



## WATCHING THE GUARDIANS

The European Court of Auditors in light of transparency

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### INTRODUCTION

Spending public money is highly controversial since central administrations decide on communal budgets - actors issuing public budgets must be held accountable for how they spend it. On the European level, the Court of Auditors is in charge of carrying out this task. In practice, the ECA describes its function as an "independent guardian of the financial interests of the citizens of the Union" (Website ECA, 2018). Thus, the Court of Auditors investigates if the European budget was issued the way it was supposed to be spent. Therefore, it holds the executive actors accountable for their budgetary actions.

Since "transparency is a sustaining element of accountability" (Auditor General of Canada, 2002, p.7), the latter cannot be implemented, before having created the previous one. At the same time, the ECA does not only rely on transparent structures, it also creates them. Additionally, it is equally important to question the transparency of the institutions itself. Given those observations, this paper aims to raise relevant issues regarding the ECA in light of transparency. It aims to provide a descriptive starting point for further research rather than an in-depth study. Thus, the goal is to raise relevant questions in explaining processes within the ECA.

Figure 1 Accountability Scheme



In aiming to approach this issue, it is necessary to assess the ECA in an analytical manner. Based on the model of the accountability process, published by Auditor general of Canada (2002, p.8), the displayed scheme is applied in this paper (Figure 1). It is now important to apply it to the ECA to define which elements to focus on when assessing transparency-related questions. Firstly, the accountability frame must be covered in investigating the (1) appointment of European auditors. Secondly, the reporting does not only rely on the (2) data that is provided to the court that holds accountable but also on the (3) type of audits that are used. Finally, the adjustments that result from this report is then depending on the (4) "follow up" of the reporting and the question of the impact that reports have. The performance itself shall not be subject to the assessment since it is outside the scope of duties by the ECA.

### INVESTIGATING TRANSPARENCY AND THE EUROPEAN COURT OF AUDITORS

## 1. APPOINTMENT OF AUDITORS

For the appointment of a member of the European Court of Auditors, the consultation procedure is applied. Following the recommendation of Member States and after consulting the European Parliament (EP), the auditors are appointed by the Council (art. 286 TFEU). Candidates nominated as members of the Court of Auditors are invited then to make a statement before the responsible committee, the Committee on Budgetary Control, and to answer questions asked by its members (rule 121.2 of the Rules of Procedure of the EP). These questions are divided in four sets: professional experience, independence, performance of duties and other questions.

Once the candidate has responded to the questionnaire, the Committee on Budgetary Control votes on each nomination and make a recommendation to the EP as to whether the nomination should be approved (rule 121.3 of the Rules of Procedure of the EP). The vote in the plenary will determine the opinion adopted by the EP, if it is unfavourable. The President will ask the Council to withdraw its nomination and to submit a new nomination (rule 121.4 of the Rules of Procedure of the EP).

In conclusion, even when the result of the voting in the EP is non-binding, that does not mean that it lacks political impact. An unfavourable opinion from the EP involves the discredit of the candidate. As a consequence, when this situation takes place, certain Member States decide to withdraw the candidature, as asked by the President of the European Parliament. This was the case for Anthony Abela 2016 and Leonard Orban in 2012.

However, if the candidature is approved by the Council in spite of an unfavourable vote of the EP, (as it has been the case for Janusz Wojciechowski and Leo Brincat in 2016 and Neven Mates in 2013), it has political consequences: firstly, it raises institutional tensions between the EP and the Council. Secondly, it can lead to the degradation of the public image of the ECA.

Thus, an ambiguous setting is found when it comes to the appointment of the auditors: on the one hand, the process within the EP creates transparency and publicity for the nomination process. At the same time, it also gives the members of the Committee on Budgetary Control the opportunity to raise their main concerns regarding the candidate and get direct information from the candidate throughout the questionnaire, which must be highlighted as positive. On the other hand, the impact of the EP is significantly limited. Recent cases have shown that Member States can ignore the outcome of the voting in the plenary meeting and maintain their candidature. In the end, the Council remains the key actor when appointing the auditors. Regarding transparency concerns, the Council shows significant shortcomings when it comes to retracing of decisions that are made (Transparency International, 2016, p.20).

## 2. DATA SOURCES

Transparency regarding the data collection was assessed by interviewing a representative of the ECA's Directorate of the Audit Quality Control Committee. Other than analysing the audit manuals (available publicly on the ECA's website), a semi-structured interview provides a worthy first-hand insight which included reflections on practicalities. Mr Radek Majer, Assistant to the Director for Audit Quality Control, explained the audit process, how audit-relevant data are collected and checked internally. The following chapter builds up on the information that was given by Mr Majer.

