

## **LEGAL FRAMEWOK FOR SUPERVISING THE USE OF UE FUNDS IN ROMANIA**

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**Abstract:** *The European funds are meant to serve certain development directions. It is imperative that these purposes are reached, so there is a need of an institution to observe, to guide and to correct, if necessary, the way that public funds are used. There are two levels of the control procedure: the European and also the national level. The European institution that has this specific mission is the European Court of Auditors, the only institution entitled to do the control over budgetary procedure and over its execution. On national level, the Romanian Court of Auditors functions according to the principle of uniqueness and autonomy. Both these institutions are independent and realize external and posterior control over the national and European funds.*

**Keywords:** *control of European funds, expertise*

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### **I. INTRODUCTION**

European money meant to serve certain directions of development of the European Union can only achieve its purpose through appropriate use, according to the destination initially envisaged. Compliance with the objectives set can not be achieved only through specific control operations and, if necessary, through implementation of sanctioning measures.

In a simple manner, the control could be defined by assessing compliance with a norm, a standard, a model. In a much broader acceptance, control is a specifically human activity that takes place consciously and always pursues an aim which is to verify and analyze permanent, periodic and unannounced of processes, phenomena in any field in order to preventing and liquidation of any shortcomings (Mihăescu, 2006).

The Explanatory Dictionary of the Romanian Language defines control as the verification, continuous or periodic analysis of activities to pursue its course and take measures for improvement.

Financial control has the task of preventing the hiring of expenditure without any economic justification, to ensure increased profit in using of material, financial and labor resources. Financial control procedure consists of a series of activities and operations

concerning the organization, conduct and control of the results of control operation (Drosu Şaguna, 2001).

In the control procedure must be verified and established the competences of institutions authorized to perform specific operations of the control operations, implementation of these operations by an incompetent body in this respect being absolutely ineffective, purposeless.

## **II. EUROPEAN LEGAL AND INSTITUTIONAL DIMENSION**

The establishment of European Court of Auditors is part of the implementation and strengthening financing Communities within own resources and of the attribution of the responsibility to the European Parliament to discharge the Committee for the budget execution (Fuerea, 2004).

European Court of Auditors was established by the Treaty of Brussels in 1975 (22<sup>nd</sup> of July), who reformed the budgetary procedure. "The Court of Auditors shall carry out the Union's audit" [Treaty on the Functioning of the European Union, Article 285]. Despite the name used, the Court is not a jurisdiction and is included in the Community institutions by the Treaty of Maastricht in 1993.

As an independent body, ECA acts as a veritable "sword of justice" for Parliament and the Council in exercising their powers of control over the budget (Lefter, 2001). According to the Treaty, the ECA examines the accounts of all revenue and expenditure of the Union and also examines the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union, in so far as the relevant constituent instrument does not preclude such examination. So that, up to 80% of the EU's budget management is shared with the Member States. Member States cooperate with the Commission in setting up supervisory and internal control systems to ensure that EU funds are spent properly and in accordance with the rules. Audit therefore has both an EU and a national dimension. In addition to the work done by the ECA, many Supreme Audit Institutions (SAIs) in the Member States audit the European funds that are managed and spent by their national administrations.

Evolution of the role and place of the ECA in the system of the European institutions sought to ensure its extended control jurisdiction. The Treaty of Nice offered the possibility of ECA to organize its functions in the direction of the adoption of special reports. Interesting is the fact that the court documents cannot be subject of an appeal for annulment to the European Court of Justice. Treaty of Amsterdam expanded control powers of the European Court of Auditors, including under its control any public or private entity receiving the European funds.

Treaty of Nice establishes the competence of the court to formulate its rules, approved by a qualified majority of the Council.

Members of the ECA shall be chosen among persons who belong or have belonged to external audit bodies in their countries or who possess special qualifications for this position and must provide all guarantees of independence in the general interest of the community. They should not accept instructions from any government or other

body. They must refrain from any action incompatible with their duties. Membership of the European Court of Auditors is incompatible with any other professional activity.

The Statute of members of the European Court of Auditors is inspired by the statute members of Court of Justice; all are obliged to act in the general interest of the European Union and not as representatives of countries whose citizens are (Zarka, 2005). They have a renewable mandate of six years. President of the Court shall be elected from among its members for a term of 3 years with the possibility of renewal. The full ECA Court of 28 Members meets around twice a month to discuss and adopt documents.

European Court of Auditors operates as a collegial body, and each member is assigned a specific sector of activity. Court adopts opinion or a annual reports by a majority of its component members.

Concerning the powers of the European Court of Auditors, there are mentioned for the first time in the EEC Treaty, Article 188c, which provides that the institution shall examine the legality and regularity of expenditure and revenue and ensure the financial management of the Communities. So that, the ECA was established to audit the EU's finances. The starting point for its audit work is the EU's budget and policies, primarily in areas relating to growth and jobs, added value, public finances, the environment and climate action. The ECA audits the budget in terms of both revenue and spending.

