

VIII EUROSAI Congress – Lisboa, 2011

PRINCIPAL PAPER

THEME II - *The audit of the independent regulatory agencies by Supreme Audit Institutions (SAIs)*

THIS PRINCIPAL PAPER WAS PREPARED BY:

SAI OF POLAND (CHAIR)

SAI OF UNITED KINGDOM (REPORTER)

TABLE OF CONTENTS

INTRODUCTION..... 3

QUESTIONNAIRE5

INTRODUCTION

Objective of the Theme and approach

Theme II's objective is to present to Congress a picture of the current state of audit by SAIs in the field of regulation across the EUROSAI region and thus to share experiences, highlight audit risks and areas of good practice and identify audit initiatives planned by SAIs for the future.

The approach in this Principle Paper and the attached questionnaire is to

- ⇒ define and benchmark the scope and nature of the audit field. This involves identifying and analysing what each EUROSAI member country has chosen to “regulate” and comparing the resulting models and frameworks established;
- ⇒ catalogue SAIs recent audit activity in the area of regulation and identify specific audits offering the wider EUROSAI membership valuable insights and interesting experiences;
- ⇒ focus on the impact of the global financial crisis and the impacts that it has had on attitudes and approaches to regulation by Governments and the implications of that for SAIs.

It is hoped that all members of EUROSAI will be able to contribute to the development of this Theme.

Regulation and regulatory frameworks: defining the audit field

Defining the audit field is key for the current Theme but also for SAIs individually when considering their audit plans. *Chapter I: Regulatory bodies – their nature, context and scope* seeks to address this issue.

The nature of the activity carried out by bodies designated as “regulators” can be very diverse. Whilst there is presumably a degree of commonality of approach between countries there are probably also significant differences. For that reason the Principal Paper does not offer a textbook definition of “regulation” or of a “regulatory body”. Instead our approach is to ask EUROSAI members to interpret these terms widely and to highlight in their replies to the questionnaire those sectors and activities in the regulation field which are most significant in their own country and/or for the SAI's audit plan. Our expectation, however, is that in answering the questions in this Chapter, respondents will focus primarily on bodies whose broad remit is to reduce the risk of market failure, and to protect the interests of consumers, particularly in sectors such as water, energy, transport, communications and financial services.

Experiences of auditing regulatory bodies

Chapter II: the audit of regulatory bodies invites EUROSAI members to share their experiences of auditing in the regulation field to date and to preview their future plans. More information is given at the start of the Chapter.

The impact of the economic and financial crisis

Chapter III: the recent economic and financial crisis and regulatory bodies aims to look deeper into this global phenomenon and to assess the impact on both regulatory bodies and SAIs within the EUROSAI region.

COMPLETING THE QUESTIONNAIRE

The questionnaire follows the format described in the Introduction. Our aim is to gather information using a mixture of fill-the-box and narrative answers. Boxes in the tables in the Word version of the Questionnaire have been set up to expand to take the text as it is added. We have also built in the possibility to quickly add more rows or columns where needed.

Further guidance and explanation has been provided where we felt it would be helpful and, for some questions, this may include a range of indicative answers. Wherever possible please limit answers to the suggested categories or short form answers suggested as this will greatly facilitate the analysis of the answers. However, each question also includes the opportunity to set out *Other* scenarios or experiences. Space is also provided for further explanation of any answers and/or *Other* situations.

Please record your answers electronically directly on to the Word form wherever possible. Thank you.

(In preparing the questionnaire note was taken of the material on the audit of regulatory bodies produced by the INTOSAI Working Group on Privatisation, Economic Regulation and Public Private Partnerships.)

Theme II Questionnaire

CHAPTER I REGULATORY BODIES – THEIR NATURE, CONTEXT AND SCOPE

The aim of this chapter is to collect general, statistical information on the main regulated sectors and the regulators operating in the individual EUROSAI countries. These may range from independent regulatory agencies, to those that are part of the government or ministries or self-regulated sectors or industries. The questions asked further in the chapter focus on aspects of the regulators structure and operation including independence, legal and administrative form, competencies, the accountability framework and aspects of impact and benefit. The focus of this chapter is on gathering statistical data to give an overview of the extent and diversity of the field and to produce a range of comparative information, graphs and charts.

Identifying significant sections of the economy subject to regulation, the regulatory bodies involved and generally accepted definitions

1. Which “regulatory bodies” have been established in your country? What sectors do they regulate and what is the size of those sectors? What is basis of their legal and administrative mandate?

i) Name	ii) Sector(s)	iii) Size/ significance	iv) Set up under ... (legal authority)	v) Run by... (executive/administrative authority)
A.				
B.				
C.				
D.				
Please add more rows if required				

Additional explanation, description or comment:

*Q1. Further guidance:

i) Name of the regulatory body – please give the local name, an English translation and, if complex or long, a short-form or acronym;

ii) Sectors – might include the following (individually or in combination). These are grouped as Infrastructure and as Financial.

