

VIII EUROSAI Congress – Lisboa, 2011

DISCUSSION PAPER

I

Challenges, demands and responsibilities of public managers today and the role of the Supreme Audit Institutions (SAIs)

THEME IB - *The role of SAIs in the accountability and responsibilities of public managers*

THIS DISCUSSION PAPER WAS PREPARED BY:

SAI OF SPAIN (CHAIR)

SAI OF FRANCE (REPORTER)

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Chapter I – Legal and ethical framework of public management

Accountability is one of the key concepts in what concerns good governance. It is linked to other dimensions of good governance, such as transparency, trustworthiness, equity, democracy, responsiveness and responsibility. However, it can mean different things to different people. Among SAIs there is not a single meaning for the word “accountability” and it is not clear enough its difference with liability.

Examination of the responses to SAI questionnaires shows that the terminology used by them is not common to all of them when we approach the issue of distinguishing between accountability and liability. Thus, some SAIs (Austria, Germany, Malta, Portugal, Russia, Slovakia, Spain and United Kingdom) say they have a clear distinction between both concepts and content, other SAIs (Belgium, Bulgaria, Estonia and Hungary) said that they use the terms of accountability and liability as equivalent concepts. Another group of SAIs avoided ruling on the topic (Croatia, Holland, Iceland, Latvia, Moldova, Romania and Switzerland, among others).

It would be appropriate to accept, in general, that both terms have different meaning and content. So we could agree that accountability is the principle under which managers are answerable about their activity and they must be subject to verification. For its part, liability would be a consequence of being responsible, and taking place in cases that the law or regulations would have been broken.

In any case, is generally accepted that accountability is a broad concept, strongly linked to ethics (SAI of Bulgaria dissents). In general, SAIs consider that the concept of accountability comprehend the respect of legal rules and principles (SAI of Iceland dissents).

The search for results by public managers is able to threaten some traditional values, such as equality, equity, honesty and fairness. Some SAIs underlined this issue, which one justifies the grown importance of ethics in public management. It is widely accepted that ethics is not just about establishing a set of rules or code of conduct but are an ongoing management process that should underpin the work of public managers. In the complex world of public administration norms and values rarely provide clear-cut answers to difficult problems. Ethics

should be thought of as helping to frame relevant questions about what government ought to be doing and how public administration ought to go about achieving those purposes. In this context, ethics seem to be particularly relevant in the promotion of accountability of public managers.

For some SAIs, public managers are not mere technicians. They are public servants and should be considered as such. For that reason, the design of responsibilities of public managers should go beyond the matters relating to formal legality or technical expertise. The action of public managers must meet the requirements of the democratic States, including the concern to respond to the real needs of the populations they serve and to ensure transparency of the decision-making processes. So, under this perspective, SAIs should promote the respect of legal rules by public managers and the economy, effectiveness and efficiency of public management, as well as promote the respect of the main principles of democratic state by public managers (including ethical principles)

For others, however, the role of SAIs is to assure the respect of legal rules by public managers and the economy, effectiveness and efficiency of public management. They should not be involved in the discussion and promotion of democratic values. That is a role of parliaments.

Chapter II – Public managers accountability

I – Public managers accountability

Accountability for public managers involves a wide range of responsibilities. They are expected to demonstrate professional capacity in both technical matters and management issues, and to constantly adapt to a context which is changing rapidly. This situation is particularly challenging, as they are held personally accountable for their professional conduct, and occasionally assessed and payed according to the performance they individually achieved (Switzerland). It is therefore necessary that public policies should be implemented within a framework that allows an efficient and effective management, sets a clear definition of objectives and responsibilities, and provides ways of coordination (SAI of Latvia).

When they are civil servants, managers have to comply with the civil service regulations and are liable in disciplinary causes. But even when they are not civil servants, law and regulations and sometimes ethical codes define their duties, because they serve the public interest. In many countries, public managers are required to fulfil ethical standards and requirements, and public officials are personally accountable for their activities in exercising the public office for which they have been appointed. In some countries (Hungary) a declaration of property is required in order to assess that managers are not susceptible of conflicts of interest.

Managers with specific financial responsibilities or in charge of control activities (like accounting officers or internal auditors) are submitted to specific accountability mechanisms. They can oppose an irregular decision, and ask for a formal direction from the minister (United Kingdom, France). In some countries, they are due to a financial and/or personal liability. Accountability involves possible sanctions where an intentional or grossly negligent breach of duty causes damage for public resources. Managers may therefore be required to pay compensation, what is decided directly by SAIs having jurisdictional powers (Spain, Portugal, France). Sanctions may also be initiated by other SAIs (Germany, Russia) which then transfer their findings to the law enforcement bodies.

