SPECIAL REPORT No 2/2000
on aid given by the European Union to Bosnia-Herzegovina with a view to restoring peace and the rule of law, together with the Commission’s replies
(submitted pursuant to Article 248(4)(2)EC)
(2000/C 85/02)

CONTENTS

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1-2</td>
</tr>
<tr>
<td>Summary of main observations</td>
<td>3-10</td>
</tr>
<tr>
<td>The Commission’s Representation in Bosnia</td>
<td>11</td>
</tr>
<tr>
<td>The EU’s contribution to the administrative expenditure of the Office of the High Representative in Bosnia-Herzegovina</td>
<td>12-23</td>
</tr>
<tr>
<td>Introduction</td>
<td>12-13</td>
</tr>
<tr>
<td>Administrative and financial management</td>
<td>14-20</td>
</tr>
<tr>
<td>Institutional responsibilities</td>
<td>21-22</td>
</tr>
<tr>
<td>Conclusion</td>
<td>23</td>
</tr>
<tr>
<td>Support for human rights and the news media</td>
<td>24-45</td>
</tr>
<tr>
<td>Institutions for the defence of basic rights</td>
<td>26-28</td>
</tr>
<tr>
<td>Support for civil society</td>
<td>29-35</td>
</tr>
<tr>
<td>Support for the media sector</td>
<td>36-41</td>
</tr>
<tr>
<td>Management of the transactions</td>
<td>42-45</td>
</tr>
<tr>
<td>Support for the electoral process</td>
<td>46-60</td>
</tr>
<tr>
<td>Conclusion</td>
<td>61-64</td>
</tr>
<tr>
<td>The Commission’s replies</td>
<td></td>
</tr>
</tbody>
</table>
INTRODUCTION

1. The Court of Auditors' Special Report No 5/98 (1) was devoted to the reconstruction operations undertaken by the EU in the former Yugoslavia in 1996 and 1997. This report left aside other measures financed in Bosnia-Herzegovina during this period using appropriations from the general budget. When the peace agreements were signed in December 1995, the European Union (EU) allocated considerable resources not only to reconstruction but also to support for the Office of the High Representative (OHR) (2) and to back measures to restore democracy in Bosnia-Herzegovina. These measures concerned human rights, the news media and support for the electoral process. The measures concerning human rights and the news media were mostly financed directly by the Commission, whereas support for the OHR or the electoral process took the form of contributions to joint financing with other suppliers of funds. This report presents the Court's observations following an examination of these various areas in 1998 and 1999.

2. These observations must be appraised in the context of the measures which the EU is required to undertake as part of the reconstruction of Kosovo following the decisions taken at the Cologne European Summit of 3 and 4 June 1999. The fact is that restoring the rule of law in this region will probably lead to measures of the kind already undertaken in Bosnia. It is therefore essential to learn from experience, especially as regards support for the new local or international institutions and joint financing with the other parties involved, in particular the OSCE (3).

SUMMARY OF MAIN OBSERVATIONS

3. In 1998, the number of staff at the Commission's Representation in Bosnia-Herzegovina was increased and the financial management of the transactions was to be decentralised at the end of the year. At the start of 1999, the Commission was still experiencing problems in filling all of the new posts which had been created at the request of the budgetary authority (see paragraph 11).

4. Although the Commission contributes more than half of what the OHR spends, it has not carried out since 1996 all the monitoring which the application of the principles of sound management would have required. The fact is that it should have paid closer attention to supervising the OHR's financial decision-making process by establishing precise rules (see paragraph 16) and ensured that the basic principles of internal control were applied to the OHR's administrative organisation (see paragraphs 17 to 20). The arrangements for submitting the OHR's accounts and granting discharge to the High Representative remained confused (see paragraph 22). By mid-1999, the High Representative considered that he had done what was needed to rectify the shortcomings in internal control (see paragraph 23).

5. The financial aid given to the Bosnian public-sector institutions for the defence of human rights took the form of projects, which was ill-suited to the constraints they were operating under and led to delays in the funds being made available. Financing in the form of a budgetary contribution and the introduction of rigorous budgetary procedures would have made it easier to raise the institutions' awareness of practices which aim to ensure that public funds are soundly managed (see paragraphs 26 to 28).

6. Given the large number of budget headings concerned and in the absence, up to 1997, of an explicit strategy for attaining the stated objectives, aid for the development of civil society was often used to cover the operating expenditure of bodies whose permanent nature was not guaranteed and without their results being evaluated. This is true of most of the support channelled through the Council of Europe, whereas support given to social areas had the side-effect of relieving the state of its basic responsibilities. Aid granted to organisations which aim to increase public awareness of democratic values proved more convincing thanks to a level of personal commitment by beneficiaries which may offset the lack of financial resources (see paragraphs 29 to 34).

7. As regards its principal assistance in the news media sector, the Commission found itself faced with a fait accompli owing to its unfamiliarity with the technical aspects of the media. As a result, it financed ineligible equipment worth ECU 2 million and supported a body's operations without making adequate checks (see paragraphs 36 to 40).

8. Generally speaking, the Commission's monitoring of financing in the area of human rights and democracy in Bosnia-Herzegovina falls far short of the requirements for implementing the principles of sound management; there would appear to be a need for matters to be taken firmly in hand in this area (see paragraphs 42 to 44).

9. As regards support for the electoral process, cooperation with the OSCE as part of the common foreign and security policy raises many problems in terms of financial control. Funds are frozen without reason for prolonged periods, the Commission's checks in respect of the eligibility of expenditure are inadequate and the legal framework chosen for financial cooperation between the Commission and the OSCE ought to be fundamentally revised as regards the new powers of the Commission's Joint External Relations Department (see paragraphs 49 to 53).

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(2) Responsible for implementing the civil aspects of the Dayton agreements.
(3) Organisation for Security and Cooperation in Europe.
10. Where sums are still to be recovered once measures have been implemented, the Commission departments which authorise expenditure are slow to make the necessary arrangements to recover Community funds held by third parties (see paragraphs 57 to 59).

THE COMMISSION’S REPRESENTATION IN BOSNIA

11. During the course of previous audits, the Court noted that many of the problems encountered when implementing aid for the reconstruction of Bosnia-Herzegovina actually stemmed from the fact that programme management was centralised (in Brussels) and that the Commission’s Representation on the spot was allocated highly inadequate resources. Since the publication of Special Report No 5/98, the number of staff at the Commission’s Representation in Bosnia has been increased. Thus, the Representation in Sarajevo is now backed up by two local offices, one in Mostar (1) and the other in Banja Luka (2), each of which has four posts. At the end of February 1999, the two LTAE (3) posts and one AL (4) post allocated to these offices were still vacant. The representation in Sarajevo comprised six A-grade posts, three B-grade posts, three C-grade posts, seven ALAT posts and 21 local staff. Several of these posts were still vacant: 1 A, 1 B, 1 ALAT and five local staff. Furthermore, two of the serving A-grade officials were about to leave. As the Court has already pointed out on many occasions (see paragraph 5.30 of the 1997 Annual Report (5)), it is a matter of urgency that the Commission should allocate itself the resources needed to ensure that, as in the Member States, overseas posts are occupied quickly and otherwise than by volunteers.

