

VIII EUROSAI Congress – Lisboa, 2011

PRINCIPAL 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 PRINCIPAL PAPER WAS PREPARED BY:

SAI OF SPAIN (CHAIR)

SAI OF FRANCE (REPORTER)

Table of contents

Introduction	3
Chapter I – Legal and ethical framework of public management	4
Chapter II – Public managers accountability	5
Chapter III – The role of SAI in ensuring accountability of public managers	6

Introduction

The issue of accountability and responsibilities of public managers is a cornerstone in public administration theories. In what degree does the accountability issue influence the discussion about SAI's roles in modern States?

In fact, recent developments in theories of administration underline the importance of democratic values, ethics and citizenship in modern public management. So, economy, efficiency and effectiveness seem not to be enough to accomplish the purposes of public administrations.

This evolution has changed the notion of accountability, which is, nowadays, more complex and challenging.

In what degree should this evolution be considered by SAIs? In what way is this change able to affect the conception of fiscal accountability and fiscal auditing?

Those issues are gathered in *Chapters*, in order to structure the *country-papers*.

In the first chapter we address the issue of legal and ethical framework of public management. This chapter contextualizes the discussion about the accountability and responsibilities of public managers. It is important to clarify in which way legal and ethical rules and standards are related with the concept of accountability.

In the second Chapter we concentrate our attention on public managers accountability issue. Accountability may be shaped in diverse ways and may be assured by distinct mechanisms.

In the third Chapter we intend to explore the role of SAIs in assuring accountability of public managers issue.

Each chapter comprehends a short presentation and a group of questions, in order to create the background for a comparison analysis of the *country-papers*.

Chapter I – Legal and ethical framework of public management

Public management comprises a wide-ranging array of legal and ethical principles. The practice of a sound financial management, the respect for the democratic principles and the realization of citizens rights are constitutional imperatives of the modern States.

In this context it is important to comprehend how public management is shaped by those principles, particularly in what concerns to the accountability of public administrators.

Are public managers merely public technicians or are they also/mainly public servants?

Democracy demands more from public servants than just technical competence. So, should public managers address the core values and principles of democratic states, such as transparency and responsiveness, in order to create public value?

Questions to be addressed¹

1. Is accountability connected with ethical principles?
2. Is accountability connected with legal rules and principles?
3. Are public managers accountable before citizens according to legal or ethical principles?
4. What would be the role of SAIs in the relationship between public managers and citizens?
 - None
 - Assure the respect of legal rules by public managers
 - Assure the respect of legal rules by public managers and the economy, effectiveness and efficiency of public management
 - Assure the respect of legal rules by public managers and the economy, effectiveness and efficiency of public management, and promote the respect of the main principles of democratic state by public managers (including ethical principles).

¹ In the questions of multiple choice, please underline your choice(s).

Chapter II – Public managers accountability

In a democratic State, public managers must be accountable for their administration before their hierarchy, the minister, the Parliament or before citizens. The actions they are accountable for involve a wide range of management responsibilities, including decisions with a financial impact, supervision of their operations, organisation of their departments or agencies, and designing of internal control. Reporting on the implementation of these duties is now often mandatory and is performed through public reports they have to issue on their activity and their performance.

Wrong decisions leading to financial losses may be sanctioned by jurisdictional decisions. A weak performance may be discussed in Parliament and lead to downgrading budget appropriations. Or it may lead to dismissing bad managers. When they identify mismanagement or weaknesses in internal control, SAIs may issue recommendations and follow-up their implementation. In most countries where performance based management is developed, public managers have to comply with objectives set by the minister or Parliament, and to report on their achievement.

In a time when citizens pay greater attention to public management, it is important to understand how accountability of public managers is assured in the different EUROSAI countries, whether SAIs have jurisdictional mandates or not.

The concept of accountability involves various aspects of management and control duties in public activities. It includes both internal management and reporting to external stakeholders, such as Parliament or citizens. It may be understood as delivering a good performance and enhancing effectiveness and transparency or, on the other hand, a being liable and sanctioned for irregularities.