In line with international audit standards and practice, the ECA bases its work on information that it has collected itself, on information requested from relevant stakeholders, and publicly available information. Using data provided by European Union institutions and bodies, Member State's authorities and other bodies involved in managing EU funds and implementing EU policies is essential for the audit process. For example, national data is necessary when auditing projects under shared management. Apart from some audits related to EU Banking Supervision, there are no systemic problems of having access to data necessary for the audit. The ECA does not keep

statistics on the proportion of data obtained from various sources.

Once the ECA receives the requested data, it carries out completeness and integrity checks to assess whether the provided information (1) matches the request and if it is (2) complete. Where relevant, such checks are supported by software to detect patterns in the data indicating errors or omissions. On top of that, the ECA, by nature, applies “professional scepticism” towards the incoming data. Therefore, when necessary, it assesses data correctness by collecting and or/verifying information “on-the-spot”.

These visits can take place both inside and outside the EU territory, depending on the location of a funded project. They include meetings with the EU, Member States and other bodies (such as international organisations) responsible for implementing the relevant EU policy, and visits to places where the EU budget was recorded as being spent. This method provides the most reliable data. Given the costs involved, the ECA has to define which element it will be examine before every auditing activity. In short, the ECA has to prioritize audits based on the risk assessment and importance to stakeholders.

An important phase in ensuring the factual correctness and quality of audit reports is clearing of facts and findings with the auditee. Auditees may request for changes in the ECA’s draft audit report by providing additional evidence where there are inaccuracies. To enhance the transparency of its audit approach, the ECA publishes in its report the auditee’s official reply.

Finally, it is important to discuss the public accessibility of the data that the ECA use for audits. While much of the information examined is publicly accessible, important information is often only in possession of relevant stakeholders. The ECA handles such documents and information in line with applicable standards and rules on data protection.

To sum up, it was found that the ECA uses **diverse sources of data**: On the one hand,

European and Member State's bodies and institutions provide information to the ECA at its request. On the other hand, the ECA also collects data from public sources and on the spot during its audit visits. External information is checked for its **completeness and correctness**. Interesting points of further research could be the actual distribution of the sources from where the data is taken and the processes of internal checks. Moreover, from the perspective of enhancing transparency, it is worth to research whether and to what extent the ECA could **publish** - on top of its audit reports - the **underlying data** used to during its audits.

### 3. TYPES OF AUDITING

The ECA performs its audits in accordance with the international auditing standards and code of ethics, which ensures the quality and professionalism of the ECA’s work, as well as its efficiency. The ECA carries out three different types of audits: financial, compliance and performance audit. Each type of audit has a different objectives and missions. Financial Audit focus on the accuracy of the financial statements, while compliance audit ensures that the EU budget complies with the relevant legal and regulatory framework requirement. Performance audit represents a modern vision of an audit, being a blend of both conventional audit and management consulting incorporating the knowledge of many disciplines (Website ECA, 2018).

In the last twenty years, the European Court of Auditors has placed increasing importance on the publishing of special reports. These reports consist of information that is collected in performance audit. They examine expenditure in specific policy areas, or budgetary or management issues (Website ECA, 2018). Just like financial audit, performance audit also promotes accountability by providing assistance to oversight bodies. At the same time, by providing useful information to the citizen that serves as a basis for learning-processes and improvements, the ECA also increases transparency (Website PSC Intosai, 2018).

Starting from 1997, the Court of Auditors released more than 200 special reports that are focused on risk-related topics and are related to the public interest (Stephenson, 2015, p.85). With performance audit, the ECA gives conclusions and recommendations for the EP and the European Commission. Thus, the quality and the interpretation of those reports may have a significant impact on financial accountability.

After the first international peer review in 2008, ECA's performance audit was criticized to focus too much on effectiveness (risk-related topics), but too little on economy and efficiency (Stephenson, 2015, p.85). The management of EU institutions in the field of procurement, facility management and human resources management were rarely audited. One should be also take into consideration that special reports are often delivered too late for their findings to influence policy decisions. Later, in 2014, the second peer review advised that performance audit should be oriented more on the causes of problems and their consequences for the further recommendations (Stephenson, 2015, p.85). Having in mind these considerations, the following question must be raised: Should performance audit only be considered a tool to measure effectiveness or also as a source of policy recommendations?

