



JOURNAL

European Court of Auditors



2014

MARCH
MARS

N° 03

Cour des comptes européenne



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- Ms Rea Georgiou, Accountant General of the Republic of Cyprus and Mr Lazaros S. Lazarou, ECA Member

- Mr Phil Wynn Owen, new ECA Member from the United Kingdom



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Interview with **Vítor Manuel da SILVA CALDEIRA**,
President of the ECA.

President Caldeira was re-elected as primus inter pares by the 28 Members of the ECA for a third three year term on 23 January 2014

By Rosmarie Carotti

Mr Vítor Caldeira, President of the ECA

R. C.: Mr President, a third three-year term is a sign of great respect for your person and the achievements you have reached so far. To which goals of the 2013-2017 ECA strategy will you give most priority?

President Caldeira: I believe that over the past six years, we succeeded in implementing initiatives that will lead to a reform of the ECA. That was one of the reasons why I thought I should present myself for a third term.

I feel honoured and privileged to be able to serve again as President of the Court, and to be able to contribute, with the cooperation of all working here, to ensuring that the strategy we have designed for the period 2013-2017 is indeed put into action.

We decided to put forward ten initiatives addressing different aspects like the Statement of assurance (DAS), the responsibilities of those working in the audit field, and streamlining audit and reporting processes. They cover a wide range of areas where we are looking to make more efficient use of our resources. We need to do more with less, to some extent. We also need to be more aware of the needs of our partners and stakeholders as indicated in the ECA's new communication and stakeholder relations strategy. I hope the creation of a new function for a Member for institutional relations will help in this respect.

It is essential that our institution and all EU institutions work together to improve accountability to citizens. That is The Court's key priority.

R. C.: You mentioned one initiative concerning the DAS. So far, the DAS has been the core of our work. Will performance audit become more prominent and will there be a new balance?

President Caldeira: As I said during a recent hearing at the European Parliament about performance audit, all types of audit are relevant. It is true that for academic and operational purposes, there is financial audit, compliance and performance audit. But the ECA, as the independent external auditor of the EU, has a clear mission, which is to ensure that the citizens of the EU have assurance that the money of the EU is well spent. All our work, be it financial audit, compliance audit or performance audit has to contribute to that end. And we have to find the best balance in terms of assigning resources, not forgetting that the ECA will have additional audit responsibilities in the near future.

For instance, the European Central Bank's role in the field of prudential supervision of banks will be one. The single resolution mechanism regulation (still under discussion) will most likely ask the ECA to perform new duties. All those areas are future challenges for the ECA, and we have to be prepared for them. We need to introduce internal reforms that help the ECA to be well prepared for all those challenges.

I cannot anticipate what will be the final version of the single resolution mechanism regulation. The proposal currently being discussed by the Parliament and the Council is broad. It focuses on clear engagements for the ECA in audit, either in terms of sound financial management or the accounts of the new entity.

R. C.: In a few months, we have the elections for a new European Parliament. Will something change in the relationship and co-operation between the ECA and the EP?

President Caldeira: The European Parliament is one of the main stakeholders of the ECA. Up to now, we have developed good relations with the Budgetary Control Committee. The ECA has aimed to further develop that cooperation with other specialised committees. I believe that we are moving in the right direction enabling the EP to make the best use of the ECA reports. Of course, the elections, which will lead to a new parliament, will also offer the Court the opportunity to prepare itself to address the concerns, expectations and needs raised by the EP in its recent "Ayala Sender" report.

We take that report very seriously. Many initiatives the Court is taking, like the review of the Annual Report 2014+, the streamlining of our audit and reporting processes for special reports, and the response to the peer review, are now converging. These initiatives will help the Court to respond to the new Parliament, through enhanced cooperation and by providing high-quality audit reports which are even more relevant to their needs.

But we also need to use the opportunity provided by the fact that we will have a new Commission in autumn. The ECA is ready to provide an overview of the main risks to EU financial management as well as to highlight the accountability and audit gaps that have developed.

To that end, two of the ten key initiatives in the ECA's strategy are to produce a landscape review on risks for financial management and a landscape review on accountability and audit. They will help the Court to demonstrate to the Parliament and the Commission that the Court recognises their needs. One major gap the Court has already identified is that not enough is known about the results achieved with EU policies and spending programmes.

R. C.: You have forgotten one aspect which is very important: there are calls from the European Parliament for a more intensive level of cooperation with the national Supreme Audit Institutions (SAIs) of Member States. How can you see this working?

President Caldeira: When I became President in 2008, one of the issues I was confronted with was the Contact Committee which was not working very well. Over the last six years, we managed to help the Contact Committee to raise its visibility. We have engaged in different initiatives to raise awareness, as a Contact Committee, of the problems of accountability and audit implied by the new economic governance of the EU. Raising awareness of this issue in respect of the European Stability Mechanism led to a concrete solution. Now we want to address the networks for dealing with Europe 2020, fiscal policies, and the Economic Semester. There progress is still modest, but I think that we are listening to the concerns of the national SAIs and we are working very hard together to propose solutions in that area.

But I feel that we need to achieve concrete goals; as audit institutions working at different levels but in the same field we need to address the issues that matter to the EU as a whole.

R.C.: There is also the financial crisis. The financial crisis revealed audit gaps and weaknesses. How can the ECA contribute to improve transparency and effective audit?

President Caldeira: The EU had to improve its economic governance in response to the financial crisis. The financial crisis had also a national dimension. Member States have different mechanisms to address the problems. The financial crisis has been at the heart of some initiatives taken by the Contact Committee. With other EU SAIs, the Court tried to identify the implications for transparency, accountability and audit of the different measures taken in response to the crisis. But the challenge for improving EU accountability is not limited to the domain of economic and financial affairs. There are also public accountability and audit issues in other EU policy areas that need to be addressed. When the Parliament asks the ECA to pay more attention to the co-operation with the SAIs, I believe it is thinking more about the role that the SAIs can play within the audit of the EU funds managed through the national authorities. That is an area where we need to identify new areas where we can work together, for example in order to carry out performance audit work together (on a voluntary basis), and then make the results available to the national parliaments and to the European Parliament. This would certainly address the need to know more about the impact and results achieved with EU spending.

R. C.: Relying on audit done at the national level means single audit. Is there not a risk in it for our role?

President Caldeira: I do not believe so. The ECA is the auditor of the EU, national audit institutions are the external auditors of Member States, and in several Member States there are even regional audit offices. Each audit body has its own role and mission.

But we cannot ignore that we need to cooperate, first to avoid duplication, but mainly to identify where we can best use the work performed by others. But the single audit is a concept the ECA has worked upon - I was reporting Member for the 2004 Court opinion on internal control framework for EU spending. The new financial regulation opens the road for a more active role for national audit institutions in that control framework.

Of course, there is also a discussion about the voluntary national declarations by Member States, already prepared by the national audit institutions of some Member States, more precisely the Netherlands, Sweden, the United Kingdom and Denmark. The ECA has issued an opinion on that. We are willing to use the work of other auditors on condition that they have followed international audit standards. We could also agree beforehand to address specific audit objectives as is possible under the legal framework in place after 1 January 2014. We will have to see how that framework evolves.

The big change will be to see whether, and to what extent, the European Commission will be able to provide reasonable assurance for the legality and regularity of the European budget. That will have an enormous impact on our statement of assurance work and might also imply different levels in the “pyramid of assurance” that is built up from the authorities in Member States to the Commission. It might also imply a different role for external auditors, i.e. the ECA and the national audit institutions. We have to see with the national audit institutions how we can best cooperate in that area.

To summarise, I would strongly advocate applying the principle of single audit, as long as the same audit standards are respected by all parties. In the field of agencies the ECA will carry out the first audit which has the opportunity to rely on other external auditors. New provisions of the financial regulation for the agencies, require the ECA to consider the results of the independent external audit of each agencies’ accounts. It is clear that we need to make best use of the work of other auditors in order to make best use of our own limited resources.

The role of the ECA will not be diminished. The auditors at each level have their respective roles to play, and they must each play this part.

R. C.: Now a critical eye on our work. What are your expectations from the Court's second peer review?

President Caldeira: The ECA has just received the final peer review report from our peers of Germany, France and Sweden. I believe it is balanced, and we thank the three institutions which have been involved. We appreciate their contribution very much. The peer review points out, in a very positive way, the progress made in implementing the recommendations of the previous peer review from 2008. They also identify that the ECA, in terms of its performance audit, follows the standards. They appreciate the progress made with the audit manuals and in respect of quality control.