Infrastructure							
Electricity	Gas	Other fuel	Heating	Water	Telecoms - fixed or mobile	TV/radio	Postal services
Transport services – buses, trains, ferries		Transport infrastructure- Roads, stations, ports, airports, navigable waterways			Other		
Financial							
Banks	Financial services	Mutual funds	Insurance	Securities	Health insurance	Pension Funds	
Other							

iii) Size/significance – the sector’s value or proportion of GDP (please state in Euros or provide a current conversion rate).

iv) Set up under.... – the source of the bodies’ legislative authority, for example the Constitution, a Parliamentary Act, Government Act or decree, Ministerial authority, Administrative rules, Other

v) Run by- the nature of the bodies’ operating authority, for example within Government (including under a Minister or Ministry), within Local government, a separate non-governmental regulatory body, Industry Self Regulation, by the Central Bank, Other

2. What general or overall legal definitions have been established in your country relevant to the field of regulation? Are these widely accepted? Please use more columns if required

Area/entity being defined	i)	ii)	iii)			
Definition (verbatim or paraphrased). Include source or originator	“.....”	“.....”	“.....”			
Is this the commonly accepted and used definition? (Y/N)						

Additional explanation, description or comment:

*Q2: Further Guidance
i), ii), iii) Areas or entities being defined might include “regulation”, “regulator” or “regulatory body or authority”, “independent regulatory body or authority” and/or Others.

(Note: Questions 3 -13 below should focus on the most significant regulatory bodies identified in Q1 above, although other cases/examples may be included at your discretion)

Objective setting for the most significant regulatory bodies

3. For each regulatory body you have identified please state who sets its objectives. Please add more columns if required
4. Which are the five most important objectives from the following list of illustrative objectives? (1 = highest, 5 = lowest).



	Regulatory bodies				
	A.	B.	C.		
<i>Overwrite A, B, C with name or acronym of regulatory body</i>					
3. Who sets the regulatory bodies' short-term and long-term objectives?					
4. Objectives (illustrative)					
i) Ensuring availability of contracted/required services.					
ii) Ensuring quality of services.					
iii) Consumer protection, Protection of consumers' interests.					
iv) Achieving social goals					
v) Competitiveness development					
vi) Competitiveness protection					
vii) Participation in preparation of draft legal acts on market supervision.					
viii) Ensuring trade security					
ix) Ensuring market stability					
x) Ensuring financial stability of market entities					
xi) Conducting analyses of regulated sectors' situation					
xii) Other. Please specify.					

Additional explanation, description or comment:

*Q3. Further Guidance:
 Objectives may be set in a variety of ways including by legislation (at the time of establishing the regulatory body or subsequently/periodically), otherwise by Parliament or by Government or Ministers, and by the appointed managers of the regulatory body or Other.

Independence and competencies of the regulatory bodies identified

Effective regulation depends to an important extent on the appointed regulatory bodies having a sufficient degree of independence as well as the professional and technical competencies and capacities required to discharge their legal mandate and objectives.

5. For each regulatory body you have identified please indicate (with an X) which of the principles/indicators of the existence of independence listed below apply?

Please provide any further information in the separate box provided particularly details of the processes underlying Principles iv, v and vi relating to the appointment and removal of the Head of a regulatory body and setting its budget.

6. Based on your answers to Q5 and your SAI’s wider knowledge of the sector in your country how real and robust is the independence of the regulatory bodies you have identified? (1 = strong independence; 5 = independence weak or lacking)

	Regulatory bodies				
	A.	B.	C.		
<i>Overwrite A, B, C with name or acronym of regulatory body</i>					
5. Principles/indicators of independence					
i) Clear and precise definition of the regulator’s scope of tasks, competences and responsibility.					
ii) Structural and functional separation of the regulator from the ministry responsible for sector’s policy.					
iii) Detailed and transparent criteria and professional requirements established for the appointment of the Head of the regulatory body and senior managers.					
iv) Participation of various external authorities (e.g. legislative and executive ones) in the process of appointing the head and senior managers of the regulatory body*.					



v) Clearly specified terms of office for Head and senior managers and of the allowable grounds and the due process for seeking an earlier rotation*.					
vi) A stable source of financing, which is adequate for the tasks entrusted and resistant to political pressure.*					
vii) Ensuring that the regulator has full autonomy as regards HR policy.					
viii) Ability to pay salaries which attract and retain staff of the required calibre when public sector pay policy results in a pay freeze or cuts.					
ix) Clear statement of the situations when decisions reached by a regulatory body may be challenged and the due process to be followed.					
x) Other. Please specify.					
6. SAI assessment of level of independence of regulatory bodies.					

