

REFLECTING THE COMPLIANCE AND PERFORMANCE DEGREE IN THE SPECIAL REPORTS OF THE EUROPEAN COURT OF ACCOUNTS

Professor Ph.D. Ionel BOSTAN

Ștefan cel Mare University of Suceava, Romania

ionel_bostan@yahoo.com

Professor Ph.D. Elena HLACIUC

Ștefan cel Mare University of Suceava, Romania

elenah@seap.usv.ro

Lecturer Ph.D. Student Eugenia IANCU

Ștefan cel Mare University of Suceava, Romania,

eliancu@seap.usv.ro

Lecturer Ph.D. Student Gabriela NEMȚOI

Ștefan cel Mare University of Suceava, Romania

gabriela_nemtoi@yahoo.com

Abstract:

The European Court of Accounts (ECA) is the European Union's institution, established by treaty, with the purpose to make the audit of the EU funds. As an external auditor of the European Union, it contributes to improving the financial management of the Union, and acts as an independent defender of the financial interests of the Union's citizens. The ECA provides with audit services, by which it evaluates the collection and use of the EU funds. Also, it examines if the financial operations were correctly recorded and presented, if they were made respecting the law and the regulations and managed with respect to the principles of economy, efficacy and efficiency. The ECA makes known the results of the audits in clear, relevant and objective reports and gives reports regarding various aspects of financial management. The Court publishes the results of its audit activities in three types of reports: the annual reports, presenting the results of the financial audit activities as insurance declarations concerning the general budget and the European Development Funds. These reports are presented together in the month of November, with the specific annual reports, which present the results of the financial audits made concerning the agencies and organizations of the Communities. The special reports, reserved for the results of certain performance audits and conformity audits, may be published at any time of the year. The present paper analyzes exactly this latter category of reports, made by the institution in the recent annual financial statements.

Keywords: European Union, audit, public acquisition control, EU Court of Accounts, monitoring, managerial procedures, investment projects, audit report, risks, audit, communitarian budget, efficiency, European program, subventions, food donations, European Committee, disfavored populations, poverty.

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1. THE NORMATIVE FRAMEWORK APPLICABLE TO THE ECA

The audit activities are performed within an inter-institutional framework, established mainly by:

- the treaty regarding the European Union functioning, within which the articles 310-325 include financial dispositions regulating the income and expenses of the Union;
- Regulation (EC, Euratom) no. 1605/2002 of the Council of June 25, 2002 referring to the financial regulation applicable to the general budget of the European Communities

The treaty concerning the functioning of the European Union attributes to the European Court of Accounts (articles 285-287) as a main task to audit the Union's accounts, with a double purpose- to improve the financial management and report, in front of the European citizens, on the method of using the public funds by the authorities responsible with their management.

Therefore, according to the treaty, the ECA verifies the total of income and expense accounts of the Union and of any organization, office or agency established by the Union, as much as the constitutional act does not exclude this control. The institution presents to the European Parliament and to the Council an insurance declaration, which refers to the reliability of the accounts, and the legality and regularity of the subjacent operation, declaration published in the *Official Journal of the European Union*. The declaration may be completed with specific appreciations, specific for each major activity domain of the Union.

The ECA examines the legality and regularity of all income and expense, and verifies the existence of a well financial management. Therefore, it is obligated to signal especially any deviation from the rule. After closing each annual financial statement, it makes an annual report, transmitted to the other institutions of the Union, and published in the *Official Journal of the European Union*, along with the responses formulated by these institutions to the Court's observations. Furthermore, it can present at any time the observations regarding specific matters, especially as special reports, and can emit authorizations at the request of one of the other Union institutions.

2. THE FINANCIAL REGULATION AND THE REPORT TYPES

The objective of such a regulation is to organize the procedures to make, adopt and execute the European Union's budget. This financial regulation establishes the financial structure of the European Union. Article after article, it introduces key concepts, establishes procedures and regulates the making and execution of the budget.

