

Legal instruments of SAI's impact on the activities of the auditees

In December 2014 the Supreme Audit Office of Poland asked the EU Contact Committee SAIs and SAIs of Candidate and Potential Candidate Countries for information on legal instruments of SAI's impact on the activities of the auditees¹.

Here is a compilation of 23 responses received.

Albania

ALSAI has not additional legal instruments (other than judiciary) that do affect the auditee activities, in the terms you have expressed.

Austria

1. Follow-up mechanisms in the Austrian Court of Audit ACA

The Austrian Court of Audit (ACA) has in place a two stage instrument to motivate auditees to implement recommendations, this is the so called follow up mechanisms:

- Evaluation of the effectiveness of the recommendations given (“inquiry”) and
- Strengthening effectiveness of recommendations given in an audit report (“Follow up audit”).

1.1 “Inquiry” procedure (“Nachfrageverfahren”):

In the year after an audit report was published the ACA contacts the audited entity. The audited entity is asked to report to what level the recommendations given in the auditor report were implemented (usually in May); levels to be reported are: “implemented”, “in implementation”, “not implemented”.

The reply of the audited entity (reply expected for July) is reported and published in the “inquiry section” of the respective activity report (which is usually published in December).

1.2 “Follow up audits”:

This is the logical second step of the inquiry procedure as it checks the level of implementation reported by the audited entity.

A follow up audit is performed in the year after the inquiry procedure. This kind of audit is designed to be a “small” type of audit, that means not more than 60 days including preparation, in field audit and preparation of audit report are dedicated for this kind of audit.

¹ The SAI of Poland wrote in its e-mail that “in a typical situation (apart from courts of audit which can issue legally binding judgements), SAIs – based on the audit results – can make recommendations on which the auditee (or another body responsible for a given area) is obliged to take a position (answer), however without any obligation to pursue the recommendations (ISSAI 1 – The Lima Declaration Section 11. Enforcement of Supreme Audit Institution findings)”. Therefore the question was “whether SAIs have any additional legal instruments (other than judiciary) that can help in affecting the activities of the auditees? For example, the mandate to do *a priori* audit, where the SAI authorises public expenditure as part of the process of financial control. Are there any other similar situations?”

Follow up audits do not differ from the general audits and their proceedings beside the type of audit i.e. when follow up audit report is prepared, it is submitted to the auditee who has about ten weeks to comment on the report. These comments are incorporated to the published final report. Not every audit has to necessarily be subject to a follow up audit (say around ½).

Belgium

As a budgetary advisor, the Belgian Court of Audit reviews the draft budgets - the initial budgets as well as the adjustments - filed by governments in the legislative assemblies. The Court provides not legally binding comments before the drafts are voted on.

See: <https://www.ccrek.be/EN/Presentation/Competences.html#BudgetAnalysis>

Legal Basis (Federal State) :

Article 54 of the Act of 22 May 2003 organising the budget and the Federal State accounts:

“Art. 54. Le cas échéant, la Cour des comptes communique à la Chambre des représentants ses remarques sur les documents visés aux articles 45, 50, 51, 52 en 53”.

See:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2003052241&table_name=loi

See also a presentation by Mr Franz Wascotte, Liaison Officer and Member of the Belgian Court at the Meeting of the Liaison Officers (Sofia, 12-13 May 2011).

Bulgaria

The legal instruments of Bulgarian NAO for influencing the activity of the auditees are stipulated in our NAO Act (*Prom. SG. 12/13 Feb 2015*), as follows:

Cooperation with institutions and Organizations in the Republic of Bulgaria

Art. 8. (1) While performing its activity, the Bulgarian National Audit Office shall cooperate with:

1. state bodies in view to raising the effectiveness of the control system and fight with crime and corruption;
2. professional and non-governmental organizations in view to exchange of good practices and professional development.

(2) The concrete forms of cooperation with the institutions and organizations pursuant to Para. 1 shall be determined by joint agreements.

Measures during the Audit at Unlawful and Damaging Actions

Art. 44. In case of found during the audit process actions, which create possibility for unlawful collection or spending budget or other public funds, as well as for damaging property of the audit site, the responsible deputy president, upon proposal of the head of the audit team and the director shall notify the relevant competent body for undertaking measures for interruption of the actions.

