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PRESENTATION OF THE 2008 ANNUAL REPORT TO THE COMMITTEE ON BUDGETARY CONTROL OF THE EUROPEAN PARLIAMENT, BRUSSELS, 10 NOVEMBER 2009

By Vitor Caldeira, President of the European Court of Auditors



Mr Lars Heikensten, Member, Mr Vitor Manuel Caldeira, President and Mr Josef Bonnici, Member

Dear Chairman, Honourable Members, Ladies and Gentlemen,

It is an honour for me to have the opportunity to present to your committee today the Annual Report of the European Court of Auditors' on the implementation of the budget and on the Annual Report on the European Development funds for the 2008 financial year.

This is my first opportunity to formally address the committee since the elections and to meet its new Members. Therefore, I would like to take the opportunity to congratulate all the Members of the Committee on their recent election, and you Mr Magistris on your appointment as its Chairman.

This year's annual report has been produced in a context that is very different from previous years. 2008 will long be remembered for the events which began a world financial and economic crisis, which continues to have significant implications for all Member States and for the EU budget.

In this context, the Court's reports and opinions have an increasingly important role to play. Not least, to serve as a reminder of the ongoing problems with financial management, the efforts that have been made to address them, and the challenges that remain. I will return to these broader themes at the end, after I have presented **the key messages in this year's annual report**.

In brief, we have four key messages in this year's annual report.

First, the EU accounts are reliable for the second year running.

Secondly, the level of irregularity has decreased overall in recent years mainly due to the improvements in the management of the budget but irregular payments are still too high in some areas, in particular Cohesion.

Thirdly, the Court's recommendations from previous years on how to improve systems continue to be valid.

And lastly, simplification remains a priority but needs to be applied with care.

Allow me to expand briefly on each of these messages.

First, **the reliability of the accounts**.

For the second consecutive year, the Court gives an unqualified opinion on the accounts. It concludes that the accounts present fairly, in all material respects, the financial position of the European Communities as at 31 December 2008 and the results of their operations and cash-flows for the year then ended.

This does not mean that the accounts are perfect or the systems that produce them never fail. In fact, the Court emphasises that there are weaknesses in the accounting systems of a number of the DGs of the Commission which put the quality of financial information at risk.

Although these have not resulted in any material errors in the figures reported in the final accounts for 2008, the Commission should pay due attention to addressing the issues the Court identifies.

As regards **the legality and regularity of underlying transactions**, the second key message of the Annual Reports is that:

The level of irregularity has decreased overall in recent years, due to the improvements in the management of the budget, but it is still too high in some areas.

As in previous years, for 2008, the Court gives an unqualified opinion on **Revenue** and on **commitments**. The picture for payments, however, continues to be mixed. Although there have been some changes from year to year.

The Court gives unqualified opinions for spending on **Education and citizenship** and for **Administrative and other expenditure**. In these areas the Court estimates that the error rate is below 2%.

For Education and citizenship this is largely due to the large share of advances in 2008 to which few conditions are attached, and which consequently are relatively less affected by errors than interim and final payments. Systems in this area continue, however, to be assessed as only partially effective.

The systems for Administrative expenditure, on the other hand, were found to have been implemented in compliance with the requirements of the Financial Regulation as has been the case in previous years.

For **Agriculture and natural resources** the Court gives a qualified opinion for the first time, concluding that, except for Rural Development, payments were in all material respects legal and regular.

For the first time the Court estimates that the overall error rate for this policy group is under 2%, a decrease with respect to previous years. However, the estimated rate of error for the part of the expenditure related to Rural Development continues to exceed 2%, although less than in previous years.

Deficiencies in supervisory and control systems related to Rural Development contributed significantly to the Court's overall assessment of systems related to Agriculture and natural resources as only partially effective, whereas the Court found IACS to be effective for limiting the risk of irregular expenditure.

The Court also gives a qualified opinion for the policy group **Economic and financial affairs** because the level of error found in transactions relating to the sixth Framework Programme for Research and Technological Development.

As regards the policy groups **Cohesion, Research, energy and transport** and **External aid development and enlargement**, the Court continues to give adverse opinions concluding that they are affected by material error, although to different levels.

Cohesion, the second largest policy group representing almost a third of the budget, remains the area most affected by error with the Court estimating that at least 11% of the total amount reimbursed should not have been reimbursed.

As in previous years, the errors found by the Court relate to interim and final payments for Cohesion projects in respect of the 2000 to 2006 period. A major part of the estimated error rate relates to eligibility errors (for example, projects did not meet the specific funding conditions) and to serious failures to respect procurement rules.

The Commission's response in the past has been to claim that the correction and recovery mechanisms would serve to mitigate the effects of the errors the Court detects at the time of payment.

However, the Commission is not in a position to demonstrate the extent to which this is the case because it does not have complete and reliable information from all Member States on financial corrections and because it is still too early to measure the impact of ongoing actions to strengthen the Commission's supervisory role under shared management of structural actions.

In addition, the Court found cases of ineligible expenditure being replaced by Member States with new expenditure which was also ineligible due and had not been identified by ex ante checks.

One example given in the report is of a managing authority replacing an ERDF project rejected by the Commission with another project with declared expenditure of 5.7 million euro that was also ineligible because it was known that the project could not meet its objectives. The project related to the construction of equalization towers on a pipeline that was not used because the local dam to which it connected was never filled with water.

For the 2007-2013 period in Cohesion, almost all payments are pre-financing, for which there are relatively few conditions. It is, therefore, too early to say whether changes to rules or supervisory and control systems for the 2007-2013 period have had a positive effect in reducing the level of errors for interim and final payments.

However, the Court noted with concern the delays in approving Member States' system descriptions, compliance assessments and audit strategies, as they have slowed budgetary implementation and may increase the risk that control systems do not prevent or detect errors in the start up phase.

As regards **Research, energy and transport** the Court concludes that, although the policy group continues to be affected by a material level of error, remedial measures taken by the Commission have helped to reduce the error rate.

As in previous years, errors found mainly related to the reimbursement of ineligible personnel and indirect costs for FP6 research projects. One reason for the errors is the complex legal framework, with a large number of eligibility criteria, including requirements to prove that costs are real and necessary for the implementation of the project.

The Court judged that the control systems in place are only partially effective. For example, beneficiaries' cost statements submitted for reimbursement have to be accompanied by an audit certificate issued by an independent auditor. However, in almost half the cases where the Court found errors in the cost statements, they had been certified without qualification. In addition, despite the considerable increase in ex-post audit coverage by the Commission, only a low amount of recoveries had been initiated by the end of 2008 and no sanctions had been imposed.

For the policy group **External aid, development and enlargement** the Court concludes that payments were materially affected by error. As in previous years, the Court found cases of ineligible expenditure, lack of supporting documentation, and irregularities in procurement procedures. The systems operated by the responsible DGs were still found to be only partially effective but for different reasons. Weaknesses continue to be found at the level of the implementing bodies and at delegation level rather than at Headquarters for external aid and development assistance, which are also funded from the European Development Fund. In other areas the shortcomings noted related mainly to aspects of ex-post control and internal audit.

Overall, error rates appear to be decreasing due to improvements in the management of the budget, but legal frameworks continue to be complex and problems remain in some control systems.

The question is how can the level of irregular payments be reduced further? The answer provided by the Court has two components: further improve the effectiveness of supervisory and control systems and, where appropriate, simplify rules and regulations.

This brings me to the third key message of this year's annual report on ***improving the effectiveness of supervisory and control systems***.

The Court's recommendations from previous years on how to improve systems continue to be valid. They must be seen as part of an ongoing process where the relevant measures will take time before they can be deemed to be effective.

The priority should be to address the specific weaknesses the Court has found in the areas where the most problems have been detected, many of which I have just outlined. Particular attention should be paid to continuing to improve the mechanisms intended to correct errors through financial corrections and recoveries, in anticipation of the closure of the 2000-2006 programming period.

In addition, and in spite of considerable progress in improving its supervision of EU spending in recent years, there is more the Commission could do.

The Court recommends that the Commission continues its efforts to ensure and demonstrate the effectiveness of the supervisory and control systems of its Directorates-General. Scope remains to improve the consistency of the assessments of supervisory and control systems presented in the annual activity reports and declarations and to better reflect in them the reservations made as well as to improve the quality of information available concerning financial corrections and recoveries.

In addition the Commission should continue to strive to gain assurance from the Annual Summaries and ex ante declarations of all Member States as well as from voluntary initiatives by certain Member States, in the form of National Declarations, or by Supreme Audit Institutions.

The Commission also needs to continue to monitor the impact of the measures in the action plan towards an integrated internal control framework on error rates, financial corrections and recoveries so as to ensure that actions taken really do deliver more effective supervisory and control systems.

The Commission should complete its study of the cost and benefits of controls in the different policy areas. This will help to identify where more could be achieved from existing expenditure on controls as well as to determine cases where an appropriate balance between the costs and benefits of controls is not possible, and therefore, where it would be appropriate to consider revising the programmes or schemes involved.

In the context of such revisions, the legislative authorities and the Commission should consider how to re-define control systems in terms of their outputs rather than inputs. In other words, instead of specifying the number of checks to be undertaken the aim should be to set a level of residual risk of irregularity to be achieved by the system i.e. a tolerable risk of error.

But there is a limit to the reduction in the level of irregularity that can be achieved by improving the effectiveness of supervisory and control systems.

This brings me to the last key message of the annual report on ***the continuing need for simplification***.

In many of the areas where the Court continues to report a high level of error, the errors are a consequence of too complex rules and regulations. Simplification, therefore, remains a priority.

As the Court emphasises in its statement of assurance, the areas where the Court finds too high levels of errors are those where there are complicated or unclear legal requirements (such as eligibility rules). This means that priority should be given to simplification in these areas.

As the Court has often emphasised in the past, well designed rules and regulations which are clear to interpret and simple to apply decrease the risk of error and enable streamlined cost-effective control arrangements.

An example of the serious efforts made to simplify expenditure schemes is agriculture, the main area of improvement noted by the Court.

But **simplification needs to be applied with care.**

The rules governing the way the money is spent are a key instrument for targeting expenditure towards meeting policy objectives. Care, therefore, needs to be taken when simplifying eligibility rules to avoid spending becoming less well targeted.

Care also needs to be taken to ensure that simplification of payments' conditions aimed primarily at reducing the administrative burden, costs to beneficiaries or delays in using funds do not lead to an unintended risk of irregular payments.

For example, simply relaxing the conditions for advanced payments and increasing the proportion of funds paid in this way may increase the risk of funds being misused, unless the relevant supervisory and control systems are effective.

Dear Chairman, Honourable Members,

I have presented to you the key messages of the Court's annual report on the implementation of the 2008 budget.

The annual report is, of course, a key product of the Court. But, as the Committee knows, it is not the only one. This week the Court will also publish the specific annual reports on the EU agencies and other bodies. In addition, since the last discharge procedure, the Court has already produced 15 special reports on topics ranging from EU food aid for deprived persons to the Commission's treasury management.

These reports highlight challenges for improving EU financial management that go beyond the objective of further reducing the level of irregular payments in the budget and raise issues related to the broader aspects of policy design.

To give you two of the most recent examples: the Court's special report on management instruments applied to the market in milk and milk products provides an example of how the policy instruments are sometimes not sufficient to achieve the wide and somewhat conflicting policy objectives set; and the report on 'Networks of excellence' and 'Integrated projects' in Community Research policy indicates the problems that result when there is no clear intervention logic or performance indicators for an expenditure programme.

The Court's messages in its annual and special reports need to be given due consideration by the Commission when preparing the proposals for a revision of the financial regulation, a new financial framework, and a reformed budget.

To this end, the Court intends to produce a public document which brings together the main messages from recent reports as a further contribution to aid the Commission and the Parliament in their efforts to improve EU financial management. The paper will identify where the Court has found the most scope for further reducing irregularity and improving financial management.

The Lisbon Treaty also implies changes to the functioning of the EU which will affect the respective roles and responsibilities of the Commission and the Parliament in managing and scrutinising the use of EU funds.

These changes will have important implications for the work of the Court and should serve to reinforce accountability and transparency thereby contributing to building the confidence and trust of citizens in the EU institutions.

Dear Chairman, Honourable Members

This is an important moment of renewal for the EU and a great opportunity for the intended reforms. The recent European elections have given us a new Parliament with a new President. Following the renewal of Mr Barroso's Presidency of the Commission, a new Commission will soon also be appointed.

At times of renewal and reform it is important, however, to remember the lessons of the past. I believe the Court plays a vital role by providing reports and opinions that not only identify existing problems but also make recommendation on how to improve the use of EU funds in the future.

The Court, therefore, looks forward to continuing to work together with its partner institutions to make the most of the current opportunities for further improving EU financial management.

Thank you for your kind attention



Par Rosmarie Carotti



De gauche à droite : Mme Karin Pundel, M. Marc Hostert, M. Henri Grethen, M. Martin Weber et Mme Petra Kneesch

Monsieur Henri Grethen, Membre de la Cour des comptes européenne, Groupe d'audit II "Politiques structurelles, Transport, Recherche et Énergie", a présenté à Luxembourg le Rapport annuel 2008 de la Cour mardi, 10 novembre 2009. La présentation a eu lieu à la Maison de l'Europe et s'est déroulée en parallèle à la présentation par M. Vítor Manuel da Silva Caldeira, Président de la Cour, à Bruxelles.