Additional explanation, description or comment:

*Q5. Further Guidance:
 iv) - Please give details of the formal requirements for appointing the Head of each regulatory body including who has the central role in the decision. For example this could be the Head of State, the Parliament, the Central Bank, the Government, the Prime Minister or another Minister or someone Other. Please also state the term of appointment for the Head of the regulatory body and whether this is fixed or renewable).
 v) - If the Head of a regulatory body can be from office before the expiry of the appointment period please give details of the possible grounds/reasons, the process and, as for v) above, state who has the central role in the decision.
 vi) – Please give details of how the regulatory bodies are financed and the arrangements for protecting their financial autonomy. Please state who decides on the level of the budget.

7. a) Have any examples arisen where a regulatory body failed to act independently in accordance with its mandate/objectives or where attempts were made by others to subrogate its independence?
If yes, then please give details of the case and the outcome.
- b) Did the situation come to light as a result of an audit or other work by the SAI? If yes, then please include details.

Additional explanation, description or comment:

8. For each regulatory body you have identified please indicate which of the competences they have from the illustrative list below. Please add more columns if required.

	Regulatory bodies				
	A.	B.	C.		
<i>Overwrite A, B, C with name or acronym of regulatory body</i>					
Competencies (illustrative list)					
Determining prices					
Approving rates and controlling how they are applied					
Granting permits					
Issuing licenses					
Control of qualifications of persons undertaking regulated activities					
Agreeing companies' development plans					
Control of quality of services provided to clients					
Issuing recommendations and orders					
Imposing sanctions					
Consent to appoint the authorities of the regulated/supervised entities					
Supervising and examining the financial situation of the regulated entities					
Taking decision about liquidation of institutions					
Establishing appointed administrators					
Cooperation with relevant bodies aimed at preventing anti-competitive practices					
Consent to mergers					
Settling disputes					
Publishing information for consumers					
Collecting and analysing market data					
Right to demand information from regulated companies					
Publishing an annual (or periodic) report on the condition of the regulated market					
Consultancy					
Other: please specify					

Additional explanation, description or comment:

Accountability, appeals and audit framework for the regulatory bodies identified

The balance between independence and accountability is a crucial one for any supervisory organisation and may sometimes be a delicate one. This section aims to explore some of the relevant components of the governance framework applied to regulatory bodies.

9. For each regulatory body you have identified please complete the table below. Please add more rows if required. The Further Guidance following the table gives a range of potential short form answers and areas where you may wish to provide further information.

Regulatory bodies.... <i>Overwrite A, B, C with name or acronym of regulatory body</i>	i) ..report to whom? (How often?)	ii) ..can be directed by whom? (How frequent in practice?)	iii) ..are required to consult whom? (When/how often?)	iv) ..may have their decisions appealed against by? (How frequent in practice?)	v) ..are subject to audit by? (With a financial reporting period of?)
A.					
B.					
C.					

Additional explanation, description or comment:

--

***Q9: Further Guidance**

i) Reporting – when and to whom. For example this may be to Parliament, Government, a Minister, the Public, the regulated industry/sector, a combination of these and/or Other

ii) Direction – may literally take the form of an Order or Direction but could be any other, formal right to influence or impact on the role and remit of the regulatory body. The Parliament, the Government, a Minister, the Public, the regulated industry/sector are all potential sources of such influence but may not be the only ones. If provision does exist for Directions (or similar) to be issued please provide details of how often this right has been exercised in practice?

iii) Consultation – are there parties which the regulatory bodies are required to consult? These could include Government, the regulated company or sector, the public and/or Others. Please include details of the main issues/activities where consultation is required.

iv) Who can appeal against decisions of the regulatory bodies, according to the regulations and what routes are open to them? For example the main interest groups likely to wish to challenge the regulatory body might be the Regulated industry/sector, the Government or the Consumers although there may be other focus or pressure groups in certain specific sectors, and/or Others. Please also specify whether appeals must be legal (i.e. through the Courts) or administrative (i.e. civil hearing or tribunal) or Other. What has been the actual incidence of appeals mounted and how many were successful.

v) Who audits the regulatory bodies? This could be internal or external audit and might involve a range of players including a Government department or agency (possibly the Ministry of Finance or Tax Inspection Office or another), the Central Bank, the SAI or a commercial audit firm or Others.