Control on Implementation of the Recommendations

Art. 50. (1) The BNAO president or a deputy president, authorized by him shall organize performance of timely control for implementation of the recommendations.

(2) The head of the audited organization shall be obliged to undertake measures for implementation of the recommendations and to notify in writing about this the BNAO president within the term, defined by the report, which has to be observed with the nature of the recommendations.

(3) In case of failure of fulfilment of the recommendations, the BNAO shall submit a report with proposals for undertaking measures to the National Assembly, to the Council of Ministers or to the Municipal council.

Measures in case of Breaches of the Regime of Public Procurement

Art. 51. (1) Where breaches are found of the procedures for awarding public procurement, the audit report in its part of the breaches of the procedures shall be submitted to the Public Procurement Agency for undertaking the relevant measures.

(2) The report under Para. 1 shall be submitted within 7 day term from adoption of the audit report.

Request for Dismissal of Position of a Guilty Person

Art. 52. The BNAO may with the audit report propose dismissal from position of a person, who bears managing responsibility and as a result of his action or lack of action, breaches of an act have been admitted or BNAO recommendations have not been fulfilled.

Proposal for Restriction of Costs of an Audited Organization

Art. 53. (1) After adoption of the final audit report, as well as in case of refusal of a certification of a financial report, the BNAO may propose to the Minister of Finance to apply Art. 107 of the Act on Public Finances in relation to an audited organization, which breaches the act or often fails to fulfil the recommendations, until removal of the breaches.

(2) The proposal under Para. 1 shall not contain measures, which lead to termination of the activity of the relevant organization.

Applying the Administrative – Procedure Code

Art. 55. (1) For unsettled issues in the procedure under Art. 38 – 54, respectively the provisions of Chapter Two, Five and Seven of the Administrative – procedure Code shall be applied.

(2) The final audit reports and opinions shall not be subject to disputes in a judicial procedure.

Notifications to Competent Bodies for Undertaking Measures

Art. 57. (1) In case of data for damages and breaches in implementation of budgets and of accounts for EU funds, or of management of property, which are not a crime, the BNAO shall submit the audit report to the relevant competent body for seeking property or administrative penal responsibility. The relevant body shall be obliged within 14 day term from receiving the audit materials or the audit report to assign performance of the needed actions for seeking responsibility.

(2) The body under Para. 1 shall notify the BNAO president within the term of up to 2 months from receiving the audit materials, or the audit report about the measures, undertaken on them.

(3) The BNAO shall announce the received notifications, as well as the failure to be fulfilled the obligations for notification.

Notification in case of Data for Crime

Art. 58. (1) In case of data for a crime, the BNAO shall submit the audit report and its materials to the prosecution office.

(2) The prosecution bodies shall notify currently the BNAO about the undertaken actions on the submitted materials under Para. 1.

(3) The BNAO shall not disclose data in the cases under Para. 1 by the time the penal procedure is finalized.

(4) In case of data for a crime in the management of the accounts for EU funds, with BNAO decision, the audit materials or the audit report shall also be submitted to the specialized bodies for prevention and fight with fraud and corruption of the EU.

Disclosure of Other Circumstances

Art. 60. The BNAO shall disclose on its internet site obligations, failed to be fulfilled under Art. 40., the recommendations, failed to be fulfilled, the refusal for dismissal of position under Art. 52, as well as other circumstances, defined by BNAO decision.

The full text you can find at <http://www.bulnao.government.bg/en/articles/national-audit-office-act-1035>

Additional information in the Bulgarian SAI's email concerned Article 53: it was introduced for the first time with the previous BNAO Act (from 4th of January 2011). The intention of the BNAO is to use this competence in practice, if necessary, although the final decision depends on the minister of finance (*Art. 107 of the PFA stipulates that (1) In the event of violations of budgetary discipline, the Minister of Finance may restrict or discontinue transfers, or restrict payment limits of budgetary organisations. (2) Paragraph 1 may only be applied to the extent that it does not cause the termination of activities of the budgetary organisations concerned or the non-fulfillment of obligations arising from statutory acts or international agreements. (3) Paragraph 1 shall not apply to the budget of the National Assembly and the budget of the judiciary.*)

Bosnia and Herzegovina

The Supreme Audit Office of Bosnia and Herzegovina does not have a mandate to perform a priori audits. However, our audit cycle is divided in two parts: interim and final audit. Interim audit starts in the fourth quarter of the current year and final audit in March of the next year and ends by the end of June. The model of having audit performed in two parts emphasizes the preventive and advisory role of auditing since auditors give their suggestions and recommendations already during the interim audits which is performed before preparation of annual financial accounts of a government entity. The interim audit has the intention to indicate the examples of good practices and eliminate deficiencies in final annual accounts.