M. Grethen a souligné que les fonds communautaires sont l'argent des contribuables européens et qu'il est important de veiller à leur usage correct et utile. C'est la tâche de la Cour des comptes européenne qui a son siège à Luxembourg et qui est composée d'un Collège de 27 Membres, un par État membre. Les Membres de la Cour des comptes exécutent leur mandat en pleine indépendance et ne représentent pas des intérêts nationaux.

M. Grethen a mis en exergue le fait que le rapport annuel 2008, tout juste publié, ne contient pas de remarque à l'encontre du Luxembourg. La Cour des comptes européenne effectue un contrôle par échantillonnage, et les échantillons sont déterminés de façon aléatoire. Le but du rapport annuel n'est d'ailleurs pas celui de faire une statistique, par État membre et domaine, sur les défaillances relevées, mais de faire le point sur la gestion financière de l'Union européenne entière.

Pour mieux faire comprendre aux représentants des ministères et institutions nationales, ainsi qu'aux journalistes, venus nombreux, la réalité des fonds communautaires contrôlés par la Cour et, à partir de là, la portée du message contenu dans le rapport annuel de la Cour des comptes européenne, il a voulu donner d'abord la parole aux représentants luxembourgeois impliqués dans deux initiatives co-financées par des Fonds européens.

Le programme européen pour l'éducation et la formation tout au long de la vie au Luxembourg, a été présentée par Madame Karin Pundel, Directrice de l'Agence nationale pour le programme européen d'éducation et de formation tout au long de la vie, Anefore asbl.

Le "Programme pour l'éducation et la formation tout au long de la vie" vise l'accroissement de la qualité de l'éducation et de la formation en Europe (COMENIUS, ERASMUS, LEONARDO DA VINCI, GRUNDTVIG). 31 pays participent sur la durée 2007 - 2013 pour un budget total de 6,9 milliards d'Euros. Le programme bénéficie d'un mécanisme de financement européen. Après la définition initiale d'un budget avec le Parlement européen, la Commission décide de l'enveloppe annuelle globale à répartir par États membres.

Le projet transfrontalier Nat'Our: Protéger la nature et soutenir le tourisme, en collaboration transfrontalière, a été présenté par Petra Kneesch, Gestion de projets Naturpark Our. Il s'agit d'un projet INTERREG A cofinancé par le FEDER et qui, sans fonds communautaires n'aurait pas pu être réalisé. Le Parc naturel de l'Our est une région NATURA 2000 mais aussi une région avec un grand potentiel touristique.

Au terme de la présentation des projets et du rapport annuel, M. Grethen a répondu aux questions de la presse et des médias. Interpellé sur la complexité des règles et règlements communautaires qui souvent serait à la base des erreurs détectées par la Cour des comptes, M. Grethen a convenu que la simplification reste une priorité mais qu'il convient de simplifier avec discernement, car les règles régissant l'utilisation des fonds sont un instrument essentiel de ciblage des dépenses en vue de la réalisation des objectifs politiques.



"THE SUSTAINABILITY AND THE COMMISSION'S MANAGEMENT OF THE LIFE-NATURE PROJECTS"

"PUBLIC ENVIRONMENTAL AUDITING: CHALLENGES AND OPPORTUNITIES FOR PUBLIC SECTOR AUDIT INSTITUTIONS"

SEMINAR BARCELONA – 16 OCTOBER 2009

By Kikis Kazamias, Member of the Court

LIFE is the Financial Instrument for the Environment. Directly managed by the Commission, LIFE is, in financial terms, the most important European instrument specifically dedicated to the environment and is therefore an essential tool for the implementation of the EU's environmental policy.

The first projects financed by LIFE started in 1992 and continued under the subsequent specific LIFE instruments through to the third phase (LIFE III) for 2000-2006. The financial allocation for LIFE III was 957 million euro. A new LIFE phase - called LIFE+ - has allocated 2 143 million euro for the period from 2007 to 2013. At least 78% of this amount must be used for project action grants. The three components have become:

- Nature and Biodiversity,
- Environment and Governance and,
- Information and Communication

During the 2000-2006 period, LIFE-Nature financed 434 projects for an amount of 436 million euro which were implemented in 26 Member States. With an average EU contribution of 1 million euro, projects involved substantial financial EU resources in addition to national co-financing. LIFE+, "Nature and Biodiversity" will remain the most important LIFE component as an annual allocation of at least 50% of the budget dedicated for action grants (850 million euro) is earmarked for the period 2007-2013. In fact, LIFE-Nature co-finances projects in the Member States, mainly in connection with the Natura 2000 network, in favour of the conservation of species and habitats. Such projects should have demonstrative added value and should contribute to the dissemination of best practice conservation methods and approaches.

The objective of the audit was to assess the effectiveness of the Commission's management of the LIFE III (2000-2006) - Nature grants at the different phases of the project cycle in respect of the sustainability of the project results. The selection procedure for the new LIFE+ (2007-2013) was also audited and the Court's observations will remain important for the new period, since the sustainability issues addressed also concern the new LIFE+ instrument. In the absence of a definition, for the purpose of the audit we defined sustainability as: the assurance which can be

obtained (project quality, management structures, financial guarantees, etc...) that the investments financed and their effects will be sustained after the project ends and its result are disseminated. The following questions were addressed:

- Did the revised selection process prioritise the projects that offered the highest expectation for sustainability?
- Were the projects adequately implemented and monitored by the Commission?
- Does the Commission ensure that information on project results and lessons learnt is appropriately disseminated?

- Does the Commission carry out the follow-up of projects, or assess their results by other appropriate means in the long-term?

The preliminary audit work carried out quickly confirmed that the supervision and management of LIFE-Nature is a complex process, since the projects financed:

- deal with different situations from one site to another across the Union;
- are run by a great variety of beneficiaries;
- should have a sustained impact on the conservation of individual species and habitats; and
- should add value, through dissemination of the results achieved (lessons learned and identified best practices).

Since 1992, the Commission has progressively developed and improved its management and control systems namely by taking into account the results of the Court's previous audits, in particular Special Report No 11/2003.

I - The audit carried out

The audit evidence was obtained at the European Commission's services and by visits to 35 projects in six Member States: Belgium, Germany, Italy, Slovenia, Spain and the United Kingdom. The outsourced monitoring and communication teams, the project evaluators, and the Topic Centre on Biological Diversity (acting under contract with the European Environment Agency) were also visited,



Mr Kikis Kazamias, Member

as they are close partners of the Commission for the management and development of environmental issues.

II - Audit results

The audit concluded that, overall, the projects audited have contributed to the conservation of the targeted species and habitats, namely in the Natura 2000 sites, thus supporting the Member States and the efforts and volunteer work of EU citizens and their associations in their commitment to biodiversity conservation.

The following shortcomings were nevertheless highlighted in relation to the different phases of the management of the projects, as they affect the sustainability of their results:

(a) Selection procedure:

- imprecise, and reduced weight given to the relevant sustainability factors in project scoring for LIFE+;
- lengthy award decision-making process.

(b) Implementation and monitoring:

- insufficient focus on the projects' results (outcomes);
- management plans and contracts not systematically approved and implemented.

(c) Dissemination of results:

relevant information, with potential added value, on individual projects not systematically made available to an interested public outside the immediate project neighbourhood (region or country) in respect of:

- the lessons learnt;
- the best practices identified; and,
- the detailed technical/scientific information acquired.

(d) Long-term management of the project results:

- limited information exists at the Commission on the results (outcomes) of the projects financed, since there is no ex-post follow-up procedure established for assessing the effectiveness of the projects financed;
- lack of an established set of appropriate indicators for evaluating the results achieved.

III. Conclusions and recommendations

Summing up, although significant progress has been achieved since the introduction of LIFE in 1992, there is still room for improvement in the Commission's management and control systems to obtain an assurance that the conservation measures financed by the EU fulfil their objectives more effectively and are sustained after EU financing of the projects has ceased.

The Commission must ensure that only appropriately designed project proposals are approved and that they are implemented as foreseen. It must insist on the establishment of organisational and financial structures which are sufficient for sustaining the impact of projects financed by the EU.

It is recommended that the Commission should give further consideration to the various factors relevant to the sustainability of the project results, improve the dissemination of the knowledge acquired and set up a systematic follow-up of the projects after the final payment has been made.



LA VISITE ANNUELLE DE LA COCOBU À LA COUR DES COMPTES EUROPÉENNE, LE 4 NOVEMBRE 2009

Par Michel Bulz et François Picouveau



M. Luigi de Magistris, Président de la COCOBU et M. Vitor Caldeira, Président de la Cour des comptes européenne

La Commission du Contrôle Budgétaire (COCOBU) du Parlement européen est la commission parlementaire compétente pour les questions ayant trait aux relations avec la Cour des comptes, à la nomination de ses membres et à l'examen de ses rapports, qu'elle utilise dans le cadre de la procédure de décharge. La COCOBU constitue ainsi au sein du Parlement européen l'interlocuteur privilégié de notre Institution, laquelle est chargée par l'article 248 du Traité instituant la Communauté européenne d'assister le Parlement européen et le Conseil dans l'exercice de leur fonction de contrôle de l'exécution du budget. Les autres commissions permanentes du Parlement européen peuvent également se saisir des rapports spéciaux de la Cour dès lors qu'ils ont été examinés par la COCOBU. Le rapport spécial n°4/2009 portant sur la gestion, par la Commission, de la participation des acteurs non étatiques (ANE) à la coopération communautaire au développement, a ainsi servi de base en octobre 2009 aux travaux de la Commission du Développement.

Dès son adoption, chaque rapport spécial de la Cour des comptes est transmis à la COCOBU, qui nomme parmi ses députés un membre rapporteur chargé de rédiger un document de travail. Reprenant tout ou partie des conclusions et recommandations du rapport de la Cour, ce document est intégré à la résolution de décharge votée par la COCOBU puis reprise dans la décharge adoptée par le Parlement européen en séance plénière.

Le Parlement européen a ainsi le pouvoir de reporter la décharge ou de geler des crédits budgétaires futurs afin de contraindre la Commission à prendre les mesures qu'il estime nécessaires.

Chaque année, les députés de la COCOBU sont invités à la Cour des comptes pour procéder à un échange de vues avec les membres de notre Institution. La réunion du 4 novembre

a constitué le premier déplacement à Luxembourg de la nouvelle COCOBU présidée par M. Luigi de Magistris (Italie) et dont le Bureau, élu en juillet dernier, est composé de M. Staes (Belgique), M. Audy (France), M. Liberadzki (Pologne) et M. Deutsch (Hongrie). Les députés de la COCOBU ont été reçus par M. Caldeira, Président de la Cour, en présence de nombreux membres de la Cour.

Dans son allocution de bienvenue, M. Caldeira rappelle le travail réalisé ensemble avec la COCOBU, dans le respect de l'indépendance de la Cour, en souhaitant poursuivre dans la voie du renforcement de la coopération entre la Cour et le PE.

M. de Magistris reconnaît l'importance du travail de la Cour dont il a déjà pu apprécier la qualité à l'occasion de l'examen des derniers rapports spéciaux de la Cour. Il se dit convaincu qu'un travail important attend les deux institutions à la veille de l'entrée en vigueur du Traité de Lisbonne.

A l'occasion de ce moment historique qui voit le renouvellement du cadre institutionnel communautaire, M. Caldeira dresse un bilan optimiste et réaliste de la coopération entre le Parlement européen et la Cour et s'interroge sur les défis et les risques qui attendent l'Europe.

Depuis 1999, la Commission européenne a entrepris une réforme du cadre financier, qui s'est concrétisée par un nouveau règlement financier, et a conduit une réforme administrative d'envergure en introduisant l'«activity based management». Elle a entamé avec l'«accruals based accounting» une modernisation du cadre comptable et a lancé une discussion en vue d'une DAS positive, notamment suite à l'opinion de la Cour sur le «Single audit», ou contrôle unique. La Commission européenne a également lancé une série d'initiatives pour améliorer le contrôle des fonds communautaires et la gestion des politiques de cohésion et réduire les dépenses administratives. En dépit des progrès réalisés, la Cour continue à trouver un niveau important de paiements irréguliers, en particulier dans les domaines de la cohésion, du développement rural et des actions extérieures.

La complexité des règles d'éligibilité et les faiblesses des systèmes sont les deux principaux problèmes que la Cour a identifiés. Trois voies d'amélioration sont possibles pour remédier à cette situation: maximiser le bénéfice des dépenses de contrôle, définir le risque d'erreur résiduel tolérable et simplifier davantage les règles de gestion des programmes.

LA VISITE ANNUELLE DE LA COCOBU À LA COUR DES COMPTES EUROPÉENNE

La Cour estime qu'il manque une claire quantification de la valeur ajoutée européenne pour une partie importante des programmes. La Cour considère que la réglementation communautaire ou une déclaration politique appropriée devraient consacrer ce principe de valeur ajoutée européenne.

Les audits de la Cour révèlent aussi qu'il est possible d'améliorer la façon dont les programmes de dépenses sont conçus, qu'il convient de mieux définir les ressources nécessaires, de simplifier les règles d'éligibilité trop complexes et de clarifier les responsabilités des acteurs.

La Cour est d'avis qu'il serait important de compléter la réforme du budget afin d'initier correctement la préparation du cadre financier postérieur à la période de programmation 2007-2013.

La révision du système de contrôle constitue un autre enjeu important. Dès lors qu'on conçoit un système d'aides, on devrait définir ce qu'on attend du système de contrôle. Ce serait un moyen d'apporter une réponse à la discussion concernant le risque tolérable d'erreur, dont on peut concevoir qu'il diffère d'un domaine politique à l'autre.

