

ENSURING THE LEGALITY AND PERFORMANCE IN USING PUBLIC FUNDS

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Abstract

At this stage, when the public entities are promoting the efficiency criterion, any public entity leader is interested to operatively know how the available public funds are being managed so as to achieve maximum results with lowest costs. This knowledge can not be achieved without the contribution of the internal audit, an activity that provides important information regarding the financial management and the heritage state, thereby contributing to achieving the objectives of the institution. The external public audit work done by the Court of Accounts, as the supreme audit institution in our country, is essential for ensuring accountability on the management of public funds. The responsibility for using the public money under legal and performance conditions is, of course, entitled to the officers of public budgets, but the public audit is the one that assesses the financial management of the entities and that issues recommendations that stay behind taking managerial decisions aimed at a better use of the funds.

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1. Introduction

In a democratic state that respects the fundamental rights of its citizens, they, in their capacity as tax and fees payers are entitled to know from objective, professional and independent sources how the laws, rules and performance criteria are being complied with in terms of the use of funds coming from taxes and contributions.

At the same time, the public funds allocated especially to public entities are not as comfortable to allow spending them without restrictions. This aspect must constitute an urge for prudence and discreteness, for the necessity of sustained efforts to find the most adequate ways for using available resources.

The public audit has an essential contribution for protecting financial resources, promoting the responsibility of public entities involved in using public funds, the order and discipline necessary for administering public money, for consolidating and developing the public and private patrimony of the state.

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2. Public audit – a growth instrument of the liability of the entities involved in managing the public funds

With the development of the universal values, of democracy, freedom and the state of law it emerges a more strongly need to establish and strengthen independent, professional and modern structures; structures that would monitor an important factor of the progress and prosperity, which is the public money.

However, the current global financial and economical crisis requires deep reflections and adequate behavior, now more than ever, at all levels, including regarding the use of public funds.

The establishment and the effective use of public funds represent a prerequisite for the success of the economic and financial reforms in progress, and for the sustainable development of Romania.

An essential contribution in ensuring the legality and performance of the public funds usage lies in the sector of the public audit activity.

Both the internal and external public audit should not be regarded as an end in itself, but as a tool that ensures an efficient use of public funds that optimizes the performance of the public entities activities through its essential contribution in identifying irregularities and financial imbalances. Recommendations offered by the audit can contribute to strengthening the stability of the public entities and to fulfill their objectives in terms of anticipating and properly managing the risks, and efficiently using the available funds under law conditions.

In the same time, through the public audit both prevention and detection actions are being convered and also the tracking actions of public funds that are lost because of negligence, irregularities or fraud. The importance and effectiveness of the public audit are measured by the possible effects that can be generated through the results of the entity, following the application method of the established measures and recommendations. The public audit may be considered useful and effective only if it has the capacity to prevent and/or remove in optimum time the deficiencies and can supply accurate information on the management of public funds.

2.1. External public audit

The external public audit activity contributes to knowing how the financial resources and public materials are managed, how the public money is being spent and also contributes to achieving financial and economic efficiency.

"The external audit is the audit performed by an entity that is not under the control of the audited entity and that can, basically, not report, in the assessments made, to the objectives of the audited entity. The external audit is exercised outside the audited entity. The external audit examines whether the revenues were received, expenditures were made legal and regular and whether the financial management was adequate. It also reports any irregularities found." [Dinga, E., Pop, N., Dimitriu, M. (2006)].

Mainly, the public external audit is performed by specialized state bodies empowered by law to exercise their attributes over the formation and use of public funds.

The external audit of the public sector has the important function to provide, to those decision makers at the highest level (the Parliament, the Government) and to citizens, assurance regarding the quality of the financial statements on how the money coming from taxes was spent.

The external public audit performed by the Court of Accounts represents:

- for the Parliament - a guarantee that the laws adopted in the public finances domain are in place and that the public money are being effectively managed;
- for the Government - a lever for correcting financial and fiscal policies adopted and for guiding resources towards efficient programs;
- for public entities - a tool to prevent shortcomings in the financial, analysis and assessment domain of the training method and the use of the available resources;
- for taxpayers - a guarantee on the proper use of the nation's funds.

From the content above, results that the public external audit is an independent activity, carried out by specialized bodies outside the audited entity, aimed at analyzing and evaluating the way the objectives of the entity's activity are being fulfilled, verifying the legality and regularity of setting up and using the public financial resources, of their economical, efficient and effective use, of organizing and operating the control systems and also the effectiveness of the internal audit.

