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REPORT

on the nomination of Juan Ramallo Massanet as a Member of the Court of
Auditors
(C6-0342/2005 – 2005/0814(CNS))

Committee on Budgetary Control

Rapporteur: José Javier Pomés Ruiz

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the nomination of Juan Ramallo Massanet as a Member of the Court of Auditors (C6-03422005 – 2005/0814(CNS))

The European Parliament,

- having regard to Article 247(3) of the EC Treaty, and Article 160b (3) of the Euratom Treaty, pursuant to which the Council consulted Parliament (C6-0342/2005),
 - whereas at its meeting of 24 November 2005 the Committee on Budgetary Control heard the Council's nominee for Membership of the Court of Auditors, and considered the nominee's qualifications in the light of the criteria laid down by Articles 247(2) of the EC Treaty and 160b (2) of the Euratom Treaty,
 - having regard to Rule 101 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A6-0372/2005),
1. Delivers a favourable opinion on the appointment of Juan Ramallo Massanet as a Member of the Court of Auditors;
 2. Instructs its President to forward this decision to the Council and, for information, to the Court of Auditors, the other institutions of the European Communities and the Audit Offices of the Member States.

ANNEX 1: CURRICULUM VITAE OF JUAN RAMALLO MASSANET

Born in Palma de Mallorca, 1943.

Doctorate in law, Complutense University of Madrid (1971).

My main activities have been at university level. Researcher (1969/74) and Associate Professor of Financial and Tax Law, Faculty of Law, Complutense University of Madrid (1975/76). Professor, University of Valladolid (1976) and University of the Balearic Islands (1977/89). Further studies at the Universities of Vienna (1970) and Heidelberg (1972 and 1974) under Professor Klaus Vogel. Dean of the Faculty of Law (1978/80); Vice-Rector of the University (1980/82). Deputy Magistrate, Higher Court of Justice of the Balearic Islands (1979/81).

In connection with my academic activities, I have published a large number of texts on subjects relating to my speciality:

A) Fiscal decentralisation: 'El sistema financiero de las corporaciones locales en el derecho alemán' (1976); 'Incidencia de la Constitución española de 1978 en materia de fuentes normativas de las Comunidades Autónomas' (1979); 'El control de la Hacienda no estatal por el Tribunal de Cuentas' (1982); 'El reparto de competencias tributarias entre los distintos ámbitos de gobierno' (1988); 'Autonomía y suficiencia en la financiación de las Haciendas Locales' (1993); 'Asimetría del poder tributario y del poder de gasto de las Comunidades Autónomas' (1993); 'Estructura constitucional del Estado y Ley General Tributaria' (1994); 'Sistema y modelos de financiación autonómica' (1994); 'La necesaria reforma de las Haciendas Locales en el Estado de las Autonomías' (1995); 'Contenido, instrumentos y límites de la corresponsabilidad fiscal' (1995); 'Constitución y Presupuestos Generales de las Comunidades Autónomas' (1996); 'Las relaciones interadministrativas en la aplicación de los tributos' (1996); 'Elementos jurídicos de la financiación autonómica' (2001); 'Principios tributarios y puntos de conexión' (2005).

B) Tax resources: 'Derecho Constitucional y Derecho Financiero' (1981); 'Condicionamientos constitucionales de la codificación tributaria' (1993); 'Tasas, precios públicos y precios privados' (1996); 'Hacia un concepto constitucional de tributo' (1997). 'El bloque presupuestario en España: presupuesto, acompañamiento, estabilidad' (2003). 'El Decreto-ley en materia tributaria' (2003), 'Hecho imponible y cuantificación de la prestación tributaria' (1978); 'La unidad familiar como sujeto en el ordenamiento tributario español' (1980); 'Régimen fiscal de determinados activos financieros' (1985); 'Tributación de entidades de previsión social' (1990); 'El tipo de gravamen' (1991); 'Aspectos fiscales de la libre circulación de capitales en la Comunidad Europea' (1992); 'Incrementos patrimoniales por operaciones entre no residentes' (1993); 'La eficacia de la voluntad de las partes en las obligaciones tributarias' (1996); 'Las nuevas reglas de determinación de la base imponible en el Impuesto sobre Sociedades' (1997); 'La Directiva 90/435/CE relativa al Régimen Fiscal Común aplicable a las sociedades matrices y filiales. La experiencia española' (2001); 'La revisión de actos tributarios en vía administrativa' (2004).

