

State Institution's Competence in Exercising the Control Activity

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Abstract: The purpose of the paper is to present state institutions that are competent in exercising control actions, the basic principles governing these actions, and the action competences according to the legal provisions in force. On the other hand, we sought to highlight the methodology used for the application of these principles and competences according to a logical sequence of actual control actions. For this purpose, we started from basic concepts related to the problems mentioned and we continued by exemplifying them according to the needs at entity level, and also according to the standards in force. On the other hand, we sought to highlight the place and role of the state institutions in the control activity process at professional level, as well as the implications of this activity on entities and on the economic and social life.

Keywords: competences; state institutions; control programme.

JEL Classification: G28, H11, P41

1 Introduction

The problems of state institutions in the control activities have not been and are not a priority for the specialised literature in Romania, unless they are related to the level where such institutions issue a number of guidelines followed by their effects, which effects are felt directly or indirectly, guiding principles, associated competences.

This matter becomes increasingly important, due to the fact that the aim is to enhance efficiency in all economy areas, and to increase the involvement of the state at the same time, with the purpose of supporting the economic growth.

State institutions try, on the background of a worldwide high competitiveness level, to provide the alignment of business entities to the requirements of the global market, by establishing professional criteria based on which they can exercise their objectives.

2 The control activity: reference elements

In our country, the intense reform activity of the whole system requires a comprehensive directing and surveillance process for all the activities performed, both at the public sector level, as well as in the private sector. For these reasons, the control activity was enhanced, improved and made indispensable for the effective management of any activity.

Control is a management function that provides the knowledge and improvement of the assets management and guidance, the organisation and performance of the production, repair and selling activity, (Munteanu & team, 2012, p. 9).

This action of knowing all the activities in order to increase their efficiency takes into account the objectives aimed by the respective entity, the objectives of the collaborating third parties, and last, but not least, the interests of the state.

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The overall control action is based on a number of steps (five) which are as follows (Florea&Macovei&Florea, 2007):

- Determining the ideal situation;
- Specifying admissible tolerances;
- Determining the actual situation at a given time;
- Comparing the two situations (the ideal and the real one) in order to set deviations, differences;
- Formulating conclusions (interpreting deviations, determining their significance, proposing or adopting measures)

A good control system, for maximum practical efficiency, should also meet certain requirements (Florea&Macovei&Florea, 2007):

- to have a **unitary nature**, with a clear view about the content, organization and methodology;
- to be **multilateral and systematic**, comprising all faces of the economic activities;
- to be thoroughly **democratic**, being exercised by multiple bodies and a high number of specialists;
- to be characterised by **efficacy and promptness**, more specifically, to be initiated at the right time and performed in an optimal period;
- to fulfil an **educative role**, by urging the stakeholders to observe the laws, to protect their own interests as well as general citizens' interests;
- to be **constructive** in order to prevent, identify and eliminate deficiencies found.

3 Basic principles of the control activity

According to the "Guide for the Assessment of the Internal Control System in Public Entities" drawn up by the Court of Accounts of Romania there are a number of principles that provide an appropriate organization and functioning of any control system.

The principle of organization implies the appropriate organization of the entity, by determining:

- The organizational chart (with all the structure composing the entity);
- The procedure manuals (responsibilities, competence delegations, tasks, manner of conveying information, etc.);

The principle of self-control, more specifically, the control procedures should also include self-control procedures aimed at discovering irregularities. In relation to the latter, we are mentioning:

- Verifying information by means of other information supplied by various documents;
- Mutual control, i.e. checks, correlations of the information obtained from two persons.

The principle of permanence implies stability for the control procedures, in order to eliminate rigidity and provide the adjustment to internal and external changes occurred. This principle allows for delimiting control deficiencies and cases of failure to observe the control procedures.

The principle of universality implies control procedures:

- For all persons in the entity;
- For all assets and liabilities of the entity;
- permanent.