The financial regulation of December 21, 1977 was replaced at June 25, 2002 with a new financial regulation (Regulation EC-Euratom no. 1605/2002 of the Council, JO L 248, 16.9.2002). The detailed application norms of the financial regulation were made by the Committee (Regulation 2342/2002 of December 23, 2002 JO L 357, 31.12.2002) As an external auditor of the EU, the ECA verifies if the communitarian funds are correctly accounted and spent according to the current norms and legislation, and in respect to a preoccupation spirit to obtain an optimum resources-results report, regardless of the funds' destination.

The results of the Court's activities are used by the Committee, the Parliament, the Council and the member states in order to improve the financial management of the EU budget. The public court publishes the results of its audit activities in the next types of reports:

- *the annual report* – presents the results of the financial audit activities as insurance declarations concerning the general budget and the European Development Funds. These reports are published together in November.

- *the specific annual reports* – which present the results of the financial audits made to the agencies and organizations of the Communities;

- *the special reports*, presenting the results of certain performance and compliance audit results, and may be published at any time of the year.

Furthermore, the Court must formulate opinions concerning the new legislative acts with financial impact, or the modification of these legislative acts.

The types of made audits are: financial audits, compliance audits and performance audits.

These approach the following problems:

- if, in the accounts, all of the significant aspects, the financial statement, the results and treasury flows of the annual statements are presented fairly, according to the applicable framework of financial reporting (financial audit);

- if the operations respect, under all of the significant aspects, the juridical and regulation frameworks applicable to them (compliance audit);

- if the financial management is good, in other words of the funds are used in a degree as small as possible (economy), if the results are obtained with the smallest possible level of resources (efficiency) and if the objectives proposed were reached (efficacy) (performance audit).

The Court's audit regarding the EU's accounts are made according to the International Standards – ISA, applied for the public sector and in the private one. The existent ISA do not cover in the same measure the conformity audit type made by the Court. The court actively participates, along with the national audit reports, to the elaboration of international standards by the standardization organizations (INTOSAI, IFAC).

In order to obtain the assurance that the payments respect the juridical and regulation frameworks, the Court is based both on the results of the surveillance and control system s examination, meant to prevent or detect the errors of legality and regularity, and on the results of

examining a payment sample. In the case when, after the system tests, these are considered to be reliable, the number of operations that has to be audited by the Court to reach a valid conclusion regarding the legality and regularity of the operation no longer has to be as large. The ECA uses also other sources in supporting its conclusions, for example the activity of other auditor.

In the performance audit, the Court uses a wide range of audit methodologies in order to evaluate the management and monitoring systems, and the information concerning performance, based on criteria derived from legislation and principles of well financial management.

When selecting the performance audit that are to be made, the Court seeks to identify the audit subjects leading mostly towards determining possible improvements connected to the economy, efficiency and efficacy of the EU expenses.

In the following passages, the most representative special reports made by this institution in the recent financial statements are to be analyzed.

3. AUDITING CERTAIN PROJECTS OF THE CENTRAL EUROPEAN BANK (CEB)

On the exact spot of a "Grossmarkthalle" in Frankfurt, the Central European Bank builds its structure, measuring almost 186,000 sq.m. The project includes the historical buildings with a tower building of circa 185 meters high.

The budget is also high, reaching almost one billion euros. Initially, finishing the work was planned for 2008, but postponed to 2011, this because two new phases were introduced: a review one and an optimization phase. The review phase took 10 months and was followed by the optimization one, of 13 months, during which a cost reduction of 30% was performed. The delay of the project finalization lead nonetheless to additional rent costs.

Obviously, managing such a huge project couldn't have escaped from the Court's jurisdiction, that is why the control institution set, as main objective, the evaluation of the operational efficiency of managing all of the activities concerning the mentioned investment (started in 2001) and its compliance with the current norms. Also, the court made a "monitoring audit" regarding the human resource policy efficiency of the CEB. The accent was put on the contest of selecting the construction project and the technical aspects of the task book made by the CEB. The audit also took into consideration the further evolution of the project concerning the new CEB establishment.