The Court also exercises control on fields and on the institutions of the Member States of EU, if they have received and used the European funds. For this reason, the powers of the Court were considerably strengthened.

European Court of Auditors is the external auditor of the European Union and has competences that have been established by the Treaty, as following:

- to examine the accounts of all revenue and expenditure of the European Union and all bodies created by it, provided that not be otherwise;
- to examine the legality and regularity of revenue and expenditure of the Union and ensure sound financial management, namely that the funds will be used in an economic, efficient and effective (<http://doctorate.ulbsibiu.ro/obj/documents/rez-ciochina.pdf>)
- an annual report, in which will be presented observations on the implementation of the EU budget for each year and to make a statement assuring (DAS) on the reliability of the EU accounts for the year then ended, as well as the legality and regularity;
- at any time to submit its observations on particular problems, particularly in the form of special reports;
- to report cases of fraud or irregularity discovered in the audit work;
- to provide advice on proposals for EU legislation procedure economic;
- to be consulted on all proposals aimed at fighting fraud measures;
- to assist the European Parliament, within the limits on its powers to control the European Union budget, through the publication of audit reports and verdicts.

For the period 2013 to 2017, the main objective of European Court of Audits is to maximize the value of its contribution to EU public accountability and for meeting this objective, the priorities of ECA are to:

- focus the ECA's products on improving EU accountability;

- work with others to leverage the ECA's contribution to EU accountability;
- develop the ECA further as a professional audit institution;
- make best use of the ECA's knowledge, skills and expertise;
- demonstrate the ECA's performance and accountability.

Over the period 2013-17, the ECA will ensure that its selected audit tasks and special reports:

- reflect financial management risks, public interest and the ECA's capacity to add value through audit;
- focus on performance issues, including those related to specific topics of current public interest, high-level EU objectives, and crosscutting policies.

In order to fulfill its duties, ECA collaborates with other similar international institutions and national supervisory bodies.

Over the period 2013-17, the ECA aims to coordinate its efforts with its main partners at EU and national level in order to:

- identify needs and common priorities for improving EU accountability;
- explore how best to achieve synergies between the work of the ECA and partners' activities;
- raise awareness about EU financial management and accountability issues; and
- facilitate the use of audit results in EU policy making and budget allocation.

In addition, as regards cooperation with Member States' SAIs, the ECA will:

- enhance its cooperation activities with respect to the audit of public funds put at stake in the EU and national budgets to meet EU objectives;
- share knowledge and expertise with respect to the audit of EU funds;
- further contribute – alongside Member States' Supreme Audit Institutions (SAIs) - to the development of international standards on financial, compliance, performance and environmental audit within the context of INTOSAI, and its regional grouping EUROSAI.

ECA is called to play a double role. Thus, the ECA exercises the competence of the assistance of budgetary authorities (Council and Parliament), and in particular, the Parliament, for the realization of his own as political control in budget execution, working closely with the budgetary control committee (Fuerea, 2002). In accord with the Treaty (article 287), the ECA provides the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which is published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity.

The results of the ECA's work are used by the European Commission, the European Parliament, the Council and the Member States to oversee the management of the EU budget and, where necessary, make improvements. The ECA's work provides an important basis for the annual discharge, a procedure in which the Parliament decides, on the basis of a recommendation from the Council, whether the Commission has satisfactorily implemented the previous year's budget.

The audit in the Member States of the EU is provided in collaboration with national audit bodies or, if they have the necessary competences, the competent national

departments. Any document or information necessary for the fulfillment of the Court, it shall, on request of other institutions of the Community and national control institutions if they have the necessary powers, the competent national departments.

The control of the European Court of Auditors is external and posterior. This control system is for legality accounting and budget execution to ensure compliance with the principle of sound financial management. Court prepares an annual report. The procedure starts on June 1<sup>st</sup> of the year following the year for which financial management is analyzed. On this basis, on 15<sup>th</sup> of July the Court of Auditors shall notify the institutions observations that are included in the report. On October 31<sup>st</sup> institutions addressing their answer to the Court, on which the Court draft the final version of the report, retransmitted to the interested institutions, and official journal of the union for publication (Jacgue, 2004).

European Court of Auditors performs two types of audit: financial audit and audit of financial management. Financial audit concerns the reliability of the accounts: financial statements are accurate and complete. The objective is to determine whether the financial statements give a true and fair view and whether the financial results of the exercise at the end of the year, operations and asset and liabilities were accounted and properly recorded in the financial statements.