The principle of information implies that the information resulted following the application of the control procedures should have two qualities: it should be verifiable and useful. The verifiability of the information implies the possibility to identify sources, documents of origin, i.e. it can be justified and authenticated. This aspect also implies an adequate conservation of the information, more specifically:

- numbering, sorting, archiving the accounting documents;
- keeping them in an appropriate manner throughout the period provided by the law.

A piece of information is deemed useful if it is obtained from the source, is not redundant, and the cost of obtaining it is lower than the benefits obtained by using it.

The principle of harmony consists in the continuous adjustment of control, taking into account: the risks that can affect the system and the costs involved for the implementation of the control procedures, compared to the costs of the deficiencies generated as a result of failure to perform the control.

The principle of staff quality, i.e. the control activity, with a high quality level, involves qualified, competent, professional staff, (recruitment under optimal conditions, continuous professional training, appropriate remuneration, high professional objectives.

4 The control exercised by the specialised state bodies

This activity implies the exercise of the control activity by the state by means of a number of institutions, for several purposes. Thus, according to the document "The strategy of the development of the public internal financial control in Romania for the 2014-2016 period" prepared by the Ministry of Public Finance, we can find the following forms of control:

A. the public external financial control

- the parliamentary control – the Senate and the Deputies' Chamber

The parliamentary control is exercised either by the whole Parliament, or by one of its chambers. In the Constitution of Romania we can find a number of provisions related to the exercise of the control function by the Parliament: the obligation of the Ombudsman to present reports to the two Chambers, the political responsibility of the Government, the obligation of the Government to present, within parliamentary control, the required information and documents, etc.

The forms and means by which the parliamentary control is exercised comprise:

- a) the control exercised by accounts, messages, reports, and programmes presented to the Parliament;
- b) the control exercised through the parliamentary commissions;
- c) the control exercised through questions and interpretations;
- d) the deputies' and senators' right to request and obtain information;
- e) the control exercised through the Ombudsman.

The Parliament adopts annual budgetary laws and the rectification laws prepared by the Government, the general government budget execution account, the government social insurance budget account, as well as the other annual special

budget fund execution accounts, which have as an annex the annual execution accounts of the budgets of the main Authorising Officers. The latter are accompanied by the Annual report on internal control elaborated by the Ministry of Public Finance. The budgets are approved by the Parliament as a whole, on parts, chapters, sub-chapters, titles, articles and paragraphs, as the case may be, and on main Authorising Officers.

The two Chambers may withdraw their confidence given to the government, by a motion of no confidence, with the vote of the majority of deputies and senators. *The Permanent Commissions* of the Chambers have duties related to performing parliamentary inquiries whose reports are submitted to the Standing Bureau.

- the control exercised by the Romanian Court of Accounts

The Court of Accounts exercises control over the manner of establishing, managing and using the financial resources of the state and of the public sector. The control itself is performed through external public audit procedures. As supreme audit institution, it represents Romania in the international organizations in this field. In the territory there are county account chambers, and the chamber of accounts of Bucharest, structures without legal personality.

The management is exercised by its Plenum, and the executive management is exercised by a President and two Vice Presidents, who are counsellors of account. The Plenum includes other members, appointed in compliance with the law, who are also counsellors of account. From the point of view of structure, it comprises the county chambers of accounts and the chamber of accounts of Bucharest and a general secretariat. Directorates, services, offices and compartments may be organised within the departments.

Within the competences provided by the law, it exercises activities over the following components:

- a) the state and the administrative and territorial units with their services and public institutions, autonomous or non-autonomous;
- b) the National Bank of Romania;
- c) the government business enterprises;
- d) the trading companies in which the government, the administrative and territorial units, the public institutions or the government business enterprises are majority shareholders;
- e) the autonomous social insurance bodies or other such bodies that manage assets, values or funds;
- f) other persons that interact with the government or with the administrative and territorial units, financial public institutions;

Exercises control over the budget execution at: the Chamber of Deputies; Senate; the Presidential Administration; the Government; the High Court of Cassation and Justice; the Constitutional Court; the Legislative Council and the Ombudsman.