Mainly, the Court evaluated if the CEB set efficient planning and organizational structure, made a corresponding risk management framework (monitor, control and report), taking into consideration the complexity of the project, and applied adequate acquisition procedures, according to the generally applicable norms.

According to the ECA Report (J of EU – 2007/C 313/01), there were remarked certain deficiencies concerning the risk management, but also in the plan of performing the public acquisitions, By August 2006, the Court had seen the risk log made for the project of the new CEB building, presenting for each element, the potential impact, measures to take, the responsible person and the evolution stage. The CEB classified more than 100 potential risks in the mentioned log, classifying them from level 1 (reduced impact and low probability) to 25 (high impact and high probability). The registry didn't always offer a clear image of the element with the greatest risk impact, their apparition possibility and the time period in which they could have appeared; the risks were not always formulated in a coherent way and sometimes confusions were made between risks and sub-risks.

Also, the various reputation risks were spread allover the registry log, sometimes being categorized as having a relatively low degree, and several times being logged only a sub-risk or omitting the main risk.

As for the public acquisitions, it was seen that the general norms and procedures of buying did not stipulate an official contestation procedure and did not define the criteria of excluding the

unusually small offers. To this was added the fact that the valuable sums were not upgraded systematically.

Although in general the acquisitions connected to the construction of the new establishment respected the norms and procedures of the CEB, the scoring method was sometimes unclear and based on sub-criteria not stipulated explicitly as being evaluation criteria. Then, although the majority of the exceptions were authorized and rightly justified, there were cases in which the justification supplied for the exceptions was debatable and not sustained by adequate documents.

As for a series of public acquisition procedures, there are not available proving elements to attest that the most advantageous offer from the quality/price report point of view was selected. Within some of these procedures, there wasn't clearly defined the area of including the to-be-supplied services, the offers presented a great number of deviations, and the ones who offered for negotiations were afterwards authorized to significantly modify their offers. The court also saw deficiencies in the controls made by the CEB regarding the acquisition procedures referring to the services performed by external consultants. In one of these cases, there were no documents to make possible monitoring the controls made by the CEB for the way of scoring the offers. Also, the ECA recommendations take into consideration for the CEB to improve the risk management within the project of the new establishment and consolidate its own control mechanisms in the public acquisitions procedure, assuring the full respect to the applicable norms.

The audit of the human resources policy efficiency highlighted that the CEB only outlined the elaboration of the key performance indicators. The introduction of the new informational system version aiming to increase the reliability and complete character of the data concerning the days off and personnel absences was to be finished after the audit finalization date, and certain orientations and procedures (the disciplinary or concerning part-time jobs) were never approached.

4. AN X-RAY OF THE EUROPEAN PUBLIC HEALTH PROGRAM (PHP)

Due to an audit made by the ECA on the financial activity of the General of Health and Consumer Protection of the EC highlights the fact that the subventions coming from the EU budget were used with certain "deviations".

The mentioned sums (232 mil. Euros, 2003-2007) were meant for financing the PHP, and aimed towards organization holdings on numerous plans. Among these, we recall: preventing/treating cancer, rare or pollution diseases, AIDS and other transmissible diseases, preventing injuries and drug addiction, health monitoring etc.

Within the PHO, the financing agreements were made with the project coordinators, who received co-financing of up to 60% (in extraordinary cases, 80%) for the cost generated by performing project activities. Besides the subventions designed for the projects, a small amount (app. 3%) of the PHP operational project was used to attribute service contracts. The projects financed with the use of PHP, that is – 352, were very different from the size, target group and adopted approach points of view. The holdings varied, as dimension, from 3 to 60 partners, the communitarian contributions having a value from 45,000 to 2.5 mld. euros.

