

GUIDING PRINCIPLES FOR CO-OPERATION

Introduction

1. At their 2002 meeting in Luxembourg the Contact Committee discussed and agreed the Liaison Officers' report proposing a possible framework under which a co-operative relationship between the ECA and the NAIs might be further developed. The proposal contained two levels: a strategic level and a practical and technical level (2002 Contact Committee paper; para 6 refers). The Liaison Officers were also mandated to continue their work under the proposed framework.
2. This paper focuses on the strategic level of the framework and the first indent of the 2002 Resolution namely that the Liaison Officers should

“(a) establish a statement of Guiding Principles for approval at the 2003 Contact Committee meeting”.
3. The paper concludes with a draft Resolution presented in the form of a Statement of 8 Guiding Principles for adoption by the 2003 Contact Committee. The body of the paper explains the process and basis used in developing the draft Guiding Principles.
4. The Liaison Officers' work on the practical and technical level is covered in a separate paper – “Putting the Principles into Practice” - also to be presented to the 2003 Contact Committee meeting.

Development of the Guiding Principles

5. The Liaison Officers entrusted preparation of the draft Guiding Principles to the Task Force established in 2002. Representatives from Denmark, ECA, France, Germany, Ireland, Netherlands, Spain, Sweden and the UK met in April and September 2003 in London and Bonn.
6. The Task Force took the approved 2002 Contact Committee report as the agreed baseline for its work and sought to ensure that the areas highlighted in that paper (in paras 8 – 14) were all adequately reflected and balanced in the principles. Further papers were prepared by members of the Task Force (Netherlands, France, Germany, Ireland, Sweden, the ECA and Spain) in preparation for its discussions.
7. The next section of this paper sets out the 8 draft Principles the Task Force have developed. Each is supported by explanatory notes. Comments and amendments proposed during the development stage have been incorporated where they were agreed.
8. The Liaison Officers of the existing Member States and the Acceding Countries approved this paper and the associated (draft) Statement of Guiding Principles at their October 2003 meeting.

The Guiding Principles

Principle No.1. The European Court of Auditors and the National Audit Institutions have different external auditing remits but they share a common interest in working together to improve the audit of European Union funds and other matters concerning good governance for the benefit of EU citizens.

The 2002 Contact Committee paper opined that the “*ECA and the NAIs have a shared duty to work towards a more efficient and effective audit of European funds*”.

It also distinguished the auditing remits as follows “*Generally speaking NAI’s have a universal competence under the law in public accounts within a limited geographical framework, while the European Court has a limited competence according to the origin of funds, within a very large geographical framework.*”

Based on its written submissions and discussions the Task Force considered that

- we have a common interest in working together but not a shared duty
- the efficient and effective audit of European funds covers more than just financial and compliance and performance auditing. It includes issues of governance, accountability, impacts of EU policies (whether intended or not) and inputs leading to improvements in the wider financial management of the EU.
- the ECA - as the external auditor of EU funds- is first of all focussed on the European Commission and its responsibility for the execution of the EU Budget (article 248, paragraph 1). As such the ECA’s remarks and recommendations are addressed to the Commission as its auditee and to the Council and the European Parliament in the context of the discharge. In carrying out its role the ECA may audit at the Member State level (article 248, paragraph 3) and its remarks and recommendations to the Commission may include issues related to the exercise by the Member State authorities of their responsibilities under, for example, the shared management arrangements for agricultural and structural funds expenditure. The ECA deals exclusively with EU matters.
- in their EU work NAIs focus on the manner in which EU obligations are carried out by their Administrations and how Member State interests are dealt with at the EU level. NAIs do not audit EU institutions and usually have no audit rights in other countries. The audit of EU funds is just one of a NAI’s tasks but they have an important role to play in reporting on the financial management of, and accountability for, EU funds in their own Member State.
- the above can result in both the ECA and the NAI planning to audit the same area and aspect of EU funds. In order to avoid unwarranted overlapping effective co-ordination and communication would be desirable. (See also Principle 3 regarding efficient and effective co-operation).

Principle No.2. The Amsterdam Treaty calls for the European Court of Auditors and the NAIs to “co-operate in a spirit of trust while maintaining their independence.” The relationship is thus unique in requiring equal and independent audit institutions to work together to improve the framework and conditions for the audit of EU funds.