THE EU’S CONTRIBUTION TO THE ADMINISTRATIVE EXPENDITURE OF THE OFFICE OF THE HIGH REPRESENTATIVE IN BOSNIA-HERZEGOVINA

Introduction

12. The High Representative’s task is to supervise the implementation of the civil aspects of the peace agreement for Bosnia-Herzegovina initialled at Dayton on 21 November 1995 and signed in Paris on 14 December 1995. His terms of reference were confirmed by the conference on the implementation of the peace agreement held in London on 8 and 9 December 1995 and by UN Security Council Resolution No 1031 of 15 December 1995. The aim of the London conference was to raise aid from the international community for the physical implementation of the peace agreements, in particular for the support to be given to the High Representative. At the same time, a Peace Implementation Council (PIC) was created, the management committee of which included representatives from Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, the United States of America, the country chairing European Union meetings, the European Commission and the Organisation of the Islamic Conference. This management committee provides political guidance for the implementation of the peace agreements and informs the PIC of the progress of its work.

13. At the London conference, it was agreed that governments would finance the salaries of staff seconded by them to the Office of the High Representative (OHR) and that the management committee would propose a budget to meet the OHR’s other operating costs. The PIC subsequently undertook to provide the necessary funds according to an allocation formula based on the one used by the International Conference on the Former Yugoslavia. This formula was to be adopted by consensus, given that the EU was already committed to covering some of the High Representative’s implementation costs and was preparing to pay over its contribution (see paragraph 16).

Administrative and financial management

14. From ECU 8.4 million in 1996, the OHR’s administrative budget increased to ECU 16.5 million in 1997 and to ECU 22 million in 1998. Over the same period, the OHR’s staff increased sevenfold, reaching 719 in February 1998. From the start, the EU has contributed 50.6% of the financing of the OHR’s administrative expenditure.

(1) Federation of Bosnia-Herzegovina.
(2) Serb Republic.
(3) Local technical assistance employee (usually a national of the EU).
(4) Local employee.
15. Since February 1996, the Commission has noted shortcomings in the administrative and financial management of the OHR. The fact is that its Representation in Sarajevo had expressed concern at the lack of regulations and procedure as regards administration and accounting and at the existence of numerous problems concerning authorisations to sign, the keeping of the accounts, the way bank accounts were operated, the management of staff and the awarding of contracts.

16. The Commission’s monitoring of the management of its OHR contribution was inadequate. Only at the end of 1998 did the Commission help the OHR introduce procedures and rules compatible with Community legislation governing the budget. As the EU is by far the OHR’s biggest provider of funds, the Commission, which is represented on the PIC’s management committee, should have insisted as early as 1996 on the adoption of a genuine management and inspection system adopted for all funds made available to the OHR.

17. In 1998, the OHR’s financial management was not based on a system of separation of duties, allowing a minimum of internal control. Thus, for example, the financial director invoiced his services to the OHR as part of a contract signed with a company of which he was the manager. Once he had checked his own invoices, he then validated them. In addition, he decided on the procedures for checking his own management by negotiating contracts for external auditors and by defining not only the procedures for, but also the scope of the audit. Such a responsibility should have fallen to the PIC’s management committee or, at the very least, to its group of financial experts, which included EU representatives.

18. As regards budgetary management, the budgets for the financial years 1997, 1998 and 1999 were not drafted in sufficient detail to enable the management committee adequately to monitor their implementation. They were not backed by any analysis of the actual requirements of the various departments of the OHR. With regard to accounting management, the signatures authorised for the bank accounts had not been valid for more than a year, at the time of the Court’s audit in 1998. In addition, an inventory was still not kept at the start of 1999, even though the Commission had stipulated a requirement to this effect in February 1996. This lack of inventory is all the more disquieting as much of the equipment used by the OHR is easily transportable. As regards public works contracts, calls for tenders were infrequent. Payments were made merely on the basis of invoices, without a contract. Generally speaking, the monitoring of receivables was neglected. Errors due to the division of departments between Sarajevo and Brussels were detected in the calculation and payment of salaries, in particular owing to shortcomings in coordination between the financial and personnel departments.

19. Furthermore, repeated shortcomings were noted at the administrative level. The recruitment, grading and management of staff did not always meet objective and coherent criteria. Payment of the rent or accommodation allowances of certain members of staff was authorised in a discretionary manner. Various items of expenditure for certain members of staff on secondment or under contract to the OHR should never have been accepted. In 1998, the duties of the posts in the establishment plan had not been described and some staff were unaware of the exact scope of their tasks and responsibilities. In May 1998, the OHR unilaterally decided to increase the salaries of its expatriate staff by 6.5% without formally consulting its management committee. Moreover, the purpose of missions was often described in a perfunctory manner and abuses in declarations of mission or entertainment expenses were detected.

20. The High Representative himself, who had occupied his post since 1997, did not have a contract of employment, which posed a problem as regards the level of his salary and the calculation of his allowances. Although the OHR’s administration asked the Commission in September 1997 for an opinion on this matter, no reply was sent and in 1999 the Commission contested the solution adopted by the OHR on the grounds that it had not granted formal approval.
Institutional responsibilities

21. Article 18(2) of the Treaty on European Union (formerly Article J.5) \(^{(1)}\) stipulates that the country chairing the Council meetings, which is responsible for implementing joint measures, must consult the Parliament about the main aspects and the basic choices of the common foreign and security policy and must ensure that the latter's views are duly taken into consideration (Article 21, formerly Article J.7). Furthermore, each Member State or the Commission may ask the Council to give its opinion on any matter concerning the common foreign and security policy and may submit proposals to the Council (Article 22(1) formerly Article J.8). Lastly, the Commission is to be fully associated in common foreign and security policy tasks (Article 27, formerly Article J.9) and, where the cost of the implementation of the measures is borne by the Community budget, the Commission is responsible for implementation of the budget (Article 28(2) formerly Article J.11).

22. Although the donors have always insisted on the role which they intended to entrust to the OHR, they have not required it to justify its management. The intervention of various Community authorities in decisions to finance the OHR, the lack of a clear distribution of responsibilities between these parties and above all the absence of a coherent strategy between the Community institutions were responsible for carelessness in the management of the funds. In addition, in spring 1999 there was still no agreement between the Council, the Member States and the Commission to specify the rate of the EU contribution which was contested by other donors.

Conclusion

23. Although the Commission did try in 1996 to provide the OHR with support in administrative and financial matters, it is clear that, owing to the political implications of the OHR’s actions, the Commission has since preferred not to intervene in its management. However, following the replacement of the High Representative in 1997 and the increase in the OHR’s tasks and resources, the Commission should have demanded, in consultation with the Council, greater transparency in the preparation and implementation of its budget and should have asked for the introduction of rules and procedures to ensure responsible management and proper controls. In June 1999, the High Representative believed he had done most of what was needed to rectify the shortcomings detected by the Court. These measures are yet to be assessed. Furthermore, the new internal rules had not yet been ratified by the PIC’s management committee. Without prejudice to the responsibilities that are peculiar to the OHR’s management bodies, the Court believes that it is up to the Commission, according to Article 274 of the EC Treaty, if not to insist that a body, to the budget of which it contributes to the extent of more than 50 %, adopts rules and adheres to procedures that are such as to ensure responsible management and serious internal control, at least to give consideration to doing so.

SUPPORT FOR HUMAN RIGHTS AND THE NEWS MEDIA

24. The Council’s conclusions of 29 April 1997 concerning the countries of south-eastern Europe assigned to the EU several priority intervention areas. Of these areas, the strengthening of institutions and of civil society concern Bosnia-Herzegovina in particular. Thus, since the end of hostilities, the Commission has provided direct support in order to:

(a) support the institutions created by the peace agreements for the defence of basic rights in Bosnia;

(b) support non-governmental organisations which are aiming to establish peaceful relations between the communities and are relieving individual suffering;

(c) nurture the development of news media which are not under the influence of political parties with nationalistic tendencies.