Also, the project activity types substantially varied. The ECA Document (Special report no. 2/2009), recently published, highlights that, referring to the PHP, there were three aspects verified, and those are: if the way in which the PCP provided with a corresponding framework to implement and monitor effectively the health promoting actions; if the EC was assured, in the program implementing and project selection stage, that the projects financed within the PHP component referring to the "factors determinants for health" may obtain durable results, were complementary and provided with European value added and if the EC and project coordinators were assured that the projects were reliably managed.

Although seeing that, in general, the projects had an European dimension, easing in many cases the experience changing and mutual learning, the ECA also retained elements with critical connotation. Therefore, the PHP objectives characterized as being "very general and ambitious" clearly were opposed to the limited means at the program's service.,

What should have been imposed was rather the efforts to be concentrated on the objectives which could have been actually reached. The intervention logic was never explained, situation that wouldn't have been capable to allow objectives to be clear, pertinent and logically connected or specifying matching performance indicators.

Therefore, within the PHP there was no strategic focusing. The program actions sub-domains, established in the annual activity plans, were far more numerous than the projects financed.

As the project proposing authors were often invited to candidate for financing within very general categories, the multitude and diversity of project themes and target groups caused the dilution of the brought contribution and lead to fragmented results. The efficacy of the projects was undermined by the concept differences and problems concerning applicability.

In very few cases, the projects didn't define the results that were to be obtained and were proved to be impossible to demonstrate that made any effect. The durability was often understood by the participants as the continuation of project activities, therefore depending greatly on the communitarian financing continuation. Finally, there was no systematic monitoring of the actions already made in various priority domains, often leading to repeating certain already made efforts.

5. THE INTRODUCTION, AS AN AUDIT OBJECT, OF THE COMMUNITARIAN SYSTEM OF FREE FOOD

Recently, the ECA published the Special Report concerning the food help provided by the European Union for the disfavored persons, The available resources for the years making the objectives of the audit were: 216 ml. euros in 2005, 264 ml. euros in 2006, 274 ml. euros in 2007 and 307 ml. euros in 2008. The sum afferent to 2009 goes up to 500 ml. euros.

The audit especially examined if the objectives stipulated for the program are still valid, in the context of changing market and social situation. Furthermore, there were aspects evaluated from the point of view of the quantity, the value and the varieties of the projects supplied and distributed, the corresponding character of the available means and the system applied to measure the program-produced impact for the beneficiaries. Neither the examination of the administrative and management procedures used for implementing the annual plans was not omitted. The European food help program for disfavored people was first applied in 1987. Its purpose is to provide with products from the intervention stocks of the Community for charity, freely distributing to the needy persons certain products as: rice, sugar, flour, butter, milk, jam and biscuits.

In order to allocate the program funds to the member states, the Committee uses a term known as "the population exposed to poverty". This is a relative category, defined for each member state as the people with income under the 60% average income level.

The target group is numerous, one person of six being considered as "exposed to poverty risk" at the whole Union level. Within the communitarian space, almost 80 ml. persons – that is, 16% of the EU-27 population are considered to be exposed to poverty risk, and almost 43 ml. persons are exposed to the food poorness risk. Here are some data, organized on countries, for the average of the population exposed to the risk out of the whole population: Romania – 18%, Bulgaria – 15%, Greece – 20%, Italy – 19%, Poland– 21%, Germany – 13%, England – 18%, Sweden – 9% (the only country with one figure).

The participation of the member states at the mentioned project is volunteer, these having to declare every year to the Committee their intention to participate and communicate their necessities. The number of the participating countries increased in the last years: 10 in 2005, 15 in 2006, 18 in 2007 and 19 in 2008. The audit that x-rays the free food giving mechanism was made in Spain, France, Italy and Poland, to which correspond more than 72% of the annual credits, and mainly took place from 2006 to 2008.