Il existe des faiblesses persistantes dans la matière de rendre compte de l'utilisation des fonds, au niveau de la Commission comme au niveau des synthèses annuelles. La Commission devrait garantir que tous les acteurs, les États membres comme elle-même, fournissent des informations suffisantes et pertinentes.

M. de Magistris confirme qu'une des tâches principales de la commission qu'il préside est justement de vérifier le rapport entre les coûts du contrôle et les bénéfices qui en résultent. Il considère que la Cour a un rôle extrêmement important, non seulement en matière de contrôle de la régularité, mais aussi pour sa fonction de prévention. En aidant les autorités nationales compétentes à corriger, sanctionner et prévenir certaines irrégularités, les travaux de la Cour des comptes européenne jouent un rôle fondamental sur le plan de la prévention des risques.

M. de Magistris souligne que l'un des enjeux de cette législation est la révision du cadre juridique du système de contrôle communautaire, comportant la COCOBU, la Cour des comptes, l'OLAF, EUROJUST, EUROPOL et le Procureur européen.

Le contrôle des fonds dépensés, qu'ils soient destinés aux États membres ou à des organismes internationaux ou non gouvernementaux, est et restera toujours très important, pour les États membres, l'Union européenne et les contribuables, et pas seulement dans cette période de crise financière.





Liaison Officer's Newsletter

ACTIVITIES OF THE EUROPEAN COURT OF AUDITORS IN THE AREA OF INTERNATIONAL CO-OPERATION (JULY - OCTOBER 2009)

CONTACT COMMITTEE ACTIVITIES

Contact Committee Workshops in Helsinki in September 2009

On 23rd and 24th September our Finnish colleagues hosted two workshops organised in the framework of Contact Committee's cooperation. Issues discussed during the workshops focused on *The Audit of Financial Sustainability and other Fiscal Policy Related Themes*, and *The Audit of Lisbon Strategy Related Topics*. The objective of the Helsinki workshops were the creation and launch of Networks focusing on benchmark, developing methodologies in both workshop theme areas and setting up a platform for exchange of experiences.

On the first day, under Theme I - Information used for Financial planning and budgeting and Compliance with Fiscal Policy Rules – the SAI of Hungary gave a presentation on *Macroeconomic Risk Analysis of the State Budget Appropriation Bill* and the SAI of Sweden on *Fiscal Target and Evaluation of Target Deviations*. Under Theme II - Evaluation of the True and fair information in the financial Central Government Reporting – the Slovak Audit Office presented a paper on the *Opinion of the Slovak Audit Office on the State Bill Budget for the Corresponding Budget Year* and the German Bundesrechnungshof on *Auditing of fiscal policy programmes in times of economic downturn*.

On the second day of the Workshop the participants were discussing the *Audit of Lisbon Strategy Related Topics*. The morning session was dedicated to Theme III - Structural Reforms Promoting Competitiveness and Productivity - Mr. Martin Weber from the EC gave a presentation on the *Impact Assessment as an instrument of the Commission's 'Better- Regulation' Policy*. Theme IV - Productivity and Sustainability of the Public Economy dealt with *the long-run sustainability of public finances* (NAO of Sweden), and *e-Transformation in Turkey*. The SAIs of the Netherlands, Portugal and Slovenia were presenting their national approaches to the Audit of the Lisbon Strategy.

The presentations and discussions held during the Workshops prepared the background for specific breakout groups. The aim of the breakout groups was to define the objectives and the functioning of the Networks. To this end, participants discussed and endeavored to identify the basic objectives of audits. E.g., in the case of fiscal policy audit, the objective of the audits should be the implementation of policies, or the policy itself; audits have to offer an opinion basically of the kind of measures taken by the governments, of the kind of estimates and information taken prior to deciding the budgetary measures, and of the effectiveness of these measures.

In the case of a Lisbon Strategy Audit, for the complexity of the theme, SAIs possibly audit only one part of the Strategy's main results, achieved in their state. As there were many questions still remained to be answered, the ECA proposed the participants of the group to make a list of special subject areas they were interested in. The subgroups discussed as well the working methods and time schedule.

As conclusion, two Networks were launched: one on the audit of Financial Sustainability and the other on auditing Lisbon Strategy, aiming at facilitating the exchange of experiences, methods, information, coordination and cooperation for auditors involved in these subjects.

Further details of both Networks will be elaborated for decision at the forthcoming meeting of the Contact Committee at the end of November 2009, in Budapest.

Regarding the Network on Lisbon Strategy related audits, the European Court of Auditors proposed to take over the technical management of the network and suggested Mrs. Ildikó Knopp as a person in charge of these. She will be responsible for managing the materials submitted by the national SAIs as well as for collecting the information on recent developments on the Lisbon Strategy and economic crisis measures at the level of the European Institutions.



Meeting of the Liaison Officers of the EU SAIs Luxembourg, 15-16 October 2009

The meeting was preceded by the meeting of the Network of the SAIs of the Candidate and Potential Candidate Countries of the EU and the ECA, with participation of SIGMA and the Chair of the Joint Working Group on Audit Activities (JWGAA) on 14 October 2009.

The aim of the Liaison Officers' Autumn meeting is to prepare the Contact Committee meeting which is traditionally held in early December. To this end, the Liaison Officers review the Contact Committee activities carried out during the year including the activities of the various working groups as well as the work of the Task Force, which looks at the organisation and functioning of the Contact Committee itself.

The main activities carried out in 2009 include the organisation of two consecutive workshops held in Helsinki in September on the topic of Fiscal Policy related Audits and Lisbon Strategy related Audits respectively (see below). Furthermore, preparations are underway for a coordinated performance audit on a TEN-T project including the SAIs of Hungary, Italy, France and Slovenia.

The Court's Liaison Officer Unit, which was tasked with the development of the Contact Committee website, presented a new, updated and much more user-friendly version of the website. The new site will contain general information about Contact Committee activities in all 23 official EU languages, which will allow bringing this information to the wider public. In parallel also the SAIs Intranet based on the CIRCA tool is currently undergoing some major modifications to make it a more efficient and modern platform of communication among the SAIs. Colleagues at the meeting welcomed these developments and also the fact that this meeting was the first paperless conference at the Court.

The Task Force has critically looked into current governance arrangements and following the request of the 2008 Contact Committee to carry out preparatory work and to prepare a draft proposal for a possible review of Contact Committee governance arrangements, the Liaison Officers discussed the first results of this preparatory work. The Task Force will present its proposal to the upcoming Contact Committee meeting.

The second day of the meeting was dedicated to the work of the various working groups of which two are currently chaired by the Court: the working group on common auditing standards and the working group on activities in the area of VAT. Both working groups presented the results of the activities carried out in 2009 and their work plans for 2010.

In the course of the year 2010 a few interesting seminars, workshops and working group activities will take place. The details will be soon published on the Liaison Officer's intranet pages and in the next issue of our newsletter.

EUROSAI ACTIVITIES

By Ignacio Calleja Ruiz



A seminar entitled "**Developing an IT Audit Programme based on COBIT**" took place 1-2 October 2009 in Antwerp. The event was organised by the Belgian Court of Auditors, under the umbrella of the EUROSAI IT Working Group and the EUROSAI Training Committee.

This seminar was the second part of a seminar on COBIT held in Tallinn (Estonia) in October 2008. The seminar was conducted by Mr. Erik Guldentops, Executive Professor of the University of Antwerp Management place that hosted the seminar. Mr. Guldentops is one of the "fathers" of COBIT as member of the ISACA board during 2002 to 2006. The seminar went deeper into the COBIT framework and there was also a case study working in teams to identify, having as security as main concern, business goals and IT goals using COBIT Excel sheets.

As in the seminar in Tallinn, it was stressed that the comprehensive COBIT framework is a reference and that only eventually some of the elements should be considered as relevant depending on the objectives of financial, performance and IT audits. This approach is in line with the guidelines on "How to integrate IT audit within the audit approach" including the ECACIT (ECA Controls on IT) tool developed by the AMS unit.

As for any event of the EUROSAI IT working group it was a very good opportunity to exchange opinions and views with the colleagues coming from different SAIs in Europe, in particular regarding audit management and documentation software in the light of the future ASSYST II under consideration.



INTOSAI ACTIVITIES

INTOSAI Working Group on Accountability for and Audit of Disaster-related Aid

By Jan Pieter Lingen

After the Tsunami the Indonesian Board of Auditors (BPK) hosted a conference in April 2005 on promoting accountability in managing funds related to tsunami, conflict and other disasters. This conference led to the establishment of an Advisory Board to the Indonesian Board of Auditors, which held its first meeting in April 2006. The Advisory Board aimed at advising BPK in setting up and implementing its audit strategy in respect of the tsunami aid, and was composed of the SAIs of Australia, Denmark, France, Japan, the Netherlands, Norway, Saudi Arabia, Korea, Sweden, United Kingdom, United States and the European

Court of Auditors. The main topic at the first meeting was BPK's audit strategy. The meeting resulted in recommendations to BPK stressing amongst others the need for a well developed communication strategy towards all relevant stakeholders.

The second (and last) meeting of this BPK Advisory Board on Tsunami-related Audit took place in Jakarta and Banda Aceh on 15-17 August 2009. The main aim was to report and discuss the results of the audits carried out by BPK so far, and to exchange experiences on audits carried out in this field by other SAIs. In order to get an impression of the reconstruction activities, BPK organized transfer to Banda Aceh. This allowed for a better picture of the scale of the devastation – in the North-western province of the island of Sumatra, Aceh, 167.000 people died, 120.000 houses were destroyed, another 70.000 damaged, but also the encouraging scale of the reconstruction activities, and the progressive trend towards more focus on sustainable economic development. And interesting enough: the tsunami in a way helped the government and the rebel movement in Aceh to overcome their disagreements, bury their weapons and conclude a peace agreement, negotiated by Mr Ahtisaari.

During the meeting Dr Nasution – Chairman of BPK - presented the overall context of BPK's audits and the Board Member responsible for the audits gave a summary of the results of the audits carried out between 2005-2009. Mr. Engwirda and Mr. Lingen presented the results of the Court's two audits on the tsunami (relief aid, SR 3/2006 and rehabilitation aid, SR6/2008), and based on these two audits identified some factors relevant for sustainability, linking relief, rehabilitation and development. In the afternoon of 17 August Mr. Engwirda chaired a Focus Group discussion on the draft guidance for audit of disaster-related aid prepared by the BPK in the framework of the INTOSAI Working Group on Accountability for and Audit of Disaster-related Aid. It was a fruitful discussion, with the promising commitment from Australia and Sweden to provide additional input, although they are not a member of the Working Group. BPK is now to revise the draft guidance document with support especially from Australia, before it will be sent around for comments in the beginning of next year.

Other bilateral and multilateral relations with other SAIs

The Court was invited to send an expert in a three days workshop on issues relating to public procurement audits organised by the State Audit Office of the former Yugoslav Republic of Macedonia. Our colleague, Mr. Jussi Bright gave a very well received presentation about these issues and the Court's relations with OLAF in matters of fraud and irregularity. The course, combined with practical case studies, was appreciated by auditors of audit units responsible for control of pre-accession funds co-managed by authorities in Skopje.

Did you know what it means...?

CIRCA	Communication and Information Resource Centre Administrator
SAI	Supreme Audit Institutions
EUROSAI	The European Organisation of Supreme Audit Institutions
INTOSAI	International Organization of Supreme Audit Institutions
ISSAI	The International Standards of Supreme Audit Institutions
IDI	INTOSAI Development Initiative
INCOSAI	International Congress of Supreme Audit Institutions
SIGMA	Support for Improvement in Governance and Management
NAO	National Audit Office
COBIT	Control Objectives for Information and related Technology
BPK	Indonesian Court of Auditors
OLAF	Office européen de lutte antifraude / European Anti-fraud Office
WG	Working Group
VAT	Value Added Tax
TEN-T	Trans European Network – Transport
ISACA	Information Systems Audit and Control Association



ECA'S PRESENCE IN INTERNATIONAL EVENTS (JULY - OCTOBER 2009)



Date and place	Event	Participating persons
01-02/07 and 09-10/10 Luxembourg	Meeting of WG on Common Auditing Standards	J. Bonnici, R. Cachia-Zammit, M. Kraff, R. Kist, J. Sweeney
10-11/09 Luxembourg	Meeting of Working Group on VAT	J. Ramallo-Massanet, P. Stafford
23-24/09 Helsinki	Contact Committee's Workshops on Fiscal Policy and Lisbon Strategy	H. Fehr, M. Weber, I. Knopp, P. Bartoszewska
14/10 Luxembourg	Meeting of the Liaison Officers of the Network of SAIs of Candidate and Potential Candidate Countries.	ECA Liaison Officer Team
15-16/10 Luxembourg	Meeting of Liaison Officers of EU SAIs	ECA Liaison Officer Team, N. Brokopp-Spiermann, P. Stafford



Date and place	Event	Participating persons
15-17/08 Banda Aceh, Jakarta	Meeting of BPK Advisory Board on Tsunamirelated Aid	M. Engwirda, J. P. Lingen
01-02/10 Antwerp, Belgium	Seminar: Developing an IT Audit Programme based on COBIT	I. Calleja-Ruiz

Planned participation for October - December 2009



Date and place	Event	Participating persons
30/11 – 01/12 Budapest, Hungary	Meeting of the Contact Committee	V. Caldeira, J. Bonnici, G. Halász

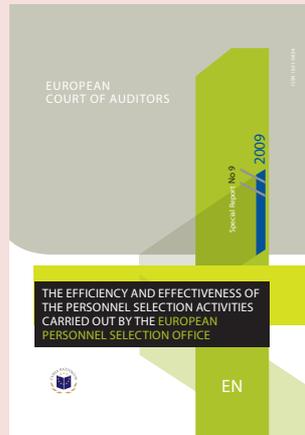


Date and place	Event	Participating persons
28-29/10 Warsaw, Poland	Joint EUROSAI-Professional Standards Committee Seminar: Raising Awareness of International Standards of Supreme Audit Institutions (ISSAI)	M. Kraff, J. Speed
16-18/11 Cape Town, South Africa	59 th Meeting of INTOSAI Governing Board	M. Engwirda, J. P. Lingen

**SPECIAL REPORT
NO 9/2009**

**ON THE EFFICIENCY AND
EFFECTIVENESS OF THE
PERSONNEL SELECTION
ACTIVITIES CARRIED OUT BY
THE EUROPEAN PERSONNEL
SELECTION OFFICE**

The European Communities' Institutions employ staff with a wide variety of professional backgrounds and geographical origins. Officials are mostly selected through open competitions which since 2003 have been managed by the European Personnel Selection Office (EPSO). In this report the Court focuses on how EPSO coped with the large increase in the number of competitions due to enlargement and whether it provided lists of laureates in a timely manner, ensuring the required numbers and geographical balance.