Implementing performance audits have generally come with a number of challenges. The major challenge of conducting performance audits can be: excessively detailed procedures, methods and standards may hamper the effective functioning of performance auditing. Additionally, flaws are difficult to identify in the short term, thus audits cannot be made soon after the implementation of a policy. However, to affect policy decisions, it is crucial to publish reports promptly. Finding the right balance here is ambitious. Still, in comparison with conventional policy evaluation, one of the privileges of Performance Audit is having an access to financial information concerning budgets and transactions. (Stephenson, 2015, p. 88).

Therefore, we can conclude that the ECA carries out an **increasing number of performance audits**. As it was shown that this type includes relevant challenges. It can help, however, ensuring accountability and providing more transparency in making public policy recommendations to decision making actors.

#### 4. FOLLOW UP

The follow up of audit reports is of primary importance to ensure accountability and to assess the effectivity of the ECA's audit work and it constitutes the "final stage in the performance audit cycle of planning, execution and follow-up" (ECA, Special Report No. 2/2016, 2016, p. 7). Ensuring follow-up and measuring the impact of ECA's recommendations is essential to guarantee the efficiency and effectivity of the audit works. These two elements are crucial for transparency purposes, as they allow to assess both the performance of ECA and the impact of its work.

The ECA issues three kinds of report depending on the type of audit: annual reports, specific annual reports or special reports. "Annual reports contain the results of financial and compliance audit work on the European Union budget and European Development Funds" while "specific annual reports present the results of the annual financial audits of EU's agencies, decentralised bodies and joint undertakings" (ECA, Audit Reports and Opinions). What is relevant in terms of follow-up work of the ECA are special reports, which contain "the results of selected performance and compliance audits of specific spending or policy areas, or budgetary or management issues" (ECA, Audit Reports and Opinions).

Starting from 2011, the Court has issued three reports on the follow-up of its special reports with the aim to check to what extent recommendations of an audit work are implemented by the Commission. However, the ECA hasn't been constant in the publication of follow-up reports, and the timeframe of such publication (an average of 2 years after the investigation took place) might result in a loss of relevance of the Commission's action.

Indeed, in case of the last 2014 report on the follow-up of the ECAs' Special Reports - that was published in 2016 – a sample of 44 recommendations from the period 2009-2012 was taken. Despite a minimum amount of time is understandable for the Commission to be able to implement the Court's recommendations, the delay in the publication of the follow-up report has the effect of making the public aware of the compliance (or non-compliance) of the Commission only after several years from the first recommendation was made. In addition to that, it has also to be noted how the follow-up work only pertains the Commission, leaving the Member States out of the picture, while it is unclear why only Special Reports are taken into consideration.

Finally, according to the 2014 report on the follow-up of the European Court of Auditors' Special Reports, 60% of ECA's recommendation was fully respected by the Commission, 29% mostly respected, 8% was somehow respected, while 3% of them was not implemented. Despite the good level of compliance, it is unclear which are the consequences in case of lack of implementation of recommendations. The late publication of follow-up results combined with the lack of consequences in case of non-compliance, undermines the credibility of the work of the ECA.

## CONCLUSION

This paper aimed to provide a general assessment of the ECA in light of transparency. It was stated that it clearly contributes to more accountability in the EU. In order to do so, transparent structures are necessary. The (1) nomination of the European auditors, the (2) data collection, the (3) applied type of audit by the ECA and the (4) follow-up of the audits were assessed. The relevant issues that must be raised at this point are

- **the weakness of the EP in the appointment procedure**
- **the public access of data that is used by the ECA**
- **the challenges that are implied by carrying out performance audits**
- **the degree of impact by follow up reports**

Of course, these challenges cannot be tackled by the ECA alone. Different European actors have to take the initiative in order to make the ECA's work more transparent and more effective to – in the end – strengthen accountability in the EU.

The use of ECA's Special Reports by members of the European Parliament could also be considered as a sort of additional control to the work of the Court. In more recent years, a tendency can be noted from the ECA to audit on issues that are directly in the interest of the EP. This is because with the evolution of interinstitutional relations, the EP has increased its power of control over the executive – in particular the Commission – and audit reports constitute a useful source of information in this regard. In addition, Special Reports could theoretically be used to hold accountable the Commission even during its election process, but this has not been the case by now. Special Reports could theoretically be used to hold accountable the Commission even during the election process of the Commission, but this has not been the case by now.

To conclude, the **follow-up work** of the ECA shows some **gaps**: (1) the small number of reports combined with the relative late date of publication, (2) the lack of tools to enforce the recommendations and (3) the limited scope of follow up (only on the Commission). Those problems are directly linked to the **limited resources of the ECA** and the rather recent use of follow-up reports as a mean to hold the Commission accountable. Apart from the follow-up reports by the ECA itself, it must be pointed out as well that the **EP is actively using** the ECA's reports.

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