In most countries, the managers' responsibilities are determined by their position in the hierarchy. Public managers are accountable to the management level above them in the hierarchy. Executive managers are accountable to the minister. They are also accountable before the Parliament, directly or indirectly. This type of accountability is usually exercised by the Public Accounts Committees, or similar parliamentary bodies, which play an increasing role in monitoring public management.

Different perspectives also seem to exist in what concerns the issue of accountability of public managers before citizens (according to legal or ethical principles). For some SAIs, public managers are accountable exclusively to their public employer; accountability to citizens can at best be construed indirectly and morally (SAI of Germany). Some SAIs stresses the accountability of Government to general public via Parliament (SAI of United Kingdom). Other SAIs underlines the importance of codes of ethics, which ones informs the citizens about the conduct they have the right to expect from civil servants (SAI of Croatia).

But the general expectation for more transparency leads public managers to report more frequently to external stakeholders. There is a growing demand (Iceland) from the medias and the general public that they should be also accountable before citizens, especially about their actions as public officials (Croatia).

This variety of perspectives in what concerns the relation between SAIs and citizens seems to show that this issue deserves some attention and that it is able to promote fruitful discussion.

II – Financial accountability

Financial accountability is generally articulated with the legal, political and professional dimensions of accountability. It may even be considered as its main and most regulated area. Managers are requested to protect public assets, to comply with regulations and to assess the risks associated with the management environment. With the development of performance management within public administration, both at central and local levels, they are now also requested to manage public resources according to principles of economy, efficiency and effectiveness, with respect to the objectives set by the government and/or the Parliament. Financial accountability often includes the obligation for managers to report on the performance of their duties in the form of an annual activity report (EU, France).

Beyond this dimension of performance, mentioned by most SAIs, financial accountability also involves addressing new challenges like sustainability of public finances, or transparency (Moldova).

III – Recent changes in public management accountability

Many changes have affected the public sector in the last decades, and thus transformed the definition, the scope and the exercise of accountability for public managers. Respondent SAIs mentioned a large variety of these changes.

Many countries in Central and Eastern Europe have experienced deep evolutions in the role of the State and its relations with the economy and the society. Other types of institutional

reforms appeared in different areas: increasing powers of local government (France, Netherlands), development of decentralized agencies (Belgium) or corporate governance codices (Austria), or extended mandates for SAIs (Slovakia).

Regularity and clarity in public accounts, transparency and efficiency have become key principles of the public management system . That means paying more attention to internal control, identifying and anticipating weaknesses in systems, and relying more on information technologies (Spain).

Such issues are of increasing importance with the financial crisis, and also for countries that have to introduce fiscal convergence in their public sector for joining the eurozone (Estonia).

In most countries, budgetary reforms introduced objective oriented programs and performance evaluation, including new definitions of responsibilities for internal control (Bulgaria) as for reporting on achievements. In this context, Parliaments play an increasing role in monitoring the action of the government and enhancing accountability (Cyprus, Czech republic).

Citizens show a growing interest in the use of public resources, and in the achievements of public policies objectives. They expect more regularity, efficiency and transparency, especially with the financial crisis (Iceland). More people have access to information, through various legal obligations imposed to the public sector (Hungary, Azerbaidjan). Public managers are thus requested to demonstrate their integrity, both professionally and personally, and to comply with ethical standards or codes (Czech republic).

Accountability is questioned by SAIs within their different audit mandates, and according to the various aspects of public managers activities: decisions, supervision, organisation of their departments or agencies, designing of internal control, reporting on their activities. SAIs will check the legality and regularity of their management, pronounce or recommend sanctions if necessary, qualify financial reporting, assess the soundness of internal control, evaluate performance and communicate their findings to relevant stakeholders.

Chapter III – The role of SAI in ensuring accountability of public managers

I – SAIs and accountability of public managers

In democratic societies the process of accountability enhances the legitimacy of power and provides guidelines for democratic governments.

SAIs have a key role in the process of accountability as to make public the way government expenditures are being run to provide useful information to voters who may use them in defining their vote, allowing to begin the process of vertical accountability. The dissemination of this information is essential for the implementation of this mechanism.

Thus, SAIs are in a unique position to ensure and enhance the accountability process, provided that two basic premises are accomplished, namely, the independence of the audit institution and the professionalism of people working for it.

How can SAIs help strengthen the accountability of public managers?

Any accountability system to be effective requires that there is a culture of accountability that is based on a shared interpretation of this principle. SAIs that have been assigned a function to control the economic and public financial management should, and are able to, promote consistent interpretation of that principle and an effective approach to it.