Impacts and benefits arising from the work of the regulatory bodies

Customer and stakeholder feedback is an important aspect of continuous improvement for organisations/entities. Who do the regulatory bodies consider to be their customers and how do they assess their impact and the benefit of their work? Are there any recent examples where a regulatory body achieved a real impact?

Please add more columns if required.

	Regulatory bodies			
<i>Overwrite A, B, C with name or acronym of regulatory body</i>	A.	B.	C.	



10. Who are the beneficiaries of each regulatory body's work?					
▪ All consumers					
▪ Socially sensitive clients					
▪ Entrepreneurs					
▪ Other. Please Specify					
11. What is the process for dealing with complaints from citizens and what actions are regulatory bodies able to take?					
▪ Investigations and/or inspections					
▪ Hearings or tribunals					
▪ Issuing reports and recommendations					
▪ Imposing financial penalties on entities					
▪ Imposing penalties on the authorities of audited entities					
▪ Other. Please Specify					
12. How does the regulatory body identify and measure its impacts?					
▪ Opinion polls or satisfaction surveys					
▪ Publishing activity reports					
▪ Publishing statistical data					
▪ Reference to market shifts or trends					
▪ Other. Please specify.					
13. Can you describe briefly any recent examples where a regulatory body claimed or was credited with a real impact in its sector? For example:					
▪ Supply of services.					
▪ Protection of consumer.					
▪ Price stabilization or reduction.					
▪ Development of the competition.					
▪ Stability of supervised markets and safety of transactions made.					
▪ Other. Please specify					

Additional explanation, description or comment:

CHAPTER II THE AUDIT OF ECONOMIC REGULATORS BY SAIs

The aim of this chapter is to collect information on the strategy adopted by SAIs with respect to audits of regulatory bodies, as well as present and planned actions of SAIs with respect to regulators (also in the context of the financial crisis). The intention of the questionnaires authors was to use the questions included in this chapter as the inspiration for identifying interesting cases or examples of good practice which might serve as case studies for the wider EUROSAI membership.

1. Which regulatory bodies does your SAI have the right to audit? Has your SAI taken up that right? If not, what factors influenced your decision?

--

2. Please list the subjects of any audits your SAI has carried out in 2008 – 2010 on regulators or regulated sectors, by category (Financial, Compliance, Performance audit, Other). Please highlight (with an asterisk*) any audits included in more than one category. Was the audit work performed by the SAIs own staff or was it fully/partly contracted out?

a) Financial audits (2008 – 2010) (Please add more rows if required)		
Sector/subject (brief description or title and start/end dates)	Contracted out?	Main reasons for contracting out?

b) Performance audits (2008 – 2010) (Please add more rows if required)		
Sector/subject (brief description or title and start/end dates)	Contracted out?	Main reasons for contracting out?

c) Compliance (2008 – 2010) (Please add more rows if required)		
Sector/subject (brief description or title and start/end dates)	Contracted out?	Main reasons for contracting out?

d) Other audits (2008 – 2010) (Please add more rows if required)		
Sector/subject (brief description or title and start/end dates)	Contracted out?	Main reasons for contracting out?

Additional explanation, description or comment:

*Q2. Further Guidance:
 Reasons that audit work may be contracted out may include access to specialist skills not available within the SAI, to obtain better value for money, to provide a benchmark for the SAI's performance and/or Other.

3. Please list the subjects of any audits your SAI plans to carry out in 2010 – 2011 on regulators or regulated sectors, by category (Financial, Compliance, Performance audit, Other) and provide the reasons these subjects have been selected . Please highlight (with an asterisk*) any audits included in more than one category.

a) Financial audits planned (2010 – 2011) (Please add more rows if required)	
Sector/subject (brief description or title and start/end dates)	Reasons for choice of subject

b) Performance audits planned (2010 – 2011) (Please add more rows if required)	
Sector/subject (brief description or title and start/end dates)	Reasons for choice of subject

c) Compliance audits planned (2010 – 2011) (Please add more rows if required)	
Sector/subject (brief description or title and start/end dates)	Reasons for choice of subject

d) Other audits planned (2010 – 2011) (Please add more rows if required)	
Sector/subject (brief description or title and start/end dates)	Reasons for choice of subject

Sector/subject (brief description or title and start/end dates)	

Additional explanation, description or comment:

4. What are the main methods of gaining audit evidence in each case?

- Review of policy strategy documents
- Examination of operational and financial records of the auditee
- Interviews (staff, stakeholders and key third parties)
- Surveys
- Academic input/research
- Comparisons of performance
- Analysis of financial and market data
- Observation
- Other: please specify

Additional explanation, description or comment:

5. Which of the regulated bodies' competencies (as highlighted in Chapter I, Question 8) have been subjected to an audit by your SAI? What were the main reasons for choosing that point of focus? Have you ever had difficulties getting access to information relevant to your audit? Please add more rows if required.