**SPECIAL REPORT
N° 11/2009 THE
SUSTAINABILITY AND THE
COMMISSION'S MANAGEMENT
OF THE LIFE-NATURE PROJECTS**

In this report the European Court of Auditors analyses the Commission's management of LIFE-Nature projects in terms of the sustainability of their results. The report provides details on the four main phases of a project cycle which include the selection procedure, implementation and monitoring of projects, dissemination of results and long-term management of project results. The audit involved on-the-spot visits to 35 projects in six Member States and led to recommendations for each phase to enhance the sustainability of future LIFE-Nature projects.



**RAPPORT SPÉCIAL
N°10/2009**

**RELATIF AUX ACTIONS
D'INFORMATION ET DE
PROMOTION EN FAVEUR DES
PRODUITS AGRICOLES**

Dans ce rapport, la Cour analyse la gestion des actions d'information et de promotion en faveur des produits agricoles, afin de vérifier l'efficacité de cette politique ainsi que la régularité des dépenses engagées.

Le rapport constate les progrès en cours dans la gestion du dispositif, tout en soulignant d'autres points devant être améliorés. Ces observations portent notamment sur la difficulté à mesurer l'impact du dispositif et sur les faiblesses de contrôle observées dans certains États membres.

Le rapport formule à cet effet une série de recommandations dont l'incidence pourrait être d'autant plus significative que le budget consacré aux actions d'information et de promotion en faveur des produits agricoles est susceptible d'augmenter, si la réflexion menée actuellement par la Commission la conduit à faire une proposition en ce sens.



**SPECIAL REPORT
N° 13/2009
DELEGATING IMPLEMENTING
TASKS TO EXECUTIVE
AGENCIES: A SUCCESSFUL
OPTION?**

Executive agencies are Community bodies established by the European Commission in order to implement, by delegation, all or part of EU spending programmes. They are a relatively new phenomenon in the European institutional landscape. The audit assessed whether the six executive agencies which have been created since 2003 had proven to be a successful instrument for implementing the European budget.

The report analyses the decision-making process for creating the agencies and the benefits achieved in terms of cost savings, service delivery and efficiency gains. The Commission's supervision of the agencies' activities is also examined.





QUESTIONS TO JOHN SWEENEY, HEAD OF UNIT, AUDIT METHODOLOGY AND SUPPORT AND JESUS NIETO OF CEAD-AMS

By Rosmarie Carotti

R.C.: Which are the different types of surveys used in public performance audit?

John Sweeney: The conduct of a survey involves the questioning of people or organisations about various issues. The questions may be in writing and transmitted by paper or electronically, delivered over the phone, or in the form of a personal interview. Due to the fact that it is generally impractical to survey an entire population, surveys are normally based on samples taken from a given population. The undertaking of a survey thus requires knowledge of the various sampling methods and techniques to be applied in each case.

In performance audit, surveys can be used at different stages of the audit process. At the audit planning stage a survey can be used to gather enough information, quickly and without detailed verification, in order to define audit objectives and the scope and methodology needed to meet those objectives. More commonly however, surveys are used as data collection tools during the collection and analysis phase of the audit. Survey questionnaires present questions in a precise and systematic manner, which enables uniform data to be compared, summarised and if quantitative, subjected to statistical analysis. They can be used to collect factual and attitudinal information (i.e. what a respondent thinks or feels about an issue), or both.

The great advantage of using surveys is that they allow the auditor to economically and efficiently collect and analyse standardised information from a large number of respondents. Sometimes information from surveys is not used directly as a basis for audit findings, but serves as additional, corroborative information for interpreting the situation, and also as the basis for recommendations.

R.C.: How does the Court use surveys for performance audits?

John Sweeney: Generally the Court uses surveys to collect information from beneficiaries and managers of EU funding, both factual information on their projects, and also attitudinal information, which it will use as audit evidence. In preparing their Evidence Collection Plan, the audit team will have identified that the most effective way to gather the information as the basis of audit evidence, is through a survey. Perhaps the greatest advantage of surveys for the

Court is that they allow the auditor to make enquiries from individuals and entities whom they would not normally reach with other audit techniques, and to receive the replies to these questions in writing, as evidence. The challenge is of course, like other data gathering techniques to ask the right questions, in the right way, and to turn it into audit evidence by using the results of the survey appropriately. The technique, while relatively new to the Court, has been used for many years by a number of SAIs, including Sweden, Norway, Canada, UK, and Malta.

R.C.: There is much talk about how the formulation of a question can affect the answer, but little talk about how the message of an open answer can be interpreted differently by the auditor. Is this discussed?

John Sweeney: This is an important issue, whether for interviews or survey or any question-based data collection techniques. With open questions the respondent is not limited to selecting a pre-defined answer. Open questions can play an important role in auditing by allowing the auditee or respondent the space to express their experiences or opinion on the performance of an entity, action, project, etc. and are particularly useful when surveying specialists. Like all research techniques the results require interpretation by the researcher. With qualitative techniques (e.g interviews) the auditors cannot quantify and apply statistical procedures to the answers. With open questions in particular, the researcher/auditors must look for meaning in the responses received, by reference to certain 'calibrations', such as the context, who the respondent is, how the question might be understood by them, etc. In the end, both researcher and auditor must use their professional judgement to interpret and process the collected data.

R.C.: Does the Court have a group of experts (from which fields?) who formulate the questions and evaluate the answers?

John Sweeney: Principally it is the audit team that develops the audit procedures and questions as they know best their domain and subject matter. However, the AMS Unit is sometimes asked by audit teams if it could review a survey, for layout, question structure and adherence to good survey practice, which we are happy to do.



Mr John Sweeney

R.C.: Survey compared with focus group. Do they serve the same purpose?

John Sweeney: These are quite different data collection tools, although they originate from the same 'stable' of evaluation methods and social science research. Funnily, focus groups were developed back in the 1920s in the development of survey instruments! In the 1960s they were used as market research instruments and are now widely used in social science research. A focus group consists of a group of six to eight people, who meet usually once or twice for a period of one to two hours. One of the main differences between the techniques is that with focus groups the data is generated by the group participants, in a 'group interview'. It is the group interaction that generates particular insightful data (something which a survey cannot capture). The researcher or auditor can interact with the group and re-direct or follow-up their responses, or s(he) can merely be an observer to the process. Like most group processes, they go through the five group process stages of "Forming, Storming, Norming, Performing and Adjourning", which is usually directed by a moderator or facilitator.

R.C.: Who do web surveys reach? What are their limits?

John Sweeney: Once you have the respondents' e-mails you can send them a questionnaire survey. There are many issues that need to be considered when designing a survey. These are detailed in the new AMS Survey guidelines which will shortly be issued on the intranet. For example, is the type of information being sought suitable to be gathered by a survey? Generally, it is better to gather financial information from a verifiable source if possible, rather than rely on the responses of beneficiaries, who may misunderstand what exactly is asked of them. Other issues relate to the quality of the answers, given that you cannot verify the responses directly, and how to ensure that the most appropriate or knowledgeable person will actually respond to the survey. It is one thing asking many questions and opinions from respondents, but that information must be capable of providing appropriate audit evidence for the question being addressed.

In this regard, evidence from surveys is traditionally considered weak. However, this is already minimised in the Court by usually asking factual questions and by requiring respondents to reply (which also eliminates the non-response bias). Some additional techniques are also used in the Court to make the resulting evidence more robust:

- Using experts in the design of the survey and to verify the questions.
- Checking the accuracy of the answers by verifying a sample with an audit visit;

- Using other audit evidence sources to collaborate survey findings (i.e. triangulation).

R. C.: Looking specifically at web surveys, the Court signed a contract in 2009 with an external firm called CheckMarket.be to carry out web-based surveys. Why this choice?

Jesus Nieto: The need for a survey tool in the Court was identified in 2005. The first option considered was using the tool developed by the Commission (IPM, <http://ec.europa.eu/idabc/ipm>) which they offered us for free and which is running on their servers. This was not judged wise because we would be asking beneficiaries about their experiences of the Commission's management, from a Commission website! Not exactly an image of the independent auditor that the Court should project.

In view of that, ADAR (now AMS) developed some scripts and programs to do surveys using MS-Word forms send by e-mail (with Lotus Notes). These tools were used about half a dozen times. Other auditors, preferring to use web surveys, commissioned external companies by way of tender, for each survey (which obviously required considerable paperwork).

In 2008, AMS studied the possibility of installing the Commission tool (IPM) in the Court (in fact IPM can be downloaded and installed for free by anyone, in virtue of an open source license by the Commission). Unfortunately the technologies involved were not compatible with the Court's technology infrastructure plan.

Finally, seeing that some auditors were using external companies with good experiences and results, we went for a call for tenders that ended in the current contract.

Our goal was to ease the work of auditors by saving time and effort. Furthermore, we also offer centralised support on surveys and on the use of the tool. Otherwise, auditors are free to use the tool as they prefer, there are no methodological impositions from AMS.

R.C.: How many web surveys have been completed by the Court to date and which tools have been used?

John Sweeney : While the Court has used paper-based surveys for many years, the web-survey tool was first used, I believe, by Jorge Guevara in 2006. The audit team outsourced three surveys (including consulting work for approximately 20,000 euro. In 2006, an electronic survey tool (based on Word and Lotus-Notes) was developed by ADAR (at the time), and about six surveys were carried out in the period 2006 – 2008 using these tools. Surveys are being used more and more for audits and to gather other information. For

example KPI-1 “Stakeholders opinion on Reports” and KPI-3 “Auditees opinion on Reports” use surveys. We estimate that about 6 audits will use surveys every year.

We signed the contract with CheckMarket.be in March 2009. The first complete audit to use the tool was the Agri-environment audit, where the questionnaire was in 16 languages. The LEADER audit was already using the tool at the time we signed the contract (they surveyed in 19 languages), and the Tourism audit is currently opening a survey using 21 languages. As you can see, the tool is in big demand as audit teams realise the potential that it offers for effective data collection and analysis.

R.C. How did you choose the tool in the end?

Jesus Nieto: CheckMarket was in our shortlist because it had been used already for the LEADER audit. Valeria Rota deserves an honorific mention here because she informed us that **automatic loading of translations** had to be a compulsory feature to save thousands of copy-paste operations in each survey.



Mr Jesus Nieto

The 33 mandatory requirements included features needed by auditors, such as full support of the current 23 languages, plus very stringent data protection and security requirements. For example that all data traffic is done under an encrypted connection (https://) including filling-in the survey.

Ease of use was also a key point in the choice of the tool. We were looking for a tool which needed only learning-time of hours rather than days. We did a usability test as part of the tender and CheckMarket was by far the easiest one to use.

R. C.: One can still question whether it is good to rely that much on external help. Do customers of web-surveys need to give all the details about themselves? Does the external firm only pass on the answers or also handle them?

John Sweeney: We were very concerned about data security and data protection (DP) and we counted on the advice from the Information Security Officer (Jo van Damme) and the Data Protection Officer (Jan Kilb) to prepare the tender for the survey tool.

Data privacy is not universal, and many companies have only sales offices in Europe so that data can be stored and processed anywhere in the world. And in some countries legislation simply says: “The data in **my** database is **mine**”.

A compulsory requirement was thus that companies comply with current EU legislation on Data Protection. In case the data were stored or processed outside the EU, they must have signed an agreement with the EU to comply with legislation such as the Safe Harbour in USA.

The external firm does not work on the data or manipulate it in any way, it merely acts as a host to store the data and provides the facilities and tools to: set-up templates, transmit surveys and responses, and present and analyse the data.

R.C.: Let’s go back to the addressees of the questionnaires. Not everybody is connected on-line.

Jesus Nieto : It is usual for the audit team to consider the accessibility of survey respondents (i.e the availability of their e-mail addresses) when deciding to use the tool as a means of data collection. A further consideration in this respect when carrying out opinion surveys is that, if the individuals you want to target are already internet users, does this already categorise them, and limit the scope of your data population (e.g. excluding groups such as the aged, the homeless, the unemployed, etc.).