SAIs in the exercise of its supervisory role review the management of public entities in a process leading to held responsible the organisations that receive and use public funds. At the same time they try to identify individual responsibilities trying to link, to the possible extent, actions and results with people who appear as authors or makers of one and another.

In the process of identification of responsibilities it is often raised the problem that the internal organisation of the audited body, its system of allocation of powers, and the decision-making process make difficult or even impossible to identify individual responsibilities due to the lack of a clear definition of the abovementioned. Furthermore, in large organisations there is a general tendency of individuals within them who assume that they do not really have authority, referring major decisions to working groups or boards. This necessarily leads to attribute the actions and results to a whole entity, unable to attribute them to individual managers who took various decisions. This weakens the effectiveness of control and the principle of accountability.

SAIs play a key role in correcting such situations strengthening, therefore, the accountability of managers. The establishment by SAIs of standards of "good practices" to promote a culture of accountability of public managers, and recommending them to organisations that show weaknesses in the definition and allocation of responsibilities to their managers, could provide an important step towards strengthening the accountability process.

When asked SAIs whether they have established standards of "good practices" for the accountability of public managers, most of which responded to the questionnaire reported they have not been established them (Belgium, Bulgaria, Czech Republic, Slovakia, Hungary, Iceland, Malta, Portugal, and Romania). Others like Croatia, Estonia, and Spain although they have not established them they have provided support using standards developed by other organisations. On the contrary, SAIs such as Germany and Britain said that they have either compiled or established this type of standards to strengthen accountability. Austria says to have elaborated "core statements" to strengthen its advisory function. Russia says it does not have them but intends to establish them in the future. Finally, Denmark advises that they do not have them as it is unnecessary, since the culture of accountability is part of the general culture of the administration of public funds in that country.

In line with the SAIs that have contributed to compile and establish standards for accountability, we can wonder about the advisability of the establishment by all of them of policies, guides, guidelines and tools for building an efficient system to ensure accountability of public managers.

Dissemination to auditees of the observance by them of the four basic principles of accountability would be part of the contribution of SAIs to their strengthening, namely:

Principle of transparency: definition of how organisations make available information on their activities and their objectives.

Principle of participation: process through which organisations always bear in mind those interested in them both in the decision making process and in planning and carrying out their activities.

Principle of evaluation: process through which organisations form an opinion about the value and quality of their activities and their results.

Principle of "feedback": process through which organisations provide comments and criticisms of their activities.

In addition, SAIs could contribute to strengthening the culture of accountability through providing auditees guidelines that would facilitate the implementation of a system of accountability of its managers. Thus, SAIs could encourage organisations to engage in activities such as: 1) interpretation of the role they play in society, 2) target identification, 3) establishing the means to achieve them, 4) definition of programs, 5) identification of persons responsible for them; 6) definition of the tasks assigned to their managers and the level of authority possessed by each one of them, 7) identification of priorities; 8) planning activities; 9) assessments (of the Organisation and their managers), 10) transparent implementation of their programs, 11) dissemination of results, and 12) implementation of an effective internal control system.

Finally, the spread between the organisations of the benefits which in any case the implementation of an accountability system provides and also the strengthening of programs to inculcate ethical values to public managers may be important contributions of SAIs in promoting a culture of accountability.

II – The recommendations of SAIs on accountability of public managers

Most of the SAIs that answered the questionnaire prepared for this issue say that they often make recommendations to the audited bodies aimed at strengthening the accountability of public managers. Among the recommendations made we can highlight the following ones:

- a) Implementation, development and strengthening of internal control in audited bodies (Austria, Bulgaria, Croatia, Hungary, Moldova, Romania, Spain and Switzerland).
- b) Improvements in the publication and dissemination of data on governance (Belgium and Hungary).
- c) Monitoring compliance with the objectives and assessment of the efficiency (Moldavia, UK, Russia and Spain).
- d) Strengthening task planning and design strategies (Belgium and Moldova).
- e) Establishment of additional reporting duties (Germany).

- f) Continued and close monitoring of the recommendations (Croatia, Slovakia, Malta and Portugal).
- g) To determine the criteria for the variable remuneration components prior to each performance period (Austria).

III – Performance accountability

The diversification of control by SAIs has substantially changed the content of the concept of accountability. Together with the classic controls of legality and financial regularity, performance controls are being developed with an increasing importance, where the assessment of the economy, efficiency and effectiveness of governance are gradually displacing the former importance of those classical controls.

The fulfilment of the objectives, the evaluation of public policy outcomes and the measurement of "value-for money" based on the equation of taxpayers effort as opposed to quantity and quality of public services received, are guidelines of increasing importance in the control function of SAIs.