Regulatory bodies <i>Overwrite A, B, C with name or acronym of regulatory body</i>	Competencies selected for auditing	Reasons for focus of audit	Access to information: please describe any problems and the impact they had on the proposed audit
A.			
B.			
C.			

Additional explanation, description or comment:

6. To whom does your SAI report on the outcome of their audits of regulation?

- Parliament
- Government
- Regulated Body
- Public
- Other

Additional explanation, description or comment:

7. Please highlight examples where your SAI's audits and/or reports and recommendations have led (directly or indirectly) to an improvement in the operation or effectiveness of the regulated bodies and/or benefits to the citizens or other stakeholders. Please add more columns if required

	Regulatory
--	------------

	bodies				
	A.	B.	C.		
<i>Overwrite A, B, C with name or acronym of regulatory body</i>					
Examples of impact from SAI audits:					
<ul style="list-style-type: none"> ▪ Operation of regulators ▪ Service provided by the regulated companies as a result of action taken by the regulators in response to investigations carried out by the SAI. ▪ Supply of services. ▪ Protection of consumer. ▪ Price stabilization or reduction. ▪ Development of competition. ▪ Other. Please specify 					

Additional explanation, description or comment:

8. Please describe any problems or barriers SAIs' face when carrying out audits in the field of regulation. (This can be from your SAI's direct experience or be drawn from another source of information.)

CHAPTER III THE RECENT ECONOMIC AND FINANCIAL CRISIS AND ECONOMIC REGULATORS

Background

The financial crisis, whose signs emerged just a few years ago, and became clearly defined at the end of 2008, gave rise, in different countries and for different reasons, to a debate on the measures taken by the regulatory agencies. Questions arise such as the need for greater coordination among them, and for more globalised action. The following questions explore the direct and indirect impacts that the crisis has had on regulators, and on the work of SAIs in relation to regulators.

1 The impact of the economic and financial crisis on economic regulators

1.1 Has the impact of the economic and financial crisis on public finances put pressure on economic regulators, for example to find efficiency savings, or through increased uncertainty about their role and structure? Please describe.

1.2 Have there been any changes to the financial services regulatory structure since 2007, or are any proposed? Please describe.

- 1.2.1 If yes, have the financial regulators become
 - More independent of government and/or politicians?
 - Less independent?
 - No change to independence?

1.3 Have there been any changes to the remits or powers of other economic regulators, or are any proposed, as a result of the economic and financial crisis? Please describe.

1.4 Do your financial regulatory agencies have responsibility for improving consumers' financial capability? If so what are the main ways they seek to achieve this, and have these changed in the light of the financial crisis?



- 1.5 Do you know of other ways in which the economic and financial crisis has affected the economic regulators in your State, directly or indirectly? For instance:
- have they had to re-evaluate decisions, for example have assumptions about company revenues in price controls proved unrealistic due to falling demand;
 - have tighter conditions in finance markets affected the ability of regulated private-sector operators to raise finance to deliver infrastructure expectations;
 - has it affected economic regulators' ability to protect the interests of vulnerable consumers?

2 The impact of the economic and financial crisis on SAIs' roles in relation to regulatory agencies

- 2.1 How has the economic and financial crisis affected your SAI's audit of economic regulators? (tick as many as apply)

- The SAI does not audit economic regulation
- The SAI has greater access powers in relation to the same organisations as before
- The SAI has access to a greater number of organisations than before
- The SAI has fewer access powers in relation to the same organisations as before
- The SAI has access to a smaller number of organisations than before
- Other (please specify)

- 2.2 What, if any, has been the impact of the economic and financial crisis on your SAI's fiscal resources and legal mandate?

- 2.3 Has your SAI had to change the way it works, in response to the economic and financial crisis? For example has it had to develop its capacity and capability in new areas; has it had to change its methodologies? Please describe briefly any developments or changes.

2.4 Has the economic and financial crisis created new opportunities for your SAI? Please describe.

2.5 Please list the subjects of any audits your SAI has performed on regulators or regulated sectors specifically in the context of the economic and financial crisis.

2.6 Please list the brief conclusions or recommendations of any audits your SAI has performed on regulators or regulated sectors in the context of the economic and financial crisis.

2.7 What information do SAIs have that can inform government exit strategies when the crisis is over?