According to Law no. 94/1992 regarding the organization and functioning of the Court of Accounts as amended by Law no. 217/2008, the external public audit is "the audit work undertaken by the Court of Auditors, which comprises mainly the financial audit and the performance audit." The two forms of external public audit are exercised under the Regulation regarding the organization and the development of specific activities of the Court of Auditors as to seize documents from these activities, adopted on the basis of the generally accepted international auditing standards.

The Financial Audit – an attestation activity for the financial responsibilities of public entities

The financial audit is the activity that seeks if the financial situations of the public entities checked are complete, true and consistent with the laws and regulations enforced, in this sense it was issued an opinion.

The financial Audit of the Accounts Court is made over the execution accounts for periods of administration concluded and seeks mainly:

- data accuracy and reality in the financial statements;
- determining the legality and the public revenue collection;
- the employment, clearance, ordinance, payment and the registration of costs according to law and to the legal regulations budget;
- the approval and the amendments brought to the original provisions of the public budgets;

- granting from the budget subsidies and of allocations for making investments and for the legal use of them;
- contracting loans, the repayment and payment of interest on outstanding rates;
- the concession and lease of publicly owned property, including leasing of public services;
- ensuring the integrity of the heritage.

The Accounts Court certifies the accuracy and reliability of the data from the audited accounts, being the only authority that can adjudicate on such data.

If by the end of 2008, the Accounts Court exercised the financial control over the closed execution accounts of the public institutions and granted an agreement discharge to officers whose accounts were accurate and real, starting with the year 2009, the Accounts Court exerts financial audit over the closed accounts, issuing a certificate of compliance for the accounts that meet the statutory requirements.

In the attempt to modernize and align to the good European practices, the Court of Accounts made a great qualitative step forward through legislating and realizing the financial audit, but the valuation of the findings resulted from the audit mission has not been finished. My affirmation is based on a real fact, according to which the concept of management discharge which the Court of Accounts had been operating is not any more between its attributions, but neither between those of other public authorities.

My proposal is that the concept of management discharge be legally reintroduced, because this is a concrete instrument to reinforce public responsibilities in the financial field but this competency must be granted to authorities that entrusted credit ordinarators with the management of public funds, respectively to the parliament for ordinarators subordinated to the government and to the local councils for ordinarators of local budgets.

The management discharge must be granted only to main credit ordinarators, who should be responsible also with the accuracy of the accounts elaborated by secondary or third credit ordinarators subordinated to them.

In order to adequately valorize the findings resulted from audit missions, I express my opinion that in case of finding some financial/accountancy deviations or losses, the measures and recommendations issued after financial audit missions have to be transmitted to a specialized commission of the Parliament (for example a Commission for Public Funds) or to the local councils, depending on the case, analyzed and transmitted by these to the main credit ordinarators for implementation.

This way the sanctions for the inadequate management of public money can take different forms, including the withdrawal of the public support or the diminution of some funds, this way insuring an increase of the financial discipline.

The performance audit – a modern form of external public audit in the activity of the Accounts Court

Performance is the unique chance that Romania has for reducing the differences which separate it from the developed countries, it is the only way to valorize

resources regardless their nature. In the future the performance audit will play an important role.

Introducing the performance audit between the main powers of the Court of Accounts of Romania is relatively recent. The regulatory framework is represented by Article 26 of Law 217/2008 recently amending and supplementing the Law on Organization and Functioning of the Court of Accounts, which states: "The Accounts Court shall carry out the performance audits of using the financial resources of the state and of the public sector. The Court makes an independent assessment on the economicity, efficiency and effectiveness with which a public entity, a program, a project, a process or an activity uses the public resources allocated to achieving the established objectives. "

These three components of the performance audit are characterized through a number of features, which are presented in the following paragraphs.

The economicity is defined as being the minimization of the cost of the resources used for an activity, subjected to quality conditions as scheduled. This requires the evaluation of a good management of the resources on the basis of some accepted and enacted criteria.

Efficiency is understood as being a relationship between results, in the form of goods and services, and resources used to produce them. Efficiency can be expressed as a ratio between the results obtained (the outputs) and the effort made in the form of the consumed resources (the inputs).

The efficiency is closely linked to the concepts of profitability and productivity. The efficacy is the extent to which the objectives have been met and the relationship between the desired and the actual impact of an activity. The efficacy can be expressed as the ratio between the achieved and the planned results.