However, in most countries around us accountability of government and other public entities against the SAI continues to be built on the basis of documentary proof of compliance with laws and regulations in the budgetary and economic- financial areas, and to ensure the consistency and reliability of financial statements, within the parameters of the purest orthodoxy of the technique of public audit.

Thus, the contents of accountability seems to be inspired by the idea of being responsible for compliance with legal and financial accountability, specifically excluding the accountability of public managers in achieving the objectives and the optimization of results.

The accounts that the Government and public bodies deliver to SAIs usually do not contain indicators of efficiency, economy rates, evaluation of results, level of compliance with the targets, evaluating the success of public policies and social satisfaction in the provision of public services.

Almost all SAIs that responded to the questionnaire admit that there is really no accountability for performance of public managers, being accredited that they do not consider

themselves liable for acts and decisions adopted outside the observance of the principles of efficiency, effectiveness and economy, or engage in misuse or waste of public money.

Exceptionally, the SAI of Denmark, on the one hand, says that in that country there is such kind of responsibility, while, on the other hand, the SAI of Bulgaria reported that the breach of the principles of efficiency, economy and efficiency by public managers could result in that country in the requirement of legal liability. In this line SAI of Austria reports a case in which a violation of diligence duties by the members of the Management Board could give place to initiate in-depth investigations as to the liability of public managers.

Moreover, the SAI of Germany reports that in many cases has asked the auditees that managers are held accountable for the results of their actions; although it admits that in practice nothing is done about it. In this line the SAI of Iceland recognizes that although that kind of responsibility is not required, public opinion, however, increasingly calls requiring accountability for results to public managers.

Practically all SAIs help to spread the culture of accountability for results by strengthening controls over the performance of managers and making recommendations on efficiency, effectiveness and economy (Austria, Germany, Belgium, Bulgaria, Estonia, Hungary, Malta, Latvia, Portugal, United Kingdom, Romania, Spain, Sweden, and Switzerland).

Specifically, the SAIs of Portugal and Spain reported that public managers are also liable for actions incurring in profligacy or fail to regard the principles of economy, effectiveness and efficiency, when they provoke a damage to public funds, resulting from a default of accounting or budgetary regulations.

While the law in every country does not agree to establish a system of accountability of public managers for the compliance of goals, the achievement of results and an effective and efficient use of public resources to enable citizens to enrich the political control exercised through the ballot box, and to lay the groundwork for the development of social control, the role of SAI in strengthening this kind of accountability is a key element. Thus, through the intensification of controls on efficiency, effectiveness and economy, making recommendations to improve management in these areas, monitoring of compliance with these recommendations, and the publication and dissemination of results in this field for the control function, the SAI can help to develop and enrich the culture of accountability of public managers on results and achievement of the objectives previously defined.

IV – SAIs and legal liability

According to what is said in chapter I of this document, liability is one of the aspects of the accountability of public managers. Liability arises when they violate the law. Thus the consequences of such violation are established in laws and regulations. In the field of legal liability we leave the world of recommendations to move to sanctions either in the form of financial compensation, either of fines or criminal penalties.

While the pertinent audits are being carried out, SAIs sometimes confront audit findings that may contain evidence of liability of various kinds (criminal, civil, or fiscal discipline). This situation raises issues such as competence of SAIs for further investigation of potential liability, their ability to prosecute, the application to be given to the findings found, and the information that the SAI disseminates in relation to these proceedings.

Almost all SAIs acknowledge having power to investigate facts that may constitute liability. Only the SAI of the Czech Republic said lack of such power, while the UK SAI reports that it may not investigate the responsibility of individuals, but the responsibilities of government. On the other hand, none of the SAIs has powers of prosecution of those responsibilities.

In general the abovementioned SAIs can include information in their conclusions about the discovery of facts constituting liability, although some of them cannot identify in the reports persons who might be responsible (Germany, Bulgaria, Slovakia and Sweden). By contrast other SAIs (Denmark, Malta, Romania, and Switzerland) do have the authority to include in them the names of those responsible.

In most cases SAIs proceed to transfer the records to the authorities under the law of each country that have the power to enforce accountability (public prosecutors to combat money laundering, tax inspection), although there are cases (Austria, Denmark and Malta) where the record is transferred to the entity in which the events have happened so that it is decided there the processing that it should be given to the case.