There are some points where we are recommended to take the opportunity to improve, namely in terms of the timing of our work, the length of the contradictory procedure. These are points which are already being addressed by a working group in the ECA and were identified by the ECA itself some time ago.

They call for the ECA to cooperate more with the European Parliament and to better take it into account the Parliament's needs in the planning of the ECA's work. This also addresses the issue of strengthening cooperation with stakeholders. We take these suggestions very seriously.

The aim is to address these recommendations in the context of the Court's 2013-2017 strategy, alongside other Court initiatives. That's why I think it is important to bring together the peer review report, the report on streamlining the audit and reporting processes, the results of the review of roles and responsibilities in audit, and the Parliament's report on the ECA. They converge on one message: the ECA's work is appreciated, but we can do better and take Parliament concerns more into account. In particular, the ECA needs to improve efficiency and shorten the time it takes to produce special reports.

We have to bring together the recommendations from the European Parliament, the peer review and with those of the Court's own working groups to develop an action plan to implement them all in a coherent way. The aim is to do that within the period of the current strategy.

In the end, peer reviews are an opportunity to learn from one another. It is important for SAIs to carry out peer reviews as it is to submit to them. I am pleased to say the Court was involved in a peer review of the SAI of Norway in 2011, and this year we are leading the peer review of the SAI of Lithuania.

R. C.: Does this also mean getting away from bottom-up planning to a top-down approach, where Parliament, for example, suggests audit subjects of relevance to the citizen?

President Caldeira: The ECA's work programming system has recently been revised. It was also one of the initiatives of our strategy. Our planning begins with a top-down approach that takes account of the priorities of stakeholders, and then looks for a bottom-up input.

This means that the College has to provide direction, and while providing direction it has to take into account the results of a global risk assessment i.e. the main risks to effective financial management. It also has to take into account, to the best of its ability, the recommendations made by Parliament, the Council or other stakeholders in terms of particular audits of interest. The Court fixes the priorities as an institution and then asks its Chambers to elaborate upon them and to come up with specific audit proposals.

R. C.: We have touched on many subjects, on stakeholders' relations as well, but have not mentioned the new communication strategy for the general public. What are your main expectations for these developments?

President Caldeira: The field of communication has been extensively considered by the ECA as I already mentioned. The Court agreed to review the overall communication strategy and to consider appointing a spokesperson and making more use of new communication tools, not only the website but also Twitter, YouTube etc. We have had success with a number of short films about our special reports and we want to produce our reports online with a new layout.

The ECA also aims to be more visible in external events and to carry out joint initiatives with academia and other professional audit bodies. There is a project for publications focused on professional matters.

We also want to communicate better with non-experts. We will have to take account of communication issues early in the audit process. And we need to better exploit modern media techniques and develop contacts with the Brussels-based correspondents for the EU media. The spokesperson will play a key role developing those contacts and providing correspondents with briefings.

R.C.: Mr President, a word to those who work at the ECA.

President Caldeira: To those who work at the ECA, I want to express my deepest gratitude for their good cooperation over these last six years. You can count on me to carry on along the path of building on our strengths and addressing our challenges over the next three years. This term as president will coincide with the end of my time at the ECA and I will be very pleased if we succeed in putting into action all the results of all the initiatives I have mentioned.



Interview with **Mr Phil Wynn OWEN**,
new ECA Member from the United Kingdom

By **Rosmarie Carotti**

Mr Phil Wynn Owen, ECA Member

R. C.: Sir, you are the new Member from the UK. What will your responsibilities be here in the ECA? Will there be tasks which are similar to those you had in your previous positions?

Phil Wynn Owen: I am excited and delighted to be here. I have worked widely across the government in the UK, and I think there are a number of areas where my experience will hopefully be able to add value to the work of the Court. The allocation of responsibilities for the new Members has just been decided in the last Court's meeting. I have been assigned to Chamber II, which covers Structural Funds, Transport and Energy.

R. C.: You were Director General of the Department of Energy & Climate Change of the UK government most recently. Earlier in your career you were Director General of Strategy, Information and Pensions at the Department for Work and Pensions. What other experience do you bring to the ECA?

Phil Wynn Owen: I also have wide-ranging general management experience. I have been on the management board of major government departments and I also served as deputy chairman of a regional hospital.

As regards the job here, I am still learning exactly what it entails, but I can see that it will be a fascinating mix of being the best possible collegiate Member that I can, working closely with my fellow Court Members, adding value to the leadership of the reports that I am assigned to work on, but also helping with other reports or working across Chambers.

And I think that for Court Members there is also a very important external representational role. As a Court Member, I should be facing outwards and dealing with stakeholders across the Union and with the other key institutions.

R. C.: How will you face the problem of the many languages in the EU?

Phil Wynn Owen: I am using the opportunities in place here at the Court to improve my French. German is my second language, which I will also work on. One of my ambitions is to make sure that I improve three of my languages, that is including English, to a much better level.

R. C.: Will you also take part in audit missions and performance audits?

Phil Wynn Owen: My understanding is that Members do go on missions associated with the studies that they are working on. When I appeared before the Committee on Budgetary Control of European Parliament (CONT), I said that I have been involved in the commissioning and receiving of many independent reports to a national Member State government. So I have some experience of designing and managing independent reports of a similar nature to performance reports, although

I am not a qualified auditor. I have also been audited, sat on various audit committees and I was trained in financial and management accountancy when I was at the London Business School.

R. C.: You also were involved in building a consensus on impact assessment procedures which are part of the Commission's better regulation reforms. What is the difference between impact assessment and performance audit? Can the ECA contribute with its advice to the Commission's impact procedures?

Phil Wynn Owen: One material difference is that impact assessments, if done well, are ex ante. They are prepared by responsible officials in the Commission or the Member State as they are developing policy to inform their own and the political decision-makers judgements about what is best to do. They also serve as a platform for consultation.

The Commission has made great progress in the past twelve years in developing its impact assessment methodology. Before, there was little or nothing. I am proud of having taken part in a collaborative Member States' exercise called the "Mandelkern report", which was independent from normal Union structures and contributed to persuading the Commission to adopt impact assessments twelve years ago.

As ever with such mechanisms there is still a long way to go. I think the ECA made an interesting and important contribution a few years ago when it published a report on how impact assessments could be improved. We are undertaking a follow-up, which is often a good thing.

Performance audit is usually not ex-ante but ex-post. There is an interesting debate about whether more could be done alongside the early implementation of a policy, but I think we need to take great care that audit does not intrude into political matters.

I am glad you have made the connection between impact assessment and performance audit. If you have a fully established impact assessment process to inform policy-making, when an auditor comes to conduct a performance report, one of the first things he or she should look for is the impact assessment, so as to assess how the policy has performed against it.

If the Commission improves impact assessments, so they become a live policy-making tool, that will further contribute to good governance. There are people both in the Commission and in the European Parliament who share that vision of a cycle of improved policy-making, supported by impact assessments and independent performance audits.

R. C.: Earlier in your career, you were a Director General at the Department for Work and Pensions. Which are the greatest structural dangers for the pension schemes of the Member States?

Phil Wynn Owen: My work on pensions' reform, as well as my work on the board of a regional hospital, showed me what a huge public policy challenge the ageing society is. I am always fascinated, in an apolitical way, by the big challenges of public policy and by inter- and intra-generational challenges like ageing or climate change.

I think that public audit has a very important role on these big issues. It can help to take a long view, by helping to encourage transparency in the costs and the benefits, as well as the contingent liabilities that exist. There is also an issue for the auditor about identifying and highlighting best practice.

R. C.: The structural problems are not only linked to the ageing population. They are also linked to people losing their jobs.

Phil Wynn Owen: One of the biggest problems in the EU is youth unemployment. So I am delighted that the ECA is going to do a performance study on this. For young people in the EU, the chance of having, both individually and collectively, adequate pensions as they grow older is a very real problem. They naturally worry about today, but pensions will be a stored problem for them if they have not been able to make adequate contributions.