R. C.: To whom were our surveys directed, to Member States, administrations and governments?

Jesus Nieto: A survey used for an audit is frequently very different from the omnipresent customer satisfaction surveys used in marketing. Our surveys are more an **electronic version of an audit questionnaire**, as used for an audit interview. The main differences we find are that our surveys frequently:

- Are longer (up to 100 questions!).
- Ask mostly factual data (as opposed to opinions).
- They are better filled on paper and later entered into the web tool (because documentation has to be consulted, people asked, calculations done...).
- Are not anonymous (they ask about an identified project or payment).
- Filling them is compulsory (Article 248(3) of the Treaty) or “gently encouraged” (for beneficiaries) obtaining response rates near 100%.
- Individual answers are more important than they would be for marketing surveys, where focus is on the overall statistics.



EXTERNAL AUDIT OF MANAGEMENT AND CONTROL SYSTEMS FOR OPERATIONAL PROGRAMMES COFINANCED WITH THE EUROPEAN UNION FUNDS

By Beata Blasiak-Nowak, national expert in Audit Group II, Structural Policies Financial Audit Unit, European Court of Auditors and
Marzena Rajczewska, technical advisor in the Department of Public Administration, Supreme Audit Office of Poland



Mrs Beata Blasiak-Nowak and
Mrs Marzena Rajczewska

(The content of the article is the sole responsibility of the authors and does not necessarily reflect the opinion of the European Court of Auditors)

Introduction

One of the most important responsibilities that the Member States have concerning expenditure of the EU funds under shared management is establishing reliable management and control systems for operational programmes in accordance with the Community Regulations. Compliance of the systems with the Community law is audited on each level of the EU funds management. It is audited both by internal auditors inside the systems as well as by independent external auditors. The internal audit is performed by the European Commission and by institutions on a higher management level within the system (e.g. the Managing Authority audits the Intermediate Body and the Audit Authority audits the Managing Authority). The external audit is mostly performed by independent institutions outside the systems, i.e. by the European Court of Auditors and by the supreme audit institutions of the Member States.

The Supreme Audit Office of Poland (Najwyższa Izba Kontroli – NIK), the supreme audit institution audits the EU funds managed by Polish administration¹ in accordance with its statutory audit criteria². As an external auditor, the NIK assesses the way that the institutions involved in the management and control systems discharge their functions. Its findings contribute to constant improvement of management and control over implementation of the EU funds by the public administration in Poland. The objectives of the NIK scrutiny are to detect and eliminate errors and irregularities in operational programmes in order to improve the implementation of the EU funds³. The NIK activity

- 1 In accordance with Act of 30 June 2005 on public finance (O.J. No 249, item 2104 with amendments) the EU budget resources, including the structural funds, belong to public resources (Article 5 par. 1 point 2 and Article 5 par. 3 point 2).
- 2 Legality, economic efficiency, efficacy and integrity – Article 5 of the Act of 23 December 1994 on the Supreme Audit Office (O.J. 2007 No 231, item 1701).
- 3 For more information on the NIK findings on establishing and functioning of the management and control systems for operational programmes cofinanced with the EU funds, see: *Overall report on the NIK findings as regards utilisation of the EU funds under the cohesion policy in Poland*. Warsaw, NIK 2009. This document summarises all the NIK findings in the audits carried out in 2004 to 2008, concerning management of the operational programmes in Poland and implementation by the final beneficiaries of projects cofinanced with the EU

in this area does not substitute for the internal control carried out by institutions involved in the management and control of operational programmes. The NIK is an external auditor and it is not acting as the Audit Authority in accordance with Article 62 of the Council Regulation No 1083/2006⁴.

The NIK submits its audit reports on selected areas of management and implementation of the EU resources to the Parliament of the Republic of Poland (to both chambers – Sejm and Senate). The NIK also presents to the Parliament its findings both on the volume of financial transfers between the State budget and the EU budget, and on the level of implementation of the EU funds allocated to Poland, in its annual *State budget analysis*⁵.

The European Court of Auditors (ECA), the external auditor of the European Union, audits independently the implementation of the European Community budget⁶, i.e. legality and regularity of expenditure and sound financial management⁷. One of the major statutory tasks of the Court is to submit annual reports on implementation of the EU budget to the European Parliament and to the Council of the EU. The main part of the ECA annual report is the Statement of Assurance (DAS)⁸ on the eligibility of accounts prepared by the European Commission and other Community Institutions, and the legality and regularity of underlying transactions. The examination of reliability of accounts aims at providing reasonable assurance, that all transactions, assets and liabilities, recorded in the accounting ledgers and presented in financial reports, have been correctly and accurately calculated and that they reflect faithfully the financial position at year-end within the framework of generally accepted accounting principles. The examination of legality and regularity of transactions underlying the accounts aims at providing adequate evidence that both the underlying transactions and the EU resources included have been correctly and accurately calculated, received and spent in accordance with the contractual and legislative conditions.

The European Court of Auditors audits the European Commission responsible for implementing the EU budget, the Member States and their institutions, legal and natural persons managing and implementing the EU funds in the Member States, in order to verify how these funds have been disbursed. In accordance with Article 248.3 of the Treaty, the Court carries out audits in the Member States in liaison with national audit bodies⁹. During audits carried out in the Member States, the ECA auditors cooperate also with the state government.

The objective of this article is to briefly present main methodology standards applied in the external audit of the management and control systems for operational programmes cofinanced with the EU funds, in particular with the structural funds. The authors focused on the approach assumed by the European Court of Auditors and by the Polish supreme audit institution – Supreme Audit Office (NIK).

budget as well as other NIK audits in the area of Polish membership in the EU.

- 4 Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L.06.210.25).
- 5 See *Analiza wykonania budżetu państwa i założeń polityki pieniężnej w 2008 r.* Warsaw, NIK 2009.
- 6 In accordance with provisions of Articles 7 and 246 to 248 of the Treaty establishing the European Community (OJ C.02.325.33 – consolidated version).
- 7 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L.02.248.1).
- 8 The ECA Statement of Assurance is often referred to by its French acronym DAS (Déclaration d'Assurance).
- 9 For more details on the role of the European Court of Auditors and a Member State supreme audit institution in auditing the Community funds see: J. Mazur, *Współdziałanie najwyższego organu kontroli państwa członkowskiego UE z Europejskim Trybunałem Obrachunkowym*, „Kontrola Państwowa”, 6/2004, pp. 3-28.

Management and control of projects cofinanced with the structural funds

The majority of the EU budget expenditure (approximately 76%) is implemented under shared management¹⁰. On the one hand, the governments of the Member States are responsible for managing and spending the EU funds in their countries, on the other, it is the European Commission who is responsible before the European Parliament for regularity and legality of implementation of the EU budget as a whole¹¹.

Management and control of the Member States over projects cofinanced with the structural funds

Member States are obliged by Article 48 of the Financial Regulation¹² to cooperate with the European Commission as regards implementation of the EU funds in such a way, that they are used in accordance with the principle of sound financial management (as defined in Chapter 7 of this regulation). In order to fulfil this requirement, the Member States establish management and control systems for operational programmes cofinanced with the structural funds¹³.

The legal framework for establishing the management and control systems for the operational programmes cofinanced with the structural funds in the period 2000-2006 was adopted in the Council Regulation No 1260/1999¹⁴ and in the Commission Regulation No 438/2001¹⁵. For the financial perspective 2007-2013, it was adopted in the Council Regulation No 1083/2006¹⁶ and the Commission Regulation No 1828/2006¹⁷. The provisions of these regulations require that the Member States are responsible for management and control of the operational programmes. In particular, they are obliged to:

- 1) verify that the management and control systems have been designed and operate so as to ensure effective and regular use of the EU funds,
- 2) submit a description of the management and control systems to the European Commission,
- 3) ensure that the funds are used in accordance with the provisions of the *acquis communautaire* and with the principles of sound financial management,
- 4) certify that the statements of expenditure submitted to the Commission are accurate, result from reliable accounting systems and are based on verifiable supporting documents,
- 5) ensure proper functioning of mechanisms for preventing, detecting and correcting irregularities,
- 6) ensure proper functioning of mechanisms for recovering amounts unduly paid,
- 7) submit to the European Commission a winding-up declaration at the end of implementation of a programme cofinanced with the EU funds.

10 Art. 53 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L.02.248.1).

11 The European Commission also has its own management and control system which aims at ensuring proper realisation of its statutory tasks. The European Court of Auditors examines this system, but analysis of this issue exceeds the scope of reflection contained in this article.

12 See footnote 7.

13 Operational programmes – strategic documents implemented under the national structural policy of the Member States, adopted by the national authorities (mostly Councils of Ministers) and the European Commission. In Poland they serve to the purpose of implementing the Community Support Framework 2004-2006 or National Strategic Reference Framework 2007-2013. Operational programmes consist of a set of multiannual priorities and measures, which can be implemented with cofinancing of one or more structural funds as well as other financial instruments and the European Investment Bank.

14 Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ L.99.161.1).

15 Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ L.01.63.21).

16 See footnote 4.

17 Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (OJ L.06.371.1).

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The management and control systems for operational programmes should ensure that only eligible beneficiaries receive financial support from the structural funds and that only such expenditures are refunded which are eligible and in compliance with contract provisions. The systems should prevent undue payments and irregularities, detect errors (if they exist) and correct them immediately¹⁸. Every Member State establishes its own management and control systems, whose description is submitted to the European Commission for endorsement. This document should contain a transparent description of the procedures for financial transfers with the structural funds down to beneficiaries, and for financial reporting and audit of the beneficiaries.

There are four general functions in the management and control systems established by the Member States for operational programmes of the period 2000-2006, i.e. management, certification, audit and winding-up of the assistance. According to the relevant regulations, these functions should be separated and performed by mutually independent institutions (except for the audit and winding-up functions). Individual tasks under particular functions are accomplished directly by the Managing Authority, Certifying Authority, Audit Authority, and Winding-up Body, or they can be delegated to lower level institutions, i.e. Intermediate Bodies. The delegating institution is however finally responsible for the accomplishment of tasks under each function. The main functions of the management and control systems are presented in Table 1.

Table 1. Functions in the management and control systems established for operational programmes 2000-2006

FUNCTIONS OF THE MANAGEMENT AND CONTROL SYSTEMS	RESPONSIBLE INSTITUTION	RESPONSIBLE INSTITUTION IN POLAND
Current management of programmes, measures and projects	Managing Authority	Ministry of Regional Development
Certification of project expenditure	Paying Authority	Ministry of Finance Paying Authority Department
Audit of effectiveness of functioning of the systems and sample ex post audit of the projects	Audit Authority	Ministry of Finance General Inspector of Fiscal Control
Validating the final declaration of expenditure	Winding-up Body	Ministry of Finance General Inspector of Fiscal Control

Based on: *Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds* (OJ L.99.161.1), *Community Support Framework 2004-2006*, Council of Ministers of the Republic of Poland / European Commission, Warsaw/Brussels 2004, p. 105, *Annual reports concerning the financial year 2007*. European Court of Auditors, Luxembourg 2008 (OJ C.08.286.1), p. 144.

In the financial perspective 2007-2013, there are three general functions in the management and control systems established by the Member States, i.e. management, certification and audit. The Member States appoint the Managing Authority for management of the programme, the Certifying Body for verification of expenditure declarations and payment claims before they are submitted to the European Commission, and the Audit Authority for each operational programme, operationally independent of the Managing Authority and the Certifying Authority. The Audit Authority is responsible for checking effective functioning of the management and control systems.

All institutions involved in the management and control system of an operational programme, that is the Certifying Authority, Managing Authority and Intermediate Bodies, are audited as to proper discharge of their functions. The management and control systems of operational programmes consist in procedures adopted in written guidelines, instructions, or manuals including organisation charts, terms of references, standard documents¹⁹. The procedures contain among others descriptions of tasks accomplished by each employee as regards for instance evaluating and accepting projects, reporting and monitoring, financial transfers, reporting on irregularities, recovering amounts unduly paid, audit, evaluation, technical assistance, public procurement, promotion, training etc.

¹⁸ For more information on the internal control system as the primary tool for effective discharge of functions, see: J. Płoskonka, *Kontrola wykonania zadań, ocena dokonań czy systemu zarządzania?*, „Kontrola Państwowa”, 6/2007, pp. 5-37.

¹⁹ For more information on management and control procedures, see: J. Płoskonka, *Pojęcie kontroli w ujęciu zarządczym*, „Kontrola Państwowa”, nr 2/2006, pp. 3-28.

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An example of a procedure adopted for verification of expenditure declarations submitted by an Intermediate Body to the Managing Authority in one of operational programmes cofinanced with the structural funds for 2007-2013 in Poland, i.e. the Operational Programme Human Capital (OPHC), prepared by the Ministry of Regional Development, is presented in Table 2.