C) Again in the academic context, I have translated the following classical works into Spanish [Spanish titles given]: H. Nawiasky: 'Cuestiones fundamentales del Derecho Tributario' (1926); L. Trotabas: 'Ensayo sobre el Derecho Fiscal' (1928); F. Geny: 'El particularismo del Derecho Fiscal' (1931). I was general rapporteur for the 13th Study Days of the Latin American Institute for Tax Law (1987) and for the 45th Congress of the International Fiscal Association (1991).

Political activities: Member of the Spanish Congress of Deputies (Cortes Generales) during the Second and Third Legislatures (1982/89). During that period, I was chairman of the Committee on the Economy, Trade and Finance (1983/89) and a member of the Committee on Budgets and the Committee on External Affairs. I represented the Spanish Parliament at the meetings of the Interparliamentary Union (1985/89). I was a member of the joint Congress/Senate committee responsible for relations with the Court of Auditors for the examination of the national accounts (1984/89).

As Professor of Financial and Tax Law at the Autonomous University of Madrid (1989/2005), I have carried out a number of international audits (National Assembly of Nicaragua, preparation of tax code, Managua, 1992; Ministry for Decentralisation, Venezuela, Intergovernmental Fund for Decentralisation project, Caracas, 1993; Government of Paraguay, White Paper on institutional reform, Asunción, 2002). I have been an adviser to the Institute of Fiscal Studies (attached to the Spanish Finance Ministry - 1990/95), participating in the 'Report on the economic and financial management of public expenditure in Spain' (1993). I was responsible for the preparation and drafting of appeals to the Constitutional Court against the enabling laws for the Spanish national budget (budgets for 1997, 1999, 2000 and 2002).

ANNEX 2: REPLIES OF JUAN RAMALLO MASSANET TO THE QUESTIONNAIRE

Performance of duties

1. What do you think of Parliament's criticisms of the DAS as expressed in the 2003 discharge report and the working documents to the financial management seminar?

For someone who, like myself, is dealing for the first time with the Court's internal workings and those of the other Community institutions, the DAS appears to be one of the most conflictive subjects as regards the various bodies and documents related to the EU budget. I believe this is an enormously complex issue, and I therefore feel it would be out of place for me to comment at this moment on Parliament's criticisms of the DAS.

At all events, I feel able to make a number of remarks in response to this question on the basis of the documents available on the Court's website.

The Court's Annual Report for 2003 dedicates its Chapter I to the statement of assurance, drawing attention (in point VI) to the shortcomings and errors of both the Commission and the Member States in the execution of certain areas of expenditure (EAGGF-Guarantee, structural actions, research programmes, external actions, pre-accession aids).

In the light of the report, the EP adopted its decision on the discharge, accompanied by numerous remarks (179 in all, but only 30 on the Court of Auditors and the DAS). Parliament's criticisms range very widely, but there are, I believe, two key aspects: 1) many of the criticisms which might appear to concern the Court are in fact directed at the Member States and the Commission; 2) the fact that the Court has delivered negative statements of assurance over ten years, which earns Parliament's reproaches (point 13), needs to be placed in the context of the Court's role, in its monitoring of the legality and regularity of the underlying transactions, of drawing attention to the actions of the bodies responsible for implementing expenditure.

In all probability and as the EP stresses, we need to improve the criteria and methods for the DAS, as well as its presentation (see points 30, 32, 33, 36, etc), while recalling that this is a matter exclusively for the Court. As things stand, my view is that the overall conclusion from Parliament's discharge for 2003 should be that it is vital to undertake a joint effort, on the part of the Community institutions and the Member States, to achieve the goal we have set ourselves, in other words, to ensure that the budget and execution procedures, for both income and expenditure, are the object of a DAS that corresponds to the realities.