What I did in the Member State I know best was to help politicians legislate to encourage a behavioural change through so-called “auto-enrolment”. Through this legislation, people are automatically enrolled into a pension scheme when they start a job rather than having to opt in to a pension. They have to opt out. So more people should now start to save for a pension.

R. C.: The other big world issue you mentioned is climate change.

Phil Wynn Owen: I have been interested in climate change and environmental matters for many years, as a professional, apolitical civil servant. I first learnt about environmental impact assessment at the London Business School. When I was tax team leader at our Finance Ministry, I helped introduce so-called ‘green taxes’ and more recently I led, as a senior official, on climate change matters. I was lucky enough to play a small part in the international climate change negotiations in Durban and Doha.

These are issues that cross all generations and on which we need to do our best. I am pleased to have already seen a lot of relevant work at the Court, a number of reports in various stages of preparation that are looking at environmental issues and climate change.

R. C.: How did you experience the hearing in the European Parliament?

Phil Wynn Owen: I have been to many hearings in national parliaments, and I am used to discussing audit matters in challenging circumstances. This was the first time I had appeared before the European Parliament. It was different because eventually there was going to be a vote about me. It was an interesting experience, one from which I hope the ECA and I will benefit over time because I am very conscious that part of my role is to represent the ECA on the reports I will be leading on to the European Parliament.

R. C.: A last personal question, Mr Wynn Owen. You are Welsh, aren't you?

Phil Wynn Owen: My parents were from the western tip of Wales and they spoke Welsh. I was brought up in England and, unfortunately, I do not speak Welsh. But I have inherited a passion for Wales and for Welsh rugby.

EU PUBLIC PROCUREMENT SEMINAR

29 January 2014

By Rosmarie Carotti

In view of an ECA performance audit on public procurement, **Mr Lazaros S. LAZAROU**, ECA Member of Chamber II organised a seminar in the ECA, to exchange views between high-rank representatives of the ECA and the Commission. Speakers included the Accountant General of the Republic of Cyprus, the Head of the Treasury (The competent authority for public procurement in Cyprus), **Ms Rea Georgiou**, and a representative of the Auditor General of the Republic of Cyprus, **Ms Chrystalla GEORGHADJI**.



From left to right: Gabriele Cipriani, Director; Lazaros S. Lazarou, ECA Member; Vítor Caldeira, ECA President; Rea Georgiou, Accountant General of the Republic of Cyprus; Stelios Kountouris, Head of the Public Procurement Directorate, Treasury of the Republic of Cyprus; Philippos Katranis, Senior Officer, Public Procurement Directorate, Treasury of the Republic of Cyprus

The context

This seminar was organised in order to discuss the EU, the national and the audit perspectives of public procurement. Next to high-rank representatives from the ECA and the Commission, Ms Rea Georgiou, Accountant General of the Republic of Cyprus, and her delegation participated in an exchange of views on the implementation and audit of public procurement procedures (see interview in annex).

EU public procurement directives cover a significant proportion of all EU public spending on goods, works and services purchased from the private sector.

On 15 January 2014 the European Parliament adopted revised EU directives on public procurement. The directives will enter into force 20 days after publication in the Official Journal of the European Union. After this date, member states will have 24 months to implement the provisions of the new rules into national law.

Public procurement policy is a fundamental pillar of the single market

ECA President Vítor CALDEIRA introduced the seminar and stressed that in the EU context, public procurement policy is seen as a fundamental pillar of the single market which also makes a significant contribution to the achievement of many of the Union's economic, environmental and societal objectives.

Devising effective public procurement procedures – let alone applying them – is a major challenge. They have to promote transparency, fair competition, and best value for money whilst minimising the administrative burden on public authorities and private businesses.

Auditors have an important role to play. Audits can assess whether the rules are followed and what results are achieved. In the case of the new directives, the ECA submitted its views to the public consultation process based on its experience on auditing their application in the context of implementing the EU budget and more specifically stressed the need to keep procurement procedures as simple as possible.

A performance audit on the management of public procurement



Mr Lazaros S. Lazarou, Member of the ECA, reminded that according to the European Commission's 2011 public procurement indicators, 19% (€ 2 406 bn) of the gross domestic product of all EU Member States is spent through public procurement procedures.

With regards to the EU budget, in the policy group "Structural policies, energy and transport", with the ERDF, CF and ESF under shared management, most of the funds are spent through public procurement procedures. As such, the absorption of EU funds and the achievement of EU policy objectives rely on the efficient application of public procurement rules, impacting on growth and job creation and the sustainability of public finances.

According to the Court's 2012 AR, the most likely error rate with regards to the legality and regularity of the € 140.9 bn EU expenditure subject to audit is 4.8%, up from 3.9% in 2011.

According to the same AR, 29% of the most likely error rate, is due to serious failures to respect public procurement rules with 22% of the MLE attributed to ineligible projects/activities or beneficiaries.

These problems are more prominent in the policy group under the responsibility of Chamber II. In Chapter 5 of the AR 'Regional policy (ERDF/CF), energy and transport' the MLE was 6.8% and the frequency of error was 49%. Errors of non-compliance with public procurement rules accounted for 52% of the MLE.

The concerns on public procurement are not just the concerns of the ECA and the National SAIs and Audit Authorities. They are also the concerns of the Commission, the Council and the European Parliament and Member States.

The ECA will contribute in the effort to improve the management of public procurement through a performance audit. It plans to publish a Special Report in 2015. ECA Chamber II is currently working on the preparation of an audit planning memorandum aiming to identify, examine and analyse more closely the causes of the problems and their consequences and possible remedies as a basis for recommendations.



From left to right: Andreas ANTONIADES, Attaché, CY Cabinet of the European Court of Auditors, Stelios KOUNTOURIS, Head of the Public Procurement Directorate of the Treasury of the Republic of Cyprus, Rea GEORGIU, Accountant General of the Republic of Cyprus, Lazaros S. LAZAROU, Member of the European Court of Auditors, Andreas LAMBRIANOU, Commissioner of Internal Audit of the Republic of Cyprus, Philippos KATRANIS, Senior Officer of the Public Procurement Directorate of the Treasury of the Republic of Cyprus, Louiza AVRAAMIDES, Audit Officer of the National Audit Office of the Republic of Cyprus, Constantinos PHOKAS, Senior Officer of the Internal Audit Service of the Republic of Cyprus



Presentation by Mrs. Rea GEORGIU, Accountant General of the Republic of Cyprus

Cyprus' experience is a proof that, by putting in place a sound ex-ante control system on Public Procurement for EU funds, minimisation of misapplication of Public Procurement procedures can be achieved. A competent Authority on Public Procurement established in each EU Member state, could be a helpful arrangement for creating the right environment on Public Procurement, by providing assistance and guidance to Contracting Authorities for better, more effective and more efficient application of the legal regime and for achieving policy objectives.

Presentation by Mr. Philippos KATRANIS, Public Procurement Directorate, Treasury of the Republic of Cyprus

In Cyprus there is an interoperable, all-in-one system in place, that covers the full spectrum of a competition, available to all Contracting Authorities, for all Public Procurement procedures and all types of contracts, ready to uptake the provisions included in the new Directives. Cyprus' experience demonstrates that through the use of tools for Collaborative Procurement, SME participation, Social and Environmental considerations and value for money purchasing is an achievable combination.





Presentation by Mr. Stelios KOUNTOURIS, Head of the Public Procurement Directorate, Treasury of the Republic of Cyprus

The new EU Directives, once in place, will help Contracting Authorities to make better competitions and will enhance SME participation, Social and Environmental purchasing and give a push to innovation in Public Procurement. However it's never too early to start preparing, due to a lot of issues that need to be addressed in transposing the new Directives.

