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Special report No 1/96 on the MED programmes (submitted pursuant to Article 188C, paragraph 4, indent 2, of the EC Treaty) together with the Commission's replies 1

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I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 1/96

on the MED programmes together with the Commission's replies

(96/C 240/01)

(submitted pursuant to Article 188C, paragraph 4, indent 2, of the EC Treaty)

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INTRODUCTION

Summary

The MED programmes consist of a range of decentralized cooperation actions undertaken by organizations in the public or private sectors of European Union and Mediterranean countries which are formed into networks. The sectors covered are local government (MED-Urbs), higher education (MED-Campus), the media (MED-Media), research (MED-Avicenne) and business (MED-Invest). The overall objective of these programmes is to promote partnership and to transfer knowledge and experience between European and Mediterranean organizations. Between 1992, when the programmes began, and 1994 ECU 75,8 million was provided from the Community budget for these actions. The audit of these programmes by the Court identified serious irregularities and mismanagement. These were immediately reported to the Commission which has informed the Court that it is taking corrective measures.

It is essential, if decentralized cooperation is to succeed in the long run, that the arrangements for its implementation should be developed in a regular manner, with adequate management and control of Community funds. The Commission must ensure that it allocates sufficient resources, notably personnel, to oversee the implementation of these programmes.

Background

1. Aid from the European Union to the Mediterranean non-member States now comes under a single programme known as the New Mediterranean Policy (NMP). The overall economic objectives of this policy are, economically speaking, to foster the emergence of a prosperous region around the Mediterranean and, politically speaking, to reinforce democracy and regional integration in the Mediterranean non-member States.

2. The Court undertook to examine the management of the budgetary resources allocated to the three main aspects of the NMP, namely the financing of:

- (a) measures to accompany the process of structural adjustment started by the Mediterranean non-member States;
- (b) multilateral aid;
- (c) the third and fourth financial protocols.

3. Chapter 11 of the Court's Annual Report concerning the financial year 1994 looked at the first component of the NMP and a subsequent report will be devoted to the implementation of the financial protocols. This report deals exclusively with the MED programmes, which are one of the aspects of multilateral aid.

4. Initially, when the Court began its audit of the MED programmes, it became apparent at an early stage that there were serious irregularities and weaknesses in the financial management of implementation. The Court, therefore, focused its efforts on the areas of weakness. It also decided that the findings justified a special report on its own.

Presentation of the MED programmes

5. The MED programmes are the expression of the Community's desire to develop multilateral cooperation with and between the Mediterranean non-member States. They were created because the financial protocols, which are bilateral agreements between States, were unsuited to carrying out such a policy.

6. The MED programmes were designed so as to make it possible to obviate these obstacles by developing decentralized cooperation on the basis of new instruments. They consist of entrusting to partners on both sides of the Mediterranean who form networks of four to eight members the realization of a project they have planned themselves. These partners are, depending on the programmes concerned (see paragraphs 7 to 18) regional authorities, universities, enterprises, media professionals or research centres. The Commission provides the additional financing and the requisite technical assistance they need to complete their projects.

The diversity of the programmes

7. As of 1994, the MED programmes included MED-Urbs, MED-Campus, MED-Media, MED-Invest and MED-Avicenne. In 1995, a sixth programme was added: MED-Migration (a sub-topic of MED-Urbs). At the same time, the same management concepts and systems were set up in order to foster the peace process in the Middle East when the Peace programmes were created.

MED-Urbs

8. The objectives of this programme are varied and complementary. The aim is to contribute to improving the

living conditions of urban populations, reinforcing and generalizing democratic practices at the local level and creating and developing decentralized cooperation between the local communities of the various Mediterranean non-member States, and also between these latter and their counterparts in the European Union.

9. The budgetary resources allocated to the MED-Urbs programmes between 1992 and 1994 represented a budgetary volume of ECU 22,3 million in commitment appropriations. The projects financed in this way concerned 17 countries and involved 170 local authorities, including 104 in the European Union and 66 in the Mediterranean non-member States.

10. These projects cover areas as varied as the environment, urban planning, municipal management, the management of human resources, economic development, urban transport, local taxation and local democracy.

MED-Campus

11. MED-Campus supports decentralized cooperation projects managed by networks of universities in the northern and southern Mediterranean. These networks are operational channels which make it possible to exchange experience and transfer technologies and know-how.

12. The 142 projects financed by these programmes during the period in question concerned training measures in the fields of the environment, development economics, culture and management. Community aid totalled ECU 23,3 million in commitment appropriations.

MED-Media

13. MED-Media aims to create high-level media networks so as to foster cooperation between professionals on both sides of the Mediterranean.

14. These programmes started in 1994. The Commission took two decisions to provide financing for it totalling ECU 11,1 million, on the basis of which about 60 projects were subsidized. They comprise four basic components: training, programme exchanges, joint production, seminars and workshops.

MED-Invest

15. Having been endowed with a budget of ECU 10 million, the MED-Invest programme aims to promote in the Mediterranean non-member States an environment which favours small and medium-sized enterprises and which is conducive to increasing their ability to compete. This programme comprises two components which are outlined below.

16. Component A consists of making available to the Mediterranean non-member States existing Community instruments and programmes originally created to assist European small and medium-sized enterprises. Broadly speaking, these instruments serve to facilitate the exchange of information and contacts between potential partners. They may take the form of meetings, which are known as Europartnership when held in a Community country, Med-Partnership when held in a Mediterranean non-member State or Med-Intreprise when on a smaller scale. They may also consist of the creation of networks of middlemen (BC-Net) or Bureaux de Rapprochement des Entreprises (BCR) with a view to identifying potential partners. Since the MED-Invest programme was launched, four Euro-Partnerships, two Med-partnerships, 11 Med-Intreprises and two BCR/BC-Net have been financed.

17. Component B, unlike the other MED programmes, does not consist in allocating a subsidy to a beneficiary network but in remunerating third parties for the technical assistance they provide with the implementation of a project pre-defined by the Commission itself. The areas covered by this component include the creation of specialized financial companies and export management companies, the establishment of service centres and development agencies and, lastly, measures to support the creation of companies. The implementation of this component was considerably delayed since, between the adoption of the financing decision by the Commission in September 1992 and 31 December 1994, only three operations had been financed at a total cost of ECU 1,3 million.

MED-Avicenne

18. MED-Avicenne is a component of the Avicenne⁽¹⁾ research programme. This programme received such a large number of applications that the appropriations available under heading B 7-5 0 3 5 provided for this purpose proved to be inadequate in 1993. ECU 9 million was therefore withdrawn from heading B 7-4 0 8 0 to finance 15 additional projects in which the Mediterranean non-member States' partners participated and which were brought under the single heading of MED-Avicenne.

Resources implemented

A new legal framework and increased budgetary resources

19. On 29 June 1992, the Council adopted Regulation (EEC) No 1762/92 which covers the management of the financial protocols with the Mediterranean non-member

⁽¹⁾ Scientific and technological cooperation with the Maghreb countries and other countries of the Mediterranean in areas such as health and environmental protection.

States and Council Regulation (EEC) No 1763/92⁽¹⁾, which covers, in particular, multilateral cooperation with the Mediterranean non-member States. This latter text states the financial resources — ECU 230 million — which the Regulation says must be devoted to multilateral aid and sets specific objectives, such as the protection of the environment, measures of regional interest and projects promoting regional integration.

20. As *Annex 1* shows, the Commission's financial estimates for the period concerned differ considerably from the wording of the Regulation. A comparative reading of the two documents reveals, in particular:

- (a) a considerable increase in resources allocated under the budgetary procedures — ECU 309,9 million instead of ECU 230 million;
- (b) a reduction in measures to assist regional cooperation, ECU 64,1 million instead of the ECU 85 to 90 million indicated;
- (c) an allocation of ECU 115,6 million to decentralized cooperation, i.e. the MED programmes.

The Court's methods and objectives

21. The Court, given the two-tier level of management, both of the programmes and of the networks, first of all carried out an analysis of the system set up to implement the financing decisions in respect of the MED programmes. It

then assessed the quality of the instruments created by the Agency for Trans-Mediterranean Networks (ARTM), which was entrusted with the administrative and financial management of the programmes, and the various Technical Assistance Bureaux (TAB) responsible for monitoring them, so as to assess to what extent they enabled the Commission to check that Community funds had been used properly.

22. Because it had observed a number of weaknesses when it examined the management system and instruments, the Court carried out an on-the-spot examination based on records at the head office of the network coordinators of a representative sample of about 30 projects. These checks made it possible to assess the overall management of the network, the eligibility of the declared expenditure and the results attained. They also served to assess the assistance given to the networks.

23. The Court identified serious irregularities and shortcomings in financial management in the way in which the MED programmes have been organized and implemented. These were brought to the attention of the Commission as soon as possible because of the need for immediate action to be taken to correct the highly unsatisfactory situation that was found. Following discussions with the Commissioner and Commission services concerned, the Court was informed at the end of November 1995 of a number of measures the Commission intended to take (see paragraph 57).

24. The criticisms set out in this report are not directed at the concept of decentralized cooperation. It is the way in which it has been implemented that is unsatisfactory. The shortcomings identified, however, must be overcome if the concept itself is not to be called into question.

⁽¹⁾ OJ No L 181. 29. 6. 1992, p. 5.

OVERALL SYSTEM FOR MANAGING THE PROGRAMMES

Summary

In the light of the inadequacy of its own resources to manage the MED-programmes, the Commission subcontracted the administration and financial management to ARTM, a non-profit making organization established specifically for this task on the initiative of the Commission. The technical monitoring functions were contracted out to Technical Assistance Offices (usually consulting firms). The manner in which this was done, and the subsequent functioning of these management arrangements gave rise to a number of serious irregularities and weaknesses in financial management:

- the powers conferred upon ARTM constitute in effect a delegation of the powers of the Commission to a third party: apart from the fact that it is doubtful whether in this case there is a legal basis for such a delegation, a decision in principal to that effect is required, which can only be taken by the Commission itself. No such decision exists,
- excessive recourse was had to private treaty contracts, without proper tendering,

- the manner in which contracts were awarded, the involvement of the same consulting firms in the conception of the programmes, in the preparation of financing proposals, in the management of ARTM, and in the technical monitoring of the programmes led to a situation in which serious confusions of interest existed, prejudicial to the proper management of Community funds,
- the resources and procedures of the Commission for monitoring the implementation of the MED programmes and for controlling their decentralized administration were inadequate: when the serious confusions of interest referred to above were identified by the Commission, it was ineffective for a long time in bringing them to an end,
- serious shortcomings in the financial management of the programmes at the level of the Commission and ARTM were identified.

General presentation

The ARTM

25. From the outset, the Commission realized that it was unable, owing to both the limited number of staff at its disposal and the constraints imposed by the Financial Regulation, directly to manage programmes which would inevitably entail a multitude of different management tasks once implementation started.

26. The management of this new instrument was organized on the basis of two central features — sub-contracting the management of the programmes to private bodies and the separation of administrative and financial duties from technical support — was adopted. Administrative and financial duties were entrusted to the ARTM whilst technical support duties were entrusted to a different BAT, for each of the programmes. The idea at the root of this division of tasks was to enable the Commission to collect information from different sources for the purposes of comparison.

27. The ARTM is an international non profit-making association under Belgian law⁽¹⁾. It was created on the initiative of the Commission which, moreover, bore all of the costs of its creation. Consequently, the decisions which this association is required to take should, in principle, be strictly supervised by the Commission. Furthermore, with the exception of the token contribution of Bfrs 1 000 per annum by the members of the association, the ARTM's resources come exclusively from the contracts awarded to it by the Commission.

The mechanism of the system

Appraisal of applications

28. The implementation of the programmes got under way with the publication in the *Official Journal of the European Communities* of a call for proposals. Networks

which wish to obtain Community financing submit their applications, which are then centralized by the competent BAT. This latter checks compliance with the conditions of eligibility for the Community subsidy, such as the area covered by the project submitted and the origin and the number of the partners in the network.