Some of audit recommendations are accepted and implemented during the interim stage and there is no need to have them in the final audit report. Still, it all depends on the understanding and good will and moral virtues of auditees' management and there is no legally binding instrument for the auditees to implement our recommendations. The Parliament regularly approves of our reports and adopts conclusions based on our recommendations directing the executive branch to perform corrective measures recommended by audit. However, the rate of implementing such conclusions is not high and

there are no legally foreseen follow-up nor sanctions to be imposed upon the institution which fails to implement Parliament's conclusions.

It could be also mentioned the Article 19 of our Audit Act which obliges the Audit Office to inform law-enforcement agencies of indications of significant violations identified in audit reports.

Cyprus

A recent amendment in legislation makes it obligatory for all auditees, when they submit their annual Budget for approval to the Parliament, to give information (in the form of a detailed memo) to the Parliament regarding their response/corrective actions taken with regard to the findings of the Auditor General. The title of the relevant legislation is "The Provision of Evidence and Information to the Auditor General Law" (No. 113(I)/2002). According to Article 4A of the above mentioned Law, with the deposition to the House of Parliament of the State Budget or the Budgets of Statutory Bodies (semi-governmental organisations), the persons legally responsible for the preparation of these Budgets shall submit to the House of Parliament and the Auditor General, a detailed report of compliance and implementation of the Auditor General's recommendations / findings that are mentioned in his last published Annual Report, relevant to the activities and responsibilities of these organisations [*the Law is in Greek and there is no official English translation*]

the Czech Republic

There are no direct follow-up provisions giving the SAO such powers as suggested in your survey (see <http://www.nku.cz/assets/act166-93.pdf>). Nevertheless, the SAO attends the meetings of the Government when our Audit Reports are discussed, and also follows whether and how the recommendations are being dealt with within the contradictory process. Since last year, it has been in the new procedural rules of the Government that our president is invited to every such meeting. However, we are more in the role of an observer and there is no legal instrument which allows us to affect the fulfilment of our recommendations more effectively.

Furthermore, we carry out follow-up audits when we are at the same entity and there is the relation with the current audit. In such case we audit also the fulfilment of the previous recommendations.

We also communicate with the Committee on Budgetary Control of the Parliament, to see whether our recommendations are implemented.

Denmark

Rigsrevisionen has not any kind of legal instruments/sanctions towards the auditees. However, it has an impact that all audit reports to the Danish PAC are made public and

submitted to Parliament. In Denmark, there is also a follow up procedure on each report where the minister involved is obliged to answer.

You will find the Auditor General's Act here: <http://uk.rigsrevisionen.dk/legislation/the-auditor-generals-act/>.

Germany

1. The Appropriations Committee (*Haushaltsausschuss*) is the parliamentary committee of Federal Parliament. The Public Accounts Committee (*Rechnungsprüfungsausschuss*) is a sub-committee of the Appropriations Committee. This Committee helps provide momentum to our audit findings in that it may impose deadlines for government departments to report on their action taken to address the shortcomings we have stated in our audit work. This is an effective tool for helping that our recommendations are followed by effect.

2. We also have an advisory role. In this role it is often easier to make the bodies reviewed accept findings of their own accord, because we do not act as an auditor in the narrow sense of the word but rather as a consultant. We are fully independent in selecting topics on which to provide advice on and we are involved in preparing the federal budget. The reports we issued in this function are called: advisory reports.

The relevant legal bases are set down below:

Federal Financial Regulations, Article 88, Functions of the Bundesrechnungshof

(2) On the basis of its audit findings, the Bundesrechnungshof may advise both Houses of the Federal Parliament, the Federal Government and individual federal ministries. Where the Bundesrechnungshof gives advice to Parliament, it will inform the Federal Government at the same time.