The 2002 Contact Committee paper said *“that the unique nature of the relationship cannot readily be embraced within a catch-all slogan such as the “Single Audit” construct. This term could well be a reasonable description of developments in the relationship between the ECA and the internal audit services of EU Institutions or even with the member state organisations implementing the Commission’s policies under the principle of subsidiarity. However, given their widely different competencies, it is not appropriate when describing the relationship between the ECA and NAIs. Indeed in terms of potential confusion and lack of clarity of message there could be dangers in using it.”*

Based on its written submissions and discussions the Task Force considered that

- this position was unchanged and reflected the current reality. The relationship between the ECA and the SAIs is therefore fundamentally different from that between other sets of auditors laid down in International Auditing Standards. For example the relationship between a primary and secondary auditor or between an external and internal auditor. Single Audit should therefore not be mentioned in the Guiding Principles
- the declaration annexed to the Treaty of Nice (2000) in which the ECA and the national SAIs are requested to improve the framework and conditions for their co-operation while maintaining their respective independence re-enforces this view.

Principle No. 3. The framework of enhanced co-operation must work efficiently and effectively without inhibiting the individual remits of those involved.

The 2002 Contact Committee paper said *“that any developments in the relationship must respect the principle of independence for both the ECA and the NAIs.*

- *For the ECA it is important that its independence is maintained through the provision of adequate resources with which to fulfil its mandate and the right of final decision on the adequacy of the audit work in support of its opinions. There can be no question of co-operation with NAIs being used as a substitute for a properly funded, staffed and fully independent audit at the European level. Nor of enforced reliance on the work of NAIs which may not meet the professional standards required by the Court.*
- *For the NAIs, it is important that their independence to conduct audits at the National level is not constrained or inhibited by any collaborative work with the ECA. NAIs must remain free to determine the scope, nature and timing of their audits of their National Administrations use of European Union Funds based on their relative materiality to the national budgets. They must also remain free to choose whether and in what way to collaborate with the ECA on specific audits.”*

Based on its written submissions and discussions the Task Force considered that it had nothing to add.

Principle No. 4. A spirit of trust will be demonstrated by openness, inclusiveness and respect for the context in which each institution operates.

The 2002 Contact Committee did not elaborate on this point.

Based on its written submissions and discussions the Task Force considered that

- it was important to include specific reference to the issue of trust
- it was difficult to define trust and it was certainly not something that could be prescribed. Trust is something that develops or grows and perhaps most quickly from mutual, positive experiences on areas of shared interest or concern.
- essential aspects would be found in relationships where participants were open (transparent), willing to explain their position and constraints, willing to appreciate and to take into account the positions of others and non judgemental. Interestingly, even when these elements are present, perceptions also play a part. For example smaller NAIs with limited resources cannot participate to the extent that other, bigger organisations might. Despite re-assurances that this is understood there can still be a perception of moral pressure.

Principle No. 5. Co-operation can take many forms and can occur on any subject or area of interest where two or more participants wish to work together. All institutions have full independence to choose which co-operation activities they participate in.

The 2002 Contact Committee paper “*considered that it was important not to lose sight of the importance of co-operation between the NAIs even without ECA participation – for example through lack of a specific locus or any other reason determined by the ECA. The examples of past joint work on the exchange of tax information, on Arable Area Payments and on State Aid showed the value of such endeavours.*”

Based on its written submissions and discussions the Task Force considered that

- this principle stems naturally from the true practical acknowledgement of independence. All partners can choose whether to participate in any activity or not. There is equally no bar to groups going ahead without full (100%) representation
- some might choose to go further than others in the nature and extent of their co-operation activities - and not always in directions that others agree with or support
- when drawing up the mandates of co-operation activities participants should be consider the contribution that each would-be participant might make so as not to de facto restrict the membership of the group

Principle No. 6. All co-operative work should be based on clear bi-lateral or multi-lateral objectives, working practices and responsibilities agreed between the participants.

The 2002 Contact Committee paper recognises *“that any joint work to be carried out would need to be based around specific, shared objectives. It is likely that these objectives would need to be refined at a bilateral level as it would not be sensible or practical to try and agree a “one-size-fits-all” approach. It is important however, that any bilateral agreements did not set precedents that constrained the freedom of action of others.”*

It also makes clear (in discussing the ECA’s independence) that there can be no question *“of enforced reliance on the work of NAIs which may not meet the professional standards required by the Court”* and that in *“.. the area of Quality Control there was wide agreement over the need to adhere to principles of consistency and meeting minimum common standards. Points of difference however arose over whether this needed to be a matter of professional trust or whether either party would need to have a right of review of scope, methods and results in order to place reliance on the work of another.”*

Based on its written submissions and discussions the Task Force considered that

- agreements covering increased co-operation would extend beyond just the objectives and into working practices, responsibilities and other aspects as appropriate. As such it is likely that much of the detailed discussion of practical and technical issues will stem from the application of this Guiding Principle. Key aspects might be expected to include i) detailed discussion and understanding amongst potential co-operation partners of the envisaged audit scope, audit methods, standards and reporting of audit findings; and ii) based on this, agreement of unambiguous arrangements for the audit co-operation.
- whilst experience indicates that such agreements would generally be set up in advance participants are free to operate a more flexible model provided such an approach is acceptable to them all.