Here is the timetable for the Cyprus law enforcement of EU directives on PP:

Treasury of the Republic of Cyprus Public Procurement Directorate		eP
Timetable		
ACTIONS	TIMEFRAME	
OPEN SEMINAR ON P.P REFORM PACKAGE	MID-MARCH 2014	
LEGISLATIVE BILLS DRAFTING	END-APRIL 2014	
INTERNAL DISCUSSION	MID-MAY 2014	
PUBLIC CONSULTATION	END-JUNE 2014	
COMMENTS INCORPORATION	MID-JULY 2014	
LEGAL VETTING	END-NOVEMBER 2014	
SUBMISSION OF BILLS TO THE COUNCIL OF MINISTERS	MID-DECEMBER 2014	
LAYING OF BILLS BEFORE THE HOUSE OF REPRESENTATIVES	MID-JANUARY 2015	
LAWS' ENTRY INTO FORCE	IN 2015	

Summary by Mr Joaquim NUNES DE ALMEIDA, Director, Public Procurement, DG MARKT, European Commission

According to the last annual report of the European Court of Auditors on the implementation of the 2012 budget, serious failures to respect public procurement rules accounted for 52 % of the error rate estimated by the Court. DG MARKT's presentation at the seminar demonstrated how the new directives on public procurement and concessions can contribute to reducing the high error rate and fraud and corruption in public procurement. Measures include increased monitoring, standardisation and electronic communication and a definition of conflicts of interests. The new Directives are expected to enter into force in March 2014. Member States will then have two years for transposition with the assistance of the Commission.



Summary by Mr Manfred KRAFF, Deputy Director General and Accounting Officer, DG BUDG, European Commission

The revision of the Financial Regulation (FR) and its Rules of Application (RAP) in 2012 generated little change in the procurement landscape. It allowed however introducing a few simplifications, especially regarding low value procurement and financial guarantees. More are to be expected with the future alignment on the revised directives.

The Commission's environment in internal policies is currently assessed as rather low risk, owing to a clear regulatory framework, efficient transparency tools and effective



management and internal control systems. This helps the institution building up assurance that its operations are legal and regular while at the same time delivering value for money.

DG Budget supports this whole process by providing guidance to all services, training, templates and first of all interpretations of the FR/RAP that aim at finding the right balance between compliance with the rules, operational needs and the costs and benefits of possible actions.

In this context, the new DAS methodology of the Court, which foresees quantifying at 100 % any serious procedural error, leads to two major risks: a possible increase of error rates in so far low-risk areas (which could be caused by one big and statistically non-representative procedure or contract) and a possible considerable impact of systemic errors (without Authorising Officers by Delegation being even necessarily responsible for them, especially if linked to diverging interpretations of the rules between the Court and the Commission's central services). Therefore it appears urgent to create an open space for discussion of potential diverging views as reflected especially in DG Budget's procurement Vade-Mecum and guidance notes or Court's observations.



Summary by Louiza AVRAAMIDES, National Audit Office of the Republic of Cyprus, on behalf of Ms Chrystalla GEORGHADJI, Auditor General of the Republic of Cyprus

The Audit Office of the Republic of Cyprus, in response to the constantly increasing need and demand of the citizens for the best possible management of public money, and acknowledging the fact that (a) auditing should be complemented by providing advice and (b) one of the most critical areas for preventive auditing is the assignment of public tenders, has acted so that in the Cypriot legislation be included provisions which would give the Audit Office the possibility of performing satisfactorily and efficiently the preventive audit work necessary.

The main provisions which give the power to the Audit Office of Cyprus to perform this preventive audit work are the following:

- (i) The establishment of a section for the audit of public tenders, made up of staff including engineering specialisations.
- (ii) The inclusion of a representative of the Audit Office in the appropriate decision making bodies for the assignment of public tenders, as an observer, with the right to express his/her comments/suggestions.
- (iii) The submission to the Audit Office of copies of the tender documents and relevant estimates of the cost, at the time of the announcement.
- (iv) The submission of comments/proposals to the contracting authorities, on the content of the tender documents.

From our experience to date, it is clearly evident that our involvement as observers in the tendering procedure was tremendously beneficial.



Summary by Martin WEBER, Head of Unit of EERDF, Transport and Energy, ECA

Public procurement errors are recurrent and persistent.

- Three quarters of all errors in public procurement occur in the tendering phase
- Less errors in the pre-tendering phase and in the contract management phase

The errors show the need to improve management and control systems in Member States, The control activities need to cover the entire procurement cycle and not only the conduct of the tender.

ECA opinion 4/2011 on the Commission's Green paper on the Modernisation of Public Procurement Policy:

- recurrent problems of non-compliance are related to weak implementation of existing rules (rather than overly complex legal provisions) and that there is still substantial room for improvement at implementing level.
- some improvements could be made to the EU Directives to reduce administrative burdens for both contracting authorities and bidders; but this should not be done at the expense of the key principles of equal access, fair competition and efficient use of public funds.

Summary by Jeroen JUTTE, Head of Unit, DG EMPL, European Commission

The European Court of Auditors has, over the last years, identified a weakness in the management verifications executed by Member States. As a result many errors found by the Court should have been detected and corrected by Member States before certification.

Within the context of last year's Court recommendation on this issue (chapter 6), DG EMPL has undertaken a number of thematic audits. The information from these audits has been complemented by our experiences from regular audits, and has been brought together in a short report. The report identifies in some detail the issues, the root causes, and presents recommendations on how Member States can improve the situation.



Presentation by Mrs Lena ANDERSON PENCH, Audit Director, and Pascal BOIJMANS, Head of Unit, DG REGIO, European Commission

Commission's preventive and corrective actions to improve public procurement in Cohesion Policy have included training, guidelines and substantial financial corrections. These have helped Member States to improve their practices.

Further improvement is though needed as public procurement continues to be a risk area for the implementation of the Cohesion Policy.



The Commission has recently made a step forward on simplification and harmonisation by adopting new public procurement directives and harmonising financial corrections guidelines for all shared management areas.

Ex-ante conditionality is another essential new feature in the 2014-2020 legal framework which will lead to improved administrative practices and fewer errors in Member States.



Interview with **Ms Rea GEORGIU**,
Accountant General of the Republic of Cyprus

By **Rosmarie Carotti**

Ms Rea Georgiou, Accountant General of the Republic of Cyprus

R. C.: Ms Georgiou, you spoke about public procurement in Cyprus and specific controls for EU funded projects. Do the new EU directives on public procurement apply only to EU funded projects?

Ms Rea Georgiou: The directives cover the whole spectrum of purchases by any public and wider public sector authority, irrespective of the origin of funding (i.e. national or EU funds).

The adaptation of the directives is compulsory for the Member States of the EU and they all have to transpose those directives into their national laws and prepare regulations in order to ensure that the provisions of the directives are applied correctly in their organisations.

R. C.: The tenders need to be made public in the 28 Member States, but what about worldwide tenders?

Ms Rea Georgiou: Although there is no requirement for worldwide publication of tenders, once a tender is out, and above the EU threshold, it is published in the EU Official Journal and the Tenders Electronic Daily (TED) rendering the tendering opportunity visible worldwide. Furthermore, there is a Government Procurement Agreement (GPA), that requires Member States to accept tendering by tenderers from other countries of the world that are part of this GPA Agreement.

R. C.: Is it correct to say that no accounting system is built to prevent mafia and corruption in tendering?

Ms Rea Georgiou: Transparency rules, equal treatment rules, the openness of the competitions are principles of public procurement that aim at minimising infiltration of corruption and organised crime in tendering. It is also important to complement provisions of laws and regulations with ethical standards for procurers, training and a supporting infrastructure for carrying out their tasks. In Cyprus we have a code of ethics for our staff, we provide training and support to contracting authorities and we feel that it is a step towards the right direction. In addition, there are provisions in the legal framework for protecting the procedures from illicit conduct and conflicts of interest. However, it would be utopic to claim that any system in any field is 100% capable of eliminating corruption, as it is a trade off between the level of controls and the administration burden/cost on the procedures.

R. C.: How can you exclude suspicious tenderers?

Ms Rea Georgiou: Tenderers have to sign a self-declaration as part of the tender they submit stating that they are not involved whatsoever in organised crime, illegal activities, child labour etc. as provided by the EU directives. According to the terms of the contract, before signing the successful tenderers have to

present the corresponding certificates to prove the above.

We had several; cases where economic operators produced false certificates which after further investigation were eliminated from future competitions and the matter was reported to the police for legal action.

R. C.: Is there a risk in EU-wide procurement that low-income countries get an undue advantage because they can provide the same quality at a lower price?

Ms Rea Georgiou: The public procurement framework enables contracting authorities to purchase on a value for money basis. Technical as well as financial criteria are set that describe what is considered to be the most economically advantageous tender in a transparent manner. If a tenderer is capable of providing the best combination of quality and price he is awarded the tender. In Cyprus participation in public procurement competitions by economic operators originating from countries outside the EU is restricted to EAA countries or countries that have signed and ratified the GPA Agreement.