25. These measures were financed partly from headings B7-7 (democracy) of the general budget of the EU, partly by appropriations earmarked for aid for the former Yugoslavia (B7-5 2 0 1, B7-5 4 1 and B7-5 4 3) and partly by appropriations from the Phare programme (B7-5 0 0 0), as shown in Table 2. The Court’s examination, at the end of 1998, of an extended sample of transactions led to the following observations.

\(^{(1)}\) The Articles mentioned in brackets are those of the Treaty of Maastricht (7.2.1992).
Institutions for the defence of basic rights

26. In Bosnia-Herzegovina, the mediation authorities operate at two levels. The first authority was created in 1994 by the Washington agreements in the Bosnian (Croat-Muslim) Federation. The second, which is attached to the Human Rights Commission (1), was set up in 1995 by the Dayton agreements at state level and covers the territories of the Federation and of the Serb Republic.

27. Both of these authorities are particularly useful for settling the many property disputes between individuals and the local authorities, especially where the plaintiffs belong to minorities. In this area, the Federation's ombudsmen are well represented on the ground and their actions are more concrete than the national ombudsman's, whose actual appointment and contribution slowed down by the lack of resources and the time needed to draw up procedures for examining the suits.

Support for civil society

29. In order to clarify its strategy for developing a civil society in Bosnia-Herzegovina (2), the Commission signed an ECU 0,3 million contract with an NGO in April 1996. Although the study concluded that a foundation for democracy was needed, so as better to structure the Commission's measures, this foundation had still not been created by the end of 1998.

Table 2
EU commitments in Bosnia-Herzegovina in the area of human rights and democracy over the 1995 to 1998 period

<table>
<thead>
<tr>
<th>Measures</th>
<th>B7-5000</th>
<th>B7-5201</th>
<th>B7-541</th>
<th>B7-7000</th>
<th>B7-7001</th>
<th>B7-7040</th>
<th>B7-7070</th>
<th>B7-708</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracy and human rights</td>
<td>0.680</td>
<td>1.975</td>
<td>0.200</td>
<td>1.656</td>
<td>4,141</td>
<td></td>
<td></td>
<td></td>
<td>8,652</td>
</tr>
<tr>
<td>WEF programmes and social measures</td>
<td>0.154</td>
<td></td>
<td>0.150</td>
<td></td>
<td>1,963</td>
<td></td>
<td></td>
<td></td>
<td>2,267</td>
</tr>
<tr>
<td>Support for institutions (Phare)</td>
<td>1,050</td>
<td>0.800</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,850</td>
</tr>
<tr>
<td>Support for elections</td>
<td></td>
<td>2,500</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,500</td>
</tr>
<tr>
<td>Independent media</td>
<td>2,000</td>
<td>0.651</td>
<td>1,736</td>
<td>1,700</td>
<td>2,385</td>
<td></td>
<td></td>
<td></td>
<td>8,472</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td></td>
<td></td>
<td>0.183</td>
<td>0.194</td>
<td>0.377</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Total</td>
<td>3,884</td>
<td>2,626</td>
<td>1,736</td>
<td>2,700</td>
<td>9,026</td>
<td>0.183</td>
<td>1,963</td>
<td>0.194</td>
<td>24,118</td>
</tr>
</tbody>
</table>

Source: Court of Auditors.

(1) The Commission comprises the chamber of human rights and the office of the ombudsman.

(2) For any given country, 'civil society' refers to all groupings or associations, whether professional or otherwise, which aim to inform the public, its representatives and the departments of state of matters they deem important for the life of the country.
31. The clubs created under the aegis of the Council of Europe or by associations (embassies of democracy and Euroclubs) received operating subsidies without adequate attention being paid to the substance and scope of their activities. Subsequently, despite the size of the sums mobilised (¹), their results were not appraised, such that the effectiveness of the assistance cannot be assessed on a reasoned basis. The disappearance of the Sarajevo Euroclub in October 1997 illustrates the fragility of initiatives of this kind.

32. Various kinds of support were given to NGOs which were attempting to set up pressure groups to strengthen the democratic nature of the public authorities. This support generally concerned clearly identifiable concrete measures, the effects of which are likely, at least in the long term, to influence attitudes. The creation of networks between these NGOs enables them to influence opinion-shapers and their measures fall within the objectives of the democracy programme.

33. Other support was earmarked for measures to compensate for the shortcomings of the state’s social services (²). This aid, the primary objective of which is to relieve individual suffering, has an almost immediate positive effect. However, in the longer term, the aid may have a negative effect if it relieves the state of its responsibilities. Social services financed by foreign aid should not be introduced in parallel to those of the state, as this does not meet the objectives of consolidating institutions set out by the EU in the Phare programme. Instead, professional expertise developed in this way should be gradually reintroduced into the public institutions responsible for such services.

34. Similarly, considerable support was given to teachers at the University of Sarajevo who received salary top-ups as part of the democracy programme. This support was subsequently maintained as part of the ‘Europe for Sarajevo’ programme (B7-5 4 5). This aid corresponds more closely to the objectives of the Tempus programme for university exchanges with east European countries than to those of the democracy programme.

35. The dispersal of activities observed was due to the large number of budget headings concerned and the absence, up to 1997, of a specific strategy in respect of aid to promote a civil society. The process by which the Commission responds to proposals for projects submitted by third parties compounds the phenomenon of dispersal. The adoption by the Commission of a more interventionist stance, concentrating on strategic objectives by providing support for measures to transform attitudes in public life, would make EU intervention more consistent.

Support for the media sector

36. The first large-scale intervention by the Commission in the media sector in Bosnia was a contribution of ECU 2 million from the essential aid programme (B7-5 0 0) to answer the High Representative’s call, shortly before the 1996 general election, for the introduction of a television station over which the nationalist parties would have no control. The Commission maintained its support for the OBN network (³) by withdrawing the necessary sums from headings B7-5 4 3 (ECU 1.7 million in 1997) and B7-5 4 1 (ECU 1 million in 1998).

37. From the beginning of 1996, the creation of an independent television network had been studied, under the aegis of USAID (⁴) and the G. Soros Foundation, by a group of experts including the representative of an American manufacturer of broadcasting equipment. In March 1996, after the group of experts had submitted its report, the technical assistant responsible for the project placed an order for the necessary equipment with the American manufacturer who had participated in the study. Unaware that the order had already been placed, the Commission subsequently undertook in July 1996 to finance the equipment to be delivered by the end of August. The Commission’s attempts to find a European supplier were pointless as they had started late and it transpired that only the American supplier was in a position to implement the contract; this was therefore the bid selected by the Commission. In these circumstances, the Commission was misled through unfamiliarity with the technical aspects of the file. It was confronted with a fait accompli which obliged it to depart from the original rules applicable to contracts. In the knowledge that its intervention was late, it should have insisted that the ECU 2 million was allocated to other aspects of the project. In 1997, two recipients of the equipment left the network and, although one of them reimbursed the OBN, the other kept the broadcasting equipment without refunding the cost.

38. Although the next subsidy served to finance the OBN’s operating expenditure, this expenditure was not implemented within a rigorous budgetary framework. In 1998, the project director was forced to resign because of his opaque management practices.