29. Once this work has been completed, the Commission convenes a Selection Committee⁽²⁾, which gives its opinion on the applications. In the second year of a programme, before the competent committee takes applications from the new networks into consideration, it first examines all of the applications submitted by the networks which have already received financing and which wish the Community aid to be continued for a period of consolidation.

30. Once this work is finished, the competent committee draws up two lists which identify the projects and the network coordinators and fix the amount of Community joint financing granted to each of them. The first list is of networks which are considered to have priority. The second comprises a reserve of networks which are eligible for financing if any candidates withdraw from the first list. On the basis of these documents, the Commission prepares the financing proposal submitted to the MED Committee⁽³⁾.

Preparation and structure of the financing decisions

31. If the MED Committee's opinion is favourable, the Commission adopts a financing decision approving the programme concerned. This decision, in addition to financing awarded to the networks, provides for a financial reserve to cover operations which prove necessary in order properly to implement the programme. Certain decisions also include the remuneration of the ARTM and the BATs,

⁽¹⁾ Subject to the Law of 25. 10. 1919.

⁽²⁾ In the case of the MED-Campus programmes, the Selection Committee is called a Scientific Committee. These committees are made up of eight experts in the field concerned.

⁽³⁾ The Committee provided for respectively in Articles 6 and 7 of Council Regulations (EEC) No 1762/92 and 1763/92 of 29. 6. 1992.

whilst, in other cases, this remuneration is settled partially or in full by the Commission itself from an overall commitment.

32. DG IB prepares a global commitment proposal for a figure corresponding to the figure established in the financing decision. Once the commitment proposal has been approved, an initial tranche of 40% of the amount committed is paid to the ARTM once it has submitted a bank guarantee. The procedures which subsequently come into play are what make the system drawn up for the administrative and financial management of the MED programmes an original one.

33. From this point on, the ARTM is invested with broad management powers, which range from sending letters of notification to the beneficiaries to signing contracts awarding subsidies and including the renegotiating of terms with applicants where the subsidies granted differ from the amounts applied for. By means, in particular, of drawing up project reports which it submits to the Commitment Committee⁽¹⁾, the ARTM plays a far from negligible role in assessing the eligibility of expenditure. It may also take the initiative to ask for sums it considers to have been paid in error to be reimbursed.

34. It should also be pointed out that the contracts signed when the first two MED-Urbs and MED-Campus programmes were implemented were exclusively signed by the ARTM and the representative of the pilot body. The same was true as regards the contracts awarding technical assistance, which were concluded directly between the ARTM and the managers of the BATs. With effect from the second series of programmes, these documents were also signed by a Commission official.

35. However, from the outset, the sums paid to the ARTM were held in a bank account and payments had to be co-signed by three people: the Director of the ARTM and two officials from the Authorizing Officer's department.

36. The contract stipulates that the coordinator of a network must provide the agency with an interim progress report and a final report. Both of these documents are divided into two parts. The first part is purely descriptive and the second comprises a series of financial tables, which the ARTM says are the revenue and expenditure accounts.

37. The payment to the beneficiaries of the second and third tranches depends on the approval of the aforementioned reports by the programme's Commitment Committee. This Committee, which is made up of representatives of the

ARTM and the BAT, is chaired by the Commission administrator responsible for the programme concerned. The decision taken depends on the opinion given by the ARTM and the BAT, based on their examination of these reports. The ARTM gives its opinion on the financial aspect of the report whereas the BAT considers only the technical aspects.

38. The diagram drawn up by the ARTM, attached as Annex 2, gives an overview of the whole system.

Analysis of the system and of the way in which it functions

Observations concerning the delegation of powers

39. In view of the nature and scope of the powers conferred on the ARTM, what the Commission had actually done was to delegate its powers *de facto* to a third body, rather than sign mere service contracts. The fact is, though, that (ignoring the questions concerning the legal basis, see paragraph 41 below) these powers were delegated in the absence of a decision of principle by the Commission (see paragraphs 42 *et seq.*). The terms of this delegation are also open to criticism, in so far as the contracts remain vague as to the responsibility of the ARTM and its administrators and say nothing about the ownership of its assets and their sharing out in the event of bankruptcy, although the ARTM was set up exclusively with finance from the Commission. Furthermore, the Court observed serious irregularities in the way this delegation was managed (see paragraphs 44 to 45 below).

40. Lastly, in spite of several warnings, this *de facto* delegation of powers was not revoked, in spite of the fact that, in a note of 2 December 1992, the Commission's Legal Service, having been consulted by the department responsible for the implementation of the MED programmes, pointed out that: 'control-related duties, or those involving the discharge of discretionary power within the framework of a genuine Community policy, including the implementation of the budget, may be carried out only by officials or, under certain circumstances, temporary staff' (2).

Legal basis

41. The legal basis for this delegation of powers is not clear. Whilst Article 105 (3) (1) of the Financial Regulation

(1) The Commitment Committee — made up of representatives of the ARTM and the relevant BAT and chaired, for each of the various programmes, by the relevant Commission administrator — is in fact a Management Committee.

(2) DG IB did not, moreover, wait for this opinion, because it signed the first contract with the ARTM on 25 November 1992. The Consultative Committee on Procurement and Contracts also warned DG IB on the same questions in an opinion of 6 December 1993.

(FR), which concerns the management of external aid in general, provides for the possibility of delegating management 'to another body', in contrast, Article 6 (1) of Council Regulation (EEC) No 1763/92, which covers the MED programmes in particular, does not mention any such possibility. Although this Regulation refers explicitly to Article 105 of the FR, it allows the Commission to delegate its management powers only to the EIB, as regards interest rate subsidies and operations based on risk capital.

Competent authority

42. The decision to entrust the management of the programmes to an external body is unquestionably a decision of principle, which implies important choices regarding the way in which a policy is to be implemented. Such a decision may only be taken by the Members of the Commission⁽¹⁾ together, and must necessarily lay down precise provisions governing the procedures for delegating the powers in question, in particular as regards the question of scrutiny and the responsibilities incumbent on the delegates.

43. In its reply to the observations of the Court, the Commission argues that 'the arrangement [with ARTM] flows from the financing decisions taken for the MED programmes adopted by the Commission'. These decisions, however, are insufficient and do not define the conditions under which ARTM is to exercise powers delegated by the Commission.

Conditions of delegation

44. Lastly, the Court of Justice, in its ruling *in re Meroni v. the High Authority* of 13 June 1958 (which has since become the standard case-law reference for such matters), lists the conditions that must be satisfied if power is to be delegated in a regular manner. One of these conditions states that discretionary power may not be delegated, and that only clearly defined powers of implementation may be delegated. However, it was noted that the utilization by the Commitment Committees of the reservations contained in the Commission's financing decision had resulted in the *de facto* amendment of several decisions (see paragraphs 73 to 74 below). An irregularity was therefore committed, either because the Commitment Committees had overstepped its powers or because the Commission had delegated the discretionary power of amending a decision. This power cannot be described as a clearly defined power of implementation.

45. Another condition stipulated by the Meroni ruling concerns the observance by the authority to which power has been delegated of the same rules as those which apply to the delegating authority. As the Commission is required to exercise its powers in complete independence⁽²⁾, the ARTM should have done the same. This was not the case, as is shown by the Court's detection of flagrant examples of confusion of interest, details of which are given in paragraphs 50 to 57. These clear violations call into question the whole system of delegation. The fact is that the Commission, as the delegating authority, is responsible for the actions of the ARTM. To this extent, it was also responsible for preventing these violations. The Commission was given the means of doing this when it co-signed the contracts and bank transfers drawn up by the ARTM.

Rules for awarding public contracts

46. The ARTM was singlehandedly created and financed from scratch by the Commission. This latter signed a private contract at the end of October 1992 with a firm of consultants totalling ECU 54 000 for the purpose of carrying out a study of the organizational needs of the future agency. The expert seconded by this consultant was subsequently put in charge of operations at the ARTM.

47. The Commission assigned the administrative and financial management of the MED programmes to this agency by private-treaty contracts from 1992 until December 1993. In July 1994, the ARTM obtained a new contract following an invitation to tender. The table attached as *Annex 3* gives the details of the amounts of these contracts and the procedures for awarding them. This situation infringes the rules governing the awarding of public contracts. The Commission issued an invitation to tender only when the conditions of equality between the applicants had definitively ceased to exist, even though that meant squandering the experience acquired over the previous two years. Furthermore, the 'brother' programmes subsequently launched as part of the peace process in the Middle East were also entrusted to the ARTM by private treaty contracts as was the technical monitoring, for example, of a Peace programme concluded by private contract with FERE Consultants on 18 January 1995.

48. The Commission justified the awarding of contracts by private treaty (by way of derogation from Article 56 of

⁽¹⁾ Court of Justice ruling of 23 September 1986, Case No 5/85, *AKZO Chemie v. Commission*, Rec. p. 2585, 2614 *et seq.*

⁽²⁾ See, for example, Article 157, paragraph 2 of the EC Treaty and paragraph 12, second indent of the Staff Regulations.

the FR⁽¹⁾) to the ARTM by citing the absence on the market of a body with the requisite qualifications. However, there is no evidence in the Commission's files to show that the Management Department carried out any research in respect of the market in order to check the situation, and the fact that several candidates applied when the invitation to tender was issued in 1994 would seem to indicate that firms with these qualifications already existed at the time. Furthermore, in the Court's opinion, the ARTM had no particular responsibilities either at the technical level or in terms of administrative and financial management which could have provided unrestricted justification for its being chosen.

49. Until December 1993, the contracts awarded to the BATs were also awarded by private treaty. The table in *Annex 3* shows for the period concerned that, out of 12 contracts awarded, in more than half of the cases no invitation to tender had been issued.

Confusion of interests

50. Two of the four administrators of the ARTM were, until April 1995, also managers of the BATs (the firms FERE Consultants and Ismeri) responsible for monitoring the MED programmes.

51. These same BATs participated in the planning of the MED programmes, including the stage at which draft financing proposals were prepared, a task which is the exclusive responsibility of the Commission⁽²⁾. In order to carry out this work, FERE Consultants, as part of the preparation of the MED-Urbs programmes and component B of the MED-Invest programme, and Ismeri Europa with regard to MED-Campus, obtained ECU 323 000 and ECU 199 960 respectively. These contracts were also awarded by direct negotiation with these bodies.

52. The conditions for awarding the contracts and the involvement of the same firms of consultants in preparing the programmes, drawing up financing proposals, on the Management Board of the ARTM and in monitoring the programmes resulted in a situation where there was a conflict of interests that was prejudicial to the sound management of Community funds and contrary to the principle of equality of access to public contracts. Two particularly serious cases must be highlighted:

- (a) once the Committee had given its approval, the ARTM directly signed (see paragraph 34) private treaty contracts to BATs that were managed by two of its administrators for ECU 547 750 and ECU 748 900

respectively. The first case was a contract dated 14 December 1992 between the ARTM and FERE Consultants. The second case concerned a contract dated 21 December 1992 between the ARTM and Ismeri. In both cases, the signatory managers occupied, when they signed the contract with the ARTM, two of the four administrator posts on the ARTM's Management Board. It must also be noted that both of the firms to which the aforementioned contracts were awarded took part in the meetings of the Commitment Committee which approved the contracts in question;

- (b) in the context of the implementation of the MED-Invest programme, these same two BATs were awarded the contract to carry out two projects even though there was no tender or selection procedure. The sums in question totalled ECU 270 000 ECU in one case and ECU 405 000 ECU in the other;

53. The risks that such errors might occur were inherent in the logic of the system that the Commission envisaged introducing and in the situations of the various parties involved. Even at the drafting stage, these risks were so evident that the Commission should have called the system into question immediately.