Also we need to be consulted in special circumstances:

Article 103

Consultation of the Bundesrechnungshof

(1) The Bundesrechnungshof shall be consulted prior to the issue of administrative regulations or rules concerning the implementation of the Federal Financial Regulations.

(2) Administrative regulations or rules within the meaning of Paragraph (1) above shall include general instructions on the operation of cash offices and paying points, as well as on accounting and the recording of assets and liabilities.

(3) The responsible federal ministry should consult the Bundesrechnungshof before a decision is taken on passing or amending budgetary, accounting and/or audit regulations and rules relating to supranational or international organisations of which the Federal Republic of Germany is a member.

The Federal Financial Regulations, called the Federal Budget Code is available at:

http://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Ministry/Laws/1969-08-19-federal-budget-code.pdf?__blob=publicationFile&v=4

3. Another approach we have to enhance audit effectiveness is to do real time audits that accompany a project while it still under way. We do this in our advisory role. We make available our audit findings at each stage of project progress. Since this work is of a proactive nature this helps to avoid shortcomings from the very beginning.

Federal Financial Regulations, Article 89, Scope of Audit

(1) The Bundesrechnungshof shall examine

- 1. receipts, payments, commitments to incur expenditure, assets and liabilities,*
 - 2. programmes having expenditure or revenue implications,*
 - 3. provisional account entries for receipts and disbursements,*
 - 4. the employment of funds allocated to independent administration (self-administered funds).*
- (2) The Bundesrechnungshof may limit the audit scope and refrain from auditing specific accounts as it sees fit.*

Hungary

Act LXVI of 2011 on the State Audit Office of Hungary declares:

Obligation of cooperation

Article 28 (1) In order to ensure that the audits of the State Audit Office of Hungary are planned and conducted, any organisation that is audited or may be audited by virtue of law (hereinafter collectively: the audited entity), as well as its employees, shall be obliged to cooperate. The obligation of cooperation of the audited entity and its employees shall include the obligations provided for in paragraphs (2) and (3) as well as in Article 33(1) and (6).

(2) The entity requested to cooperate shall make the data and documents necessary for the planning, specification and conduct of the audit available to the State Audit Office of Hungary (upon its request without delay, but not later than within five working days), and shall also provide any related information.

(3) During the on-site audit, the audited entity and its employees shall allow the auditor to enter the premises of the organisation and to inspect the paper-based data recording systems as well as those managed by means of IT equipment, including the making of copies and abstracts of such data, and shall also provide the information requested.

(4) Communications between the State Audit Office of Hungary and the entity which is obliged to cooperate and which promotes the audit may also be maintained by electronic means. The State Audit Office may use electronic administrative services based on the Act on the General Rules of Administrative Proceedings and Services.

(5) Should the entity obliged to cooperate or any of its employees, without a good reason, fail to meet their obligation to cooperate, or be delayed in doing so, the State Audit Office of Hungary shall act in accordance with the rules applicable in the case of non-compliance with the obligation to act [Article 33(3)].

Obligation of the audited entity to act

Article 33 (1) The State Audit Office of Hungary shall forward its report containing its audit findings to the head of the audited entity. The head of the audited entity shall develop

an action plan in response to the findings in the report and send that plan to the State Audit Office of Hungary within thirty days from the receipt of the report.

(...)

(6) In order to eliminate the practices found to be in violation of the law as well as the improper or wasteful use of assets identified during the audit, the President of the State Audit Office of Hungary may send a reminder of the findings to the head of the audited entity, provided that more serious sanctions need not be imposed under law. The head of the entity shall evaluate the contents of this reminder within fifteen days (a body at its next meeting), take the necessary measure, and notify the President of the State Audit Office of Hungary accordingly.

The whole act available in English at: <http://www.asz.hu/introduction/act-lxvi-of-2011-on-the-sao/act-on-sao-july-2013.pdf>

Italy

According to the Italian Constitution the Corte dei conti carries out an audit and a jurisdictional function.

In carrying out the performance audit (to evaluate the effectiveness, efficiency and economy of the administrative action) the “Corte dei conti” does not issue any sentence (legally binding judgment) rather a deliberation containing evaluations, observations, as well as recommendations concerning irregularities emerged during the audit activity.