Prepares the annual public report which it submits to the Parliament with observations related to the budget execution accounts subject to its control, conclusions from the controls ordered by the Chambers, or performed at the government business enterprises, trading companies fully or majority-owned by the government, and at the other legal entities subject to the control of this authority, the violations of the law found and the accountability actions taken. The county chambers of accounts submit to the deliberative public authorities of the administrative and territorial units, annual reports related to the local public finance. They can also submit to the Parliament, or through the county chambers of

accounts, the deliberative public authorities of the administrative and territorial units, reports in their remits, whenever they deem such reports are required.

B. Public internal financial control

- government control structures

a) Control Body of the Prime Minister

It operates under the Prime Minister, it does not have legal personality, it controls and monitors the activity of the ministries and their decentralized public services, public institutions subordinated to the Government, specialized bodies of the central public administration subordinated to the Government, offices, departments, commissions, government business enterprises, national companies and enterprises, trading companies and financial and banking institutions fully or majority owned by the government. It also controls the activity of the public institutions subordinated to the local public administration authorities, in compliance with the general regime of local autonomy and the organization and functioning of local authorities. It is headed by a state secretary appointed/dismissed by decision of the Prime Minister. The operation costs are financed from the budget of the Government's General Secretariat.

b) The Fight against Fraud Department (DLAF)

It is a legal structure within the working apparatus of the Government, coordinated by the Prime Minister, acting based on functional and decisional autonomy, independently from other public institutions.

DLAF is the contact institution for the European Anti-Fraud Office and provides, supports and coordinates, as the case may be, the fulfilment of all the obligations of our country in relation to the protection of the EU financial interests, according to the undertaken obligations. DLAF is headed by a chief, with the rank of Secretary of State, appointed by decision of the Prime Minister, for a period of 5 years, and who is a tertiary authorising officer. The operating expenses of DLAF are financed from the government budget, through the budget of the Government's General Secretariat.

DLAF also fulfils, among others, *the control function*, with the purpose of identifying irregularities, fraud and other illegal activities harming the EU financial interests in Romania. The measures comprised in the control documents drawn up by the DLAF staff are compulsory for the authorities competent to manage European funds and associated co-financings.

C. The control performed by the Ministry of Public Finance (MFP) is carried out through the 6 structures below:

1. *The Central Harmonisation Unit for Public Internal Audit (UCAAPI)* – Represents a distinctive structure within MFP, which is directly subordinated to the Minister of Public Finance; its manager is appointed by the Minister of Public Finance with the endorsement of the Committee for Public Internal Audit (CAPI). UCAAPI is used with the purpose of providing the coordination of the internal public audit activity. CAPI is attached to UCAAPI, has an advisory status, and acts with the purpose of defining the strategy and of improving the internal audit activity in the public sector.

2. *The Central Harmonization Unit of Financial Management and Control Systems (UCASMFC)* – was established by attaching to the control duties of the Delegated Controller Body, certain additional duties related to the regulation, methodological guidance and monitoring of the process of

implementing financial management and control systems in public institutions.

3. *The General Directorate for Economic and Financial Inspection (DGIEF)* – operates as a specialised ex-ante control, operative control and ex-post control structure, ensuring the appropriate and timely fulfilment of the duties of the Ministry of Public Finance, in relation to the accountability of the economic operators in exercising the economic and financial activity and with the purpose of strengthening budgetary and economic and financial discipline. This structure comprises the *Economic and Financial Inspection Service and the European Fund Inspection Service*.

4. *The Public Procurements Coordination and Verification Unit (UCVAP)* – a structure within the Ministry of Public Finance performing the ex-ante verification of the procedural aspects related to the award of the contracts within the scope of the laws on the award of public procurement contracts, public work concession contracts, and public service concession contracts.