I take it that the 'working documents to the financial management seminar' concern the meeting of the Committee on Budgetary Control of 4 October 2005. These documents, whether they originate with the Court of Auditors, Parliament or elsewhere, have been extremely useful to me in examining the DAS issue, although they do also give the impression that the uncertainties and doubts surrounding this instrument are shared by those most familiar with it.

2. How can the Court of Auditors contribute to giving a positive image to European citizens of the European Union? How could the Court's reports be better presented and made more accessible to the public?

The responsibility of the Court of Auditors is to monitor the Union's revenue and expenditure and ensure sound financial management.

I believe that if the Court performs, in all responsibility, its duty under the Treaties (Articles 246, 247 and 248 of the EC Treaty), it can make a decisive contribution to the Union's image. Its responsible and rigorous nature as a Union institution constitutes a safeguard for the citizens of Europe. In the performance of its duties, the Court must resist the temptation, wherever it may come from, to denounce irregularities under all circumstances or to do so for interests alien to its role. The fight against fraud and against all illegal activities affecting the Community's financial interests is a task for both the Community and the Member States (Article 280(1) of the EC Treaty). The fact that the Court tends to give a positive image of the Union as such should not prevent it from giving a negative image of its accounts and financial management.

On a subject as complex as the EU's accounts and their management, the information that exists is necessarily going to be complex. Much of it may not be real information at all: quality is more important than quantity. I do not claim at this moment to be informed on all aspects of the Court's present and past activity in relation to the presentation of its reports, and it is therefore hard for me to suggest how it could be improved. Decision 92/2004 (Articles 69, 70 and 71) establishes a number of guidelines in this connection which could prove useful.

At all events, and allowing for the reservations I have expressed regarding the present state of my knowledge, I shall venture to stress two factors. First, we need to use all the opportunities offered by the new technologies, above all the Internet, and their potential for democracy and ease of access. Second, the results of the Court's work could usefully be made available to those members of the public who receive funds from the budget under Community policies. Here, one could consider providing information at the appropriate territorial level (regions, municipalities) on the results of the Court's audits and its findings on the management of the sums concerned, cofinanced or otherwise.

3. What should be the main features of a sound financial management culture in any public service?

I feel that this question, which does not concern budgetary control alone, raises an initial consideration. The idea of a financial management culture presupposes, as I see it, the absence of financial arbitrariness. Management calls for at least two criteria: legal certainty in the moment of administration, and prior and subsequent awareness of actions performed. A political community cannot have two opposed cultures coexisting. Thus, an arbitrary political system is not compatible with a 'sound financial management culture'. It follows that, for there to be sound and proper financial management, there has also to be, as a *sine qua non*, a democratic political system based on the separation of powers and backed up by a declaration of the rights and duties of the citizen.

Concerning the financial management of the Union's own resources, one problem is that this is carried out by the administrations of the Member States (VAT, customs duties), who may fail to collect certain sums because a taxpayer is going through financial difficulties or because the amounts involved are minimal or do not compensate the risks and costs of collection by the authorities. The Court needs to monitor the application of the tax procedures relating to the collection of those resources in which the Union participates.

The financial management of public expenditure in any public service, whether belonging to the Community or not, needs to show a basic feature, namely transparency, in line with the following criteria: 1) a precondition for management is proper budgeting which, following the principle of budgetary specificity, does not establish global amounts and headings that then have to be interpreted in concrete terms by the managers; what is needed here is a clear definition of the objectives and programmes to be executed, with expenditure commitments not being assumed without the appropriate budget allocation; 2) from the viewpoint of the bodies or officials responsible for management, there must be a precise definition of the competences and responsibilities of all involved; 3) there have to be clear guidelines concerning tasks and objectives, of a stable nature and not requiring a massive organisational effort for implementation: these should regulate the procedure for execution of expenditure by the managers, should specify the documentation required (for the Community administration and the final beneficiaries) for the justification of spending, and should ensure that all stages of expenditure are accompanied by intervention of an internal and simultaneous nature.

At the end of the process, the Court of Auditors' reports should serve to provide feedback for future decisions, on the basis of the evaluation of management according to the principles of economy (use of the smallest amount of resources), effectiveness (extent to which the objectives proposed have been achieved within the limits of the plan, without considering the economy of the means used to achieve them), and efficiency (whether the resources have been allocated so as to minimise costs and maximise benefits).