Financial accountability, which is the core objective pursued by SAIs, is related to many aspects of public management: designing budgets, managing financial operations, assuring internal control and audit functions, contracting out...

Accountability in public finances is achieved by many types of agents: accounting officers, managers, auditors. They may be either administrative or elected people, and act at the level of central government, local authorities or agencies.

Questions to be addressed

5. In your country, public managers are accountable to whom? (Parliament, citizens, Courts, hierarchy, others...)
6. In what way is financial accountability articulated with the legal, political and professional dimensions of accountability?
7. In what occasions and with which consequences is accountability questioned by your SAI?
8. What changes did you experience in public management accountability in recent years, to face the public management new challenges?

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

Both in the public domain, and in the private, a need for greater transparency has emerged. Citizens demand transparency from public managers and reports on public resource management. Society feels the need for accounts of both government policy and management decisions. Accountability is a means of meeting these requirements.

In democratic societies accountability enhances the legitimacy of power and provides guidelines for democratic governments. That is why nowadays there is public debate on accountability. Accountability could help to prevent abuses, would oblige the inspection of public power and aid in determining responsibilities.

The powers of the SAIs, and the instruments used by them, constitute crucial contributions to an effective determination of accountability of public managers. The recommendations and follow-up on different types of audits performed by the SAIs (regularity, financial, systems, performance) and the activities carried out with reference to the liabilities of public managers are all means of ensuring public manager accountability.

Citizens who learn of the results of audits performed by the SAIs wonder what consequences will be derived there from. In particular, they might wonder in what form the recommendations made will be implemented, and to what extent the SAIs will follow-up. Furthermore, will public managers be held accountable and legally responsible, and to what extent?

The issue of ensuring accountability of public managers will be affected in large measure by the jurisdictional powers that the Audit Institution has, or has not. There are some SAIs with jurisdictional mandate, and other SAIs without.

Legal responsibilities are incurred in only when laws are breached. Nevertheless, citizens often wonder about responsibilities of public managers in cases of actions not illegal, but presumably unfair.

Concerning responsibilities, there is often a gap between what is set out by law and what citizens expect. As a matter of fact taxpayers are more demanding than are the laws with respect to the liability of public managers. Should the SAIs try to diminish that gap by promoting changes aimed at extending the conditions under which public managers are held responsible?

Should public managers be held accountable for public resource management decisions which are profligate or disrespectful of the principles of economy, efficacy and efficiency? Should the concept of performance accountability be considered and developed?

Questions to be addressed on the concept of accountability and the actions carried out by SAIs to ensure accountability²

9. According to the standards of your Superior Audit Institution, what is the meaning of “accountability/responsibility”?
10. According to the standards of your Superior Audit Institution, what is the meaning of “liability” and how does it differ from “accountability”?
11. Has your Superior Audit Institution established standards of good practice for the accountability of public managers? Are such standards recommended to the audited entities?
12. Do the audits performed by your Superior Audit Institution include recommendations to enhance accountability of public managers of the audited entities?
 a) Never; b) Sometimes; c) Often; d) Always.

² In the questions of multiple choice, please underline your choice(s).

13. If the answer to question number 12 was “b”, “c”, or “d”, please cite some recommendations included in those audits you consider highly relevant.

14. According to the experience of your Superior Audit Institution, to what extent are public managers of the audited entities held accountable for actions incurring in profligacy or fail to regard the principles of economy, effectiveness, and efficiency? Have you ever made recommendations so as to hold public managers accountable for such actions?

Questions to be addressed only by SAI with jurisdictional mandate and responsibility³

15. What type of jurisdictional powers has your Superior Audit Institution?
 - a) Judicial (within the Judicial Power).
 - b) Administrative (outside of the Judicial Power).

16. Has your Superior Audit Institution separated auditing functions and jurisdictional powers?
 - a) Yes, there are separate organs for jurisdictional functions and for auditing responsibilities.
 - b) No, jurisdictional powers and auditing responsibilities are attributed to the same organs.
 - c) In fact, there is not a clear distinction between both functions.