5. *The State Treasury* – represents the system by which the state ensures the execution of the collection and payment operations related to the public funds, including those related to the public debt, other government operations, in compliance with the legal provisions. *The General Treasury and Public Accounting Directorate* is established and operates at MPF level, and coordinates, from the methodological point of view, the organization and distribution of funds from the treasury budget and the reports of the territorial units of the State Treasury within the general regional directorates of the public finance/county public finance administration bodies. It includes the *Public Institution Accounting Methodology Department*.

6. *The National Agency for Fiscal Administration (NAFA)* – exercises control duties related to the combat of tax evasion by increasing the efficiency of the tax inspection, multinational fraud combat, transfer price control and combating intra-Community fraud activity. The fulfilment of these duties implies the following components:

- Directorate General for Integrity (DGI) – which is the structure with duties and responsibilities related to taking corruption and prevention and combat measures, exercising all the control and monitoring operations related to the activity carried out at the level of own apparatus and at the level of the NAFA central and territorial structures;

- The Directorate General for Tax Inspection Coordination (DGCIF) – its main objective is to coordinate and provide methodological guidance to the territorial structures with tax inspection competences;

- Directorate General for Tax Fraud (DGAF) - exercises competences related to the prevention and combat of tax and customs evasion acts. Besides the prevention and control structures, it also comprises the *Fraud Combat Directorate*, which provides specialised technical support to the prosecutor in carrying out prosecution for cases of economic and financial crimes.

- The Large Taxpayer General Administration Directorate (DGAMC) – operates as a general directorate within NAFA, and its main mission is to increase the efficiency of the management and collection of the government budget revenues, the tax monitoring and assistance, as well

as the tax control at large taxpayers nationwide. *The Economic and Financial Inspection Service* operates within it.

- The General Customs Directorate (DGV) – operates as a general directorate within NAFA, and its main mission is to apply the customs and excise policies.

- The General Regional Public Finance Directorates (DGRFP) – are territorial units with legal personality, subordinated to NAFA, which develop the Government's public finance strategy and programme and apply the Government's tax policy.

- other control authorities in the central public administration

This category comprises other control authorities acting for the prevention, ascertainment, and punishment of the violations of the legal provisions in specific remits, such as: the National Authority for Regulating and Monitoring Public Procurement; Labour Inspection; the National Agency for Payments Social and Inspection; the Competition Council; the National Authority for Consumer Protection; the National Office for Preventing and Combating Money Laundering; the National Environmental Guard; the State Inspectorate for Constructions; the National Sanitary Veterinary and Food Safety Authority, etc.

C. The public internal financial control in the local administration

- the control exercised by the Prefect and the Prefect's institution

The Prefect is the Government's representative at territorial level, the guarantor of the compliance with the law and public order at local level. In the control area, the prefect fulfils the following duties:

- a) he/she provides, at county or Bucharest level, the application and compliance with the Constitution, the legislation issued, as well as with the public order;
- b) he/she acts for the accomplishment in the county or Bucharest, of the objectives in the ruling programme, ordering the measures required for their achievement, in compliance with its legal competences and duties;
- c) verifies the lawfulness of the administrative acts of the county or local council or of the mayor.

The *Prefect's Institution* is organised and operates for the exercise of these duties, has legal personality, as well as its own assets and budget. Its office is in the county capital city, or in Bucharest, respectively. The Prefect's Chancellery is organised and operates within the Prefect's Institution.