4. According to the Treaty, the Court shall assist Parliament in exercising its powers of control over the implementation of the budget. How would you describe your duties with regard to reporting to the European Parliament and its Committee on Budgetary Control, in particular? If Parliament invited the Court to prepare a report on an area of concern, how would you respond to this invitation?

The Court must strive at all times to maintain its total independence from all other institutions and bodies. This independence is compatible with its instrumental position vis-à-vis Parliament and the Council (Article 248(4), fourth paragraph of the EC Treaty), since it is not an end in itself. The equilibrium of the Union's budgetary powers means that the institutions competent to adopt the budget must also be those competent for the final approval of its execution. If adoption of the budget implies adoption of the forecasts of income for the period concerned and approval of authorisation for the Commission to spend certain sums for the purposes proposed, it follows democratically that it should be the authorising institutions that finally approve the use made of them by the Commission, in other words the execution of the budget (Article 276(1) of the EC Treaty).

The duties which I would perform in this connection should I be appointed to the Court would be carried out in accordance with professional criteria and on a collegiate basis together with the other members of the Court (Articles 1 and 23 of the Court's internal rules, 2004; additional provisions of Decision 92/2004). These duties would, in line with the organisation of the Court's work determined by its President, concern the two key instruments: the annual report and the special reports, opinions and remarks (Article 248 (1), (2) and (4) of the EC Treaty). It is obvious that this assistance to Parliament and the Council should operate in the first place through the Committee on Budgetary Control, to which the reports may be submitted (Article 66, Decision 92/2004).

It is essential to take due account of the motives and interests underlying Parliament's requests for reports made to the Court, and here the Court needs to be attentive. The two institutions' cooperation forms the basis for a reliable external control permitting approval of the Commission's exercise of its political responsibilities. I shall therefore examine those requests closely and carefully, on the basis that they should correspond to the Union's general interest and should be promoted by parliamentary bodies (preferably going through the Committee on Budgetary Control). At all events, the final decision on whether to draw up a report is the Court's own.

5. As you know, the Commission is revising its Financial Regulation. What could be the added value of such a change, if any?

The Financial Regulation is an essential text for the work of the Union, since it contains the rules for the determination and execution of the budget and for the presentation and auditing of the accounts. Since it has to take account of real circumstances, it is hardly surprising that it should be frequently amended, to the point where the existing (2002) Regulation, which is the result of a root-and-branch reform of its predecessor, provides for its own revision every three years (or even before three years if necessary).

The revision of the Financial Regulation for 2005 is already under way (3 May 2005). As I am not a member of any of the Union institutions and have no experience of them, my opinions on this point should be taken as being purely intuitive - approximations, perhaps of a theoretical nature, which might not reflect the real state of things in the Union.

The proposed changes to the Financial Regulation are aimed at: simplifying the rules on tendering and the granting of subsidies; clarifying and rationalising the rules on management methods; and improving its effectiveness and transparency. These aims could be reflected in, for example, reduction of red tape for the granting of subsidies, or simplification of the financial management procedures by introducing flat-rate arrangements or replacing documentary evidence with declarations on oath.

It is said that these measures will have two positive effects (the 'added value' mentioned in the question): for the beneficiary citizens, there will immediately be less red tape; and for the Community's management bodies, there will be greater flexibility and effectiveness in budgetary execution and the achievement of the political goals proposed.

If the new rules incorporate the principles that the rules should not require a disproportionate organisational effort and that their objective should be clearly delimited (cf. reply to question 3), it will be necessary to strike a balance between two potentially conflictive values: on the one hand, administrative flexibility; on the other, sound financial management and the protection of the Union's financial interests.

6. What role could the National Audit Institutions play in helping ensure the correct use of EU funds spent in their countries?

There is an obvious connection between the Community's expenditure budget and those of the Member States. If we recall that at least 80% of the Community budget is executed at the national levels (EAGFF-Guarantee and Structural Funds), it is clear that the control procedures - both the Commission's internal procedure carried out in tandem with expenditure and the Court of Auditors' external and a posteriori checks on accounts and operations - will interact with those of the Member States' own internal and external control bodies. As some Member States operate a composite structure, we also need to take account of the internal and external control bodies at the relevant political and administrative levels. Where one and the same euro has to pass through several different budgets before reaching its end recipient, it follows that the control activities in relation to that euro may take account of all of those budgets.