Sound financial management audit aims to assess which measures of the Commission and Member States have been well applied having regard to the principles of sound financial management, namely: economy, efficiency and effectiveness in the management of EU funds. This type of audit is called "the performance audit " and still, "checking optimal use of resources."

### **III. LEGAL AND INSTITUTIONAL DIMENSION IN ROMANIA**

In the EU countries, the responsibility for auditing state institutions that benefit from public funds and which makes investments, has the Supreme Audit Institution.

The Romanian Court of Accounts is the supreme institution external subsequent financial control, operating independently in addition to the Romanian Parliament. Functioning of the Court of Accounts is governed by two principles: the principle of uniqueness and autonomy [Dan Drosu Şaguna, 2003].

As supreme institution external subsequent financial control, the Court of Auditors of Romania's main task verifying the formation, management and use of financial resources of the state and the public sector.

The Court of Auditors is to contribute to sound financial management of public funds and public patrimony, to provide to the Parliament and to the deliberative public authorities of administrative-territorial units, reports on the use of public funds and their management, in accordance with the principles of legality, regularity, economy, efficiency and effectiveness. Court has exclusive jurisdiction to decide after checking accounts on discharge.

Romania's Integration in the European Union must be characterized by a new approach for which means public funds, namely their performance of use and how an activity, program or government organization operates efficiently and effectively. In this

regard, EO no. 43 of 14 June 2006 on the organization and functioning of the Court establish the regulation.

Given the delay in the adoption of organic law of the Court of Auditors to reflect the constitutional amendments of October 2003 indicated in the attention (yellow flag) in the Monitoring Report of the European Commission of 16 May 2006, Romanian authorities have changed the regulatory framework for the operation and organization of the Court of Auditors. These legislative changes have received the approval by General Department for Budget of the European Commission, saying that it in accord with international recommendations in the field (INTOSAI) Lima Declaration and EU requirements in the field of external audit.

Court exercise control over of the establishment, administration and utilization of the financial resources of the state and the public sector. Control function of the Court of Auditors shall be made public external audit procedures stipulated in its own audit standards developed in accordance with international auditing standards generally accepted (Law no. 94/1992 republished in Official Gazette No. 282 / 29.04.2009).

Court of Accounts is the public authority of State exercising external audit in the public sector as a supreme audit institution.

Court of Accounts carries out the external audit of public institutions and other entities for which the law provides jurisdiction of the Court Auditors. In to achieve the objectives external audit in the public sector, the Court has the power to require information and documents and doing the verifications which it considers necessary, to legal persons which:

- a) manage and / or use public funds;
- b) there are companies, also in which the state or territorial-administrative units is a major shareholder;
- c) administer the goods or services of the public or private domain of the state or territorial-administrative units based on concession agreements, rental or other forms of administration;
- d) benefit from government guarantees for loans, grants or other forms of financial support from the state, municipalities and public institutions.

Court of Auditors carry out audits of international public authorities and other institutions headquartered in the country or abroad, whether through agreements, memoranda of understanding or other international agreement that competence is established.

Court of Accounts, in exercising its role, performing external financial audit and performance audit in the public sector and other specific actions to audit compliance with the Constitution of Romania, republished, and legal regulations.

Text ordinance transposes into law the principle of independence of European law. The Court of Accounts operates independently, in accordance with the provisions of the Constitution and the Government Emergency Ordinance. Court of Accounts decides independently on its program of work, but the Chamber of Deputies or the Senate resolutions asking the Court of Auditors to carry out control actions within its powers are required. Court of Accounts cannot be bound by any other public authority to carry out control.

Counselors of accounts are independent and irremovable. The Court of Auditors shall draw up its own draft budget to be submitted to Government for inclusion in the draft budget law. Account Verification annual budget execution Court shall be exercised by the Committee on Budget, Finance, Banking and capital markets of the Senate and the Committee on Budget, Finance and Banking of the Chamber of Deputies.

Court of Accounts cooperates with the European Court of Auditors, supreme audit institutions in other countries, the International Organization of Supreme Audit Institutions and its regional structures, as well as with other international organizations in areas falling within its sphere of activity.

Court of Accounts represents Romania in international organizations Supreme Audit Institutions. The Court of Accounts may conduct joint audits with other supreme audit institutions of other countries under bilateral agreements, memoranda of understanding, agreements, exchange of letters or other forms of understanding.

Both the Court of Auditors organized at national level and European Court have a consultative role regarding the draft legal acts concerning national and European finances and track legality and regularity of revenue and expenditure, making general reports on the whole control activities.

#### **IV. CONCLUSIONS**

In conclusion, both the European Court of Auditors and Court of Accounts of Romania are independent institutions responsible for controlling the management of public finances national and European. These made external control, with the main purpose control over the national budget, respectively, union, on budget and extrabudgetary financial operations, the Structural Funds and the actions financed from the EU budget.

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