However, for purposes of establishing the Guiding Principles the Task Force considered that

- it is a mistake to think only of bi-lateral co-operation – multi lateral is equally possible and desirable
- notwithstanding the need for a tailored framework agreement for each co-operation there may be scope to develop basic definitions for activities currently referred to (not always consistently) as “joint”, “parallel”, “co-ordinated” or “common”

it is important to recognise the fear that individual NAIs or the ECA might be compelled to do something because of a binding precedent established by virtue of the actions of another. This Principle, in requiring clear objectives to be determined for **each** co-operative activity, makes it clear that this is not the intention.

Principle No. 7. Information on the objectives, scope, progress and results of all such activities will be made available to all members of the Contact Committee.

The 2002 Contact Committee paper said *“Moreover, information regarding bilateral co-operation should be shared among all members of the Contact Committee”*

Based on its written submissions and discussions the Task Force considered that

- the principle of openness and transparency was fundamental in all co-operation activities (not just bi-laterally as already discussed under Principle 6 above)
- open reporting was a strong antidote to any possible fears non-participants might have that they were missing out or excluded (whether real or perceived)
- in order to achieve transparency and efficiency (that is to ensure information is sufficient and relevant) further work will be needed to agree on questions such as the frequency, timing and extent of information to be made available.

Principle No. 8. The ECA and the NAIs are committed to exploring all possible areas where co-operative work will have a positive impact on the administration of EU funds and other EU matters of common interest and to identify solutions to any practical and technical problems that are inhibiting such co-operation.

Most of the elements within Principle 8 have already been dealt with in addressing a specific issue of substance or concern within other, foregoing Principles. However the Task Force felt there was merit in ending with a positive re-affirmation of what the whole exercise is really about and of our collective support for it.

Principle 8 also serves as a Mission Statement for the Contact Committee and leads naturally to the remaining parts of the Liaison Officers 2002 mandate.

RESOLUTION ON GUIDING PRINCIPLES

The Contact Committee

Relying on article 248 of the Treaty establishing the European Community, and on the Declaration 18 on the Court of Auditors attached to the Treaty of Nice,

Fully recognising the specific mandate and remit of the European Court of Auditors (ECA) and of the National Audit Institutions (NAIs) including the realities imposed by their available resources and respecting national and institutional differences,

Conscious that 2004 represents the threshold of a new Contact Committee within an enlarged European Union,

Determined to improve the framework and conditions for co-operation between the European Court of Auditors and the National Audit Institutions

Has adopted the following guiding principles for enhanced co-operation:

- 1. The European Court of Auditors and the National Audit Institutions have different external auditing remits but they share a common interest in working together to improve the audit of European Union funds and other matters concerning good governance for the benefit of EU citizens.**
- 2. The Amsterdam Treaty calls for the European Court of Auditors and the NAIs to “co-operate in a spirit of trust while maintaining their independence.” The relationship is thus unique in requiring equal and independent audit institutions to work together to improve the framework and conditions for the audit of EU funds.**
- 3. The framework of enhanced co-operation must work efficiently and effectively without inhibiting the individual remits of those involved.**
- 4. A spirit of trust will be demonstrated by openness, inclusiveness and respect for the context in which each institution operates.**
- 5. Co-operation can take many forms and can occur on any subject or area of interest where two or more participants wish to work together. All institutions have full independence to choose which co-operation activities they participate in.**
- 6. All co-operative work should be based on clear bi-lateral or multi-lateral objectives, working practices and responsibilities agreed between the participants.**
- 7. Information on the objectives, scope, progress and results of all such activities will be made available to all members of the Contact Committee.**
- 8. The ECA and the NAIs are committed to exploring all possible areas where co-operative work will have a positive impact on the administration of EU funds and other EU matters of common interest and to identify solutions to any practical and technical problems that are inhibiting such co-operation.**

Mandates the Liaison Officers to

- (a) keep the Guiding Principles under review in light of further developments in the wider framework of EU financial management, and in full knowledge of the Contact Committee's desire that the Principles should contribute to the creation of a live, dynamic environment for co-operation which can add value at the global level whilst remaining sensitive to the existence of different models and methods of auditing within a common framework, and
- (b) provide the Contact Committee with regular reports on progress made in putting the principles into practice and the results.

Prague, 9 December 2003