It is clear, then, that there is an obligation to coordinate between the two types of control (internal and simultaneous/external and a posteriori), as also between the various levels or areas of power which coexist in the Union. Indeed, the Committee on Budgetary Control made a proposal in this sense some years ago, in the context of the work on the SEM 2000 programme. I am not at present in a position to express an opinion as to whether the results of an audit by one control body should be considered valid for the other similar control bodies. An alternative approach would be to consider taking the Community approach of legislative harmonisation - as in the case of tax resources - in order to achieve greater uniformity of the control procedures for expenditure.

7. Can you envisage any changes to the structure of the Court that might make it more efficient?

I think it would be difficult, and indeed unwise, to put forward any proposal on this subject without being fully informed on the internal workings of the Court of which I hope to become a member. Before replying, I would need advice from more experienced members.

At all events, I believe there are a number of factors which could be of use if we are to consider any changes to the Court's structure. First, the Treaty of Nice provides for the possibility of creating chambers within the Court. Second, the Court is already structured on the basis of four groups (plus the CEAD Group), and this seems in line with the chambers option. Third, should the Court be divided into chambers certain things (opinions, reports, remarks) could be debated and adopted by the relevant chamber without needing to be dealt with in plenary, while others (including the annual report, of course) would have to be reserved for the plenary.

Independence

8. How would you describe your obligation to be independent in carrying out your duties and how do you concretely envisage putting this principle into practice?

In the performance of my duties as a member of the Court, I shall be guided by the principles laid down in Article 247(4) of the EC Treaty, as complemented by the obligations set out in the Court's code of conduct (December 2004), in Article 3 of the Court's rules and in Articles 5 and 6 of Decision 92/2004 implementing the Court's internal rules.

From the subjective point of view, independence means, at the very least, not to accept recommendations, and still less instructions, from anyone and not to be influenced by any possible reactions to my decisions - reached on a collegiate basis - be they from public bodies (of the EU or otherwise), private bodies (e.g. in the Member States) or interest groups which will necessarily be affected by the Union's actions and, specifically, by its budget.

From the objective viewpoint, I believe my performance of my duties will be independent if I undertake them with intellectual honesty and rigour as regards the criteria to be applied, operating professional standards of budgetary control while abstaining from any activity other than total dedication to the Court. From this perspective, the guarantees of independence are observance of the rules on incompatibilities and exclusive dedication to the Court.

9. Could you provide the European Parliament with details of your recent and present business, financial and political interests and positions, and of any other commitment that might clash with your prospective duties?

I do not have any business, political or other interests or commitments that could affect my duties as a Member of the Court. This is true both for the present and the recent and, indeed, less recent past. I have never been involved in any business activities or other obligations in the financial sector. My main activity has always been in the academic world, although at certain points in my career I was also a political representative or gave legal advice on matters related to public finances.

Concerning my political activity, I was elected to the Spanish parliament as an independent: in other words, I was not a member of the party on whose list I was included as a candidate for the Balearic Islands. Those years (1982-1989) provided me with an excellent opportunity to perform the duties required of me in a fashion reconciling independence and loyalty, freedom and commitment. The result was enormously positive. In 1989, I decided on my own initiative not to stand again.

Professional experience

10. Please highlight the main aspects of your professional experience in public finance, management or management auditing.

My doctoral thesis (1971) was already on a subject related to public finances. Since then, my activities have continuously been centred on that area of knowledge, be it academically, politically or as an adviser.

From the academic perspective, as the occupant from 1977 of a chair in public finances I had to lecture to undergraduates and doctoral students on the various aspects of the subjects, both revenue (especially taxation) and expenditure (the budget cycle and control of execution as an essential part of it). At different times of my life I have had to deal with the budget and its control, notably from the viewpoint of a composite or decentralised state ('El control de la Hacienda no estatal por el Tribunal de Cuentas', 1982; 'Constitución y Presupuestos Generales de las Comunidades Autónomas', 1996), as well as with the generally accepted accounting standards as regulated by Community directives and regulations in the area of company tax ('Las nuevas reglas de determinación de la base imponible en el Impuesto sobre Sociedades', 1997).