Table 2. Procedure for verification of expenditure declarations submitted by Intermediate Bodies to the Managing Authority – an excerpt

	PERSON RESPONSIBLE	TASK	DEADLINE
1.	Director/Deputy Director	To assign an expenditure declaration submitted by an Intermediate Body (IB) to the Head of the Financial Unit.	Immediately
2.	Head of Financial Unit	To update the electronic register of expenditure declarations on the website of the Managing Authority (MA) with the data submitted in the declaration. To assign the expenditure declaration to the Financial Expert for Operational Programme Human Capital (OPHC). To insert the data submitted in the declaration to the National IT System (NIS).	Immediately
3.	Financial Expert for OPHC	To verify the formal and calculation aspects of the declaration in accordance with the checklist in Annex 10. To update the computer register on the MA website of the recoverable and withdrawn amounts for OPHC with the data contained in Table 3 of the submitted declaration. If corrections are necessary – proceed with point 4, if there is no need for corrections – proceed with point 11.	10 working days
4.	Financial Expert for OPHC	To prepare a formal letter with MA comments to the Intermediate Body along with a checklist for rejection of the declaration. To update the NIS with information on the status of the rejected declaration.	Immediately
5.	Head of Financial Unit	To verify the declaration, to accept the checklist and the letter with comments (with initials). Financial Expert for OPHC corrects the checklist and the letter if necessary. To update the computer register of the declarations submitted to the MA, to verify information introduced by the Financial Expert for OPHC to the NIS. To submit the checklist and the letter with comments to the Director / Deputy Director for acceptance.	2 working days
6.	Director/Deputy Director	To accept the checklist and the letter with comments.	Immediately
7.	Financial Expert for OPHC	To send the letter with comments to the Intermediate Body.	Immediately
8.	Director/Deputy Director	To assign the corrected expenditure declaration submitted by the Intermediate Body to the Head of the Financial Unit.	Immediately
9.	Head of Financial Unit	To assign the corrected declaration to the Financial Expert for OPHC and to update the computer register of the declarations submitted to the MA.	Immediately
10.	Financial Expert for OPHC	To verify the formal and calculation aspects of the declaration in accordance with the checklist, to insert information on the corrected declaration to the NIS and to amend the register of the recoverable and withdrawn amounts, if necessary. If corrections are necessary – proceed with point 4.	10 working days

Implementing guidelines of the Managing Authority of the Operational Programme Human Capital 2007-2013, internal document of the Ministry of Regional Development, October 2007.

Internal procedures contain detailed guidelines for accomplishing particular tasks (e.g. verification of expenditure declarations, payment requests, implementation reports) with specially designed control mechanisms for these tasks which are crucial to the successful completion of the whole procedure. The control mechanisms should limit the risk of an error, therefore their role is:

- preventive, i.e. they prevent errors from occurring,
- detective, if an error has already occurred,
- corrective, i.e. they can correct detected errors.

The control mechanisms should operate:

- continuously (in the whole audited period),
- coherently (in the same way for all the operations),
- effectively (reaching their objectives)²⁰.

The management and control systems established by the Member States vary as far as the level of centralization is concerned, in line with their administrative systems. Some management and control systems are centralised on the national level and in the others – particular functions are delegated to regional administration or to specialised bodies.

Supervision of the European Commission over management and control systems in the Member States

The European Commission supervises the systems in the Member States in order to ensure that they have been established in accordance with the requirements of the Community law and that they function properly as to guarantee day-to-day prevention, detection and correction of irregularities. The Commission's supervision is exercised mainly with ex post audits and with financial corrections introduced whenever irregularities in the management and control systems are detected. The Commission exercises its supervision with the means of:

- 1) ex post audits of effective functioning of the systems in the Member States,
- 2) corrective actions undertaken as a consequence of the detected irregularities in the functioning of the audited key elements of the systems.

The Commission exercises its supervisory powers also through negotiations with Member States of draft operational programmes, participation of its representatives in the workings of the monitoring committees, annual meetings with the Member States' institutions responsible for management and control, issuing guidelines and organisation of seminars.

In order to strengthen its supervisory role under shared management of the structural funds, the Commission adopted an Action Plan of 19 February 2008²¹. The action plan aims at intensifying actions taken by the Commission in order to solve the problem of numerous errors in payment requests and irregularities in establishing and functioning of the management and control systems in the Member States. The supervisory powers of the Commission were reinforced by means of inter alia improvements in the reporting system, increasing the competence to issue guidelines and organise training seminars, simplification of internal procedures for financial corrections and suspension of payments, intensification of audit activities in managing authorities of a higher risk, closer monitoring the level of implementation of actions adopted in the corrective plans.

The European Court of Auditors' audit of management and control systems

In the Statement of Assurance (i.e. DAS audit) for the structural funds, the European Court of Auditors assesses legality and regularity of transactions and reliability of accounts of the European Commission²². The Court audits payments down to the level of the final beneficiaries in the Member States, given that the Community payments are

²⁰ J. Płoskonka, *Kontrola wykonania zadań, ocena dokonań czy systemu zarządzania?* Op. cit., s. 22.

²¹ *Communication from the Commission to the European Parliament, the Council and the Court of Auditors. An action plan to strengthen the Commission's supervisory role under shared management of structural actions.* Brussels, 2008 (COM(2008) 97 final).

²² This chapter is drawn from the European Court of Auditors *DAS Methodology* manual. *ECA DAS Methodology*. Luxembourg, 2007.

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made on the basis of expenditure declarations and payment claims submitted by the final beneficiaries themselves. Under the DAS audit, the Court examines regularity of implementation of projects cofinanced with the structural funds on two levels. The first level is the management and control system established by the Member States and the second level is the supervision exercised by the Commission. The Court based the assurance of the legality and regularity of the transactions on:

- 1) analysis of the effectiveness of the management and control systems established by the Commission and by the Member States,
- 2) examination of selected transactions under each major area of the EU activity through audit on each level down to the final beneficiary,
- 3) evaluation of the annual activity reports and declarations by the Commission Directorates-General, as well as the procedures applied to prepare them,
- 4) and in justified cases on audit findings by other auditors independent of the Community management procedures.

The Court audits the management and control systems for operational programmes in the major areas of the EU activity. It examines the ability of these systems to ensure legality and regularity of transactions and it identifies their weaknesses. The detailed methodology of the Court's DAS audit is presented in the ECA manual on DAS Methodology.

Examination of the proper functioning of the management and control systems established by the Community institutions and by the Member States is an indispensable element of the DAS audit. Its aim is to find out whether the established internal procedures function properly. The main auditee of the Court is the European Commission, nevertheless the Court also examines the functioning of the management and control systems in the Member States, in order to take into consideration the "delegation risk"²³. It allows for a more precise identification of the sources of errors on the level of individual payments.

Preparation for the ECA audit of the management and control systems

Before commencing an audit in a Member State, the ECA carries out a risk analysis and identifies the confidence level²⁴ to be obtained from examination of the management and control system established by this Member State. A preliminary evaluation of how this system functions in practice and its actual ability to ensure legality and regularity of transactions is the next necessary element of the audit. The ECA audit questionnaire used for auditing proper functioning of the systems is prepared with respect to five key audit objectives, presented in Table 3.

Table 3. Objectives of the audit of management and control systems

KEY AUDIT OBJECTIVES	MANAGEMENT AND CONTROL SYSTEMS SHOULD ENSURE THAT
1. Reality and measurement	Underlying operations exist and are accurately determined.
2. Eligibility of underlying transactions	Various Community eligibility criteria are met for the underlying transactions.
3. Compliance with other regulatory requirements	Other (non-eligibility) criteria are met.
4. Correctness of calculations	All calculations are correctly undertaken.
5. Completeness and accuracy of accounting	All transactions are accounted for, are not included more than once, are recorded in correct accounting period and at correct value.

ECA DAS Methodology. Luxembourg, 2007, p. 15.

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²³ The delegation risk stems from the final responsibility of the European Commission for the implementation of the EU budget while at the same time under the shared management Member States are responsible for spending the EU resources.

²⁴ Estimated probability that the conclusions regarding the population drawn by the auditor on the basis of sample tests are correct.

Based on the preliminary evaluation of proper functioning of the system and on the preliminary opinion about its ability to ensure legality and regularity of transactions, the ECA identifies the extent to which it can rely in the overall DAS opinion on the analysis and preliminary evaluation of the management and control system, and the extent to which it has to rely on substantive testing. The balance between the examination of the system and the substantive testing of selected transactions, is presented in Table 4.

Table 4. Balance between testing controls and substantive testing assurance

ASSESSMENT OF INHERENT RISK AND EVALUATION OF MANAGEMENT AND CONTROL SYSTEMS	TENDENCIES CONCERNING LEVEL OF INHERENT RISK / QUALITY OF MANAGEMENT AND CONTROL SYSTEMS	SUBSTANTIVE TESTING OF UNDERLYING TRANSACTIONS
Auditor cannot rely (sufficiently) on management and control systems	High inherent risk / Poor management and control systems	Focused substantive testing
Auditor can draw a more than insignificant part of the assurance from the evaluation of management and control systems	Diminishing inherent risk / Improving quality of management and control systems	Standard substantive testing
Auditor can draw a very high part of the assurance from the evaluation of management and control systems	Low inherent risk / Excellent management and control systems	Minimum substantive testing

ECA DAS Methodology. Luxembourg, 2007, p. 18.

The detailed ECA methodology of evaluation of the key requirements for the management and control systems established for operational programmes in the period 2000-2006, was prepared in cooperation with the European Commission²⁵. This methodology is used for drawing a final opinion on the audited system. The ECA used it for the first time for evaluation of the systems under DAS audit for the financial year 2002. It was further improved, based on hands-on experience, during DAS audits for the following budgetary years. The method used by the Court takes into consideration the key requirements for the management and control systems, provided for in Articles 3-16 of the Commission Regulation No 438/2001²⁶. They include in particular:

- 1) a clear definition, allocation and separation of functions within the organisation (Article 3),
- 2) procedures to verify the delivery of the products and services co-financed and the reality of expenditure claimed (Article 4),
- 3) a sufficient audit trail (Article 7),
- 4) procedures for recovering amounts unduly paid (Article 8),
- 5) reliability of statements of expenditure (Article 9),
- 6) progress and proper organisation of checks on operations covering at least 5 % of the total eligible expenditure (Article 10-12),
- 7) independence and audit standards of the institution responsible for winding-up of the assistance (Article 15),
- 8) that declarations on winding-up the assistance are based on examination of the management and control systems (Article 16).

²⁵ *Guidelines for evaluating the key requirements for management and control systems for structural funds assistance under Regulation 438/01*. internal document of the European Commission, 2002.

²⁶ See footnote 15.

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In its DAS audit, the Court evaluates the management and control systems established by the Member States for operational programmes cofinanced with the structural funds for the period 2000-2006 in three categories, i.e. as *works / effective, works, but improvement necessary / partially effective, or does not work / not effective*. Audit criteria used by the ECA as reference are presented in Table 5. First, the Court formulates an opinion on each audited element of the system. Then, based on individual opinions on functioning of particular elements of the system, the overall opinion is formulated.

Table 5. Qualification of the ECA opinion in evaluation of the management and control systems for the period 2000-2006

EVALUATION OF THE MANAGEMENT AND CONTROL SYSTEMS IN THE DAS AUDIT	AUDIT CRITERIA
Works / Effective	The system functions properly, some small improvements are necessary.
Works, but improvement necessary / Partially effective	The system functions, but improvements are necessary.
Does not work / Not effective	The system does not function.

Based on *Guidelines for evaluating the key requirements for management and control systems for structural funds assistance under Regulation 438/01*, an internal document of the European Commission, 2002, p. 2.

The general principles of the management and control systems established for operational programmes in the financial perspective 2007-2013 have been adopted in Article 58 of the Council Regulation No 1083/2006²⁷ and further developed in the Commission Regulation No 1828/2006²⁸. They include in particular:

- 1) definition of functions of institutions responsible for management and control and allocation of functions within each institution;
- 2) compliance with the principle of separation of functions between and within such institutions;
- 3) procedures for ensuring correctness and regularity of expenditure declared under the operational programme;
- 4) reliable accounting, monitoring and financial reporting systems in computerised form;
- 5) a system of reporting and monitoring whenever the responsible institution delegates the execution of tasks to another institution;
- 6) arrangements for auditing the functioning of the systems;
- 7) systems and procedures to ensure an adequate audit trail;
- 8) reporting and monitoring procedures for irregularities and for recovery of amounts unduly paid.

While auditing the management and control systems established for operational programmes cofinanced with the structural funds in the period 2007-2013, the ECA auditors use four different categories of opinion, presented in Table 6.

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27 See footnote 4.

28 See footnote 17.

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Table 6. Categories for the assessment of the management and control systems used by the ECA in audit of the systems for 2007-2013

EVALUATION OF THE MANAGEMENT AND CONTROL SYSTEMS IN THE DAS AUDIT	AUDIT CRITERIA
Works well, only minor improvements needed	There are no deficiencies or only minor deficiencies found. These deficiencies do not have any significant impact on the functioning of the key requirements / authorities / system.
Works, but some improvements are needed	Some deficiencies were found. These deficiencies have a moderate impact on the functioning of the key requirements / authorities / system. Recommendations have been formulated for implementation by the audited body.
Works partially, substantial improvements are needed	Deficiencies were found that have lead or may lead to irregularities. The impact on the effective functioning of the key requirements / authorities / system is significant. Recommendations and/or an action plan have been put in place. The Member State / European Commission may decide to take corrective action (e.g. interruption or suspension of payments) in order to mitigate the risk of improper use of the EU funds.
Essentially does not work	Numerous deficiencies were found which have lead or may lead to irregularities. The impact on the effective functioning of the key requirements / authorities / system is significant – it functions poorly or it does not function at all. The deficiencies are systemic and wide-ranging. As a consequence, no assurance can be obtained from the assessment of the key requirements / authorities / system. A formal action plan should be prepared and followed up. The Member State / European Commission take corrective action (e.g. suspension of payments) in order to mitigate the risk of improper use of the EU funds.