54. The awarding of the contract to monitor the MED-Urbs programme gave rise to a further confusion of interests. Following the invitation to tender issued during the first quarter of 1994, the Conseil des Communes et Régions d'Europe (CCRE) and the Cités Unies Développement (CUD) were instructed to monitor the MED-Urbs programme. The legal status of these two bodies is that of a non-profit-making association, set up, *inter alia*, for the purpose of defending its members' interests. To award them, as the Commission did, the contract to monitor the implementation of a programme which consists of granting subsidies to regional authorities may place the loyalty which the CCRE/CUD owe contractually to the Commission at odds with their statutory obligations in respect of their principals. This situation may also give rise to unfair discrimination against regional authorities which adhere to neither of these associations, all the more so since they belong to other organizations.

55. Furthermore, one BAT which had received financing to implement a project in the context of the implementation of component B of the MED-Invest programme was awarded the contract to monitor this programme before the Commission had even given its opinion on the final implementation report which it had submitted as part of this operation.

56. Once the Commission had realized the danger of this situation, it asked the managers of the BATs responsible

(1) Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities.

(2) Commission manual of operational procedures, paragraph 9.2, pages 17 and 18.

for monitoring to resign from the ARTM's Management Board. The minutes of the meetings of the Agency's Management Board show how vigorously those concerned resisted the Commission's requests. Nearly a year and a half went by before they finally decided to step down, in circumstances which are questionable to say the least. Thus, the minutes of the meeting of 11 October 1994 of the Agency's Management Board show that the two administrators concerned 'would resign if:

- FERE Consultants were chosen by the European Commission to provide technical assistance for the MED-Invest programme,
- [or if] Ismeri Europa were reselected as Technical Assistance Bureau (BAT) for the MED Campus programme'.

Furthermore, both of these managers asked to be able to propose a candidate of their choice to replace them in the event of their resignation. Once all of these conditions were fulfilled, both administrators resigned from the ARTM's Management Board in April 1995.

57. In view of the seriousness of these findings, the Court immediately informed the Commission of them, so that it could take appropriate measures and examine, in particular, the need to take legal action against those responsible. At the end of November 1995, the responsible Commission departments informed the Court that they intended not to renew contracts signed with the ARTM when they expired in January 1996 and to wind up the ARTM. They were also minded not to renew contracts signed with the BATs and to open an enquiry so as to establish responsibilities and to examine, in cooperation with the Commission's Legal Service, whether it was appropriate to take legal action.

Budgetary and financial observations concerning the implementation of the programmes

Rate of implementation of the budget

58. An analysis of the utilization of the appropriations under budget heading B 7-4 0 8 0, which was introduced into the budget by Regulation (EEC) No 1763/92, shows that, on 31 December 1994, a total of ECU 169,7 million was committed, on the basis of which ECU 62,4 million was disbursed.

59. Of these sums, the commitments corresponding to the implementation of the MED programmes amounted to ECU 75,8 million, of which ECU 23,9 million was committed in December 1994. A total of ECU 40,2 million (ECU 39,2 million to the ARTM and ECU 1,0 million in direct payments

to TAOs and experts) was paid by the Commission from these commitments.

60. Annex 4 provides a detailed analysis of available funds and their use. That shows that out of the total available funds of ECU 40,9 million, ECU 33,3 million was disbursed, leaving ECU 7,6 million unused at 31 December 1994. This amount, which represented almost 20% of the Commission's payments to ARTM, was well in excess of the cash requirements for the programmes.

Cost of managing the system

61. Annex 4 also shows that, of the ECU 33,3 million paid out by ARTM, only ECU 26,9 million (80,8%) was contributions to projects. The rest was used to pay for the services of ARTM itself (ECU 1,3 million) and the TAO's (ECU 3,7 million) and to finance committees (ECU 0,3 million), conferences (ECU 0,1 million) and evaluations (ECU 0,5 million). Another ECU 0,2 million for other costs and ECU 0,3 million for financing costs are overheads. These items, representing the costs necessary for the management of the programmes, total ECU 6,4 million, i.e. more than 19% of funds actually used. These costs of actually managing the programmes do not include expenditure specific to the functioning of each of the networks subsidized.

Checks in respect of the ARTM's financial data

62. The progress reports sent by the ARTM to the Commission are not based directly on its accounts but are drawn up on the basis of non-accounting data compiled from spreadsheets kept on computer by ARTM staff.

63. These non-accounting documents do not comply with the rules for submitting information which were observed in respect of the keeping of the ARTM's accounts by an independent expert. The Court drew attention to a number of discrepancies between these two sources which should be analysed and regularly justified. The Court was unable to find any evidence that these comparisons had been made either by the ARTM or the Commission.

Regularity from the point of view of budgetary principles

Administrative expenditure covered by operating appropriations

64. Although it is irregular, entrusting the administrative and financial management of the MED programmes to the

ARTM constitutes a delegation of the Commission's powers. Consequently, this agency's operating costs should have been entirely funded from Part A of the budget, the Commission's operating expenditure appropriations. Similarly, work on drafting the financing proposals, which was entrusted to external consultants, should also have been financed from Part A. However, an examination of the Commission's accounts and the contracts awarded to the ARTM and FERE Consultants as part of the implementation of the MED programmes included in *Annex 5*, shows that:

- (a) out of ECU 1 311 136 ECU received by the ARTM as payment, ECU 863 743 was charged by the Commission to operating appropriations under heading B 7-4 0 8 0, although no justification was provided other than the shortage of appropriations available from Part A of the budget;
- (b) the same is true as regards financing obtained by consultants recruited to design and draw up preliminary draft financing proposals for the MED-Urbs, MED-Invest and MED-Campus programmes for total payments of ECU 480 160.

65. This practice marks the reappearance of so-called 'mini-budgets', even though the remarks in the budget which accompany heading B 7-4 0 8 0 explicitly rule out the utilization of appropriations to cover management and administrative expenditure in general.

Infringements of the budgetary principle of universality

66. In a note dated 3 March 1994, the Commission informed the ARTM that 'interest produced by the Commission's payments must be specifically deducted from the applications for payment that you send to the Commission'.

67. This solution is contrary to the budgetary principle of universality. The interest concerned is the product of sums which, until such time as the beneficiary networks have fulfilled the contractual conditions which enable them to demand payment of the subsidy awarded, belong to the Commission.

68. This interest (see *Annex 4*), which totalled ECU 707 900 on 31 December 1994, is therefore a revenue item under the general budget of the Community which must be entered as such and must be paid back to the Commission's Accountant.

69. Furthermore, Article 277 of the Financial Regulation shows that this interest is not part of the revenue in respect of which Community legislation allowed for the possibility of re-use.

70. Consequently, the Commission was wrong in the note in question to allow this interest to be confused in accounting terms with the interest fixed in the Commission's financing decisions.

Incorrect presentation of the Community's accounts

71. Payments made to the ARTM, excluding the sums corresponding to its fees, are regarded from an accounting point of view as advances rather than payments. The fact is that the Community's debt to the networks and the BATs only arises on the date the contract is signed by the networks and the ARTM, irrespective of whether it is countersigned by the Commission.

72. Payment, which is the action by means of which the Commission discharges its debt, is given concrete form by disbursements to beneficiaries effected by the ARTM on the Commission's behalf once it has been confirmed that these beneficiaries have fulfilled their contractual obligations. Therefore, Commission revenue and expenditure accounts which indicate all disbursements to the ARTM by way of payment are incorrect. These disbursements should have been entered in the accounts merely as advances. The cash balance in the ARTM's accounts should have been carried over to the Community's balance sheet at the end of each financial year.

Use of reserves

73. Every financing decision concerning a MED programme stipulates that an amount is to be held in reserve. The table in *Annex 6* shows that the programme managers have modified these amounts on several occasions and that, with only one exception, they have been increased, sometimes substantially. In the case of the first MED-Urbs programme, the reserve was thus increased from the initial allocation of ECU 110 000 to ECU 699 277, by a factor of 6,35.

74. A large increase such as this amounts to an amendment of the Commission's financing decision, which is irregular, either because the Commitment Committee has exceeded its powers or because the powers delegated by the Commission are discretionary powers (see paragraph 44).

Drawing up of the accounts

75. In principle, the duration of the operations covered by the MED financing decisions is one year. If the accounts which record the implementation of these decisions had been drawn up on the due date that would have enabled the Commission to regularize its financial accounts. As of mid-July 1995 the Commission and ARTM had not agreed the balances of the accounts for any of the financing decisions and the former had applied to the latter for payment of neither interest nor the available balances on the accounts.

76. Spending in excess of the annual framework initially provided for is explained by serious delays in the implementation of programmes. Component B of the MED-Invest programme continues to be the case that gives most cause for concern: two years after the adoption of the financing decision, the rate of progress was only 24,8%.

Protection of the Commission's financial interests

77. An examination of the ARTM's balance sheets shows that the first year of operation generated a loss of ECU 19 706. However, the operations of the second year made it possible to record in the balance sheet adopted in 1994 a profit of ECU 36 224, a sum which included a payment of ECU 74 000 to cover risks and charges.

78. The ARTM has not returned to the Commission the ECU 51 847 which the latter disbursed when the agency was formed, even though ARTM has refunded to FERE Consultant the 22 700 ECU that it put up for the same purpose.

79. The ARTM's Articles of Association stipulate in the event of dissolution that the Management Board shall determine the allocation of the association's assets. All expenditure on creating and setting up the ARTM was borne by the Commission, which is also the ARTM's sole backer. Furthermore, the ARTM's work is totally dependent on the programmes managed by the Commission.

80. Consequently, the Commission should have taken greater care to ensure its interests were protected by demanding that the sums it had advanced should be reimbursed and by having itself clearly designated in the ARTM's Articles of Association as the recipient of the ARTM's assets in the event of dissolution.

Observations concerning selection procedures

Establishment of the Committees

81. Delays in establishing the Committees vary in degree from one programme to another. For example, subsidies were

awarded under the first MED-Urbs, MED-Campus and MED-Invest programmes before the Committees had been established. Furthermore, in the case of the MED-Invest programme, a committee had still not been set up at the end of 1995.

Procedures for the selection of members

82. It is usual for the members of these committees to be selected from among the most able people in their field, and, by virtue of their ability, they or their organizations will also qualify as suitable beneficiaries for Community aid under the programmes. In such circumstances it is necessary to have clear rules and procedures for the selection of members and a code of conduct for them which ensures that confusions of interest are avoided. At the time of the audit these did not exist.

Identifying needs

83. Most projects (28 out of the 30 in the sample) were proposed by European bodies and none of the files contained any information from a Commission delegation in a non-member Mediterranean country to clarify the Selection Committees' opinion as to what the aid recipients considered their priority needs to be. Consequently, the projects adopted as part of MED-Urbs programmes were better suited to the concerns of northern cities than to the priority needs of those in the south. Although this shortcoming was not entirely absent from the MED-Campus and MED-Avicenne programmes, it has usually been avoided because the large university networks such as Unimed (Universités de la Méditerranée) and CUM (Communautés des Universités Méditerranéennes) have installed information systems that enable them to collect expressions of priority needs by their partners in non-member Mediterranean countries.

84. Allowing the Selection Committees the latitude to give a favourable opinion on a network whilst cutting the budget of the proposed project has led to significant delays in execution. As a result ARTM is, in fact, obliged to renegotiate its budget with the network coordinator after the Commission has adopted the financing decision. Under these circumstances, the delays inherent in the selection process, combined with those imposed by the necessity of consulting the MED Committee in advance of the financing decision, make it virtually impossible for projects to be carried out under satisfactory conditions within the one-year framework of these measures. On all the projects that were visited the timetabling constraint was mentioned as one of the main difficulties that had to be overcome when projects were being executed.