R. C.: The Commission agreed to limit the directives to the identification of the tasks to be fulfilled while leaving decisions on the internal organisation to Member States. What is your suggestion in terms of oversight?

Ms Rea Georgiou: In public procurement there is a need for an effective oversight system. This can be achieved at a national level, but it can be enhanced by a structured network at a European level so as to benefit from standards and guidance for the national authorities. This will lead to an effective oversight of contracting authorities in a more consistent way between and within

DESIGN FAILURES IN THE EUROZONE - CAN THEY BE FIXED?

By Jacques Sciberras, Head of Private Office

Mr Paul DE GRAUWE from the London School of Economics gave a lecture on the governance of the euro zone on 27 January 2014.



From left to right: Zacharias Koliias, Director; Dr Louis Galea, Member of the Court; Paul De Grauwe, Professor at the London School of Economics; Dieter Böckem, Professional Training

The presentation was introduced by Mr Louis Galea, Member of the ECA.

Professor De Grauwe resumed in a lively manner many fundamental elements described in his academic papers. He started with a short history of capitalism which he described as an inherently unstable system characterised by periods of optimism and periods of pessimism with self-fulfilling dynamics. The waves of optimism and pessimism (“animal spirits”) are generated by the correlation of biased beliefs. The banking sector plays an important role in such dynamics. The last ten years have shown how banks in fact fuel the booms and recessions.

To mitigate the negative effects of recessions, central banks and government fiscal policy have a role to play as a ‘shock absorber’ or stabiliser to the financial system. Central banks act as a lender of the last resort, government budget as an automatic shock absorber.

Banks and governments in a deadly embrace

Central banks in capitalist systems were initially created to deal with the instability. They had a double task – to be a lender of last resort to banks (and counter a run on banks), and to act as a lender of last resort to governments (to counter a run in government bond markets). Originally central banks did not have the objective of ensuring stability in consumer prices.

These functions of central banks are necessary because banks and governments face a similar problem - that the maturity structure of the assets and liabilities is imbalanced.

Banks borrow short and lend long; the assets are long term. Therefore trust is important. As soon as distrust prevails, the bank collapses. That makes banks fragile.

Similarly, government liabilities are mostly bonds with fixed maturity terms. On the asset side, however, assets such as infrastructure and the power to impose claims on taxpayers are not sufficiently liquid or responsive in times of crisis.

Banks and governments hold each other in a deadly embrace: when banks collapse, sovereigns are drawn into trouble. Conversely when sovereigns are in crisis, banks are affected severely.

The need for government budgets as shock absorbers

During recessions budget deficits increase automatically, output and income decline and the cost of automatic social welfare stabilizers (unemployment and poverty related programmes) increases. Governments face three constraints – debt ceilings which prevent fiscal policy to reverse a downward trend, unsustainable interest rates for market financing of debt, and the asymmetric impact of severe austerity measures on potential growth. Some of these constraints are the result of the current approach in the Eurozone.

Originally, central bank and government budgets provided the necessary stabilisers and were organised at a national level. The Eurozone constrained the use of the budget as a stabiliser at the national level, has not transposed this function at an EMU level, and transferred central bank functions to the ECB.

Within the Eurozone, the ECB provides a single monetary policy to a very asymmetric group of Member State economies. However it lacks a central EU level fiscal capacity to replace what was previously possible at a national level. As a consequence the European Monetary Union (EMU) exacerbates the national booms and busts, leaving governments more fragile and less able to manage crisis situations.

Most aspects of macroeconomic policy remain managed at national level. This system allows for some countries to boom whilst others face recession. The EMU exacerbates this divergence because when the ECB sets one interest rate (based on an average), the interest rate is too low for the boom countries and too high for the countries in recession.

Governments within the EMU cannot guarantee to bond holders that cash always will be there to redeem bonds at maturity. This uncertainty creates distrust. In contrast, stand-alone countries, like the UK, that afford to give an implicit guarantee face less severe market responses for similar crisis situations. Eurozone states are more prone to being driven into default by financial markets than stand-alone countries.

At the same time many countries had to implement austerity and this made the recession more intense.



The governance issue and the future

Three are the levels at which there is a need to intervene:

- In the short run: ECB
- In the medium run: macroeconomic policies
- In the long run: fiscal union consolidating national budgets and debt levels.

The ECB

The announcement of the willingness of the ECB to use Outright Monetary Transactions (OMT – purchases of bonds in times of crisis), had an important role in restoring confidence of the markets in the Eurozone. This occurred even though OMT have not yet been used.

For Professor De Grauwe a central bank has to provide liquidity in times of crisis. This does not necessarily create inflation and is important to avoid spiralling deflation. On the question of whether the intervention creates a moral hazard, the answer is yes, as the beneficiary of the money will do less to avoid the risk. However, he argues that this risk is no different from that of moral

hazard in the banking sector. It would be a mistake if the central bank were to abandon its role of lender of last resort, to either the banking sector or to governments, because there is a risk of moral hazard alone.

The way to deal with moral hazard is to separate the role of liquidity provision from that of supervision. The latter is the role of the Commission, rules are in place to constrain governments from unsustainable levels of debt, and the supervision needs to be effective.

In terms of the fiscal consequences of central bank support to governments, buying assets can of course lead to losses, but a central bank should not worry about the profit and loss balance, it should worry about financial stability. In fact, assets and liabilities of the central bank cancel out with those of the government when consolidated.

How should we organise macroeconomic fiscal policies?

Professor De Grauwe argued that the right approach has not been followed up to now. The countries in the North have become creditors of the system and the countries in the South have started a process of internal devaluation.

The system requires a disproportionate adjustment from debtor countries and not from creditor countries which should share part of the responsibility for the outcome. Such an asymmetric approach exacerbated the recession and increased the cost of the recession for debtor countries, led to severe austerity measures that could have been avoided, and evidence indicates that austerity measures have contributed to worsening deficit ratios .

Professor De Grauwe's argument is that with a systemic approach it would have been possible to reduce the cost of austerity in the debt of southern Europe countries if the northern European countries had been willing to provide a stimulus in the economy by increasing their spending.

A more symmetric system for macroeconomic adjustments is necessary. To this end, the EU has to evolve from a monetary union into a political and fiscal union as national government budgets and deficits are at the core of the fragility of the current system and the key to better responses in the future. The consolidation of national budgets and debts will protect Member States from the effects of volatile financial markets.

This has important implications of transfer of national sovereignty to the European Union on fiscal matters. To date, there is no willingness to move in this direction, but in the long run such a move would be necessary to ensure sustainable and fair responses to such economic shocks.

Conclusion

Professor De Grauwe argues that a fiscal capacity which can raise finance through the issuance of Eurobonds to respond to sovereign debt crisis situations would be a strong instrument to assure markets and restore confidence. He recognises the risk of moral hazard that Eurobonds may bring about but this would need to be policed through a different mechanism for controlling the level of sovereign debt under sustainable levels.

A complimentary step would be further coordination of budgetary and economic policies, as too much is still done at the national level, despite the Commission's macroeconomic imbalance procedure.

Professor De Grauwe's thesis is that the EU cannot rely solely on the ECB in times of crisis. Budgetary discipline is a necessary component, the fiscal compact is part of it, but this is not sufficient

A common fiscal capacity requires a strong political union. Failure to address the current weaknesses might jeopardise the long term sustainability of the Euro as a common currency for the Eurozone.

PRESENTATION OF THE 2012 ANNUAL REPORTS IN SLOVAKIA

Bratislava, 29 January 2014

By **Branislav Urbanič**, Head of Private Office

The presentation of the European Court of Auditors' 2012 Annual Reports, focusing on the Annual Report on the implementation of the EU budget, took place in Bratislava on 29 January 2014



Standing: Dr. Ladislav Balko, Member of the Court

Mr Balko, together with the Head of his Private Office, Mr Urbanič, traditionally first visited the Supreme Audit Office (SAO), and delivered a presentation at a meeting chaired by the President of the SAO Mr Ján Jasovský and attended by some 50 staff members at the SAO headquarters in Bratislava and by many more via videoconference in the eight SAO regional offices. Mr Balko presented the main messages and findings of the Annual Report, explained the context in which the increased error rate needs to be reflected upon, and stressed the distinction between error and fraud. He also referred to the instances where the Annual Report mentions Slovakia, concerning the recoveries and corrections in Chapter 1 and the sample of Member States visited in the context of the audit of the legality and regularity of transactions and the effectiveness of the systems in Chapters 5 and 6. Then, Mr Balko and Mr Urbanič answered the participants' questions, which concerned the Court's role in the process of establishing the EU budget, the budgetary principles and EU Financial Regulations, EU external aid, and the distinction between the error rate and the error frequency.