The auditees have to follow these recommendations in order to eliminate the negative and inefficient factors of the management and improve their administrative action. They have also to communicate the measures undertaken to the Corte dei conti.

The audit powers of the Corte dei conti have been greatly strengthened in recent years, for example, according to the Decree Law 174/2012, the local bodies have to present a financial rebalancing plan in case of precarious financial situation and this plan is continuously monitored.

With regard to the “a priori” audit (one of the most traditional function of the Corte dei conti), it is an “ex- ante” compliance evaluation of the acts of the Government with laws in force, in particular with the budget laws.

For example, the ex-ante compliance audit is carried out on contracts of substantial financial amounts as well as on, provisions adopted following a deliberation of the Council of Ministers, regulations, acts of programming , general acts involving public finances.

The ex-ante compliance audit has an essential role of guarantee in the system since it prevents illegitimate acts from becoming effective.

With regard to the jurisdictional function, the “Corte dei conti” can issue judgement (legally binding judgement) concerning the liability of civil servants, accounting agents, public administrators in the management of public resources for damages caused to the State. The action for ascertaining the liability is undertaken by the Prosecutor General of the Corte dei conti.

Latvia

The functions of the State Audit Office of the Republic of Latvia (henceforth referred to as “SAO”) do not include infliction of penalties and the SAO is not authorized to require reimbursement of improperly spent budget funds into the State budget.

However, the SAO has a statutory duty to report to the law enforcement institutions on violations of legal norms which are revealed during audits. In this case the General Prosecutor office is informed about the observed violations of legal norms which exhibit characteristics of offence (e.g. has caused a substantial material damage in the value of at least five minimum monthly wages – in total 1600 euro) and are subject to criminal penalty under the Criminal Law of the Republic of Latvia. If no criminal procedure has been initiated administrative penalties can be implied within the procedure of administrative violation. In addition, we also report to the Procurement Monitoring Bureau on procurement violations and to the Corruption Prevention and Combating Bureau on conflict of interest violations and see our cooperation as fruitful.

Referring to the additional legal instruments by which the activities of the auditees can be affected – according to the law the SAO is entitled to submit recommendations to the audited entity on elimination of the revealed shortages as well as to set a time period within which the audited entity has to report in written on the progress of implementation of the recommendations and elimination of the shortages.

Accordingly to the law “On Prevention of Squandering of the Financial Resources and Property of a Public Person” – if during audit the State Audit Office reveals violations, five months after the SAO's decision on approval of audit report has taken effect, the audited entity or its supreme institution or official are obliged to inform the SAO on results of evaluation of responsibility of the respective persons.

Currently we are in a process of initiating the system, where in case of auditee's omission the SAO would be empowered to take a decision on recovery of losses by the responsible officials, not undertaking the recovery of financial resources itself. It is planned to submit the proposal to the parliament this year.

Lithuania

The National Audit Office's recommendations are not legally binding to the audited entity, however we are taking every effort to draft relevant and practical recommendations that would be useful for the audited entity and conducive to improving financial management. Recommendations by the NAOL are published in the audit report and accompanied by the implementing measures proposed by the auditee.

The Law on National Audit Office defines our actions in case of material violations when the NAOL may approach the Prosecutor General's Office asking to begin the process within their competence:

- Having revealed systematic, material violations or violations of public interests during the public audit, the National Audit Office of Lithuania (NAOL) shall inform the

Parliament, the Government, law enforcement bodies, and take other preventive measures to avoid the recurring violations (Article 21)

- When drawing up statements on audit reports, Auditor General and his deputies shall be entitled to upon the establishment of violations subject to consideration by appropriate public administration entities or law enforcement bodies, refer public audit documents according to the competence (Article 18)

Macedonia (former Yugoslav Republic of)

The State Audit Office of the Republic of Macedonia has no other legal instrument apart from the one in art. 32 of the State Audit Law (below) regarding the impact on the activities of the auditees.

However, the Government of the Republic of Macedonia, in the sense of affecting the activities of the auditees, each year obligates the budget users to submit data to SAO relating to their operations, in particular to provide information on proposed measures for system solutions for overcoming remarks set out by SAO in the audit reports.