PROJECT IMPLEMENTATION

Summary

At the level of the networks and the projects themselves (30 networks were sampled by the Court), a large number of weaknesses and irregularities were identified. These can be summarised as follows:

(a) concerning financial and accounting matters

- basic requirements of proper financial management and control of public funds, which were provided for in the contracts between ARTM and the network coordinators, were frequently not respected: this was notably the case with regard to separate accounting for the projects, conservation of supporting documents for expenditure claimed and the opening of a separate bank account for the network,
- the obligations of network partners to provide a co-financing contribution to the projects have been largely ignored,
- ineligible expenditure has been financed: in some cases this was systematic (e.g. the reimbursement of the costs of local authority personnel already financed by the budget of the authority), in others it concerned individual cases, which, albeit of limited financial importance, reflected the weaknesses in the system of controls;

(b) concerning matters of sound financial management:

- the award of contracts following competitive tendering was the exception rather than the rule,
- because of its lack of knowledge of national rules, ARTM paid daily allowances and supplementary remuneration at levels exceeding those allowed.

With regard to the impact of the projects, the Commission should obtain more systematic information, based on rigorous evaluations of the results against clearly defined objectives. The nature of many of the actions renders impact measurement difficult, but this makes the evaluation function all the more important. On the basis of the data currently available, and its own observations in the field, the Court considers that the impact of the MED programmes remains to be proven.

Some of the weaknesses in implementation of the programmes stem from inadequacies in the conception of the programmes (e.g. the lack of authority of the network coordinators, limits to the autonomy of the members), from weaknesses in the management instruments (most notably the inapplicability of important clauses in the contract), and from limits on the role given to the Technical Assistance Offices.

Introduction

85. The audits of documents carried out on the spot in the head offices of the organizations coordinating the 30 selected networks revealed many examples of shortcomings and irregularities. At the same time, irrespective of the necessary slight variations from one programme to another and the caution imposed by the lack of distance, the impact of the funded projects appears overall to be low in quantitative terms and difficult to evaluate in terms of quality.

86. This situation is not, however, attributable solely to the network managers. The inherent weaknesses in the design of the programmes and the unsuitability of the monitoring and management facilities installed by the Commission and ARTM are also at fault.

Results of audits at network head offices*Findings concerning financial and accounting matters*

87. In addition to stipulating that the budget on which it is based is to be adhered to, the contract concluded between the Commission, the ARTM and every network coordinator:

- (a) sets out the principle that the project is to be co-financed by the Commission and the members of the network;
- (b) specifies that a special bank account is to be opened for the network;
- (c) provides that the accounts for the project are to be separate and in accordance with the standards laid down by ARTM;

- (d) states that supporting documents are to be kept for a period of five years;
- (e) specifies that a set of financial statements is to be annexed to the progress reports.

88. These requirements had been substantially ignored by networks. In spite of some rare exceptions (MED-Avicenne 126, MED-Invest B.201, MED-Urbs 3, MED-Media 5 and 6), networks on the whole did not keep separate accounts for projects. The transactions pertaining to the implementation of the subsidized project could not be singled out in the general accounts of the coordinating body, or were absent from them if they had been settled from another network member's funds. There were five cases — MED-Campus 33, MED-Invest A3.09, MED-Campus 25, MED-Campus 126 and MED-Campus 179 — where no accounts could be produced for inspection.

89. There were similar findings regarding the opening of a special bank account. In reality this obligation was respected only by those networks which subcontracted project management to an outside organization (usually a non-profit making body). In the case of the MED-Urbs 39/40 network, the bank account was opened in a country other than that of the coordinator, contrary to the provisions of the contract. In addition, there were found to be several instances where the funds had been transferred to a bank account that had been opened in the name of the project leader and to which he had unrestricted access (MED-Campus 126, MED-Campus 179 and MED-Media 6).

90. As regards the possibility of delegating management from the coordinator to an outside organization, in at least one case, that of the MED-Urbs 01 network, the conditions laid down by national jurisprudence to qualify the practice followed by senior staff of the management association had, in fact, been satisfied.

91. Furthermore, none of the networks selected for the sample were able to provide supporting documents for all the refund applications submitted to ARTM.

92. Finally, several wrong entries in the accounts were made. Fees for the MED-Media 29 and MED-Urbs 39/40 networks had been entered as staff expenditure, as had travel expenses and subsistence allowances for the latter network. In the case of MED-Urbs 30, some of the costs resulting from extensive use of consultants were accounted for as personnel expenditure. This had the effect of seriously understating the amount of expenditure on external consultants: when the amount of ECU 33 495 wrongly charged as personnel expenses is added to the ECU 55 807 correctly declared as expenditure on external consultants, the total actually spent under this heading accounts for 22,6% of the total budget for the network.

93. From the above it is apparent not only that the obligations specified in the contracts signed with ARTM have been widely disregarded by the networks, but also that

the financial documents on which the Commitment Committee bases its decisions are worthless in the strict accounting sense and offer no guarantee of reliability. It is also clear that the responsible staff of the Commission and ARTM were not aware of this. In the extreme case of the MED Campus 33 network, the coordinator not only did not keep the supporting documents, he did not keep any accounts either.

94. The obligations associated with the principle that projects are to be co-financed by the Commission and the members of the networks have been widely disregarded. The Annexes to the first contracts were particularly clear on this point. Before it paid the second instalment of the Community subsidy to the networks, ARTM was to check that the coordinator had mobilized the material, human and financial resources required of each member of the network⁽¹⁾. Checks by the Court showed that none of the MED-Campus networks was in a position to produce a decision of the board of directors concerning a subsidy award, still less by the coordinator organization or the other network members. As regards MED-Urbs, only one of the coordinating authorities, the town of Belfort, was able to produce to the Court the minutes of the municipal council meeting awarding a subsidy specifically to the MED-Urbs 31 network.

95. In practice, therefore, the participation of network members has usually been confined to providing material resources and making direct payment for some expenditure items. In the case of the latter it subsequently transpired that the amounts could not be verified because the network coordinators did not have the supporting documents for the amounts declared and were unable to obtain them from their associates. As a result, the European Community is usually the only backer. When confronted with this situation, the managers at ARTM and the Commission elected to amend the specimens of subsequent contracts to make the co-financing obligation more vague, instead of requiring network coordinators to fulfil their contractual obligations. In so doing, they abandoned one of the concepts on which the creation of the MED programmes was based.

96. An analysis of financial flows even indicates that for some projects the EC contribution was higher than the real financial outflows (MED-Campus 25, 95, 126, MED-Urbs 34 and MED-Media 6).

Ineligibility of some expenditure

97. Among the Court's findings there were certain elements that were systematic whilst others concerned only a small number of networks. The following examples are in the first category.

⁽¹⁾ Article 3 of Annex 1 of Title II.

Reimbursement of staff expenditure

98. In the context of the MED-Urbs programme local authorities were systematically submitting to ARTM for refund amounts corresponding to the time that their officials and similar staff had spent on implementing the project. The work done by such staff is part of the responsibilities of the authority by which they are employed and is covered by its administrative budget. Although it is conceivable that the Commission might bear part of the cost of additional remuneration as an incentive to staff or to facilitate the recruitment of extra staff so as to cope with an increased workload, declarations for reimbursement, in full, for time spent by national officials must be considered ineligible for Community funding.

99. Since the authorities concerned were unable to produce any record of authorization for the payment of extra remuneration or the recruitment of the staff assigned to the project, it may be deduced that the Community refunds were, in fact, used to refinance the budgets of the network members concerned.

100. In this connection, the Court recalls that, in September 1992, in the context of the European Regional Development Fund (ERDF), the Commission issued a manual of financial procedures, setting out the principles behind Community co-financing of inter-regional cooperation. In that document, in the second sentence of Section 4.2, the Commission stated that the European Community does not take into account as eligible expenditure for co-financing capital expenditure (purchases of machinery, furniture, etc.) or the salaries of permanent officials or staff of local authorities or other organizations.

Absence of supporting documents

101. In 16 of the 32 transactions selected for the sample, the coordinators were unable to produce any documents in support of the expenditure. Under the rules concerning the use of Community public funds the transactions in question should, therefore, not have been accepted.

Other anomalies identified

102. Cases of the entry in the accounts of other ineligible items of expenditure, although they were not systematic or material in terms of the budget, were nevertheless indicative of weakness in the established control systems.

103. For example:

- (a) Med-Urbs 30: an amount of ECU 31 705, or 15,5% of the total Community contribution for the network, was

for ineligible expenditure such as a consultant's charge for drafting a tender prepared for the purpose of obtaining fresh Commission funding (ECU 18 125); the cost of preparing a simple agenda (never updated) and a four-page guide which simply presents the MED programmes, without providing any management aids (ECU 9 350); a legal opinion, of which there was no trace (ECU 4 230); and the refund to the coordinator of expenditure on services that were paid for before the service was actually rendered and before the approval of the municipal council was obtained, although it was required before the contract could be signed;

- (b) MED-Urbs 38: apart from the fact that the only concrete achievement of this network was the introduction of a course for training the municipal staff in a very specific craft (there was no practical follow-up), the expenditure financed was for the preparation and establishment of an accounting system of which the auditors could find no trace (ECU 13 905) and the person responsible for the project used the account opened in his name to settle various items of casual expenditure;

- (c) MED-Campus 55: ARTM concluded a contract with a person who exercised control, either directly or through his spouse, of several legal bodies involved in the execution of the project. Two of the organizations shared the same premises, used the same equipment and the books of account were kept by the same person, but almost all the staff were paid by only one of them. This arrangement made it possible for one firm to bill the other without it being possible to verify the existence of numerous services for which refund applications were made to ARTM. Neither ARTM nor the Commission was aware of the situation. Furthermore, there were no worksheets by which to verify the number of days' work performed for the network, even though ARTM was charged at a rate of ECU 745 per man/day. This same network invoiced ECU 12 148 ECU to ARTM for preparing progress reports which were a contractual obligation and were included in its fees.

104. The above findings indicate that payments have been made to the projects which were not justified, and which should, therefore, in principle be recovered by the Commission. The total amounts to be recovered, however, can only be assessed after an exhaustive examination at the level of the networks. It is for the Commission to decide how to proceed in this matter.

*Observations on sound financial management***Calls for tenders**

105. Contracts were frequently concluded by private treaty, especially within the framework of the MED-Urbs programmes. Furthermore, the network coordinators had no control over the choices made by other network members. In the case of Med-Urbs 31, a member of the network thus imposed contractors on the project leader, without producing evidence of a preceding call for tenders. In the case of the Med-Urbs 30 network, it is arguable that in addition to the accounting error which it represents there was also real misapplication of procedures. From a reading of the progress reports it appears, in fact, that expenditure for external consultants was entered under the heading of staff expenditure.

Amount of subsistence allowances and additional remuneration

106. The rates of subsistence allowances paid by ARTM were systematically higher than the rates paid and often authorized under the pay scales laid down in the national rules to which the European members of the networks are subject. Consequently, instead of being used to pay for services rendered, the extra amounts paid by ARTM were used to refinance the budget of the coordinating body for the network concerned.

107. As regards additional remuneration, the observations concerning local authorities apply *mutatis mutandis* to the universities. In their case the national regulations usually provide that contracts may be concluded with teachers for a number of additional hours of work. The regulations specify the hourly rates and maximum number of extra hours authorized.

108. ARTM's misreading of these regulations led it to settle bills that were in excess of these maxima and also (in most cases) greater than the amounts actually received by the beneficiary mentioned in the refund application received.

The viability of the networks

109. In view of the fact that the Commission funds the operation of the MED-Urbs, Campus and Media networks almost entirely by itself, it is doubtful whether they can continue to operate once the Community subsidy stops. In cases where the Commission had not renewed a subsidy, the network had thus ceased to function. Networks' ability to release independent resources to joint projects should, therefore, be a determining factor in their selection. Although the Community co-financing is intended to provide the initial impetus, and in some cases sustains it with a second grant of funds, it cannot make up for the networks' omissions indefinitely. The Commission's selection procedure must ensure that the capacity exists, because without it the MED networks are doomed to disappear eventually or stagnate.