39. At the end of 1998, although the legal status of the OBN in Bosnia was not clearly established (⁵), the company’s survival still largely depended on international financing. Although an operational plan was in the process of being drawn up, the company was not envisaged as being financially viable for at least five years. In the face of privatisation objectives that were in contradiction of economic reality in the media sector in Bosnia, the donors had

¹ Euroclubs: ECU 1,2 million; embassies for democracy: ECU 0,2 million.
² The projects in question aim to assist the disadvantaged (children and the elderly) or to provide medical care and psychological treatment.
³ Open broadcasting network (OBN).
⁴ United States Agency for International Development.
⁵ At the end of November 1998, the OBN existed in the form of a trust registered in the United Kingdom.
made no commitment whatsoever to continue with their financial support to the OBN. The Commission, rather than the OHR, would seem to be best placed to support, from its own resources, the continuation of this operation.

40. At the start of 1999, the OBN’s broadcasts were being received in 80% of Bosnia. The quality of its news programmes began to be acknowledged, having long been suspected of putting forward only a Bosnian point of view (1). The quality of the other programmes was still disputed, which augured ill for the growth of its audience and therefore for its ability ultimately to be financially independent.

41. The Commission’s other assistance in the media sector concerned (see Table 2) radio and press companies which were granted operating subsidies for amounts that were not always clearly justified. The fact is that the Commission met beneficiaries’ requests without first assessing their validity on objective bases. At the time of the on-the-spot checks in November 1998, it was not possible to obtain justification for the use of the sums disbursed as the various beneficiaries’ accounts were not available.

Management of the transactions

42. For a large number of measures presented as projects, the terms of reference remain vague and cannot serve as a monitoring tool. The Commission should require beneficiaries to submit proposals divided into distinct activities and specifying in as quantified a way as possible the objectives to be attained and the means of measuring the results obtained. For many projects the advances paid are rarely regularised on time because the beneficiaries have not yet filed their reports.

43. A clear distinction should be drawn between operating subsidies and the financing of projects. The Commission should contribute to operational expenditure only once it has ensured that that beneficiary bodies are governed by transparent budgetary procedures subject to adequate controls. No operating subsidy should be paid to private companies (press) if their accounts are not accessible and if their genuineness has not been certified by an independent auditor.

44. In the case of Bosnia-Herzegovina, the monitoring of the implementation of contracts by the Commission departments in Brussels responsible for human rights and the media falls far short of the level required by the principles of sound management. On several occasions, it was noted that beneficiaries’ implementation reports had not been submitted, that the advances paid had not been followed by payment of the balance owed in respect of contracts, while the corresponding reasons could not be determined from the files, that certain beneficiaries should have been asked to repay excess sums they had received and that the form of the contracts was ill-suited to the type of transactions financed.

45. In order to remedy these shortcomings, the Commission should set up in Bosnia, as for the Phare programme, a decentralised financial system to monitor the human rights, democracy and media sectors. Results should therefore be systematically assessed, first by task managers and then as part of the independent assessments carried out by the SCR’s evaluation unit (2).

SUPPORT FOR THE ELECTORAL PROCESS

46. Article II-1 of Annex 3 of the Dayton agreements entrusts the organisation of the first elections in Bosnia-Herzegovina to the OSCE. In December 1997, in Bonn, the Peace Implementation Council asked the OSCE to supervise once again the organisation of polling for the 1998 general election (see Table 3).

(1) That of the Muslim community, as opposed to that of the Croat and Serb communities.

(2) Common External Relations Department.
47. Thus, for each of the four polls organised between September 1996 and September 1998, the EU contributed to ‘Voluntary funds’ opened by the OSCE. The Community appropriations were taken either from the budget heading for the support of democracy and human rights (B7-7 0 0 1) or from a budget heading earmarked for the common foreign and security policy (B8-0 1 3 0 or B8-0 1 0).

48. Table 3 provides an overview of the Commission’s accounting records.

49. Three joint Council measures resulted in the commitment of ECU 16 million (excluding the ECU 1,1 million decommitted in 1998) from the 1996, 1997 and 1998 budgets. In all three cases, the Commission submitted the preparatory documents. The major failing of these joint measures is that they are non-committal as regards the nature and duration of the support given to the OSCE (1). The fact is that joint measures generally set a maximum EU contribution, which implies a contribution based on actual costs. However, as these measures provide a mere indication of the nature of eligible expenditure without specifying their scope, they are considered by the OSCE almost as flat-rate contributions. This interpretation is based on the fact that most of the other contributors to the voluntary funds do not indicate particular uses for the sums they provide.

50. Although the date on which the joint measures came into force is clear, their expiry date is not. Moreover, although decisions require the transactions to be formally appraised no such document is formally drafted by the Commission (2) or requested of it by the Council in order to account for each transaction (3). Thus, the OSCE kept surplus funds from previous measures for future measures.

51. Commission financing should be based on budgetary forecasts which are as reliable as possible. This was never the case with the budgets submitted by the OSCE, which all proved extremely unrealistic. In future, the Commission should check the plausibility of the forecasts submitted by the OSCE.

52. The agreements reached by the Commission and the OSCE proved to be ill-suited to the special relationship between the two institutions and to the requirements of sound financial management. The fact is that:

(a) the budgets are merely indicative in nature, which hardly corresponds to the idea of contributing to specific expenditure for given amounts;

(b) For example, in the form of a communication to the Council and to the European Parliament (COM document).

(1) See paragraph 30 of Opinion No 1/97 of the Court of Auditors on the conditions governing the implementation of expenditure within the framework of the common foreign and security policy.

(2) See paragraph 31 of Opinion No 1/97 of the Court of Auditors.

Table 3

Accounting situation (Sincom of OSCE commitments as of 31 December 1998)

<table>
<thead>
<tr>
<th>Poll</th>
<th>Commitments</th>
<th>Payments</th>
<th>Still outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B7-7 0 0 1</td>
<td>B8-0 1 3 0</td>
<td>B7-7 0 0 1</td>
</tr>
<tr>
<td>BiH national elections (1)</td>
<td>2,500</td>
<td>3,000</td>
<td>2,000</td>
</tr>
<tr>
<td>(September 1996)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipal elections (Federation)</td>
<td>—</td>
<td>5,500</td>
<td>—</td>
</tr>
<tr>
<td>(September 1997)</td>
<td></td>
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<tr>
<td>National elections in Serb Republic (2)</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<tr>
<td>(November 1997)</td>
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<td></td>
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<tr>
<td>National elections BiH (B8-0 1 0 0)</td>
<td>—</td>
<td>5,000</td>
<td>—</td>
</tr>
<tr>
<td>(September 1998)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2,500</td>
<td>12,389</td>
<td>2,000</td>
</tr>
</tbody>
</table>

(1) The OSCE obtained the allocation of the amount left over from local elections in September 1997.

(2) Transaction financed from amounts left over from local elections held in September 1997 in the Federation of Bosnia Herzegovina.

Source: Sincom.
(b) other funds from third parties which are allocated to the same measures as those supported by the EU are not indicated in spite of the risk of duplication of financing;

(c) the procedures for adjusting budget items currently being implemented are not always specified, nor are those for using the contingency reserves;

(d) the scales used for the reimbursement of observers' expenses are not explicit where they depart from the OSCE's usual rules, a level of flexibility which is likely to engender confusion;

(e) currency conversion rates are not specified even though the Commission insists on making its payments in ecu and the OSCE, which makes part of its payments in USD, keeps its accounts in Austrian schillings (ATS);

(f) the level of advances paid (80 % for transactions committed against appropriations for 1996 and 1997 and 60 % for those committed against appropriations for 1998) proved excessive, with the result that the OSCE's cash holdings increased to the detriment of the Commission's. In so far as the OSCE's financial regulations did not enable it to offset the cost of holding large sums by levying interest, the scale of the advances should have been drastically reduced;

(g) the OSCE is not required to submit detailed accounts indicating for each transaction all contributions mobilised and comparing forecasts with actual implementation.