- the control exercised by the Mayor

The Mayor represents the executive authority in the local public administration and represents the administrative and territorial unit in which he/she was elected, in the relationships with other public authorities. The Mayor fulfils the following duties in the local public finance area:

- a) he/she develops draft strategies concerning the status of the administrative and territorial unit on components and subjects them to the approval of the local council;
- b) he/she presents to the local council an annual report concerning the status of the administrative and territorial unit;
- c) he/she prepares the draft local budget and the fiscal year closing report and submits them to the local council for approval;
- d) he/she monitors and reports the local budget execution throughout the year;

- e) he/she commits, liquidates and authorises local budget expenses, as main Authorising Officer;
- f) he/she organises the activity of ascertainment, control, monitoring, and collection of the local taxes, as well as any other revenues of the administrative and territorial unit;
- g) he/she verifies, through the specialised compartments, the appropriate fiscal registration of taxpayers with the territorial tax authority for local taxes;
- h) he/she takes measures to provide the inventory, statistical recording, inspection and control of the provision of local interest services;
- i) he/she takes measures for the appropriate management of the publicly-owned and privately-owned assets of the administrative and territorial unit, etc.

For the fulfilment of his/her duties, the Mayor has a specialised apparatus that includes the specialised structure performing the activities related to establishing and recoding debts related to the local budget, the collection, monitoring and control of the accuracy of the local financial statements.

5 The place and the role of the control in the activity of the entities. Economic and social implications

The control activity is a continuously developing process, adjustable to the changes proposed within any entity. The actual control action involves both the internal as well as the external staff in order to ensure the achievement of the general objectives of the entity compared to the risks inherent to its mission.

The specificity of the activity of the entity in which the control action is performed and the entity's size are not important, because a good organisation of the mission in compliance with certain specific principles and professional rules provide the subsequent success and the quality of the conclusions. The existence, development, applicability and interference of these elements make the concentrated action of the state through its specialised bodies indispensable.

On the other hand, the involvement of the specialised government bodies in exercising the control actions ensures the external credibility of the respective nation, and of all the activities in which they get involved.

The existence of harmonised standards at the level of each country also implies a good guarantee related to the financial resources available, the reports related to the economic and financial activities, the good faith in exercising their duties. This guarantee is also manifested in inter-country relationships, which is an additional factor in the communication and cooperation process.

The obligations concerning the control at state level, represented by its institutions implies transparency and correctness towards the civil society they represent, in the revenue distribution process, and which, in its turn, generates value added through its actions.

At the level of any entity there are a number of factors that are not directly influenced by the decisions issued directly by the state, the internal decisions made by the managerial team, the fulfilment of various actions, they are influenced by random factors such as: human errors, lack of discipline, ill faith.

Under such circumstances, the superposition of the control system at the level of the entities with the control system exercised by the specialised government bodies, the state adjustment to the actual practical conditions lead, in certain restrictive

conditions, to the achievement of the general and specific objectives, more effectively, in optimum conditions and maximizing results with a minimum effort.

6 Conclusions

The control exercised at entity level is later “doubled” by the control performed by the state through its specialised bodies (the Court of Accounts, the Tax Inspection, the General Antifraud Directorate, etc). These bodies, through the actions performed, monitor the entity’s compliance with the legal provisions in the economic and financial areas.

As shown hereinabove, this type of control implies diversified services that are determined depending on the nature and content of the duties of these bodies in the social and economic life. All these duties are set through well substantiated programmes which are focused on the objectives proposed, the specificity of the controlled entity, and also the own scope.

Although we can find, in each country, many differentiation elements, peculiarities, control actions that must be carried out according to a normative framework, with general applicability, however, depending on the actual conditions, this framework allows for the adjustment to the general requirements, in such a way as to ensure the general protection against fund fraud and irresponsible management, the usefulness and pertinence of the data obtained and their practical use.

There are currently multiple forms and classification criteria of the control activity, which denotes the major role and place of this activity in the economic and social life through its involvement in the elimination of certain deficiencies and in the optimisation of the system.

In conclusion, the control activity exercised by the state institutions is a factor that contributes maintaining the normality of any activity, the competent solution of the problems related to the development and optimization if the activity of any entity, and monitors the operation of the entities based on efficiency and profitability criteria.

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