Guidance on a common methodology for the assessment of management and control systems in the Member States (2007-2013 programming period), an internal document of the European Commission, 2008, p. 4.

The ECA auditors have already commenced evaluation of the management and control systems adopted for operational programmes in the financial perspective 2007-2013, also based on a methodology prepared in cooperation with the European Commission²⁹. First opinion of the Court concerning the systems for the programmes in the period 2007-2013 will be presented in the annual DAS report for budget year 2008, published in November 2009. Nevertheless, a more focused analysis of the Court in this respect should be expected in the annual report for 2009, due to an increase in the level of transactions in the new operational programmes. Therefore, the reflections on the ECA methodology used for the audit of the management and control systems, contained in this article, are limited to the programmes for the period 2000-2006.

As a preparation for the two DAS audit components, i.e. evaluation of the management and control systems and substantive testing, the ECA carries out the control environment analysis and estimates levels of inherent risk and control risk. Results of the control environment analysis contribute to a better understanding of the management and control systems. An estimation of levels of inherent risk and control risk is necessary to decide on the level of assurance which must be based on the substantive testing of transactions.

The ECA audit of the management and control systems on the spot

Before commencing the audit of the management and control systems on the spot, the ECA auditors identify institutions responsible for executing individual tasks under particular management and control functions in the audited Member State, in accordance with the Council Regulation No 1260/1999³⁰. Then, the functioning of the management and control system is audited on the spot in all major institutions (i.e. Managing Authority, Paying Authority, Audit Authority, and Intermediate Bodies – if there are any).

²⁹ *Guidance on a common methodology for the assessment of management and control systems in the Member States (2007-2013 programming period)*, an internal document of the European Commission, 2008.

³⁰ See footnote 14.

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The ECA auditors request the Managing Authority, or other relevant institutions, to prepare and submit documents necessary to carry out an analysis of the audited management and control system. During an audit mission to the Member State and – if necessary – also after the monitoring visit, the auditors request additional explanations for better understanding of the management and control system.

The results of ECA audits of the management and control systems in the Member States

In its annual report concerning the financial year 2007, the ECA presented audit results regarding the management and control systems adopted by the European Commission and by the Member States for operational programmes cofinanced with the structural funds in the period 2000-2006³¹. In the DAS audit for the financial year 2007, the Court audited management and control systems for 16 operational programmes established by 10 Member States. In 11 cases, the Court’s opinion on the management and control systems was that they are partially effective, in three cases – not effective, and in two cases – effective. The Court’s opinion on the management and control systems in the Member States issued in the DAS audit for the financial year 2007 is presented in Table 7.

Table 7. Assessment of management and control systems adopted by the Member States audited by the ECA in the DAS audit for the financial year 2007

Fund / Programme	Key internal control			Winding-up Body	Overall assessment
	Managing Authority	Paying Authority	Audit Authority		
EAGGF – Portugal	Yellow	Green	Yellow	Green	Yellow
EAGGF – Spain	Yellow	Green	Yellow	Green	Yellow
ESF – Denmark – Objective 3	Green	Green	Green	Green	Green
ESF – Greece – Health	Green	Green	Green	Green	Green
ESF – Italy – Campania	Yellow	Green	Yellow	Green	Yellow
ESF – Portugal – Norte	Yellow	Green	Yellow	Green	Yellow
ESF – Spain – Entrepreneurial initiative	Yellow	Green	Yellow	Green	Yellow
EFRR – Spain – Competitiveness	Yellow	Green	Yellow	Green	Yellow
EFRR – Czech Republic – Industry and enterprise	Yellow	Green	Yellow	Green	Yellow
EFRR – Germany – Meklenburg Vorpommern – Objective 1	Yellow	Green	Red	Green	Yellow
EFRR – Greece – Information society	Yellow	Green	Yellow	Green	Yellow
EFRR – France – Martinique	Yellow	Green	Yellow	Green	Yellow
EFRR – UK/Ireland – Peace II	Yellow	Green	Yellow	Green	Yellow
EFRR – Italy – Research	Yellow	Green	Yellow	Green	Yellow
EFRR – Czech Republic – Infrastructure	Yellow	Green	Yellow	Green	Yellow
EFRR – Slovakia – Basic infrastructure	Yellow	Green	Yellow	Green	Yellow

	Effective
	Partially effective
	Not effective

The annual reports concerning the financial year 2007. European Court of Auditors, Luxembourg 2008 (OJ C.08.286.1), p. 154.

The most important irregularities detected by the Court in the area of the management and control systems established by the Member States revealed cases of insufficient checks of the reality of underlying expenditure. Major irregularities in the functioning of the management and control systems, identified by the ECA in the DAS audit for 2007, are presented in Table 8.

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³¹ This and the following chapter are drawn from *The European Court of Auditors annual reports concerning the financial year 2007.* Luxembourg 2008. (OJ C.08.286.1), pp. 139-154.

Table 8. Major irregularities in the management and control systems detected by the ECA in the DAS audit for 2007

INSTITUTION	IRREGULARITIES AND WEAKNESSES
Managing Authorities	1. insufficient day-to-day checks of the reality of expenditure, 2. failure to identify expenditure declarations not supported by appropriate evidence, 3. failure to identify weaknesses in tender procedures.
Paying Authorities	Failure to identify cases when Managing Authorities had not carried out adequate day-to-day checks.
Audit Authorities	Failure to carry out sufficient checks to obtain assurance on the effective functioning of the management and control systems.

The annual reports concerning the financial year 2007. European Court of Auditors, Luxembourg 2008. (OJ C.08.286.1), p. 150.

The findings of the Court presented in the annual DAS report for 2007 indicate a certain improvement in comparison with the previous year, when the Court assessed as ineffective 13 out of 19 audited management and control systems for operational programmes established in 10 Member States, and the other six – as only moderately effective.

In DAS audit for 2007, the Court did not examine the functioning of the management and control system for any operational programme cofinanced with the structural funds in Poland. However, one management and control system established by the Polish government audited under DAS audit for 2006 was assessed as ineffective. It was the management and control system in the Sectorial Operational Programme *Restructurisation and modernisation of the food sector and development of rural areas 2004-2006*, cofinanced with the European Agricultural Guidance and Guarantee Fund – Orientation Section. The ECA assessed as ineffective the functioning of the management and control system in the Managing Authority, Paying Authority and Audit Authority. Only the system adopted by the Winding-up Body was assessed as moderately effective³².

Results of the ECA audit of the Commission supervision over the management and control systems

In the DAS audit for the financial year 2007, the ECA examined 20 audits carried out by four directorates-general of the European Commission, responsible for implementation of the structural funds. This audit covered Directorate-General for Regional Policy (DG REGIO), Directorate-General for Employment, Social Affairs and Equal Opportunities (DG EMPL), Directorate-General for Agriculture and Rural Development (DG AGRI) and Directorate-General for Maritime Affairs and Fisheries (DG MARE).

The ECA auditors concluded that, in the majority of cases, the audits carried out by these directorates-general as supervisory activities over the management and control systems established by the Member States, have been adequately planned and carried out, but in six cases appropriate corrective action had been taken late. In three cases, the weaknesses in audit documentation made the assessment of the audit result difficult. In the opinion of the Court, this reduces the effectiveness of this key supervision procedure.

³² *The annual reports concerning the financial year 2006.* European Court of Auditors, Luxembourg 2007 (OJ C.07.273.1), p. 166.

The NIK audit of the management and control systems

The objective of the Supreme Audit Office scrutiny is to determine whether the management and control systems for operational programmes cofinanced with the EU funds function properly in order to prevent undue payments and other irregularities, and to detect and correct errors and weaknesses which have already occurred. The NIK also assesses the way that the institutions involved in the management and control systems discharge their functions.

Preparation of the NIK audits of the management and control systems

At the preparation stage of its audits of the management and control systems for operational programmes, the NIK collects and analyses available information and carries out a preliminary evaluation of adopted procedures. Based on results of this analysis, a preliminary opinion on the management and control system is issued and individual areas and audited units for substantive testing are selected.

Collecting and analysing available information is necessary for indicating specific audit objectives and for selecting institutions to be audited. This analysis precedes the audit on the spot and it takes into consideration relevant provisions of the EU law and the national law, guidelines and instructions issued by the Commission and national administration, descriptions of the systems submitted to the Commission, manuals prepared by relevant institutions. This analysis allows the NIK to identify and understand principal procedures in the audited activity, in order to determine the key procedures of the audited management and control system.

The preliminary review of procedures with instructions for executing tasks in the management and control systems results in a preliminary opinion of this system. At this stage of the audit preparation, the NIK auditors draw a preliminary opinion on the quality of the system, i.e. they attempt at concluding whether the system is very good, good or weak. They formulate their opinion based on their evaluation whether control mechanisms respond to the identified key risks or whether there are weaknesses visible. Due to a large number of institutions involved in the management and control systems, a selection is necessary. The audited units are selected, based in particular on information on the function of institutions, their experience in a similar activity and quality of their internal control systems. Information from previous NIK audits and from other sources is taken into consideration in order to select the audit sample.

The NIK audit of the management and control systems on the spot

During audit of the functioning of the management and control systems on the spot, the NIK attempts to obtain relevant and reliable evidence that the audited systems function as prescribed and that they are adequate to ensure regularity of expenditure from the EU budget. In order to obtain this evidence, the NIK reviews and analyses documentation of the audited systems, asks for written explanations, or/and interviews employees responsible for individual operations. Then, the NIK examines on a sample of operations, if the system functions properly in terms of formal requirements and if it is successful in achieving its objectives.

The NIK examines proper functioning of formal aspects of the management and control system established in the audited institution, in order to provide an answer to the question whether key control mechanisms established in the system function properly, in a continuous and coherent way. This evaluation covers also regularity of the audit trail, i.e. whether the employees, having executed individual tasks standardised in the written procedures, have documented this fact with an adequate audit trail in the official documentation as confirmation that the adopted procedures have been observed.

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**EXTERNAL AUDIT OF MANAGEMENT AND CONTROL SYSTEMS
FOR OPERATIONAL PROGRAMMES COFINANCED WITH THE EUROPEAN UNION FUNDS**

Examination of proper functioning of the formal aspects of the audited systems is carried out with assistance of checklists annexed to the NIK audit programme, prepared on the basis of internal procedures of the audited institution. Results of this examination are presented in this checklist by means of filling in the relevant answer: YES, NO, NOT APPLICABLE. The answer YES is selected when existence of the sufficient audit trail is confirmed by the NIK auditor. The answer NO is selected when a lack of the sufficient audit trail is detected (lack of evidence that the task was actually executed by the responsible person). The answer NO requires a detailed explanation of the reasons, consequences and persons responsible for this error in the audit report. The errors presented in the checklist have to be described in the audit report and adequately documented in the audit files. The checklist prepared by the auditor is signed both by the auditor and by the head of the audited institution.

In Table 8 below, an example of the NIK checklist for auditing proper functioning of formal aspects of the management and control system of the Managing Authority, was presented. The displayed excerpt refers to proper functioning of the system as regards verification of expenditure declarations and payment requests submitted by Implementing Bodies and preparation of an expenditure declaration and payment request by the Managing Authority of the Operational Programme Human Capital 2007-2013.

Table 8. A NIK checklist for evaluation of the procedure for verification of expenditure declarations and payment requests by the Managing Authority

AUDITED TASK		NO	N/A
1.	Was the expenditure declaration and payment request submitted by the Intermediate Body verified in accordance with a checklist attached to the <i>Implementing guidelines of the Managing Authority</i> ?		
2.	Was the checklist verified by the Head of Unit?		
3.	Was the checklist accepted by the Director or Deputy Director of Department?		
4.	Was the relevant Intermediate Body notified of the acceptance of its expenditure declaration and payment request?		
5.	Was the expenditure declaration and payment request prepared by the Managing Authority verified by the Head of Unit?		
6.	Was the expenditure declaration and payment request accepted by the Director or Deputy Director of Department?		

The NIK audit programme on preparation of public administration to implement the structural funds under Operational Programme Human Capital 2007-2013, an internal document of the NIK. Warsaw, 2008.

The NIK auditors are not satisfied only with the evaluation of proper functioning of the formal aspects of the audited management and control systems for operational programmes cofinanced with the structural funds. The second stage of their audit is checking if the system is successful in achieving its aims and thus how the audited institution discharges its functions. Evaluation of proper execution of individual operations is carried out on the basis of an analysis of source documentation. Therefore, the NIK examines whether the audited system is successful in detecting errors, eliminating irregularities and accomplishing intended results, e.g. whether adherence to a written procedure for verification of expenditure declarations and payment requests results in refunding eligible expenditure only.

The NIK audit results on functioning of the management and control system for the Operational Programme Human Capital 2007-2013

In 2008, the NIK carried out a coordinated audit on *Ability of the national administration to implement the structural funds under Operational Programme Human Capital 2007-2013*³³. The objective of this audit was to assess if the

national administration was well prepared, at the time of audit, to successfully manage and control implementation of the projects cofinanced with the structural funds by the final beneficiaries of the Operational Programme Human Capital (OPHC). The audited programme is the largest operational programme cofinanced with the European Social Fund (EFS) in the whole EU history, both in financial terms and as far as the number of institutions involved in the management and control system is concerned. The programme encloses all the categories of intervention intended for the EFS in the Community regulations. The total value of the allocation for implementation of this programme is approximately 11,400 million EUR, which represents 14% of the total allocation for Poland for cofinancing of all the operational programmes in the financial perspective 2007-2013. In this amount, the EFS contribution constitutes 9,700 million EUR, and the national cofinancing is 1,700 million EUR (15%).