53. It would be preferable, assuming the Commission continues to maintain financial relations with the OSCE, to introduce contractual arrangements which take greater account not only of the two institutions' requirements but also of their constraints (1). In particular, the significance of the budgets annexed to the Commission's financing agreements and desired objectives should be clarified as regards the keeping of accounts by the OSCE and the provision of documentation to justify expenditure.

54. With regard to the polls in September 1996 and September 1997, the budget estimates submitted by the OSCE considerably exceeded actual expenditure and the residue was allocated to the following elections. After the November 1997 poll (which was itself financed exclusively from residue sums), the appropriations decommitted by the Commission still amounted to ECU 1.1 million (see Table 3). After the September 1998 elections, appropriations liable for decommitment purportedly total at least ECU 1.6 million.

55. The implementation reports submitted by the OSCE in the context of financing for central and east European countries provide only a summary, and at times even laconic, description of the transactions effected and the results registered. In this respect, the report on the 1998 elections provides better information than for the previous transactions but does not specify the lessons to be learnt. The detailed financial accounts certified by the OSCE's Accounting Officer are too succinct to lend themselves to in-depth inspection. The OSCE should be required by the financial agreements to produce a copy of its own accounting records in order to provide the Commission with a pertinent basis for inspection. In the light of the errors detected, the detailed accounts should be certified not by the OSCE's Accounting Officer but by an independent auditor who can vouch for the eligibility of the expenditure.

56. In spite of the Commission's repeated requests, EU support enjoyed only limited visibility as the EU teams were incorporated into those of the OSCE without any particular distinguishing feature (2). Moreover, the Commission's files do not indicate that it made any particular efforts in this area and it appears that the OSCE's main concern was its own visibility.

57. Operations financed from appropriations earmarked for human rights and democracy (B7-7) were also largely neglected by the Commission (see paragraph 44), in terms not only of the results obtained but also of the advances disbursed. In spite of amendments to the contracts concluded in July 1997 in order to cover the municipal elections of September 1997, the balance of the 1996 contracts, i.e. ECU 500 000, has never been settled. The implementation reports for two of the three measures for which the contracts provide were not included in the files and the eligibility of the expenditure was not verified.

58. Generally speaking, the inspection mechanism introduced by the Commission fell short of the requirements of sound financial management. In the case of appropriations withdrawn from headings earmarked for measures to support democracy and human rights, it even proved non-existent.

59. On 31 December 1998, the sums still to be decommitted as part of the contributions given by the EU to the OSCE both within the framework of the common foreign and security policy and of the democracy programme for the elections in Bosnia-Herzegovina total approximately ECU 2 million, whereas the sums to be recovered from the OSCE can be definitively evaluated only after an in-depth on-the-spot check in respect of the eligibility of the expenditure (see paragraph 55).

60. The nature of the financial relationship between the Commission and the OSCE requires a thorough re-examination (see paragraph 53).

(1) See paragraphs 40 and 49 of Opinion No 1/97 of the Court of Auditors.

(2) See, in particular, the intentions to increase the visibility of the EU expressed in Article 3 of the common foreign and security policy joint measure 98/302 of 30.4.1998, (OJ L 138, 9.5.1998, p. 1).
CONCLUSION

61. The Court’s examination of the aid given to Bosnia to promote the restoration of the rule of law highlighted two major kinds of assistance: support for the running of institutions or companies and support for individualised measures in the form of projects.

62. In the case of aid for the running of bodies, the Commission failed to develop either an approach or a practice suited to the situation and classed this type of assistance as projects. As a result, difficulties arose, the most significant of which are delays in payment by the Commission and a lack of clarity in the process for rendering beneficiaries’ accounts. Where the Commission intends to contribute to financing a beneficiary’s current measures, it must include its financing in the latter’s normal management system after ensuring that a global mechanism for rendering the accounts exists and actually works. In the case of bodies such as the OHR or the OSCE, it is essential for the Commission to reach with these latter framework agreements which, taking account of the mechanisms and constraints characteristic of their management, define the procedures for providing and checking contributions from the EU budget. In the latter case, it is no doubt preferable to assume that the financing is fungible and that the funds provided by the EU cannot be dissociated from other funds, in which case overall checks must be carried out in respect of management. To this end, existing inspection mechanisms must be taken as a basis and, where appropriate, strengthened.

63. As regards support provided in the form of projects, care must be taken to ensure that the terms of reference stipulate in a precise and quantified way the measures to be undertaken so that the projects’ budgets can become genuine monitoring tools and to prevent the eligibility of the expenditure from being contested. In this respect, the support given to the OBN is a particularly unfortunate example.

64. In order further to promote the development of civil society, the Commission should preferably adopt guidelines which are targeted more on the basis of the priorities which it chose for the Balkan region, to wit the implementation of democratic principles, the introduction of the rule of law, as well as respect for and protection of minorities. The fact is that the Commission has too often contented itself with approving the requests for financing which it found to be the most convincing. In so doing, the support was fragmented and measures which, although useful, were not a priority often prevailed over measures which were more likely to have a direct effect on the democratic workings of the institutions or departments of State. Lastly, a monitoring system which is close to the projects in these various areas should be set up at the local level.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 13 January 2000.

For the Court of Auditors

Jan O. KARLSSON

President
INTRODUCTION


It should be pointed out that the Commission was called on to act in particularly difficult circumstances: the situation on the ground was politically unstable, with certain parties obstructing the application of the peace agreements. Support was given to accompany a peace process and the establishment of basic institutions rather than to traditional projects. It is important to make this distinction if one is to appreciate fully the operations assessed.

2. One of the lessons drawn from the experience in Bosnia-Herzegovina for operations in Kosovo is the importance of having direct on-the-spot capacity for ensuring management of projects, contracts and finance. In Kosovo this was achieved in July, when a Task Force of officials supported by experts and local employees was set up, pending the creation of a reconstruction agency.

SUMMARY OF MAIN OBSERVATIONS

3. The policy of devolving management to the office in Bosnia-Herzegovina marks a radical change in thinking. Devolution really entered into its own in early 1999 when the office began to function as a Sincom unit (for the purpose of the Commission’s accounting system), the first of the Commission Delegations to do so. Prior to that the office had been given more staff and reorganised so as to be able to ensure both project management and financial management on the spot. Since early 1999, the Commission has gradually filled the majority of the vacant posts, ensuring responsible management of this ‘pilot project’ on devolution.

4. The Commission considers that the OHR’s supervisory authorities bear primary responsibility for its management and any shortcomings. However, subject to the constraints inherent in the organisation and its decision-making machinery, the Commission has worked consistently from its inception to achieve greater rigour in its financial, contractual, accounting and procedural management. The OHR introduced considerable improvements in its administrative and financial rules in 1999. The Commission will ensure at its next verification visit that these are being effectively applied.

5. The Commission has, up to now, taken the view that financing projects rather than contributing to budgets offered greater guarantees that Community funds would be used properly.

6. The strategy was initially to support projects aimed at alleviating immediate problems and suffering as well as institutional projects.