The impact of the projects

110. Measuring the real impact of actions such as those financed by the MED programmes is difficult:

- (a) the volume of resources devoted to these actions in their respective sectors is limited, and isolating the impact of these measures from other factors affecting them is often not feasible;
- (b) some of the actions — for example certain training courses, seminars, meetings to transfer knowledge and know-how have no concrete output; others — for the identification of projects, elaboration of physical development plans — produce intermediate outputs, which may or may not lead to the realization of a final output;
- (c) some actions, within programmes with general goals such as reforming public administration, enhancing democracy, promotion and cooperation between media professionals in Europe and the Mediterranean countries, form part of a long-term process designed to influence trends and change mentalities.

In these circumstances, it is essential that specific objectives be defined carefully for the individual actions, which show how they are intended to contribute to the overall objectives. Objectively verifiable indicators that permit evaluation of the results should be identified.

111. The evaluation reports of the first-year pilot phases of MED-Urbs and MED-Media, which were carried out in 1994⁽¹⁾, both identify key weaknesses in the formulation and prioritizing of the purposes and goals of the programmes, and translating these into specific and concise objectives. Although the evaluation report for MED-Campus did not examine the programme in the same way as the other two⁽²⁾, concentrating primarily on the way in which the programme had been implemented, there are indications in the report that the same weaknesses applied.

112. It was, therefore, difficult for the evaluators to measure the impact of the programmes. The MED-Urbs report identified positive results for some of the individual projects it examined, while the MED-Media report concluded that after the first year the impact of the programme had been limited, but that lessons had been learned for the

(1) 'Évaluation à mi-parcours du programme MED-Urbs', Abatons Srl, Italy October 1994, and 'MED-Media pilot phase evaluation', SPAN consultants BV, 6 October 1994.

(2) 'Rapport d'Évaluation — système de la phase pilote du programme MED-Campus', Euro-Perspective, 15 July 1993.

future. The MED-Campus report did not examine the projects themselves.

113. The Commission has used the results of the three evaluation reports to strengthen the formulation of the programmes and the projects, but at the time of the Court's audit it was too early to see whether this had led to a significantly greater impact for the programmes.

114. As explained in paragraph 4, the Court's audit concentrated on the serious irregularities and weaknesses in financial management identified at an early stage of its work. It has, however, found the following in terms of the impact of the measures:

- (a) during the first two years of the programmes, when the majority of the network coordinators and the organizations carrying out activities for the networks were located in Europe, the bulk of the funds provided by the Commission were consumed in Europe;
- (b) the freedom of operation of certain local authorities within the networks was limited by the absence, in whole or in part, of legal and/or financial autonomy in relation to the central government: the ultimate effectiveness of the actions carried out, particularly where investments are required, depends in such circumstances on obtaining the agreement and support of the central government, which in most cases will not have been involved in the initial action;
- (c) there is undoubted enthusiasm amongst the participants for the actions, where contacts between professionals in the same sector are developed; however, positive evaluations of meetings, seminars, and other actions by the participants do not necessarily mean that the activities have had the intended impact; more systematic evaluation is necessary;
- (d) as noted in paragraph 110, the sustainability of some of the networks when Commission support is withdrawn is doubtful.

115. The impact of the MED programmes, therefore, remains to be proven. Even if the concept of decentralized cooperation of this sort may be innovative and attractive, it is essential that rigour should be applied in formulating objectives, in deciding how those objectives are to be achieved and measured and then in evaluating whether or not they have been achieved.

The causes of this situation

116. The causes of the situation described above are various. They consist not only of weaknesses in network management, but also of weaknesses in the planning of projects and the shortcomings of the monitoring tools.

Weaknesses in the planning of projects

117. The network concept was adopted as a way of fostering multilateral cooperation between the countries on the northern and southern shores of the Mediterranean. Its purpose was both to prevent delays at intergovernmental level and to provide a common workplace for European and southern Mediterranean partnerships, where they could operate on a basis of equality.

118. The actual execution of a project nevertheless presupposes that all those involved have real legal and financial autonomy. Generally speaking, however, as mentioned in paragraph 114, the governments of the non-member Mediterranean countries supervise their local authorities closely, though to varying extents. The same is true of press freedom. These constraints strongly influence the results that can be expected from programmes such as MED-Urbs and MED-Media. For example, members of the Med-Urbs 29 and Med-Media 15 networks from one southern Mediterranean country were required to obtain the consent of the Ministry of the Interior before they could send even a fax to the network coordinator. From that point of view, the situation of the other MED programmes is less adverse.

119. A second limit is imposed by the status of the networks. With the exception of some MED-Avicenne networks, the relationship between the various members of the networks is simply an *ad hoc* association, so that network coordinators have no legal means of compelling members to fulfil their obligations. Furthermore, these obligations are only defined in the contract between ARTM/Commission and the coordinator, to which the other network members are not party. Their only commitment is in the form of a simple letter which is usually very loosely worded.

120. A third limit concerns the operating costs associated with networking — a method which requires finance for the organization of regular meetings between the widely separated members of the network. The number of meetings varies, but was rarely less than two or three a year in the case of the networks audited by the Court. In the specific case of MED-Urbs, the meetings include elected representatives and technical staff, either separately or together, which inevitably increased the cost. In addition to the meetings for each network, there were also programme conference(s). The project leaders whom the auditors met during visits usually complained that the number of such conferences was too high and that the financial resources available for the actual project were reduced proportionately in consequence. In extreme cases the existence of the network may become an end in itself. Leaving aside the numerous criticisms generated by its management, the Med-Urbs 38 network has practically reached this extreme (see paragraph 103 (b)).

The volume of funding

121. Each financing decision concerns a relatively high number of beneficiaries. Since the overall funding for each programme is only a few million ecus, the amount of the individual subsidies awarded to networks is inevitably limited to a few hundreds, or even tens, of thousands of ecus.

122. The amount is relatively small, so it is not an obstacle in itself if the project being financed concerns a training measure, feasibility study or other similar, small-scale operation. When financing studies of this kind, however, the Commission must be careful to check that the beneficiaries will subsequently be able to obtain the loans needed to complete the proposed operation from other sources and that it will not be blocked in any way by the local government. The Med-Urbs 30 network may be mentioned in this connection. The cost of carrying out one of the proposed measures was estimated to be about ECU 230 million. There appears to be some doubt as to the network's ability to raise such a sum and the beneficiary town's ability to assume the corresponding debt burden, either legally or financially.

The annual framework

The delays inherent in the selection process, combined with the necessity of consulting the MED Committee in advance of the financing decision, make it virtually impossible for projects to be carried out satisfactorily within the one-year framework initially laid down for the MED programmes. For all the networks visited, the problem of the timetable was advanced as one of the major hurdles that had to be surmounted when putting projects into effect. The problem is particularly acute in the case of the MED-Campus networks, because of the constraints imposed by the university year.

The management tools

Impossibility of applying important contract clauses

124. As reported above, the contractual clauses on which ARTM wished to construct its monitoring system have not been generally respected by the networks. The explanation for this lies less in any lack of goodwill on the part of the managers than in the legal impossibility of complying with them on account of prohibitions imposed by national legislation.

125. However, the coordinators cannot be exonerated completely, because the audit visits showed that they were fully aware of this conflict of legislation and, therefore, of the impossibility of complying with the clauses in question. However, not only did that not prevent them from signing

contracts which, theoretically, were legally binding on them, but the question of the contradiction was never raised officially with ARTM and/or the Commission.

126. ARTM's structure, size and staff profile are such that it was impossible for it to be aware of all the legal constraints affecting the managers of networks whose members were from different countries of the Union and southern Mediterranean. The Commission, on the other hand, is responsible for checking that any measures which it puts into effect are fully legal. It must be aware of conflicts of legislation and, moreover, it has the necessary powers. That reason alone should have sufficed for it to question, if not the legality then, at least, the validity of the delegation of powers to ARTM.

127. The fact that the project coordinators signed contracts containing clauses with which they could not comply can undoubtedly be explained partly by the probable unenforceability of the choice of the Brussels civil court as the court to which any disputes are to be referred. In fact, it is not clear whether that court is competent to deal with contracts which concern the implementation of a Community policy where the parties to the contract may include a public-law body in a member country of the European Union.

Weakness of the financial control system

128. Apart from the unreliability of the financial information that has been discussed above, there was another major weakness in ARTM's financial monitoring. It is essentially based on a comparison of the expenditure statements forwarded by the network coordinator and the budget documents annexed to the contracts. The two sets of documents have been structured in a way which makes such comparison easy. In fact, in the absence of the supporting documents for the amounts of expenditure shown, the comparison can be used only to form an opinion of their plausibility and cannot be used to establish their existence or accuracy.

The limits of BAT monitoring

129. The objective of the BATs' involvement was twofold: to assist the networks and to provide the Commission with information concerning the progress of projects. From this point of view, the overall results achieved are mediocre given their cost, although there is some slight variation between programmes. On the other hand, the quality of monitoring for the MED-Avicenne programmes, which is carried out directly by the Commission, is high.

130. The terms of reference of the contracts concluded with the BATS do not include any obligation to assess the justification for the sums which are the subject of refund applications.

CONCLUSIONS

131. The system for the administration and management of the MED programmes was established with insufficient analysis by the various services of the Commission of what could be done within the existing regulatory framework, and without examining properly the implications of what was being proposed. Thus, basic administrative procedures of the Commission which are designed to ensure that an irregular situation is avoided failed to function correctly (paragraphs 39 to 45).

132. The structure and procedures of the Commission to oversee and monitor the implementation of the MED programmes, and to exercise control over their decentralized administration, were inadequate and deficient. In part, this was because insufficient resources were available for the task.

133. Serious confusions of interest developed in the implementation of the MED programmes which the Commission failed to put an end to in a timely manner (paragraphs 50 to 57). The risks of such situations arising were evident from the outset and should have led the Commission to call the system itself into question.

134. There was excessive recourse to private-treaty contracts, without proper tendering. Private-treaty contracts have permeated the whole structure of the MED programmes. This was one of the elements contributing to the development of conflicts of interest referred to above (paragraphs 46 to 49).

135. At all levels of the financial management of the MED programmes there are serious shortcomings and irregularities (paragraphs 62 to 63; 64 to 80).

136. At the level of network coordinators and the projects themselves, basic requirements of proper financial management and control of public funds were frequently not respected, and many of the conditions in the contracts between the Commission, ARTM and the network coordinators have not been respected in part because they are inapplicable under the terms of national law (paragraphs 87 to 108 and 124 to 127).

137. On the basis of the data currently available and its own observations in the field, the Court considers that the impact of the MED programmes remains to be proven.

RECOMMENDATIONS

138. The Commission should take immediate action to redesign the manner in which these programmes are

formulated, managed and implemented. The Court is, therefore, pleased to note that, in response to the Court's findings, the Commission intends to take a number of measures which would go in this direction.

139. New programmes or instruments should not be undertaken until adequate resources are available for their management and the structures and procedures for their implementation have been properly evaluated.

140. The Commission must ensure that it does not give to external organizations called upon to assist in the implementation of a programme functions and responsibilities which it should exercise itself: in particular, the Commission must remain responsible for the execution of the programmes and the budgetary resources devoted to them, and recourse to external organizations should not lead to a loss of control.

141. Considerable strengthening in the concept and status of the networks is necessary if the implementation of projects is to be improved. The obligations of the members of the networks should be defined in a contract, and their respect should be a condition for the granting of funds to networks. Generally, networks should have a legal personality and financial autonomy so that a specific bank account and financial accounts can be maintained, with full supporting documentation.

142. Provision should be made to ensure that the accounts of all the organizations involved at all levels in the implementation of the programmes are audited annually by independent external audit bodies, whether from the private sector or from the public sector.

143. The Commission needs to examine more closely the question of the longer-term viability of the networks. In this regard, the Commission should decide clearly whether or not to maintain the principle of co-financing, and if it decides to maintain it, to ensure that it applies to real co-financing, with the effective payment of funds allocated by the members of the networks.