From the political perspective, I was chairman (1983 to 1989) of the Committee on the Economy, Trade and Finance of the Spanish Congress of Deputies, and was responsible for the procedural aspect of all the laws of those eight years - during which time the entire Spanish tax and budget system was rehailed, and Spain became a member of the EEC - as well as for the regular and extraordinary debates with the Minister of Finance, the Governor of the Banco de España and other ministerial authorities. In addition, I was a member of the Congress's Committee on Budgets and was rapporteur and spokesman in the debate on the national budget during the eight years of my membership. Finally, I was a member (1984 to 1989) of the joint Congress/Senate committee for relations with the Court of Auditors, with responsibility for examining the national accounts submitted annually to Parliament by the national Court.

Finally, my activities as adviser have been as follows. As an adviser to the Institute of Fiscal Studies (attached to the Spanish Finance Ministry - 1990-1995), I was a member of the team which drew up the 'Report on the economic and financial management of public expenditure in Spain' (1993). In 1997, 1999, 2000 and 2002 I was entrusted by the Socialist group in the Spanish Parliament with the preparation and drafting of appeals to the Constitutional Court against the enabling laws for the Spanish national budget for those years. Those appeals are still *sub judice*. My activity as adviser to the private sector has essentially concerned tax matters. As an international adviser, my activities have been essentially related to the decentralisation of public finances.

11. If you have already served as a Member of the European Court of Auditors, please describe the contribution that you have made to improving management of the European Union's finances during your time as Member of the European Court of Auditors.

I cannot really comment on this, as I have never before been a member of the European Court of Auditors. I would only be able to answer properly if asked again in six years' time, by which time I would certainly hope to have contributed to improving the management of the Union's finances.

12. Would you withdraw your candidacy if Parliament's opinion on your appointment as Member of the Court were unfavourable?

While both the European Parliament and the Court of Auditors (since Maastricht in 1992) are Institutions of the Union and as such enjoy a high degree of independence, it is also true that the Court, in its external control activities carried out in the general interest of the Union, exercises its control responsibilities in relation to the powers of the European Parliament and the Council, as the two branches of the Union's budgetary authority.

I therefore believe that it is not desirable to perform the duties of a member of the Court of Auditors while not sharing Parliament's position. This is the case even though the members of the Court are appointed by the Council.

Should the circumstances you describe arise (as I certainly hope they will not), I would not be in a position to withdraw a candidacy which I did not submit myself, but I would inform the Spanish Government that, in view of the EP's unfavourable opinion, I felt unable to accept the position of member of the Court of Auditors. The Spanish Government, having put forward my name as a candidate under Article 247(3) of the EC Treaty, would then have to submit a fresh proposal to the Union.

PROCEDURE

Title	Nomination of Juan Ramallo Massanet as a Member of the Court of Auditors
References	C6-0342/2005 – 2005/0814(CNS)
Legal basis	Articles 247(3), first subparagraph, EC and 160b (3) Euratom
Basis in Rules of Procedure	Rule 101
Date of consulting Parliament	14.10.2005
Committee responsible Date of referral	CONT 27.10.2005
Rapporteur Date appointed	José Javier Pomés Ruiz 12.09.2005
Discussed in committee	24.11.2005
Date adopted	24.11.2005
Members present for the final vote	Inés Ayala Sender, Herbert Bösch, Mogens N.J. Camre, Paulo Casaca, Lorenzo Cesa, Petr Duchoň, Szabolcs Fazakas, Umberto Guidoni, Hans-Peter Martin, Borut Pahor, José Javier Pomés Ruiz, Bart Staes, Margarita Starkevičiūtė, Kyösti Tapio Virrankoski
Substitutes present for the final vote	Daniel Caspary, Joel Hasse Ferreira, Edit Herczog
Substitutes under Rule 178(2) present for the final vote	Iles Braghetto, Manolis Mavrommatis, Marcello Vernola
Date tabled – A6	28.11.2005 A6-0372/2005