It is necessary to consider also other criteria which can define the performance of the usage of funds allocated to public entities. So, apart of the control of the "3E" (economy, efficiency, effectiveness) the performance audit should consider another "2E", respectively the efficiency of using environment resources and the ethics of public money usage.

The performance audit, the most modern and efficient form of audit orientated towards results must occupy a grater quantum in the external audit activity, because it insures a superior valorization of financial resources made available for public entities. The number of performance audit actions in the current stage is reduced, and the effects of the mission don't have the desired impact, we observe some reserves of the audit towards criticism and eventual identified failures. The new regulation of the activity of the Court of Accounts regulates the performance audit, introducing at the same time a new element. If the performance audit was being exerted only ex-post until now, the new normative act gives the possibility to perform audit actions during the deployment of programs, projects, activities'.

This is an important competency which should be exploited by the Court of Accounts, but my convincement is that the legal regulation could be improved in the sense of introducing also the performance audit type ex-ante. In the case of

performance audit, following its preventive side can prevent the dissipation of public money, negligence, eventual losses or deficiencies through making public entities and their leaders more responsible in engaging and making public money expenses.

An aspect which has to be always considered must follow one of the serious phenomena in Romania in the actual stage, respectively corruption. Corruption has unpleasant consequences for the public entities, but also for honest citizens. Identifying concrete forms where corruption happens, evaluating its dimensions and keeping the phenomena under control implies the external public audit which must undertake actions for protecting the public financial resources.

Adapting the audit methodologies to the degree of the delinquents' professionalism, extending the transnational collaboration, aligning the external audit to the international standards and good practices in the field must become absolute priorities.

For a better measurement of the performance it is necessary to elaborate budgets on programs, these helping auditors to concentrate on concrete objectives, established by the public entity. This way the accent on how public money is spend will be moved on obtaining results and reaching the set goals.

In order to completely evaluate the audited activity or program, both from the legislative point of view as from that of performance, there is necessary a new vision over the concept and operating external public audit, which means combining the two forms of audit (financial and performance audit) under the same mission.

The goals projected by the state, desired in a more performant economy cannot be achieved without an efficient and effective integrated audit, capable to identify deviations form the set performances and to issue recommendations to adjust these.

2.2. Internal public audit

Thanks to the contribution of the internal public audit to the effort of streamlining the activity of the governmental entities, contribution made through assurance and counseling missions provided to the leadership people for a better management of the revenue and of the public funds, through a continuous evaluation and improvement of the internal control and through the analysis and management of the risks, I believe that this type of audit is the main form of the public audit's activity performed by the public entities. The internal audit activity represents therefore the key element in supporting the management of the entities, as it provides important sources of information necessary to conduct the activities.

Through the process of observing the reality, through early capturing and correcting the financial errors and irregularities, through identifying and establishing measures and recommendations for an efficient use of the budgetary appropriations, the internal audit helps solving the financial imbalances that may arise in the public institution.

The internal public audit is exercised over the activities developed inside a public institution, including over the subordinate activities, concerning:

- the raising and usage of the public funds;

- the administration of the public property, in accordance with the law, in terms of economy, efficiency, effectiveness, opportunity and regularity.

According to the legal frame (Law no. 672/2002 regarding the internal public audit), the internal public audit includes: regularity audit, performance audit and system audit. By using one of these types of internal public audit, the auditor brings its contribution to improving the management of public funds for an economical use, efficient and effective in terms of legality, as follows:

- the regularity audit – examines the legality and the regularity of the patrimonial transactions;
- the system audit – represents a deeper evaluation of the leadership and control systems;
- the performance audit – evaluates the inexpensiveness, the efficiency and the efficacy of the audited activities.

In practice, in most public entities are being carried out mainly internal audit actions at a regular time, which are routine and inconclusive actions for the best management of public funds and assets, the system and the performance audit are generally neglected, although they can play a decisive role in ensuring the effective functioning of the audited activities.

Sustained efforts are required to pass from the audit focused on verifying the compliance with the regularity of transactions, the compliance of the activities with the law, on protecting the assets, and in the system and performance audit's case, through adding relevant analyses regarding the achievement of the objectives in terms of economy, efficiency and effectiveness.

In my opinion, in auditing the management systems of the internal audit we will not focus on issuing views concerning the strategic objectives of the institution's leading, but on assessing the suitability of the decisions made by the officer with the purpose of realizing the entity's objectives. Perhaps, this new dimension of the internal audit will represent the final stage in the development of this activity. Of course, such an audit in the present stage in which the auditor is directly subordinated to the head of the public institution is hardly doable, but nominating an auditor from the upper structures that could achieve this mission would produce effects qualitatively.