144. As regards the implementation of the MED programmes, the Court noted the Commission's inability to complete its tasks with the resources, in particular in terms of staff, available to the departments concerned. Consequently, the Court can only reiterate the recommendation it made in the conclusions to Chapter 10 of the Annual Report concerning the financial year 1994⁽¹⁾; the Commission should '... state whether it believes it has adequate human resources to cope with its obligations without systematically entrusting to third parties or staff not subject to the Staff

⁽¹⁾ Paragraph 10.70 of Chapter 10 'Measures in favour of the countries of central and eastern Europe, the newly independent States (former Soviet Union) and Mongolia'.

Regulations tasks that should be executed by a public service body'. Furthermore, the Court must draw the Budgetary Authority's attention to the dangers to the sound use of public funds and the legislation of the Community (and sometimes of the Member States) posed by the gap which has widened between the volume and the complexity of the work needed

to implement the policies which the Commission, through DG IB, must manage and the resources placed at its disposal. This point should be taken into account in the context of the considerable increase in the funds allocated to the Mediterranean non-member States as part of the MED programmes.

This report was adopted by the Court of Auditors in Luxembourg at the Court meeting of 30 May 1996.

For the Court of Auditors

Bernhard FRIEDMANN
President

ANNEX I

NEW MEDITERRANEAN POLICY
COOPERATION CONCERNING ALL MEDITERRANEAN NON-MEMBER STATES

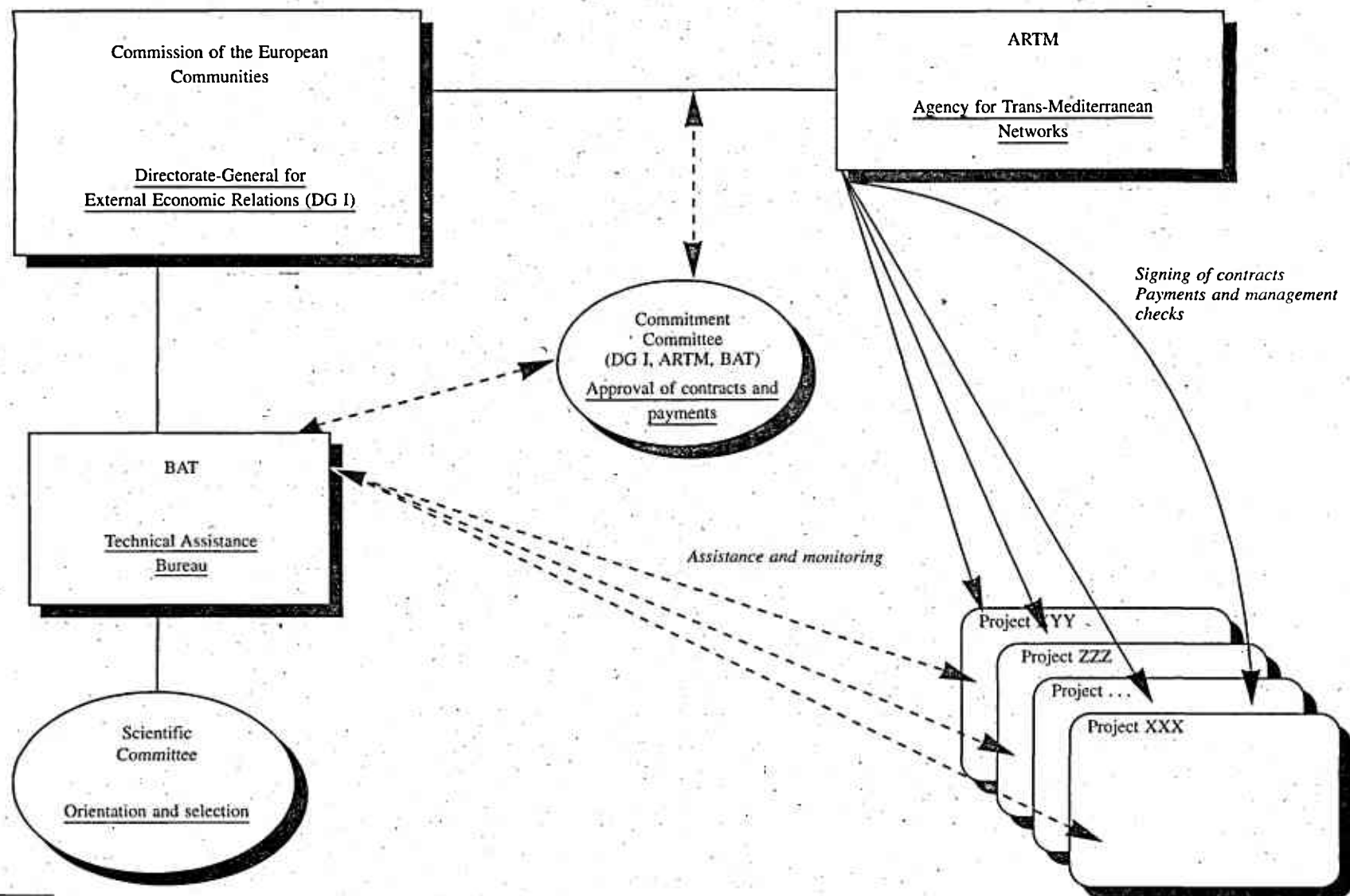
Budget heading B7-4080

20. 5. 1994

Area of intervention	Commitments (million ECU)				
	1992	1993	1994	1995	1996
1. Environment					
1.1. Interest rate subsidies (EIB loans)	3,93	9,66	25,0	35,0	40,0
1.2. Imphos-Decad. Phosphate	1,10	0,00	0,0	0,0	0,0
1.3. IEE training	0,53	0,00	0,0	0,0	0,0
1.4. GAZA sanitation	0,00	15,00	0,0	0,0	0,0
Total 1	5,56	24,66	25,0	35,0	40,0
2. Decentralized cooperation					
2.1. CIHEAM	1,00	2,00	0,0	2,0	0,0
2.2. MED-Urbs	5,50	7,92	9,0	0,0	9,5
2.3. MED-Campus	6,50	7,90	9,0	9,0	0,0
2.4. MED-Invest	10,00	0,00	0,0	5,0	6,0
2.5. MED-Media	0,00	4,94	5,0	0,0	6,5
2.6. MED-Avicenne	0,00	1,43	7,4	0,0	0,0
2.7. Others	0,00	0,00	0,0	0,0	0,0
Total 2	23,00	24,19	30,4	16,0	22,0
3. Regional cooperation					
3.1. Framework contract	0,50	0,00	0,0	0,0	0,0
3.2. Demography	10,50	0,00	0,0	0,0	0,0
3.3. Euronews	3,00	0,00	0,0	0,0	0,0
3.4. Risk capital	9,00	0,00	0,0	8,0	5,0
3.5. Micro-measures/studies	6,76	3,76	3,6	3,0	3,0
3.6. Peace process	0,00	0,00	5,0	3,0	0,0
Total 3	29,76	3,76	8,6	14,0	8,0
Grand total	58,32	52,61	64,0	65,0	70,0
4. Transferred	5,50	10,89			
5. Not committed	0,19	0,00			

Source: Commission.

ANNEX 2

THEORETICAL MANAGEMENT DIAGRAM⁽¹⁾⁽¹⁾ Source: ARTM.

ANNEX 3

**INVENTORY OF DOCUMENTATION CONCERNING CONTRACTUAL
ARRANGEMENTS FOR MANAGING THE NETWORKS**

Bodies	Procedure (private treaty/ call for tenders)	Date signed	Period covered	Programmes covered	Amount (in ECU)
ARTM					
Contract 1	Private treaty	12. 12. 1993	15. 6. 1994	MED management	159 250
Contract 2	Private treaty	15. 6. 1994	15. 8. 1994	MED management	47 785
Contract 3	Call for tenders A	1. 9. 1994	15. 4. 1995	MED management	406 695
others	Call for tenders B	6. 9. 1994	15. 12. 1995	MED management	312 150
Total					925 880
Ismeri					
Contract 1	Private treaty	21. 12. 1992	1992-1993	MED-Campus	748 900
Contract 2	Call for tenders	1. 1994	1994	MED-Campus	619 800
Contract 3	Renewal	1. 1995	1995	MED-Campus	720 000
Total					2 088 700
FERE					
Contract 1	Private treaty	14. 12. 1992	1992-1993	MED-Urbs	547 750
Contract 2	Call for tenders	23. 11. 1994	1994-1995	MED-Invest	592 900
Total					1 140 650
CCRE					
Contract 1	Call for tenders	11. 2. 1994	1994	MED-Urbs	479 617
Contract 2	Renewal	Under way	1995	MED-Urbs	549 990
Total					1 029 607
TVE					
Contract 1	Private treaty	15. 9. 1993	1993-1994	MED-Media	300 300
Total					300 300

Source: Court of Auditors.

ANNEX 4

OVERALL REVIEW OF FUND USES WITHIN THE MED PROGRAMMES AS PER 31 DECEMBER 1994

(in ECU)

	Total		Urbs 1		Campus 1		Invest		Urbs 2		Campus 2		Avicenne		Media 1		Gestion
Receipts																	
Paid by Commission	39 228 640		5 177 496		5 967 768		6 500 000		6 325 493		6 320 000		3 528 000		4 852 344		557 539
Received by ARTM	39 126 486 ⁽¹⁾	96%	5 177 496	94%	5 967 768	96%	6 500 000	92%	6 325 493	99%	6 320 000	99%	3 528 000	98%	4 852 344	93%	455 385
Interest generated	707 900	2%	63 680	1%	53 535	1%	350 133	5%	53 920	1%	33 544	1%	77 929	2%	75 159	1%	
Available ARTM	39 936 540		5 241 176		6 021 303		6 850 133		6 379 413		6 353 544		3 605 929		4 927 503		557 539
Direct payments	977 324	2%	292 660	5%	168 550	3%	187 500	3%	—	0%	—	0%	—	0%	276 767	5%	51 847
Total available	40 913 864		5 533 836		6 189 853		7 037 633		6 379 413		6 353 544		3 605 929		5 204 270		609 386
Uses																	
Project payments	27 184 490		3 904 002		4 734 575		2 600 943		5 207 772		5 415 124		1 592 472		3 729 602		
Paid via reserve	89 002		7 846		81 156												
Project reimbursements	376 582		41 188		271 394		—		64 000		—		—		—		
Project contributions	26 896 910	80,78%	3 870 660	74%	4 544 337	75%	2 600 943	78%	5 143 772	87%	5 415 124	87%	1 592 472	89%	3 729 602	79%	
Overhead costs																	
ARTM	1 311 136	3,94%	162 258	3%	206 484	3%	150 901	5%	276 040	5%	293 251	5%	93 448	5%	128 754	3%	609 386
Via overall contract	701 750		137 500		180 000		149 000		66 000		77 500		30 000		61 750		
Via contrat de gestion ⁽²⁾	609 386		24 758		26 484		1 901		210 040		215 751		63 448		67 004		609 386
TAO	3 731 297	11,21%	825 820	16%	769 018	13%	459 978	14%	472 015	8%	495 840	8%	—	0%	708 626	15%	
Paid by ARTM	2 663 246		477 905		653 559		272 478		383 692		495 840		—		379 772		
Paid by reserve account	334 503		55 255		115 459				88 323						75 466		

	Total		Urbs 1		Campus 1		Invest		Urbs 2		Campus 2		Avicenne		Media 1		Gestion
Paid by Commission	733 548		292 660		—		187 500								253 388		
Committees	305 068	0,92 %	68 183	1 %	108 567	2 %	—	0 %	—	0 %	—	0 %	62 132	3 %	66 186	1 %	
Paid by reserve account	281 689		68 183		108 567		—		—		—		62 132		42 807		
Paid by Commission	23 379		—		—		—		—		—		—		23 379		
Conferences	68 905	0,21 %	11 489	0 %	57 416	1 %	—	0 %	—	0 %	—	0 %	—	0 %	—	0 %	
Evaluation-audits	503 742	1,51 %	190 666	4 %	260 441	4 %	—	0 %	—	0 %	—	0 %	—	0 %	52 635	1 %	
Paid by reserve account	335 192		190 666		91 891		—		—		—		—		52 635		
Direct payment	168 550		—		168 550		—		—		—		—		—		
Other	173 062	0,52 %	73 581	1 %	57 529	1 %	21 824	1 %	—	0 %	—	0 %	—	0 %	20 128	0 %	
Financial costs	307 831	0,92 %	30 482	1 %	35 419	1 %	109 418	3 %	32 907	1 %	31 840	1 %	34 876	2 %	32 889	1 %	
Total used ⁽³⁾	33 297 951		5 233 139		6 039 211		3 343 064		5 924 734		6 236 055		1 782 928		4 738 820		
Unused funds ⁽⁴⁾	7 615 913	19,41 %	325 455	6 %	177 126	3 %	3 696 470	57 %	664 719	11 %	333 240	5 %	1 886 449	53 %	532 454	11 %	

(¹) A payment made by the Commission at the end of 1994 was not entered in ARTM's accounts at 31 December 1994.