According to the information provided, none of the SAIs prepares special memoranda concerning the number and type of liability cases that have been identified during the audits that they have conducted. Some SAIs (Malta, Russia, and Switzerland) make reports thereon to the Parliament, other SAIs (Bulgaria, Croatia, Czech Republic and Spain) include that

information in the Annual Report, although in the case of Spain that information refers only to the activity derived from its jurisdictional mandate. It's a remarkable practice of the SAI of Russia to disseminate these findings through the media.

Since, most SAIs can investigate the legal responsibilities and transfer the records to the competent national institutions to require in each case the corresponding responsibility, the role of SAI in enriching the culture of accountability among public managers could be enhanced, preparing special reports or memoranda on the finding of facts which could give rise to legal liability as well as a broad dissemination of such information to its citizens. This, in turn, strengthens the social significance of SAIs, making them more noticeable by the citizens themselves and generally getting better appreciation of the role that they play in democratic societies.

V – SAIs with jurisdictional power

A special case of SAIs contribution to strengthening the legal responsibility of public managers is that of the Supreme Audit Institutions that among its powers include the jurisdictional power. It is a historical tradition in countries like Belgium, France, Greece, Italy, Portugal, Spain and Turkey where their SAIs also have jurisdictional power, in addition to its audit function.

The legal responsibility determined and required by these SAIs is of civil nature and it is aimed at damage compensation, i.e. recovery of the integrity of public assets damaged by the actions of public managers, resulting in the obligation of being held responsible for any damage caused in public funds. However, some SAIs (Portugal, France) have jurisdictional power not only to determine the financial responsibility or restitution of public funds but also to impose penalties for mere violation of financial law.

Data provided by SAIs show the important role that in the requirement of legal liability play those audit institutions that have jurisdictional power. It is not only the recovery of public money, in the case of civil liability (10.278 M € in the last three years by the SAI of Spain), or obtaining public funds, in the case of sanctions (853 M € in period 2007/2009 by the SAI of Portugal) but what is most important is the significance that for public managers have the fact that the institution to which he/she is accountable can also claim legal responsibility to hold

him/her liable in the form of damage compensation. This certainly strengthens the culture of accountability of public managers.

The specialization of SAIs in the economic-financial field and the immediacy of their response of accountability when occur the finding of facts that may give rise to legal liability, enriches the role of those SAIs with jurisdictional power to ensure that public managers respond of their performance.

While the SAI with judiciary power model clearly strengthens the role of them in enriching the culture of managerial accountability, being therefore good to keep it, to develop it and to disseminate results, we must accept that this is hardly a model exportable to countries that today do not have it, as constitutional adjustment problems might arise in most cases.

VI – The SAI as catalysts for changes in legislation

Strengthening the culture of accountability should be reflected in the legal framework so that the laws and regulations collect the obligations that public managers have as a consequence of being held accountable, and the consequences that may be associated with responsibility. It is clearly not the same a "recommendation" that a "legal mandate"

In the process of transforming a "recommendation" in a "legal mandate", SAIs can play a crucial role in two ways: either by creating in the legislator the need to make changes to the law by reiterating some of the recommendations in the reports being forwarded to Parliament by SAIs, or through initiatives that directly request or suggest to the legislator statutory changes to strengthen the accountability of public managers in favour of better governance, that is, in the benefit of the citizens that Parliament represents.

From the information gathered through the questionnaire sent to the SAIs is clear that none of them has "legislative initiative" in strict sense, i.e. the power to propose to Parliament "bills" of obligatory admission. However, some SAIs (Austria, Germany, Bulgaria, Croatia, Czech Republic ECA, Estonia, Iceland, Romania, Russia, Slovakia, Spain, Sweden and Switzerland) can somehow transmit to the legislator by way of suggestions, proposals for changes in law or in some cases they may express their opinion on bills on management of public funds that are being debated in Parliament.

In some cases, SAIs proposals have been favourably received by Parliament. Let us mention in this particular case, Estonia, where they have accepted four proposals made to the Parliament in the past four years, as well as Bulgaria, where two initiatives have recently been agreed on enrichment of transparency and accountability, and finally, the case of Russia, where the Parliament has accepted several proposals for legal amendments made by the SAI in the fight against corruption. Special mention deserves the successful initiative made by the SAI of Spain aimed at enhancing accountability of the Political parties for the financial support received from both public and private entities. It is remarkable the role played in this field by the ECA. It has provided sixty opinions in the last five years (2006 to 2010) aimed at informing decisions on legislative proposals. In many cases the ECA made observations on the implications of the proposals for accountability and transparency. Some of them have included recommendations concerning the roles and responsibilities of the actors responsible for managing EU funds.

It would be advisable to strengthen the referred role of SAIs to propose legal reforms to Parliament as this would certainly contribute to strengthening the culture of accountability of public managers.