On the same day, Mr Balko presented the 2012 Annual Report on the implementation of the EU budget at a meeting of the National Council of the Slovak Republic (the Parliament) Committee on European Affairs. The presentation sparked lively interest among the Members of Parliament, and Mr Balko answered many questions on various issues. These concerned EU spending on research (the new EU research framework programme Horizon 2020, the international thermonuclear experimental reactor ITER, the Commission's Joint Research Centre, whose new Director General Mr Vladimír Šucha comes from Slovakia), the focus of EU spending programmes on performance (SMART criteria, milestones, performance indicators), the trend of an increasing error rate after 2009, the distinction between the error rate and the error frequency, and the Court's DAS approach, including the method for sampling the transactions to be audited. The Members of the Committee appreciated the comprehensive answers and explanations provided, and the Committee then adopted a resolution taking note of the Annual Report.

EPSAS (EUROPEAN PUBLIC SECTOR ACCOUNTING STANDARDS) – THE FUTURE OF PUBLIC SECTOR ACCOUNTING?

By Mila Strahilova, Cabinet Attaché of Dr Harald Noack

On Tuesday 11 February 2014, the Representation of the State of Hesse to the EU organised a panel discussion entitled “EPSAS – the future of public sector accounting?”. The members of the panel were **Dr Thomas SCHÄFER**, Finance Minister of the State of Hesse; **Dr Harald NOACK**, Member of the European Court of Auditors; **Mr Michael THEURER** MEP, Chairman of the Committee on budgetary control; **Dr Inge GRÄSSLE** MEP, Member of the Committee on budgetary control, **Professor Dennis HILGERS** from the University of Linz; **Dr Alexandre MAKARONIDIS**, Head of Unit at Eurostat; and **Thomas MÜLLER-MARQUÉS BERGER** from Ernst & Young



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From left to right: Mr T. Müller-Marqués Berger, Dr I. Gräßle, Dr T. Schäfer, Mr. G. Gehrt (presenter), Dr H. Noack, Mr M. Theurer, Dr A. Makaronidis, Prof. D. Hilgers

Dr Thomas Schäfer welcomed the guests, and recalled that in 1998 Dr Noack, then Secretary of State in the Ministry of Finance of the State of Hesse, had modernised public sector accounting practices in Germany by introducing double-entry financial management for the first time in a German state. Since 2009, the state of Hesse had published an opening balance with the aim of increasing transparency and public sector accountability.

Dr Schäfer described the difficulties affecting the conversion of accounting practices in the public sector. He emphasised that two difficulties in particular should not be overlooked. Firstly, the idea that the process of conversion took only five years was unrealistic. Secondly, staff sometimes showed resistance to working with the new accounting standards. Dr Schäfer stressed that there were also numerous practical issues which required attention. The state of Hesse, for example, possessed numerous works of art which needed to be valued.

Dr Noack started his presentation by emphasising that he would be expressing his own views and ideas, and that these might not reflect the position of the European Court of Auditors.

Dr Noack continued by expressing concerns that expectations linked to EPSAS were very high. He cited the EPSAS website, which linked public sector financial management to the prevention of future public financial crises. Dr Noack stated that arguments like this were not valid, because financial crises could not be avoided by the sole means of accounting policy.

The question, said Dr Noack, was whether Europe was prepared to harmonise public sector accounting at all levels across all EU Member States. In order to answer that question, he went on, it was important to first determine the extent to which the need to do so was real: was EU-wide harmonisation in this area necessary, or was each EU Member State able to implement its own requirements for itself and its regions in line with the principle of subsidiarity?

Secondly, Dr Noack went on, the costs of conversion should be borne in mind. The European Commission had estimated that the costs conversion would be up to 0.1 % of each Member State's nominal GDP – up to 2.65 billion euros for Germany alone. Dr Noack said that this was an important aspect which needed to be taken into consideration.



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Horst Wagner
Dr H. Noack

Thirdly, Dr Noack expressed concerns about the nature of the discussion surrounding EPSAS. He drew particular attention to the risk that the discussion in favour of EPSAS might largely be being driven by stakeholders representing the profit-driven private sector.

The panel discussion raised questions related to the transparency of the accounting information and its use for policy making, the need for fiscal consolidation, the costs of democracy and the cost-benefit rationale.

The audience enjoyed the well organised event by the Representation of the State of Hesse to the EU. They appreciated the lively discussions, as well as the interesting and fruitful arguments brought forward by the panel in this very important policy field.

BRIDGE FORUM DIALOGUE : UPHOLDING UNION VALUES IN TIMES OF SOCIAL CHANGE : THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Summary¹ of the academic lecture given by **Mr Koen LENAERTS**, Vice-President of the Court of Justice of the European Union on 16 January 2014. The event took place in the premises of the Court of Justice in Luxembourg and was introduced by **Mr Gaston REINESCH**, Governor of the Banque centrale du Luxembourg and President of the Bridge Forum Dialogue.



Professor Koen Lenaerts, Vice-President of the Court of Justice of the European Union

The European Court of Justice (ECJ) in Luxembourg is a supranational court established by the EU Treaties. If a legal dispute in a Member State gives rise to issues under EU law, the national judge may, and, in some cases, must, refer the case to the EU Court of Justice for a preliminary ruling. The ECJ also decides cases brought against the EU institutions for annulment of their actions and cases brought against Member States for failing to fulfil their Treaty obligations.

By Rosmarie Carotti

Continuity and change

It is Professor's Lenaerts conviction that the European Union must remain faithful to its founding values whilst allowing room to adapt to societal change. He drew an analogy with the designs of Euro banknotes and coins saying that "Just as the euro banknotes bear images which illustrate the fact that the European Union is committed to upholding its shared, founding values whilst allowing room for societal change, pluralism seems to be the message conveyed by the images on the euro coins. On one side, there is a map of Europe which is present in all euro coins. On the other side, it is for each of the 18 Member States whose currency is the euro to decide how it wishes to express its identity. And yet, both sides are minted together into a single, coherent existence."

¹ The full text of the lecture is available at www.forum-dialogue.lu

The European Court of Justice is daily called upon to rule on all areas of EU law in a changing political, economic and scientific environment. It has to safeguard the shared values of the European Union while adapting to new circumstances. The ECJ's law is a case law based on common principles but without the rigidity of absolute law

Professor Lenaerts quotes the *Pringle* case in which the ECJ was called upon to examine the compatibility with the Treaties of the establishment of a financial stability mechanism such as the European Stability Mechanism (the 'ESM'). It was also asked to determine whether the ESM Treaty was compatible with the Treaties and, in particular, with the no-bail out clause laid down in Article 125 TFEU.

The Court of Justice replied to both questions in the affirmative. In so doing, it stressed the importance of the EU value of solidarity which, as Robert Schuman rightly foresaw, is an inseparable component of the European integration project. However, that value had to be adapted to the difficult economic context in which we live. This meant that the financial assistance granted by the ESM had to comply with the no-bail out clause. Thus, solidarity, as a founding value of the Union, was interpreted by the Court of Justice in light of both "continuity and change".

Mutual influence of societal change at EU and national level

The European Union may now exercise its powers over areas of activity which had traditionally been reserved to the nation state. Matters such as criminal law or family law are no longer the exclusive preserve of national sovereigns. In the area of freedom, security and justice, the EU legislator now takes policy decisions that are likely to affect the everyday lives of European citizens.

On the other hand, national societies are not only the passive recipients of change and may also serve as the initiators and promoters of it as the progressive empowerment of the European Parliament shows.



ECA Members in the audience

The role played by the EU law in this parallel evolution

Professor's Lenaerts personal interest lies in the role that EU law has played in this parallel evolution.

EU law may, he says, facilitate change where the EU political process agrees to it. At EU level, social consensus is generally expressed through the Council and the European Parliament which are the EU political institutions. Conversely, if social consensus is lacking, political deadlock may operate as a shield against unwanted winds of change.