The definition of the internal public audit (Law no. 672/2002 regarding the internal public audit) as *“the activity...that provides assurance and consulting to the management on the good administration of public revenues and public expenses”*, allows us to state that, in essence, the internal public audit's contribution to optimizing the entity's activity is realized through the assurance and consulting activity given to the management.

The assurance activity represents an objective examination of evidence for the purpose of providing an independent assessment on governance, risk management, and control processes for the organization. [Glossary of terms - Professional standards of the internal auditing, Ministry of Finance and Institute of Internal Audit and Control (IFAC), (2002)].

The aim of any internal audit mission is to provide assurance that the audited financial statements are complete, accurate and prepared in compliance with the legal and internal regulations in force. Assurance given as a result of the objective examination of the audit's evidence is relative, because auditors can not examine all of the entity's operations and programs on the one hand, and on the other hand the internal audit has a periodical character.

Assurance is usually presented in the form of a firm statement about the state of the audited domain, thus emphasizing the responsibility of the internal auditors.

Regarding counseling, this is the activity developed by the internal auditors, designed to bring value and improve the management of the public entity, to manage risk and internal control, without the internal auditor having to assume managerial responsibilities.

Internal auditors often give advice at the public entity's management request, embodied particularly in developing some analyses and formulating points of view over issues of interest for the leadership - especially in the financial accounting domain with the role to increase the added value brought by the internal audit to the counseled activities.

I believe that counseling work can act like a natural extension of the assurance activity and that the two activities are not mutually exclusive, but can interact or be complementary.

3. Conclusion

The public audit is a process of monitorization and verification of public money, with which you can enter in the essence of the phenomenon, you can optimize the economic and financial activities for the rapid and efficient development of the public entities.

The core subject of the public audit is represented by the formation and use of public funds. The certain fact according to which the public financial resources materialize much of the gross domestic product, is a strong argument, which advocates for exerting the public audit activity over the public financial resources, for preserving the integrity and for a proper management of public goods.

Providing an improved reliability and creating a state of transparency of information contained in the financial statements requires the existence, in addition to its own audit of entities, of a public external audit exercised by bodies that are independent, outside the organizational structures of the entities managing public funds.

The contribution of the internal public audit to the effort of streamlining the activity of the governmental entities is made through assurance and counseling missions provided to the leadership people for a better management of the revenue and of the public expenditure, through a continuous evaluation and improvement of the internal control and through the analysis and management of the risks.

At the level of the public entities there are still some confusions among the budget officers and even among the ones with attributions in the internal audit

domain. This is because the internal audit is considered to be a verifying operation, although in the current context, in which all the entities, including the public ones, are interested in performance, this activity is a good tool for streamlining the work of the public entities. Through the assurance and counseling missions regarding the administration of public funds, by assessing the risk's management processes and the internal control, the internal audit activity contributes to empowering the public entities in terms of managing the public money and, finally, increasing the financial administration's performance of the public entities.

From the references studied I found that the public external audit monitors the formation and the usage under legal and performance conditions of the public funds, ensures transparency by providing credible information over the financial statements of public entities to third parties.

In all democratic countries of the European Union, the external audit of the funds used by the public entities is performed by state bodies, known under the generic name of Supreme Audit Institutions (SAI), which are established under the Constitution and under organizational and operational laws that guarantees their independence.

Only through a performant, flexible, dynamic and pragmatic external audit over the formation and use of the public entities funds shall be ensured the proper practice of the laws adopted in this area and the financial resources can be oriented towards efficient programs.

Combining the two forms of audit, namely financial and performance audit in the same mission in order to enable the total evaluation of the activity or of the audited program, both in terms of legality and performance use of public funds must become a priority of the Court of Accounts, which is currently carrying out either only financial audit missions or performance audit missions.

The symbiosis between the two basic types of audit should become a matter of professional judgment and opportunity.

A new vision over the conception and operation of the public external audit is needed. Targets designed by the state and by public entities can not be achieved without an effective and efficient integrated audit, that is able to identify deviations from the established performances and to make recommendations for their adjustment.

Appropriate and effective use of public funds, ensuring a healthy economic and financial management, carrying out the financial-economical operations and activities in a legal and efficient way, ensuring transparency and providing reliable information to third parties regarding the financial situation, which is performed with the help of the public audit activity, these are necessary tools for a positive development of the society as a whole.

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