The programme is divided into 10 priority axes, out of which 6 are implemented on the national level and 4 – on the regional level³⁴. The function of the Managing Authority is discharged by the Ministry of Regional Development which however has delegated the majority of its tasks in all except one priority axes to 19 Intermediate Bodies (3 ministries and 16 regional governments). Most of the Intermediate Bodies further delegated some of their tasks to 22 Second Level Intermediate Bodies. As a result of the complex structure of the programme, there are in total 41 institutions involved in the management and control system.

As a result of previous audits carried out in the years 2004-2007, the NIK identified one of the reasons behind low absorption of the structural funds at the beginning of the implementation of the operational programmes for 2004-2006 in Poland. In the NIK opinion, the reason was the management and control systems established by the government, which were too complex, overcomplicated, and not transparent. The systems often overloaded the institutions with additional tasks not required by the Community law, and sometimes they even doubled some tasks, repeating them on different levels. This situation led to delays in the implementation of operational programmes in Poland for the period 2004-2006. The delays stemmed amongst others from the fact that the institutions responsible for management and control concentrated more on executing unnecessary tasks required by the established procedures and not by the Community law, than on achieving the primary aim of implementing the projects, i.e. accomplishing the indicators of products and results, adopted for individual measures and priority axes of the operational programmes, with the assistance of the available financial allocation from the structural funds.

One of the components of the NIK audit of *Ability of the national administration to implement the structural funds under Operational Programme Human Capital 2007-2013*³⁵ was the evaluation of proper functioning of the established management and control system of this programme, which supports the audited institutions in discharging the functions of the Managing Authority, Intermediate Bodies and Second Level Intermediate Bodies. The NIK audited 24 institutions involved in the management and control system, including 8 ministries and central offices and all 16 regional governments. The NIK audited also 40 out of 104 system projects³⁵ implemented by these institutions under four priority axes, two implemented on the national level and two – on the regional level.

As it has already been mentioned, the Managing Authority of OPHC, i.e. the Ministry of Regional Development, Department for Management of the European Social Fund, delegated some of its tasks to the Intermediate Bodies, which are responsible for managing individual priority axes. Nevertheless, the Managing Authority is ultimately responsible for the implementation of the whole programme. The tasks of Intermediate Bodies in the central component, covering mainly system support for public administration on the central level, have been delegated to ministries or central offices. Financial support for individual beneficiaries is granted mostly in the regional component, where tasks of Intermediate Bodies have been delegated to regional administration. The majority of Intermediate Bodies further delegated some of their tasks to Second Level Intermediate Bodies. Nevertheless, they are still ultimately responsible for implementing their priority axes.

Capital 2007-2013. NIK, Warsaw 2009.

³⁴ The territory of Poland is divided into 16 regions, named “voivodships”.

³⁵ The objective of the system projects is to cofinance some public tasks carried out by institutions of public administration and other organisational units of public finance sector.

The NIK issued a clean audit opinion on the functioning of the management and control system for the programme in 12 audited institutions³⁶ and it qualified its audit opinion in 12 institutions³⁷. The audited key control mechanisms in the procedures for evaluation of applications for cofinancing, monitoring and reporting, financial management, reporting on irregularities, and audit in the management and control system for OP HC were performed in a continuous, coherent way. The procedures were also successful in accomplishing their objectives, and the audited institutions were mostly well prepared for the management of the programme and they discharged their functions well. In the NIK opinion, the tasks were executed with regularity and documented in accordance with the procedures adopted in their *Implementing guidelines*³⁸. The errors revealed by the NIK concerned e.g. a lack of signature confirming verification of a document or a lack of the checklist for verification of another document, delays in signing the agreement for cofinancing of a project or delays in acceptance of projects for cofinancing.

Conclusions

Proper functioning of the management and control systems established by the Member States for operational programmes is crucial to guarantee that the utilisation of the EU structural funds support accomplishing the main objectives of the Community cohesion policy. Internal and external audit of the management and control systems contribute to their constant improvement and – as a consequence – to better utilisation of the EU funds. Owing to their crucial role, the systems must be evaluated on a timely basis to assess whether they are adequate in order to prevent errors and irregularities, or detect and correct them if they already occurred. In case of serious irregularities in the establishment and functioning of the management and control systems, the European Commission may suspend payments in the operational programme, or even introduce financial corrections.

The authors of this article present the main methodological standards of the external audit of the management and control systems for operational programmes cofinanced with EU resources, carried out by the European Court of Auditors and the supreme audit institution of Poland – Supreme Audit Office (NIK). There are many similarities between the approaches adopted to audit the systems by the ECA and the NIK, as regards audit preparation, audit on the spot, reporting on audit results to the relevant parliaments and for the public opinion.

The NIK, as the supreme audit institution in the Member State, examines only the functioning of management and control systems adopted by institutions of public administration in Poland. The main auditee of the European Court of Auditors, however, is the European Commission and regularity of supervision exercised by its services over preparation and functioning of the systems in the Member States. The Court's evaluation of the management and control systems in the Member States aims at a more precise explanation of sources of errors on the level of individual transactions by final beneficiaries. Through the audit of the systems and transactions on the spot in the Member States, the Court can better address the risk of delegation of the structural funds management from the Community level (by the European Commission) to the national level (by the Member States).

36 In the Ministry of Finance, Ministry of Interior and Administration, Ministry of Labour and Social Policy, Ministry of National Education, Ministry of Health, Chancellery of the President of the Council of Ministers, Marshal Offices of the following voivodships: Kujawsko-Pomorskie, Lubelskie, Łódzkie, Opolskie, Śląskie, and in the Office for Regional Development of the Świętokrzyskie voivodship.

37 In the Ministry of Regional Development, Ministry of Science and Higher Education, Marshal Offices of the following voivodships: Dolnośląskie, Lubuskie, Małopolskie, Mazowieckie, Podlaskie, Pomorskie, Warmińsko-Mazurskie and Regional Labour Offices in Poznań, Rzeszów and Szczecin.

38 Implementing guidelines are prepared by institutions involved in the management and control system for operational programmes. They contain internal procedures for execution of their individual tasks.



JOHN DAVIES, ACCA'S HEAD OF BUSINESS LAW, IN LUXEMBOURG ON NOVEMBER 4, 2009

By Rosmarie Carotti

The ACCA (Association of Chartered Certified Accountants) which originally was one of the six accounting bodies in the UK and Ireland, is now an international organisation with students and members all over the world.

Once more, ACCA members of the Court got the opportunity to share experiences and meet up with colleagues in Luxembourg. This time the subject was white collar crime, which in a time of economic downturn tends to rise. It was presented by John Davies, ACCA's Head of Business Law, who first examined the nature of fraud in today's environment and then what companies are or should be doing about it.

According to research carried out by KPMG, the number of fraud cases coming before the UK courts is at its highest in over 20 years. But what is fraud? Many countries, including the UK, does not have a legal definition of fraud.

Using a broad definition such as deceit leading to financial disadvantage, fraud tends to be an extremely fluid, dynamic and multi-faceted activity. Fraud can come from within the business, or the business itself can be the perpetrator. The victims of fraud on the other hand can be the business, its customers, other businesses, or the taxpayer.

Fraud often concerns the public and the private sector alike and this article will focus on the aspects which are common to the work of external auditors. Frauds against the State and fraudulent applications for State benefits and grants make all governments lose money. The UK Government estimates that in 2008-2009, benefit fraud alone amounted to some £ 3 billion. In relation to fraud and its impact on the EU budget, both the ACCA and OLAF are continuously pushing for effective controls to deter opportunities for fraud.

Mr Davies then spoke about a type of fraud that the Court has encountered in the past, the so-called "Missing Trader" or carousel fraud, which is a "commercial" fraud since it is directly linked to business activity although the ultimate objective is to defraud the State.

It is a systematic fraud that exploits the rules regarding the charging of VAT on goods and services. In the normal course of events any business will set off the VAT that it owes against the VAT that it has received, and will pay the net amount over to the national government concerned. But goods traded cross-border are free from VAT, and this creates the loophole for fraudsters to exploit.



Mr John Davies

In the simplest case, a trader can import goods from another EU country, free of VAT, and then sell them on the domestic market, charging VAT on them, but not paying the tax on to the Government. He thus becomes the "missing trader".

One recent estimate is that the missing trader fraud costs EU governments a combined £ 170 billion every year. This loss also affects the EU budget, as the own resource based on value added tax (VAT) is levied on Member States'

VAT bases.

Another fast-growing form of fraud involves the deliberate abuse of the trade system to engineer mass transfers of economic value. Trade-based fraud can happen on the domestic level, but its impact can be greater when carried out on a cross-border level, usually between complicit companies in different countries.

An additional incentive for group structures to engage in fraudulent trade-based transactions of this sort is if an objective of the transaction concerned is to transfer income away from subsidiaries in high tax jurisdictions to other group companies based in low tax jurisdictions, so that the group as a whole can minimise its overall tax liability.

Under the 2005 Anti-Money-Laundering Directive of the EU, all countries should criminalise the activity of money laundering, which in general terms means dealing with the financial proceeds of crime. And as a minimum, countries should criminalise money laundering in one of two ways - either by specifying the types of offences in domestic law which are to be treated as money laundering - and they should do this by reference to a list of recommended predicate offences which are set out in the Directive - or alternatively countries should provide that money laundering offences are to be those that carry a jail sentence of at least one year in the jurisdiction concerned.

The Directive goes on to provide that, where a business is of a type which is required to assume anti money laundering responsibilities, it is obliged to put in place a series of controls designed to prevent proceeds of crime being dealt with in the first place and, where it does happen, to ensure that that fact is identified and dealt with.

Even if a business is not of a type which is specifically obliged to operate these anti money laundering controls, then it will

still be covered by those controls more indirectly because its auditor, lawyer and bank will be covered and they will have responsibilities regarding information they pick up in their dealings with that company.

And so any information or intelligence that an external accountant or auditor or tax adviser acquires which causes them to suspect that anybody within a company or connected with a company is defrauding the company or using the company to commit fraud, will have to be passed on. This is not a discretionary act but a legal requirement which usually carries with it a substantial penalty for non-compliance. And given that accountants and auditors are designated businesses under the Directive they also have to take the necessary steps to ensure that they are in a position to recognise client transactions which appear to have no economic or lawful purpose.

Bribery, like fraud, is considered to be very much an unwanted by-product of the economic downturn. There is a direct link to fraud as when individuals or companies pay bribes, then almost inevitably some sort of fraud will follow as the perpetrators falsify accounts in order to cover up what they have done. Anti-bribery rules focus not only on the bribery itself but also on what internal controls can be put in place to deter such illegal activity.

38 countries have now signed up to the OECD's convention on combating bribery of foreign public officials in international business transactions. Art 8 is the main provision. It says that countries should 'take such steps as are necessary within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.'

The strongest and most strictly enforced piece of anti-bribery legislation in the world is the US Foreign Corrupt Practices Act which applies not only to US companies and individuals but also to foreign companies that are listed in the US.

The key element of the FCPA is that it makes it unlawful to bribe foreign government officials in order to obtain or retain business, irrespective of whether the bribe is paid directly or through any intermediary.

And one very important point for group companies to be aware of is that while the Books and Records and Internal Control provisions technically apply only to the listed parent company, and not to its foreign subsidiaries, the enforcement

agencies routinely hold parent companies liable for false or fraudulent entries on any book or record that is ultimately consolidated in the group accounts of the listed parent company. Failures in this area in fact formed the major part of the case brought by the US authorities against the German company Siemens last year – Siemens was charged with failing to keep proper records and controls at three of its subsidiaries in Argentina, Venezuela and Bangladesh. In total Siemens ended up paying fines and penalties amounting to \$800 million, bringing the total amount it has paid worldwide since the scandal first broke to \$1.6 billion.

In addition, any company found guilty of a bribery offence will be excluded from tendering for public procurement work with bodies such as the EU and the World bank and most national governments as well.

Data Protection Controls is one area in which harmonised legal rules exist throughout the EU, via the EU Directive on data protection. On top of that, most countries now have their own national codes or regulations on corporate governance and where these exist they invariably contain some provisions that are relevant to the issue of managing fraud. Probably the biggest influence on the content of these national codes has been the principles of corporate governance issued by OECD, which amount to a sort of international template for what national codes should contain.

There are also, importantly, external audit procedures. Audit standards have these days become largely internationalised. The auditor's professional duty regarding fraud is now found in ISA 240. If and when an auditor does come across fraud, then ISA 240 deals with what he should do about it.

Under this standard, auditors are required to plan and perform their audit work in a way which takes into account the risk that fraud will result in material mis-statements in the financial statements. The auditor of course is not actually expected to root out fraud or necessarily be alert to fraud in a general sense (although he is expressly required to adopt an attitude of healthy professional scepticism in carrying out his procedures).

The question of the scope of the auditor's duty with regard to fraud has re-emerged as a political issue in the wake of the financial crisis. To be fair, auditors have not been blamed for what happened to the banks anything like as much as credit reference agencies, non-executive directors or dominant CEOs, but questions have again been asked about the value of an audit if large companies can collapse within months of a clean audit report being given. And, specifically, it has been suggested in some quarters that the audit process should in future take on a more explicit and pro-active responsibility to actually look for evidence of fraud, as opposed to the current situation where the auditor must be prepared to recognise it if it presents itself during the course of the audit.

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