7. With regard to its principal intervention in the media sector, the Commission felt that the strategic objective of the operation, to set up an independent press capacity in time for the first elections, overrode procedural considerations, i.e. the rules of origin on equipment. To this day the OHR still considers the project in question to be one of the pillars of its strategy for the independent media in Bosnia-Herzegovina.

8. Support for initiatives to create a counterweight of independent media and encourage civil society in a post-conflict situation is extremely delicate. Such initiatives necessarily entail working with fragile partners in many cases, whose capacity to produce reports to the deadlines and in the form required by the Commission is limited. The Commission’s own monitoring capacity was severely hampered by a chronic lack of staff, which is all the more telling when the programme to be managed entails a large number of small contracts.

9 and 10. It is true that cooperation with the OSCE was somewhat problematic in terms of reporting and financial control. Support for supervising elections in real time was a relatively new area of work, as were the CFSP joint actions, which required a balance between Council Decisions and the implementational and financial responsibilities to be shouldered by the Commission. Funds were frozen to some degree, the remainder of budgets for previous elections having been carried over to subsequent elections. These funds were in the accounts of the OSCE, an international organisation. An audit at the OSCE was undertaken at the end of 1999 to collect the necessary information to close the accounts for the operations in question.

The Court’s remarks raise some pertinent questions as to the Commission’s future use of implementation channels, such as the OHR and OSCE in this instance, which are politically the most appropriate but whose rules and management methods may not necessarily accord with Community practice. The Commission considers it essential that the Budgetary Authority rule on the matter.

THE COMMISSION’S REPRESENTATION IN BOSNIA

11. The two category A officials referred to by the Court were replaced, one immediately, the other after a few months, which is not unusual for rotations.
With regard to filling posts in the external service, the Commission took a decision on 8 April 1997 that from 2000, all category A officials in the external relations directorates would be obliged to serve a period abroad (1). However, so far the Commission has generally been able to fill posts by means of the existing rotation system.

THE EU’S CONTRIBUTION TO THE ADMINISTRATIVE EXPENDITURE OF THE OFFICE OF THE HIGH REPRESENTATIVE IN BOSNIA-HERZEGOVINA

Administrative and financial management

14. The Council Decision adopted on 11 May 1999 took the EU contribution from the 1999 budget to 53 %, subject to the following conditions:

(a) no net increase in the EU contribution for 1999,

(b) net reduction of the OHR budget in 2000,

(c) no retroactive coverage of costs.

15 and 16. Since 1995, the Commission has undertaken measures and made representations with regard to the management of the OHR and these have gradually been adapted as the situation evolved. Among these measures were:

(a) given the OHR’s lack of any legal personality, the Commission set up a specific contractual instrument explicitly referring to the financial regulation (exchanges of letters in 1995, 1996, 1997 and 1998);

(b) the Commission made political representations to the Belgian authorities to regulate the status of the OHR in Belgium (March 1997);

(c) the Commission’s financial controller took part in a mission organised in April 1996;

(d) numerous meetings were organised (one attended by the Court in March 1995) to assist the OHR with budgetary and financial matters, particularly the setting up of an appropriate co-financing instrument and the application of public procurement rules;

(e) the OHR was sent a detailed aide-memoire on the execution of CFSP contributions (last updated in January 1999).

17. The financial director of the OHR was replaced in 1999. Following a control mission organised in January 1999 by the Commission, the OHR was also asked to issue an invitation to tender to select new auditors.

18. The Commission considers that as matters have progressed, the OHR has made considerable efforts to present detailed budgets to the financial experts and to accommodate their requests. The OHR has also presented detailed information on certain points at the request of the Financial Experts (e.g. on staff recruitment). In 1999 it undertook the work of updating the inventory and improving the use of resources (e.g. its transport policy). The offices in Brussels were gradually transferred to Sarajevo, so that it has recently become possible to perform certain tasks on the spot (for example, the travel office). The OHR will retain a minimal presence in Brussels in the long term.

19. Since the beginning of 1999, the OHR has paid increasing attention to introducing strict rules for the various services of the organisation: staff, transport, travel, public procurement, and financial rules. In autumn 1998, when preparing the 1999 budget, the Commission insisted on better control of recruitment and convinced the other donors of the need to introduce the following procedure for staff recruitment: in the first instance the OHR will have to rely on secondment, then local recruitment, and only if there is no other alternative may it consider recruiting expatriate staff. Since autumn 1998 recruitment has been under closer scrutiny by the financial experts to avoid any increase in the wage bill. The 1999 budget shows a reduction of 6 % in salary expenditure and the Commission has insisted that this effort be kept up when the OHR budget for 2000 is presented. The payment of accommodation allowances was resolved by the financial experts, who insisted on the strict application of the Lancaster House Agreement (8 to 9 December 1995) by the administrations of origin of seconded staff.

These strict measures were put into practice and consolidated in the budget for 2000 which was formally adopted by the Steering Board on 29 October 1999.

20. The Commission played a very active role in setting the salary of the High Representative in 1995 and in the final decision to align the salary on a member of the Commission with a comparable family situation, it being felt that the salary should be set taking into account the tasks to be performed and the level of responsibility and previous experience of the High Representative.

In 1997 it was necessary to act at great speed, subject to political imperatives; this led to some precipitate decisions to which the Commission could not object, given the political sensitivity of the case and the status of the persons concerned. Considering the OHR’s lack of a legal personality at the outset and the need to act urgently to facilitate the setting up of the OHR in a very difficult local context, contractual relations between the Commission and the High Representative were based on exchanges of letters.

(1) Decision SEC(97) 605, 8.4.1999.
Nonetheless, with the appointment of the third High Representative in mid-1999 the Commission took the opportunity to review the matter and find solutions that were more considered, equitable and transparent with the OHR (see paragraphs 18 and 19).

Institutional responsibilities

22. Management of the OHR has come under increasing scrutiny from donors in the light of the scope of the tasks entrusted to it and the expense which these entail. Policies for the various OHR departments are now in place (see paragraph 19), and the donors intend to see that they are applied with the arrival of a new High Representative. (On the EU contribution, see the reply to paragraph 14). A remarkable degree of rationalisation was achieved in preparing the budget for 2000, which was formally adopted by the Steering Board at Sarajevo on 29 October 1999.

Conclusion

23. The Commission would point out that the OHR functions under the aegis of the PIC (Peace Implementation Council) and its management committee. The Community budget covers 50 % to 53 % of the budget of the OHR. This support is governed by successive CFSP Joint Actions adopted by the Council. In this context, the Commission has gradually succeeded in introducing greater transparency and rigour into the management of the OHR. The OHR has responded satisfactorily to the recommendations made by the Commission, notably following an inspection on the spot in January 1999. Another mission to ensure these recommendations are properly implemented was planned for late 1999, but was put back to March 2000 because the OHR was not free.

As to the OHR’s technical measures and internal machinery, the Commission considers that the Court is trying to assign it responsibilities which properly belong to the management bodies of the OHR.

Support for civil society

29. The Commission services have examined at length the project on the creation of a Democracy Foundation of Bosnia-Herzegovina.

The project aims to reach goals largely shared by the international community and, in particular, by the European Commission.

In assisting, together with an intergovernmental organisation, the development of this project, the European Commission has been effectively responding to the initiative of the European Parliament.

The European Commission asked the Foundation, which now legally exists (registered in the Netherlands in the absence of a Law on Associations and Foundations in Bosnia-Herzegovina), to revise some aspects of its financing proposal.

The Foundation has revised the project and the Commission is evaluating the new project with a view to relaunching the internal procedures required to be able to finance the project.