Despite the budgetary credit level increase, the sum available for each person had these values: 6.24 euro/person in 2006, 5.73 euro/person in 2007 and 5.83 euro/person in 2008. Obviously, these modest values for each person put into discussion the potential impact of the

program. The conclusions of the ECA audit show that there are no established priorities within the disfavored persons' category, to precisely orientate the help.

Taking into consideration the great number of potential beneficiaries and the low level of available resources, it is imposed that the beneficiaries are to be more precisely defined, for the measure to have a significant impact on the target population. According to the juridical framework, the eligibility criteria referring to the beneficiaries must be based on a "financial and social dependence situation[...]seen or recognized". The member states also are to annually inform the Committee on the eligibility criteria applicable to the helped.

The ECA also saw that, with the auditing of this program, that the member states did not establish exact eligibility for the free food beneficiaries. What was communicated annually to the Committee is rather a typology of the assisted people than qualitative or quantitative selection criteria.

The audit highlighted significant differences in the frequency of receiving the help, certain people receiving occasional meals, unlike persons of social institutions or families that regularly received food help or supplies. Given that the potential beneficiary budgetary credits go to up to 6 euros/person/year, the Committee – in its own impact evaluation – shows that in 2006 13 ml. persons of 15 member states received food supplies, and estimates the cost of a meal given by a charity organization to be at least 2 euros.

These figures reflect the fact that the program contributes to the distribution of maximum three meals a year for every potential disfavored person or, in average, 12 meals a year for every effective help beneficiary. Although in certain member states the EU program provides with more than 50% of the supplies offered to the disfavored. The ECA says that a program offering, at maximum level, the equivalent of a meal per month (avg.) for its beneficiaries has the lowest chances to reach the legislator's objective to realize "an important contribution to the welfare of its most disfavored citizens".

Nowadays, the juridical norms allow acquisition of food products on the communitarian market in case that there are shortly no intervention stocks available for free distributions. What is important is that, as long as the food products must belong to the same product groups as the ones of the intervention groups, the range of products available for distribution is limited. The mentioned regulations should be re-analyzed, in order to increase diversity, complementariness and nutritional values of the provided supplies.

Within the distribution chain connecting the management authorities, the charity organization and the disfavored persons a great variety of system is applied. There are no standards or orientation that are common at the EU or national level concerning the quantity and product range to be distributed per person. This increases the risk of a low impact, which may lead to the application of an unequal treatment at the helped level.

The auditors also saw that, in practice, the member states often designed without any formalized procedures a reduced number of organizations, to perform national activities. On the other side, there are no available precise data concerning the number of the organizations involved.

Because in a series of cases the implementation reports of the member states were incomplete, or had incomplete data, the management information at the availability of the Committee, referring to the recorded process in making the global objectives of the program cannot be considered as being reliable enough.

That is why the Committee should solicit the member states to make precise, measurable, realizable, relevant and determined-in-time objectives to implement the program and, also, in order to define the performance indicators to monitor the objective reaching degree. On the other hand, the re-analysis of the program reporting system is imposed, to assure the availability of data that are exact and fed on time, referring to the target group and implementation. Finally, another conclusion was that there are very different attribution procedures from state to state, not guaranteeing the equal access of all EU operators and not obtaining the widest competition or best conditions and prices.

6. CONCLUSIONS

The effective implementation of a program requires, on behalf of its administrator (or Committee/ executive agency) to have a correct and current assembly view on the project portfolio. This allows overlaying and "work duplication" avoidance, creating synergies among the made actions and the make of planning in a coherent and constant manner, the implementation and monitoring of the program.

The audit especially examines if the objective stipulated for the program are still valid in the context of a changing market or social status. Furthermore, the corresponding character of the available means and the systems applied to measure the impact made by the program on the beneficiary level is analyzed from the points of view of the value, quantity and variety of the supplied and distributed products.

Obviously, the examination of the administrative and management procedures used to implement the annual plans has a special plan within the typical operations of complex audits, as the ones described in the special plans elaborated by the ECA.

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