(²) 'Via contrat de gestion': the total costs of the general contrat de gestion have been allocated in the table to the individual programmes in accordance with their financial importance in order to show the full costs of each programme.

(³) 'Total used' includes all uses of funds, i.e. both those paid by ARTM and those paid directly by the Commission.

(⁴) Unused funds for each programme are those unused within the accounts of ARTM. They are arrived at by subtracting payments made by ARTM from the funds 'available ARTM'. Thus, when deducting payments in the 'uses' section of the table from the 'available ARTM' figures for each programme, no account is taken of payments 'via contrat de gestion' or 'paid by Commission'.

Source: Court of Auditors.

ANNEX 5
FINANCING OF ARTM CONTRACTS
(PAYMENTS)

	Part A of the Budget	Part B of the Budget	Total
Contracts by programme			
Urbs 1		137 500	
Urbs 2		66 000	
Campus 1		180 000	
Campus 2		77 500	
Media		61 750	
Invest		149 000	
Avicenne		30 000	
Total		701 750	
Management contracts			
15. 12. 1993	128 861		
	29 500		
15. 6. 1994	7 500		
	37 515		
1994	49 482		
	194 535		
6. 9. 1994		110 146	
Total	447 393	811 896	1 259 289
Preliminary study		51 847	
Grand total	447 393	863 743	1 311 136

Source: Court of Auditors.

ANNEX 6
MED PROGRAMMES — ARTM
VARIATIONS IN THE SIZE OF THE RESERVES

(in ECU)

Programme	Year	Initial allocation	First amendment	Second amendment	Third amendment	Final allocation
MED-Urbs	1992-1993	110 000	589 277			699 277
MED-Urbs	1993-1994	264 000	213 719			477 719
MED-Urbs	1994-1995	180 000				Programme not completed
MED-Campus	1992-1993	211 420	184 382	279 750		675 552
MED-Campus	1993-1994	233 680	- 120 000	7 545		121 225
MED-Campus	1994-1995	292 635				Programme not completed
MED-Invest	1993-1996	250 000				Programme not completed
MED-Media	1993-1994	105 200	176 880			282 080
MED-Media	1994-1995	150 000				150 000
Avicenne	1994-1996	199 000	190 598			389 598

Source: ARTM.

THE COMMISSION'S REPLIES

Introduction

1. The Court of Auditors preliminary observations on the Mediterranean decentralized cooperation programmes raise important questions concerning the legality of the structure used to manage the MED programmes, the way in which this structure was put in place during the experimental phase of the programmes, certain conflicts of interest, and the degree of control exercised by the Commission over the bodies entrusted with certain tasks related to the implementation of the programmes.

The present reply by the Commission consists of:

1. General remarks
2. Measures taken
3. New general framework
4. Detailed comments

A series of general remarks on the Court of Auditors' report are followed by a presentation of measures which were taken to strengthen the management of all MED programmes. These measures were taken in response to the ever increasing number of projects in the framework of the MED programmes and the political support given to decentralized cooperation by the Ministers of Foreign Affairs of the European Union and the Mediterranean partners at the Euro-Mediterranean Conference in Barcelona, November 1995.

This is followed by a description of the principles of the new overall framework which the Commission proposes to put in place. A number of detailed comments on the Court's preliminary observations on the Med programmes are contained in annex.

General remarks

2. The first Med programmes were launched *ex nihilo* in 1992. They corresponded to a political priority, consistently supported by the Commission, the Council and the Parliament, to include in the New Mediterranean Policy an element of regional multilateral cooperation and the involvement of civil society. The Commission was aware that, given the large numbers of transactions involved in the implementation of the programmes, it did not have the staff resources available to take on all aspects of the administration of the programmes.

It was therefore decided to entrust a certain number of tasks concerning the management of the programmes to an external body (ARTM), while ensuring that all major decisions remained under Commission control.

There is a difference of view between the Court and the Commission over Article 105 of the Financial Regulation taken together with Regulation (EEC) No 1763/92. In the Commission's view this Article fully covers the case of the ARTM contract entrusting certain management tasks to them under the control of the Commission. The procedure followed flows from the financing decisions taken by the Commission after consulting the MED Committee. The principle of collegiality of Commission decisions was therefore fully respected.

3. The Commission does however accept that certain undesirable situations arose during the setting up and the experimental phase of the programmes. The Commission services were under extreme time pressure to set up the new programmes and to commit expenditure: the Council had agreed in 1991 to the principle of the New Mediterranean Policy for 1992 to 1996 but the implementing Regulation (EEC) No 1763/92 was not approved until end June 1992. The services therefore selected a consultant whose qualifications and experience were known to them to perform the task and engaged the same consultant as manager of the agency (ARTM) for the experimental phase. The two firms of consultants, FERE and Ismeri, who carried out the studies for setting up the Med programmes, participated in the setting up of ARTM in view of the expertise they were able to provide.

4. The Commission recognized that these exceptional measures should give way to regular procedures. For the body entrusted with the management of the programmes, the Commission services launched a consultation procedure which led to the publication of a call for tender on 30 March 1994 and the eventual approval by the CCAM on 15 July 1994 of the award of the contract to ARTM being the most economically advantageous tender (signed on 1 September 1994).

It should also be noted that in the call for tenders of 30 March 1994 it was stated that the successful bidder would not be allowed to benefit from any assistance under Med programmes in order to eliminate any possible conflict of interest.

5. These measures went some way towards eliminating the problems encountered. However, the Commission accepts that a number of anomalies remained which took some time to correct. The Commission has now taken more drastic measures (see below).

6. Concerning the Court's observations on the degree of autonomy exercised by ARTM, in the consolidation phase of the Med programmes a number of steps (selection of beneficiaries of financial assistance, decisions on payments to networks and changes to the composition of the financial reserve within each programme) were taken under the

responsibility of one, or in most cases several Commission officials, although in practice the large number of transactions involved made it impossible for detailed control to be exercised throughout the programmes.

7. At the next level, the Court suggests that there are shortcomings in the financial management by the networks themselves. With about 200 networks operating throughout the European Community and in all Mediterranean partners, each consisting of at least four partners, it is impossible for the Commission to carry out at all times individual checks on the financial operations of them all. However, the Commission proposes improvements to the financial management of the Med programmes which are detailed in 'New general framework'.

8. The Court considers in its conclusions that 'the impact of the MED programmes remains to be proven'. In the body of the report it is made clear that the impact is extremely hard to evaluate (paragraph 111). The Commission has in fact regularly carried out independent evaluations and needs assessments of the programmes and will continue to do so. The results of these have been used to adjust the objectives and the guidelines for the programmes; projects used to be financed on a yearly basis but have been made into multi-annual projects to increase efficiency, a limitation in the number of themes and network partners has been introduced, the application procedures have been changed in order to allow a better selection system and more emphasis has been put on concrete results and outputs of the projects. These evaluations and needs assessments concerned the operation of the individual programmes rather than the overall concept of decentralized cooperation in the Mediterranean. In the meantime, an evaluation unit has been established in DG IB which is drawing up new parameters for evaluation. A more global evaluation of the decentralized cooperation actions will be carried out in due course in accordance with the provisions of the MEDA Regulation, which explicitly mentions decentralized cooperation as one of the objectives of Mediterranean policy.

9. Impact of decentralized cooperation is indeed hard to evaluate, is often long term and to be measured more in terms of overall changes in attitude and perceptions than physical products. The programmes aim to increase mutual understanding and to promote the role of civil society in the Mediterranean partners, where it is often not yet in a position to exert the influence in the decision-making process which can be expected in open societies. In these terms, the support for the programmes in many areas of society both in the Community and among the Mediterranean partners is widely acknowledged. This acknowledgement comes from national governments in the Community and both from governments and social and political forces in the Mediterranean partners, from members of the European Parliament, local and regional governments, international media associations and

the academic world across Europe and the Mediterranean. While the main objective is not to focus on concrete projects, mention could be made of results such as the water purification systems being set up in towns in Syria and Lebanon, media training possibilities for over 200 journalists from the Maghreb and the Mashrak, and numerous occasions of joint research between Community and Mediterranean researchers on agricultural, biological and medical themes.

Measures taken

10. The Commission, accepting that certain undesirable situations were created during the launching of the programmes and that there is scope for tightening their financial and administrative control and after a useful dialogue with the Court, has already taken a number of measures:

- a letter was sent on 12 December 1995 informing ARTM that all contracts with the Commission would not be renewed; similar letters were sent to all Technical Assistance Offices,
- a contract was signed with ARTM on 16 February 1996, ending on 30 June 1996 defining the terms and conditions for the completion of their outstanding contractual obligations; this is the only remaining contract with ARTM,
- an audit of ARTM has been carried out by DG XX and another audit of the Technical Assistance Offices will follow,
- all networks selected for financing under the next phase of the Med programmes were informed in early January 1996 that there would be a delay in starting the 1996 phase pending a review of the form of management used for the decentralized cooperation programmes,
- a new management system for decentralized cooperation has been proposed and is under discussion in the Commission.

New general framework

Internal redeployment and increases in staff resources will strengthen budgetary control and management in DG IB. A Directorate for Finance and Resources is being created responsible for budgetary and financial matters, contracts and tendering procedures, evaluation methods and personnel management. A Division responsible for internal audit and relations with the Court of Auditors directly attached to the Director General has also been created. Within the Directorate responsible for relations with Mediterranean countries a horizontal unit has been created responsible for programming and economic cooperation including the Med programmes.

It is proposed that a new framework will be implemented for decentralized cooperation, with not only the Mediterranean partners but also the countries of Asia and Latin America, reflecting the political importance now attached to supporting the role of civil society in the Community's cooperation programmes. The procedures for the approval by the Commission of this general framework is currently under way. It will be based on the following principles:

1. combining the flexibility required to support initiatives from civil society (an aim specifically supported in the Declaration of the Barcelona Euro-Mediterranean Ministerial Conference and other Ministerial and high-level conferences in Latin America and Asia) with the control of the Commission over the implementation of the policy;
2. providing the technical assistance offices and the decentralized cooperation networks with a standard framework in order to ensure overall consistency of operation particularly through 'manual of procedures' to guarantee this objective, which will also cover questions of financial management;
3. drawing up standard contracts with the technical assistance offices and the networks to avoid emergence of a multiplicity of different *ad hoc* arrangements.

The large number of operations involved in decentralized cooperation will often require recourse to external organizations. In that context, the following tasks will remain the sole responsibility of the Commission:

1. decision on the eligibility criteria of the actions as well as final decisions over the actions to be financed;
2. signature of financing contracts and technical assistance contracts to assure support for the execution of the actions;
3. evaluation of actions carried out by the beneficiaries and the technical assistance offices;
4. overall evaluation of the results of the programmes according to their objectives.