SUPPORT FOR HUMAN RIGHTS AND FOR THE NEWS MEDIA

Institutions for the defence of basic rights

27. Support to the Office of the Ombudsperson, established by the Dayton Agreement, has been made available through both the Phare and Obnova programmes since 1996. The Commission, notably through its Office in Sarajevo, has developed close working relations with the institution as well as with the Office of the High Representative, which plays a key role in coordinating the support to the so called Dayton Institutions.

28. The EC support is indeed granted on the basis of a project proposal which includes a comprehensive breakdown of prices and payments against progress reports. The Commission is aware of the difficulties institutions such as the Office of the Ombudsperson have experienced with the management of their resources. However, the objective of the solution adopted by the Commission is to secure maximum transparency and accountability for the Phare and Obnova contributions. While agreeing with the Court on the need to accompany the local authorities in making the institutions sustainable, the Commission wishes to reinstate the role to be played in this respect by the OHR. The Court suggests making direct payment of contributions to the budgets of public bodies in the region. This runs counter to the Commission’s approach up to now of favouring support for specific operations and barring general contributions to the budget of the beneficiaries save in exceptional circumstances. The Commission’s approach was motivated by concern for sound management and accountability.

31. The Court is critical of the support given to clubs (the ‘embassies of democracy’ and Euroclubs) created under the auspices of the Council of Europe, and challenges the Commission on the grounds that their results were not evaluated. While it must be conceded that this type of support did not produce positive results in all cases, it is important to emphasise that this was an experiment in solidarity and that in some cases, for example in Tuzla, it did have positive results.
33. The Commission subscribes to the statement made by the Court on the immediate positive effects. The intention for the longer term is, in line with the Court’s remark, to strengthen the social services which are the responsibility of the authorities at entity level.

34. The support provided to the University of Sarajevo through the ‘Europe for Sarajevo’ programme was to complement the Democracy and Tempus related initiatives. EUR 750 000 was contracted to the World University Service to provide immediate support for the development of the University. In addition, EUR 3,1 million has been allocated to building rehabilitation for the faculties of Philosophy, Law, Medicine and Mathematics, which could not have been funded via the democracy programme or Tempus.

35. The Commission’s strategy was initially to diversify efforts not only in terms of the areas of intervention but in the instruments to be used. As time goes by efforts may be focused on the institutions of public life.

Support for the media sector

37. For political reasons, the then High Representative wanted OBN (open broadcast network) to broadcast before the elections in September 1996. Consequently, the independent television network was set up very fast in spring and summer 1996 (normally it takes at least 12 to 18 months to set up a television station). It is true that, having decided to support OBN because of the political relevance of the project and facing very tight deadlines, the Commission found that it could no longer tie the Community contribution to the rules of origin that normally govern Phare operations. Given the urgency of the situation, the Commission decided that it was more important to meet the goal of the project, to contribute to setting up an independent press in time for the elections, than to obey the rules of origin on equipment.

38 to 40. From the outset, this project was atypical of the projects customarily supported by the Commission: an initiative of the international community, set up for political reasons from public funds, it went on to be a private Bosnian television station.

In addition OBN was intended to become profitable, at a time when the Bosnian economy and therefore the media market (income from private advertisers) was fragile. Successive management teams at OBN presented a series of business plans to the Commission. In reality OBN is highly unlikely to make a profit in the very short term, especially since it was set up in particularly difficult conditions and in a climate of economic uncertainty. This failure of short-term viability does not mean that there is no political point to supporting the station, which, in the long term, will have to build its commercial viability on private advertising (local, regional, international) rather than increase its financial dependence on the OHR or international donors. Politically, direct and exclusive financing by the OHR would tend to brand OBN in the eyes of public opinion as a TV station tied to the international community. The project in question was presented by the OHR and is still considered by it as one of the pillars of international strategy in Bosnia-Herzegovina. Moreover, this OHR strategy received backing from the international community as a whole, in that the need for political and financial support for the TV station has been expressly stated in all the conclusions of the Peace Implementation Conferences, since that of London in December 1996. The political importance of the project is evidenced by the fact that the OHR website has a direct link to information on OBN.

41. As early as 1994 (when the war in Bosnia was not yet over), the Commission chose to support independent media in Bosnia-Herzegovina. The selection of projects, particularly during the war, was made primarily on professional and political criteria. Subsequently, monitoring certain of the contracts posed problems: in practice, good journalists or editors (who take physical risks in the prevailing situation in Bosnia-Herzegovina) are not necessarily good financial managers. A 1994 contract for support for the weekly Dani in Sarajevo, for example, has only just been closed because of the difficulty of obtaining accounts. Dani, it should be said, is still today one of the leading independent news sources in Bosnia-Herzegovina.

Management of the transactions

42. The Commission agrees with the Court of Auditors that the terms of reference have rarely been of use as a monitoring tool. The Commission is preparing to tackle this situation, if need be by issuing the requisite recovery orders.

43. The Commission wishes to point out that at certain times, particularly when contributing to stabilisation and peace processes, the conditions of work on the ground inevitably present difficulties and risks.

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Footnotes:

(1) Peace Implementation Conferences (PIC), at which are represented France, Canada, Germany, Italy, Japan, Russia, the United Kingdom, the United States of America, the EU Presidency, the European Commission, the United Nations, the UNHCR, the OSCE and NATO.

(2) The Council recognises the pressing importance of independent media questions and agrees on the need to contribute to the funding of the second phase of the Open Broadcast Network project under its two-year consolidation plan. The Council welcomes the reinforced role of the Office of the High Representative in coordinating assistance to the independent media. For later PIC conclusions, see the website of the OHR(http://www.ohr.int/pic.htm).
In the particular case of aid to press outfits, the background to the selection process, as explained in the reply to paragraph 41, was not conducive to lodging audited accounts.

44. The Commission regrets that at the time some cases were not followed up diligently by the central departments in Brussels. As the Court states, the delay in receiving implementation reports was the primary problem. Most of the beneficiaries, small NGOs and local press organisations, were not able to find interlocutors on the spot who could advise them on monitoring their projects.

45. Devolved management by the delegations should in future guarantee better monitoring of most projects. Management from Brussels suffered from understaffing, which is all the more telling when the programme to be administered consists of a large number of small contracts.

SUPPORT FOR THE ELECTORAL PROCESS

46 to 49. The Commission would point out that the preparation documents were the supervision projects complete with costings sourced from OSCE election budgets. This material had already been approved by EU Member States in Vienna in their role as OSCE participating states. The Council took the view that the OSCE material provided a sound basis for Joint Action design.

The provision of support for elections in Bosnia-Herzegovina was not a standard financial and technical cooperation-type project and contract. The Joint Actions were designed to facilitate EU participation within the OSCE framework during an evolving post-war situation. They were not designed as budgetary support to OSCE.

To be effective, the nature and duration of EU-designed support for the Dayton Peace Process (there was no alternative to working through OSCE) had to be flexible for the following reasons:

(i) The nature of the process in Bosnia-Herzegovina: real-time conflict resolution

The task of election supervision was essentially a component in a dynamic process of conflict resolution. A number of key elements in the process had to be designed, negotiated and agreed with the Parties to Dayton, in real time, during the run-up to the polls. This was the case with much of the structure of the election cycle and the timing of some of its major component parts. The OSCE Chairman of the Provisional Election Commission was obliged, when all else failed and often at the last minute, to use his extraordinary powers of decision. Real-time problem resolution and decision making were integral parts of the election process.