The existence of social consensus is also an important factor when interpreting the law of the Union. In this context, Professor Lenaerts draws a distinction between 'constitutional consensus' and 'legislative consensus'.

Constitutional consensus

Constitutional consensus leads to the adoption of EU norms of the highest rank (primary EU law – expressed in the Treaties), while legislative consensus is an integral part of the daily functioning of the European political process. It also goes without saying that ‘legislative consensus’ must comply with ‘constitutional consensus’.

Norms which reflect European constitutional consensus bring stability to the European integration project.

Striving for European constitutional consensus does not, however, operate as a hindrance to social change. On the contrary, where a Member State departs from norms that implement values which are recognised as all-European, those very norms that have been breached may in fact bring about change to the society of the defaulting Member State.

In the absence of constitutional consensus, the Court of Justice will not engage in judicial law-making by creating a new constitutional norm, such as a new fundamental right. For example, there is no European constitutional consensus as to whether same-sex couples should have a fundamental right to marry and if so, whether same-sex marriage should stand on an equal footing with heterosexual marriage. The ECJ will therefore opt for a prudent approach and defer, where appropriate, to the solutions adopted by the constitutions of each Member State.

However, the absence of constitutional consensus regarding the existence of a fundamental right does not mean that Member States enjoy absolute discretion in making their social choices. In exercising such discretion, Member States must comply with other norms embedding EU values. National choices are thus circumscribed by EU values.

Legislative consensus

Furthermore, in order to achieve legislative consensus, the EU political institutions may deliberately decide that some matters are best left unresolved. In such cases, litigation will inevitably lead to solving questions that the political process did not address. The European Court of Justice for example did not define the concept of a “human embryo” leaving that question to judicial interpretation.

National diversity

Whilst it is true that values such as democracy and the rule of law are recognised as all-European, the European integration project does not exclude national diversity. Pluralism means that each national society remains free to evolve differently according to its own scale of values. Value diversity must, where possible, be respected and preserved by the European Union.

However, neither unity nor diversity is absolute. The European Union may not deprive the Member States of their own identities. Nor may those national identities jeopardise the European integration project as a whole. The survival of the European Union requires that what brings Europeans together must remain stronger than what pulls Europeans apart. It follows that pluralism is a relative value which must be respectful of a core nucleus composed of the basic constitutional tenets of the EU.

Where a matter falls within the scope of EU law and the EU legislator has not yet determined the precise level of protection that must be given to a fundamental right, it is for the society of each Member State to make that determination. Yet, since pluralism is not an absolute value, the level of protection granted to a fundamental right by a national legal order must comply with any constitutional consensus that exists at EU level.

Conclusion

In summary, the European Union must remain faithful to its founding values. Those values imbue the European integration project with stability.

European values which are the result of a constitutional consensus are embedded in primary EU law. It is essentially for the political process to determine when, and indeed whether, those norms – which require the unanimous consent of the Member States and, where appropriate, of their citizens – should be adopted. Constitutional consensus can also lead to the adoption of general principles of EU law. These principles allow room for flexibility, yet in a context of conceptual continuity between the European Union and its Member States. When discovering a general principle, the Court of Justice serves as a bridge between the constitutional traditions common to the Member States and their shared European values.

National diversity and EU legislative consensus must both comply with values which are regarded as all-European, i.e. those that are the object of a constitutional consensus at EU level. It is this latter consensus that guarantees that all the forces that bring Europeans together are stronger than those that pull them apart.



From left to right: Mr Vassilios Skouris, President of the European Court of Justice, Mr Vítor Caldeira, President of the European Court of Auditors, Professor Koen Lenaerts, Vice-President of the Court of Justice of the European Union and Mr Gaston Reinesch, Governor of the Banque centrale du Luxembourg and President of the Bridge Forum Dialogue

FOOD FOR THOUGHT

Reforming EU audit services to restore investors' confidence

European Parliament issued a press release on 21.01.2014 informing that a draft agreement between Parliament and Council on legislation to open up the EU audit services market beyond the dominant "Big Four" firms and remedy auditing weaknesses revealed by the financial crisis had been endorsed by the Legal Affairs Committee. The draft also aims to improve audit quality and transparency and prevent conflicts of interest and will be put to a vote by Parliament as a whole, probably in April.

Better quality auditing

The law would require auditors in the EU to publish audit reports according to international auditing standards. For auditors of public-interest entities, such as banks, insurance companies and listed companies, the agreed text would require audit firms to provide shareholders and investors with a detailed understanding of what the auditor did and an overall assurance of the accuracy of the company's accounts.

Opening up the EU audit market to competition and improving transparency

The agreed text would prohibit "Big 4-only" contractual clauses requiring that the audit be done by one of these firms.

Public interest entities would be obliged to issue a call for tenders when selecting a new auditor. MEPs agreed on a "mandatory rotation" rule whereby an auditor can inspect a company's books for a maximum 10 years, which may be increased to 10 additional years if new tenders are carried out, and by up to 14 additional years in the case of joint audits, i.e. when a firm is being audited by more than one audit firm.

Independence of non-auditing services

To preclude conflicts of interest and threats to independence, EU audit firms would be required to abide by rules mirroring those in effect internationally. Moreover EU audit firms would generally be prohibited from providing non-audit services to their clients, including tax advisory services which directly affect the company's financial statements.

IN MARCH 2014 THE COURT SAYS:

HELLO TO

GRUBER	Carmen
DIMITROPOULOU	Angeliki
SCHMIDT	Monika
SAIC	Tomislav
PAPADAKIS	Ioannis

GOODBYE TO

KAKOL	Danuta
HOSKOVA	Jana
STRADA	Marco
MÄNNIKKÖ	Marko

FISCAL SUSTAINABILITY ISSUES HAVE BECOME MORE IMPORTANT - LESSONS LEARNT IN THE NATIONAL AUDIT OFFICE OF FINLAND

By Marko Männikkö, senior auditor



Marko MÄNNIKKÖ has been working for the ECA since 2004; recently in CEAD ARR as senior auditor. Between 2007 and 2013 Männikkö was seconded to the National Audit office of Finland within the exchange of officials programme.

Männikkö has been nominated as deputy auditor general for the National Audit Office of Finland, responsible for performance audit from March 2014.

Männikkö has Master's Degrees in Law and in Business Administration; CIA and CFSA certifications and a background as qualified statutory auditor.

The European Court of Auditors and the European national supreme audit institutions (SAI) cooperate at several levels. The exchange of officials is an example of excellent cooperation at working level. This ensures that the knowledge and experience gained through international cooperation is disseminated to all levels of the organisations.

During the exchange of officials between the European Court of Auditors and the National Audit Office of Finland (NAOF) I had the opportunity to work for NAOF in several positions. In this article I am discussing the lessons learned and especially how NAOF is working to ensure that it can add value to public operations in the current economic situation.

Public Auditing and the Fiscal Sustainability

Firstly, NAOF has a clear strategy. Its strategic objectives are based on the principal agent theory. NAOF states that its task is to promote citizens' and other taxpayers' willingness to pay taxes and the functioning of Finnish democracy.

The ISSAI standards recognise a number of different roles for public sector auditing. Public sector auditing contributes to good governance by providing information, by enhancing accountability and transparency, and by supporting performance improvements. The ISSAI standards make a distinction between audit risks in financial audits and performance audits. As separately mentioned, the performance audit risk involves the risk of failing to add value for end users. In the financial audit risk, the focus is on the risk that the auditor reaches the wrong conclusions.

However, when the added value of the external audit (financial or performance audit) is discussed it should always be remembered that all decision-making should be based on reliable information. Thus, for financial audit the added value for users is evident and inherent, although occasionally forgotten. The willingness of any principal to transfer assets to any agent to pursue commonly agreed objectives in the best interests of their principals depends on trust and thus also the audit.

Since 2007, as a result of the financial crisis, fiscal sustainability issues have become more important. Due to the financial crisis there is greater demand for accountability, transparency and reliable information. In practice, it has become much more important to take into account the taxpayers' willingness to accept the increased direct and contingent liabilities, especially in Finland.

In practice, NAOF has defined its audit types more clearly. 2011 the agency has recognized the fiscal policy audit as a separate audit type in addition to the three main types of public-sector audit (financial, compliance and performance audit). The clear objectives of each audit type and audit reports make it easier to take into account the needs of users and the value added.