17. Has your Superior Audit Institution a Court of Appeal within its organization or has it only first instance jurisdictional powers?
 - a) Only first instance courts; b) Also, Court of appeal.

18. What type/s of liability/s has your Superior Audit Institution powers to prosecute?
 - a) Penal b) Civil c) Disciplinary d) Fiscal e) Others (please specify).

19. Who could be declared liable by your Superior Audit Institution?
 - a) Public managers b) Public subsidy recipients c) Public credit borrowers

³ In the questions of multiple choice, please underline your choice(s).



- d) Contractors e) Taxpayers f) Others (please specify)
20. What sanctions could be imposed by your Superior Audit Institution on someone declared liable?
- a) Prison b) Damage compensation c) Fines d) Professional downgrading
e) Temporary loss of job f) Firing g) Others (please specify)
21. According to the laws applicable to your Superior Audit Institution liability could derive from:
- a. Breaches of laws and/or regulations.
b. Unsubstantiated debit balance.
c. Acts of mismanagement or misuse of public funds.
d. Acts which incur in profligacy or fail to follow the principles of economy, efficacy and efficiency.
e. Others.
22. According to the laws applicable to your Superior Audit Institution, liability of public managers derives from:
- a. Only wilful misconduct.
b. Either wilful misconduct or serious negligence.
c. All kinds of negligence.
d. Objective liability.
23. According to the laws applicable to your Superior Audit Institution, who can present a lawsuit against the public managers held to be liable?
- a. The entity whose public funds have allegedly been damaged.
b. The Attorney General.
c. Citizens.
d. Others.



24. How many claims for liability were presented in your Superior Audit Institution in the years 2007, 2008 and 2009?
25. How many sentences involving the payment of damages were produced by your Superior Audit Institution in the years 2007, 2008 and 2009?
26. How many claims for liability presented in your Superior Audit Institution in the years 2007, 2008 and 2009 were rejected as being unsustainable?
27. How much money was recovered during the years 2007, 2008 and 2009 as a result of the enforcement of the decisions adopted by your Superior Audit Institution?
28. Does your Superior Audit Institution elaborate public reports or memoranda on its jurisdictional activity? How often? What are the Institutions recipients of them?
29. In cases of a lack of jurisdiction or competence of your Superior Audit Institution (e.g. when the facts constitute an offence), is the file or record transferred to the competent Institution of the State?
30. Does your Superior Audit Institution elaborate public reports or memoranda on the issues transferred to other Institutions? How often? What are the Institutions recipients of them?
31. Has your Superior Audit Institution powers to promote legal changes to the laws or regulations of the liability of public managers?
32. If the answer to question number 31 is “yes”, how many proposals of legal changes has your Superior Audit Institution promoted in the last five years? How many of them gave place to an effective change in the legislation?

Questions to be addressed only by SAI without jurisdictional mandate and responsibility⁴

33. Has your Superior Audit Institution powers to investigate liabilities of public managers?
34. Has your Superior Audit Institution powers to carry out any kind of prosecution of liabilities of public managers?
35. Has your Superior Audit Institution power to include in an audit report conclusions about evidence of liability? Has it power to identify the persons allegedly liable?
36. If the answer to question number 28 is “yes”, what types of liability?
a) Penal b) Civil c) Disciplinary d) Fiscal e) Others (please specify).
37. In the afore-mentioned case, does your Superior Audit Institution transfer the file or record to the competent Institution of the State?
38. Does your Superior Audit Institution elaborate public reports or memoranda on the issues transferred to other Institutions? How often? What are the Institutions recipients of them?
39. Has your Superior Audit Institution powers to promote legal changes to the laws or regulations of the liability of public managers?
40. If the answer to question number 39 is “yes”, how many proposals of legal changes has your Superior Audit Institution promoted in the last five years? How many of them gave place to an effective change in the legislation?

⁴ In the questions of multiple choice, please underline your choice(s).