(ii) The supply of supervisors by the Member States

Delivery of EU supervision manpower lay exclusively in the hands of Member States aiming for an overall target share of the total OSCE supervision field force. Budget flexibility was needed to deal with any aggregate under- or over-supply of supervisor numbers and the duration of their stay in the field. Similarly, the final mix of national origins had implications for aggregate transport costs to the region. For example, relatively more supervisors from Scandinavia and less from Italy would cause the aggregate transport bill to rise.

(iii) Provision and costing of supervision support services by the OSCE

The Commission had no independent source of financial information on the cost of providing support for supervisors in the field. Reliance had to be placed on OSCE estimates already approved by Member States at the OSCE in Vienna. Prudence suggested flexibility of EU budget design given the estimated nature of support costs. The cost of support services to be provided by the OSCE were estimated in Austrian shillings but much of the expenditure in the field would be in US dollars. Currency exchange rate uncertainties pointed to the need for flexibility.

A maximum was set for the EU disbursements to establish a clear ceiling to the financial flexibility needed for effective field operations by EU Joint Action supervisors.

(iv) OSCE perceptions

The Commission made it clear in all contacts with the OSCE that EU funding was not a lump sum but a sum earmarked specifically for the costs of supporting the EU Joint Action body of supervisors.

50. The Commission considers that the lack of a specific expiry date in the joint action is adequately explained by the need for flexibility for the reasons already stated above. As to appraisal, Article 5 of the text of the Joint Action (96/406/CFSP) of 10 June 1996 states: ‘The Council shall take stock of implementation of this joint action’. The Member States had the opportunity for such stocktaking within the framework of the OSCE.

51. To this the Commission would point out that it used the only cost information available at the time and that this had already been approved by Member States in Vienna in their role as OSCE participating states. Independent verification was difficult within the timeframe.

In order to avoid this type of situation, the Commission was keen to improve the budget estimates for joint actions and drafted a standard financial statement specifically for the CFSP so as to improve the definition of both the individual cost forecasts and the context for implementation of joint actions adopted by the Council.
52. It should be stressed that the Commission’s responsibility in this matter does not give it any discretion as to either the beneficiary (chosen by the Council) or the amount and composition of the budget set by the OSCE, and that, moreover, its departments had no expertise likely to help them judge whether the budget estimates were sound, whereas the OSCE had specialist departments responsible for this type of operation.

(a) The Commission points out that flexibility was needed in the circumstances. The budgets annexed were in the spirit of the Joint Action for decisions adopted by the Council. The maximum amount was always specified in the agreements themselves.

(b) The Commission would point out that the EU Joint Action supervisors were the only beneficiaries of Joint Action funds and were entirely financed from this source. The standard financial statement drafted by the Commission contains a table listing the other contributions, to give an overview of all the financing, including financing in kind, supplied in the framework of a Joint Action or Council CFSP Decision.

(c) and (e) In order to avoid a repetition of this situation, the comments made by the Court were systematically taken on board in new contracts drawn up by the Commission.

(d) The estimates were based on individual costs which the Commission checked when the financial reports were submitted.

(f) An advance of 80% was granted given the urgency and the political importance of the first elections and the OSCE’s apparently justified requests. This percentage was later substantially reduced, to 60%, in particular because the Commission found from the financial reports submitted by the OSCE on the two first contributions that OSCE forecasts were excessive compared with the expenditure incurred.

(g) The Commission will examine the possibilities for improving the accounts which the OSCE should provide. The planned audit should help to clarify the matter.

53. The Commission notes the Court’s remark on relations with the OSCE, which is fully in keeping with the efforts made by the Commission in that regard.

54. The Commission selected an independent expert to carry out checks on the spot at the end of 1999 on the overall contributions to the OSCE. Any decommitments required will be made, depending on the results of the checks.

55. Since it is not part of the remit of the auditor of the OSCE to certify the accounts produced by the OSCE’s Accounting Officer, those accounts will be subject to a review on the spot by the independent expert sent by the Commission.

56. The OSCE was given a political mandate by the international community to supervise the elections. It proved difficult to give the EU presence on the spot the political visibility one would have wished. However, the Commission did what it could to inform the European contingent of the operations undertaken by the EU in Bosnia-Herzegovina.

57 and 58. The operations financed from 1996 allocations for human rights and democracy were subject to redefinition and addenda to the initial contracts in mid-1997, in order to cover the 1997 municipal elections as well.

It is true that the accounts for the contracts in question were not always closed for various reasons: the Commission has still not received the final reports despite several reminders to the OSCE, and in addition there was confusion regarding the late presentation of certain interim financial reports by the OSCE; the restructuring of the Relex DG and SCR in mid-1998, when staff and files were reassigned, delayed closure even more and the general shortage of staff in external relations meant that not all priorities could be covered at the time.

The Commission is planning a full audit of OSCE operations financed by the Community budget from CFSP funds and democracy funds by an independent expert at OSCE headquarters in Vienna for the end of 1999/early 2000.

59. It should be stated that the Commission received reports on the 1996 use of Community grants, on the basis of which it drafted amendments to the contracts with a view to the 1997 elections; it is true that the Commission still has not obtained the final reports relating to the 1997 phase of these (amended) contracts; the reports produced by the OSCE are too succinct to enable eligible expenditure incurred to be identified and sums to be liquidated. The object of the forthcoming audit is precisely to provide a thorough review of the implementation by the OSCE of its contractual commitments and the amounts to be liquidated.

60. The Commission agrees that its financial relationship with the OSCE requires re-examination. The audit will provide a contribution to this exercise.
The Court’s observations, however, touch on wider issues. They raise the question of the degree to which the Commission should use the more politically appropriate channels such as the OHR and OSCE in this case, or other bodies with a specific international vocation or mandate in other circumstances, when their rules and administrative procedures do not necessarily accord with Community practice.

The Commission would like to receive clear guidelines on this from the Budgetary Authority. It cannot continue to be put in a situation where it must shoulder responsibility for matters that are beyond its remit.

CONCLUSION

62. The Commission takes note of the Court’s recommendation that contributions to current financing may be preferable in some cases to project financing. The Commission notes that the Court makes this kind of financing conditional on there being a mechanism for rendering the accounts and that the Commission is called on where necessary to help strengthen existing inspection mechanisms. While accepting the logic of the Court’s argument, the Commission wishes to emphasise the following two points. It is not realistic to expect the conditions to be easily fulfilled for operations in destabilised societies. It is also clear that there are limits to the tasks which can be imposed on the Commission, particularly in relation to the implementation of adequate procedures by other international institutions.

63. The Commission agrees with the principle that care must be taken with the terms of reference and budgets of projects, and it is trying to improve the instruments in question, as stated in a previous answer (see paragraph 43).

With regard to support for OBN, the Commission would repeat that despite the difficulties encountered, OBN is still considered one of the pillars of OHR strategy in Bosnia-Herzegovina.

64. The process of development of civil society must necessarily go through different phases to take into account specific circumstances; in the Balkans, the postwar phase had to focus on support for the formation of pressure groups and their various initiatives while in subsequent phases it is possible to target priorities according to developments in the different areas.

In this perspective, the Commission’s invitation to submit proposals for projects to be carried out under Chapter B7-70 clearly identifies among the priority topics for 1999 for budget heading B7-70 (former Yugoslav republics):

— the development of democracy, the rule of law and civil society, the peace process, easing tension, interethnic dialogue,

— equal participation of women in decision-making processes,

— promotion of free and independent media and press freedom,

— vulnerable groups.