The fiscal policy audit incorporates financial, performance and compliance aspects regarding the fiscal sustainability issues. In practice Fiscal Policy Audit reports cover compliance with fiscal policy rules, quality analysis of the macroeconomic forecasts underlying Government's fiscal policy, assessment of the attainment of the objectives set for the fiscal policy, transparency of Government's reporting on fiscal policy and assessment of fiscal sustainability reporting.

NAOF as an Independent Fiscal Institution

Fiscal policy audit also has a clear legal basis in NAOF's mandate. The new role for NAOF as an IFI (Independent Fiscal Institution) came into effect on the 1st of January 2013.

By conducting fiscal policy audits, NAOF is responsible for the independent monitoring and evaluation of fiscal policy referred to in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union and in the legislation of the European Union.

The new task includes the assessment of the reliability of the estimates for the structural balance and compliance with respect to the medium term objective, MTO. Many aspects of the IFI task have been covered by fiscal policy audits since 2008, but there are new challenging tasks as well.

As an IFI, NAOF monitors the macroeconomic forecasts of the Ministry of Finance. Monitoring includes continuous benchmarking on how the Ministry of Finance performs with respect to other Finnish forecasters. NAOF also monitors that fiscal policy is exercised in accordance with the MTO. In case of the correction mechanism, NAOF monitors and gives public assessments whether the actions decided by the Government are sufficient to improve the general government structural balance.

Risk Assessment and Audit Selection

Secondly, the process of selecting audit topics has been enhanced. In order to make it easier for audit units to focus on material issues, NAOF prepares a risk assessment report concerning state finance and macro-economic level. The state finance and macro-economic level risk assessment identifies the key risks that the Finnish government and public administration is facing in the future.

Although the state finance and macro-economic level risk assessment is not identical with the scoreboard used by the Commission to detect macroeconomic imbalances (Regulations 1176/2011 and 1174/2011), the approach is consistent with the objectives of the scoreboard.

The objective of the risk assessment is to identify and analyse the key indicators and break them down into an auditable level. The state finance and macro-economic level risk assessment can be seen as an important link between the audit work and the macroeconomic and fiscal sustainability objectives.

By focusing its scarce resources on issues that are material to fiscal sustainability objectives NAOF seeks to improve its effectiveness and performance. One concrete example of an ongoing audit that has a link to the macro-economic level is the performance audit concerning the Youth Guarantee. The state finance and macro-economic level risk assessment report also helps to increase awareness of the macro-economic implications of the policy measures.

NAOF decided to include the quality of the legislation in the annual work plan of the performance audit each year. This is because it was considered that audit resources allocated to the quality of the legislation issues would add substantial value to the process as regulatory policy can significantly improve performance. Legislation is also one of the most important tools that governments use to achieve different objectives.

The external auditor is expected to respect the will of the legislator, which is concretized in the form of enforced laws. Performance audit does not question the intentions and decisions of the legislature (ISSAI 300.13). Thus, the criteria have to be based on what should be expected under the legislation. If the performance auditors challenge enforced laws, there is a risk that they enter into the political debate. However, the performance auditor is able to cover the quality of the legislation issues from a financial viewpoint, if necessary. The ISSAI 300.13 also recognises the need to examine any shortcomings in the laws and regulations.

Legislation is a result of an administrative process. The drafting of the legislation can be audited from several viewpoints. From a transparency and financial viewpoint it is important that when bills are discussed in the political arena they give a true and fair view of the future financial costs. This is particularly important when the proposals concern the provision of new or improved services so that it can be ensured that there will be adequate budgetary funding to finance the measures needed for citizens to effectively enjoy their statutory rights. On the other hand, the legislative planning should be consistent with the fiscal spending limits.

Legislation often includes multiple objectives, which are unspecified. Occasionally the objectives are also conflicting. In some cases the stated objectives are different from those accepted as part of the political reality. For performance audit such situations mean fewer opportunities to utilize the output-oriented approach but, on the other hand, they increase the need to promote transparency. Taking into account the increasing complexity of the public management one could argue that it is inappropriate to assume that the objectives would be clear and easily auditable.

Cooperation with the Auditee

Thirdly, in order to improve its impact and effectiveness NAOF places more focus on pragmatic proposals for improvement, follow-up, a constructive working relationship with the auditee and the utilization of media.

A few years after the publication of the performance audit, a follow-up report is prepared and published. The follow-up determines what measures the auditee has taken on the basis of the audit reports. The measures or explanations for failing to take any action are given in the report. The objective of the follow-up is to promote the effectiveness of the performance audit, the implementation of the improvements and accountability. The follow-up process gives NOAF a good basis to evaluate its effectiveness and impact.

Media makes an important contribution to accountability. For end users the media is often the main source of audit conclusions instead of the audit reports. However, this poses a challenge for the efforts to provide a true and fair view of the Government's performance. The pitfall is that the negative observations and conclusions are news instead of the positive audit observations. Thus, there is a risk that the true and fair view is not communicated to the end user correctly despite the constructive and objective reporting.

The task of the performance auditors is to ensure added value, which, due to the risk-based approach, often leads to critical observations in performance audit reports. For this reason, such a risk-based approach may not give a true and fair view of the overall performance of the auditees. Even when continuous critical reporting is constructive and objective, it may be considered harmful for taxpayers' trust and thus weaken the preconditions for effective administration. However, in societies that are built on the principles of good governance and good management critical observations, too, support preconditions for effective administration. Taxpayers' trust is indeed strengthened when they can be certain that the public administration is prepared to openly debate and discuss the need for continuous improvement.

NAOF has decided to verify its findings concerning the accountability of the public administration reported in the annual accounts and issue an attestation type report to the national Parliament. In addition, NAOF also issues an annual synthesis report to the national Parliament. The objective of the synthesis reporting is to facilitate the work of the Parliament by reporting observations in a form that can be used in budgetary and parliamentary decision-making. Such an approach makes it easier for the auditor and the auditee and the principals to engage in a constructive debate.

Constructive debate does not mean a mutual understanding on the audit conclusions or observations, but a transparent contradictory process. In practice, NAOF enhances the transparency of the contradictory process by publishing the contradictory memos and the public hearings of the Parliamentary Audit Committee.

During the exchange of officials I had a pleasure to be involved in several performance audits reported to the national Parliament. Some of the audits inspired law changes; in other words they led to actual changes or improvements, whereas for some audits it was not possible to identify actual changes or improvements as a result of the audit. Some audits even inspired a clear statement from the Government that no changes to the issues raised will be made.

However, I consider that - as good governance and transparency are factors supporting economic success - a clear statement from the Government and open debate as a result of audit reporting increase transparency and therefore also added value.

An example of a performance audit that facilitated legislative improvements is NAOF's Cash management performance audit. NAOF conducted a performance audit of the central government cash management, in which conclusions on the quality of the legislation had a major role. It was found out in the audit that because of the legal interpretation of the Constitution the cash position depended on the cash needs of the central government budget economy rather than on liquidity needs. As a result, the loan withdrawals exceeded the need for borrowing to safeguard the liquidity. From the viewpoint of cash management this led to an inappropriate cash position and unnecessary costs. In this case it was fairly easy to assess the monetary added value of the audit. The future annual interest savings were about 20 million euros, which is 25% more than the annual budget of NAOF.

An example of a performance audit that did not result in any actual change is the audit on State aid for foundations and their supervision. The main question was whether the central government can achieve the intended social impacts efficiently and adequately through tax benefits given to foundations. After the report had been published the new government clearly stated in its Government Programme that no adjustments will be made to the tax benefits given to foundations. Thus, there were no improvements as a result of the audit and one could argue that there was no added value either. However, my personal view is that the audit supported transparency and open debate.

For the auditee it is convenient to agree that public audits bring added value when concrete mutually agreed improvements can be defined. When the added value is based on the enhanced transparency and accountability the mutual understanding concerning the added value is not always obvious.

The ISSAI standards recognise the different roles of the public auditing. However, enhancing accountability and transparency on the one hand and providing innovative recommendations for improvement on the other can well be seen as conflicting approached by auditees.

The financial crisis and its European-level implications and measures have created a situation that is challenging for SAIs. However, the current economic situation has increased the need for public audit, as good governance and transparency are important values and factors that support economic success.

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