The Commission will maintain overall control over the application of its programmes through the examination and approval of reports submitted by external organizations on their activities and must maintain the possibility of carrying out *ad hoc* checks on the spot on individual documents.

Subject to these stipulations, the following tasks may be entrusted to external organizations under the control of the Commission and in the context of a clearly defined legal framework:

1. promotion of and information on the actions envisaged in the programmes;

2. receipt, examination and processing of applications;
3. preparation of draft contracts decided by the Commission;
4. follow up of the action and its implementation including preparation of regular reports;
5. carrying out of payments on the basis of a specific and precise delegation from the Commission using funds properly guaranteed.

In addition, the financial management of projects in the framework of the Med programmes will be improved by revising the terms of reference of the networks. Standard contracts will be made between the Commission and the networks and with all the projects being subject to independent external audit, under terms of reference defined by the Commission so as to detect and correct the type of situations noted by the Court. An increase in Commission staffing would enable closer supervision to take place.

However, if the essential characteristics of decentralized cooperation are to be maintained, the operation of the system will need to continue to rely on the participants respecting the contractual obligations which they have entered into and on regular external auditing. For the future, all members of a network will be required to give a binding undertaking to cooperate, and the Commission will be taking up with the Member States and the Mediterranean Partners any cases where national legislation impedes the effective implementation of decentralized cooperation.

Detailed comments

Paragraphs 33 and 34

As far as letters notifying the coordinator of each network about the results of the selection procedures are concerned, ARTM's role was secretarial. After the experimental phase, decisions were taken in the Approval Committees, which were not only chaired, but controlled, by the representative of the Commission who had the right to veto any decision.

Paragraphs 39 to 45

Concerning the principle of delegation of competence to ARTM, the Commission considers that Article 6 (1) of Regulation (EEC) No 1763/92 could not exclude the option opened by Article 105 of the Financial Regulation: the reference to the EIB was linked to the specific provisions relating to the Bank's interventions. In any case the Commission proposes to clarify the situation in the framework of the new MEDA regulation.

In accordance with Article 105 (3) of the Financial Regulation, the contract entrusted ARTM with the implementation of specific tasks of management under the control of the Commission. As results from the contractual provisions, the services entrusted to ARTM included in particular the conclusion of contracts with beneficiaries and Technical Assistance Offices designated by the Commission, as well as the direct control of the Commission of the financial administration of the contracts with the beneficiaries chosen by the Commission, with the Commission also fixing the amount of the financial contribution, the terms of the contract and the payment modalities.

Concerning the procedure followed for awarding the ARTM contract, the Commission notes that the arrangement flows from the financing decisions taken for the Med programmes, adopted by the Commission.

Concerning the use of the reserve funds see paragraphs 73 and 74.

Paragraphs 46 to 48, and 52

The Commission, under political and time pressure, awarded contracts by private treaty in the experimental phase of the Med programmes. Such procedures are permitted by the Financial Regulation in exceptional circumstances. After the end of the 'experimental phase' all contracts awarded for financial management or technical assistance were awarded following standard tender procedures (see also point 4 of 'General remarks').

The contracts with the TAOs awarded during the experimental phase of the programmes were signed in accordance with the Commission's instructions.

Paragraph 54

The CCRE and CUD are organizations with specific knowledge of urban affairs. They give their advice to many organizations such as the Committee of the Regions and the Council of Europe and to DG XVI and DG IA of the European Commission. The team providing the MED-Urbs technical assistance is a highly qualified team specialized in the Mediterranean region. The Commission has seen no evidence that they have discriminated unfairly in the assistance they have given to the networks.

Paragraph 56

The Commission agrees that the long delay before the resignation of the TAO representatives from the ARTM board, after assurances were given that they would resign, is unacceptable. The Commission was not aware of the meeting of the ARTM Board at which representatives of FERE and Ismeri made their withdrawal conditional on being granted technical assistance contracts and on the right to choose their own replacements. The Commission has seen the minutes of

this meeting only during the preparation of the Court of Auditors report. There is no trace of the minutes of the Board meeting having been sent to the Commission at the time.

While it is true that the delay before the resignation took place was excessive, it is to some extent explained by the fact that the members of the Board concerned were not clear whether their resignation would be required until the outcome of the bidding process for the technical assistance contracts, which took some months, was known.

Paragraph 57

The contracts concerned have not been renewed (see 'General remarks') and the audit of ARTM will be pursued by auditing the TAOs.

Paragraphs 58 to 60

The high level of cash in hand on 31 December 1994 is partly due to the slow rate of implementation of the MED-Invest programme (Part B). The Commission is currently preparing new guidelines for the implementation of this programme.

In addition, financing decisions for the MED programmes have generally been taken towards the end of the year. Commitment decisions have been made often in December and corresponding payments the following year. The result is that the figures presented in this section giving the situation on 31 December 1994 generally relate to commitments made over three years and corresponding payments over only two years.

Paragraph 61

The costs presented by the Court for the management of the programmes should not be seen as excessive since they include costs of technical assistance; technical assistance tasks are inherent to the exchange of knowledge and expertise which are among the objectives of the programmes. These tasks include supporting the setting up of networks, assistance to ongoing network activities, helping to organize meetings, seminars and workshops, etc. Since the audit of the Court the situation has evolved: an audit of ARTM carried out by DG XX found that, as of 31 December 1995, the costs necessary for the management of the programmes were lower than indicated by the Court.

Paragraphs 64 and 65

Prior to 1994, ARTM's contract was financed on operational credits (Part B of the budget) reflecting the policy previously in force on 'mini-budgets'. Since 1994, since ARTM carried out both administrative functions attributable to Part A of the

budget and information and communications functions attributable to Part B, this distinction has been respected in financing ARTM, consistent with the Commission's policy of repatriating 'mini-budgets' to Part A of the budget. On the preparation of financing proposals, this was technical assistance eligible for financing from Part B of the Community budget.

Paragraphs 66 to 72

The Commission attests to the exactitude of the facts mentioned by the Court as well as the correctness of its conclusions. The Commission has already taken into consideration this kind of situation and has taken the appropriate measures on the occasion of the revision of the Financial Regulation which is currently being carried out.

Paragraphs 73 and 74

Each programme contains a reserve of financial resources (approved at the time of the financing decision) to be used on activities to improve the functioning of the programmes and additional activities to extend their effectiveness. When networks are not successful in implementing their programmes, resources which would have been used for financing them have been transferred to the reserves, subject to the approval of the Director-General of DG IB. The use of these reserves therefore covers a period considerably longer than expenditure on the original networks themselves.

Any changes in the composition of the reserve were required to be approved by the Approvals Committee, controlled by the Commission and were executed under the authority of the Director-General of DG IB. Since the reserve constitutes only about 5% of the total of the programme these changes were well within the discretion allowed by the Commission to the Director-General (up to 10% of the total of the programme or ECU 1 million).

Paragraphs 77 to 80

In accordance with the provisions of the contracts with ARTM the return of their assets to the Commission is to be the subject of discussions and mutual agreements in the context of the ending of the participation of ARTM in the programmes.

Paragraph 82

The Commission's services are establishing a code of conduct to be signed by all Selection Committees in the future which will be established in the overall framework of the future management of the MED programmes.

Paragraph 83

It is not surprising that in the early stages of the MED programmes projects originated more from the European

Community. Since then, the situation has, however, changed dramatically. More and more projects stem from the Mediterranean partners (situation 1995/96: MED-Campus: more MNC leaders than Community leaders; MED-Media: 50% is Mediterranean led; MED-Urbs: 40% is Mediterranean led). The Commission has launched specific information and awareness campaigns, Community Delegations have been actively involved in the MED programmes and Technical Assistance Offices have played a very useful role in reaching potential Mediterranean partners for projects. Decentralized cooperation is a new concept for many of the countries and territories involved and it is only over time that the Commission will have as many or more projects led by Mediterranean partners as by European Community partners.

Paragraph 84

The Commission identified this obstacle early 1995 following the needs assessment carried out. The MED programmes now finance networks of two to three years' duration.

Paragraphs 85 to 108

Steps are being taken to improve the financial management and control of the networks. In particular, each network will be required to have an annual external audit under terms of reference defined by the Commission so as to detect and correct the type of situations noted by the Court.

Paragraph 95

Network partners bring in time, money, personnel, meeting rooms, transport, etc. and these have always been considered as elements of co-financing. The new procedures will require a clearer description of co-financing modalities. In the future, contracts will detail any kind of contribution by the network, as well as require proper justification.

Paragraph 118

The constraints referred to in this paragraph serve to reinforce the arguments in favour of the need to promote decentralized cooperation in the south and east Mediterranean. The MED programmes were set up to contribute towards enlarging the role of civil society in these countries and territories and to create situations whereby the facts referred to in the report of the Court would no longer be necessary. In the Commission's view, while it is very difficult to generalize, the overall assessment is that the situation is improving over time in part due to the influence of Community policies and actions including the MED programmes.

Paragraph 119

In future, all partners in a network will be required to sign an undertaking to cooperate for the duration of the project.

Paragraph 120

Exchange of experience and know-how, and mutual understanding, are an integral part of the objectives, and it would therefore be wrong to regard costs of meetings as ancillary.

Paragraph 122

Feasibility studies are frequently carried out by projects in the framework of the MED programmes. This feasibility study outcome was not intended to be executed by the MED-Urbs network and it was never the case that the network partner would seek such funding from the European Community. The lead city and one partner city intended to try and get money from the EIB or the World Bank after completion of the study.

Paragraph 123

See paragraph 84.

Paragraphs 125 and 126

For the future, the Commission will ensure that all partners are able to assume legal responsibility for their actions within the network. Also, all partners in a network will be required to sign an undertaking to cooperate for the duration of the project which will be enforceable under appropriate law.

Paragraph 127

The Community needs to be covered by the possibility of legal recourse in the event of disputes. The reference to jurisdiction of the Brussels Court provides the necessary guarantee.

Paragraphs 129 and 130

The Technical Assistance Offices have a double role as was clear to them from the beginning. They assist participants of the MED programmes on the one hand and they are 'the eyes and ears' of the Commission on the other hand. This difficult task was carried out well and the Commission has no evidence of occasions where this task was impossible to carry out or not carried out at all. However, in the context of introducing a completely new management system, the Commission has decided to terminate the contracts with the different TAOs and no organization mentioned in this Court

of Auditors report has, at this moment, a technical assistance contract with the Commission in the framework of the MED programmes.

Conclusions*Paragraph 131*

The Commission accepts that certain irregularities occurred during the experimental phase of the MED programmes but these were subsequently corrected. The Commission has a different interpretation from the Court of Auditors over the legal situation concerning the contract signed with ARTM (comments on paragraphs 39 to 45).

Paragraph 132 to 134

Inappropriate recourse to direct-treaty contracts, resulting from political and time pressure, has since been corrected. Conflicts of interest did indeed arise in certain cases and were already dealt with by the Commission although this process should have been more rapid (comments on paragraphs 46 to 48, 52, 54, 56 and 57).

Paragraph 135

Measures already taken, together with the introduction of a new system of financial management, will considerably improve budgetary management at the central level (comments on paragraphs 64, 65, 66 to 72, 75, and 77 to 80).

Paragraph 136

Steps are being taken to improve the financial management and control of the networks including an external audit requirement. Increases in human resources decided by the Commission will make a substantial contribution towards an improved management system (comments on paragraphs 85 to 108 and 125 and 126).

Paragraph 137

As the Court itself admits, measuring the impact of decentralized cooperation is extremely hard given that the objectives are long term and qualitative, nevertheless the benefits of actions under the MED programmes are already widely acknowledged (paragraphs 9 and 10 of the 'General comments').

Recommendations

The Commission's response to these recommendations is contained in the overall reply to the Court's preliminary observations.

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