I. PROCEDURE FOR ADOPTION OF FINAL AUDIT REPORT

Article 30

(1) Following the audit procedure, the authorized state auditor shall prepare and submit draft audit report to the legal representative of the auditee and to the person accountable for the auditee in the audited period.

(2) Within 30 days from the day of receipt of the draft report, the persons referred to in paragraph (1) of this Article may submit comments to the State Audit Office.

(3) After the expiration of the deadline from paragraph (2) of this Article, the authorized state auditor shall prepare final audit report.

(4) Reports referred to in paragraph (1) and (3) of this Article shall be signed by no less than three auditors.

Article 31

(1) The General State Auditor shall submit the reports referred to in Article 30 of this Law to the legal representative of the auditee, to the person accountable for the auditee in the audited period and to the authorities responsible for supervision and control of the operations of the auditee.

(2) The General State Auditor shall publish the final audit reports and the comments by the persons referred to in Article 30 paragraph (1) of this Law on the Internet (web) site of the State Audit Office.

Article 32

The legal representative of the auditee shall inform the State Audit Office and the authority responsible for its supervision and control on the measures undertaken in relation to the findings and recommendations in the audit reports within 90 days of the date of receipt of the final report.

Malta

NAO Malta is not authorised to carry out a priori audits. NAO Malta, in certain instances, carries out follow up audits to determine the extent of implementation of its recommendations. During this process, NAO Malta also takes note of limitations/circumstances, prevailing at the audited entity's environment, hindering implementation (whether part or full) of its recommendations. However, no direct reference to follow-up audits is made in the relevant legislation, though such audits are carried out by NAO Malta as part of its audit plans.

NAO Malta legal instruments (where corrective measures on auditees are concerned) are found in terms of Article 10 of the First Schedule to the Auditor General and National Audit Office Act (Chapter 396 of the Laws of Malta). This Article stipulates that any serious irregularity discovered by the Auditor General in an audited entity is to be brought to the notice of the responsible Minister by the Auditor General. The latter may recommend that the Minister surcharges against that person the amount of deficiency or loss or improper payment resulting from the non-compliance with laws and regulations. Any person aggrieved by the imposition of any such surcharge shall have a right to contest it by action taken against the Minister in the First Hall of the Civil Court.

The above article also empowers the Auditor General to report any person who fraudulently applies, or fraudulently causes or permits to be applied, public monies to other than public services, or who is a defaulter in respect of public monies, to the Minister, who shall take such steps as he may consider necessary to have the offender prosecuted according to law. This article does not preclude the taking of proceedings against such person by any person other than the Minister.

Moreover, the above article also empowers the Auditor General to report to the Speaker of the House of Representatives any public officer who fails to comply with the Financial Administration and Audit Act, the Auditor General and National Audit Office Act and other regulations made thereunder.

In addition, Article 10 of the above legislation stipulates that the Auditor General is to make queries and observations addressed to any accounting officer, or other officer in any way concerned with the receipt or payment of public monies and call for explanations as he may think necessary. Every such query and observation addressed to any such officers shall be returned by them to the Auditor General with the necessary reply without delay. In the event of any unusual or unexplained delay occurring in obtaining reply, or an unsatisfactory reply being received, to inquiries or representations made by him, the Auditor General shall report the circumstances to the responsible Minister.

See the Auditor General and National Audit Office Act (Chapter 396 of the Laws of Malta).

the Netherlands

The Netherlands Court of Audit has no additional legal instruments and no mandate to do a priori audit to authorise on public expenditure.

Poland

The Supreme Audit Office of Poland (NIK) has no decision-making mandate towards the auditees, however it can influence their activity in a non-decision-making manner. Those possibilities result from the following NIK's powers (defined mostly in the Act on NIK of 23 December 1994):

- NIK is entitled to audit the state bodies and other subjects defined in the law (e.g. access to documents, materials and databases of those entities, access to the premises and office space, call witnesses to testify, etc. – Article 29 and other provisions of the Act on NIK),
- is entitled to make a description of the factual state and an assessment of the audited activity (incl. defining the irregularities, their causes, extent, consequences and persons responsible) and to make audit recommendations on how to remove the irregularities found (post-audit statements – Article 53; see also Article 51 and 52),
- is entitled to obtain from the auditee (within the period defined in the post-audit statement – not shorter than 14 days) information on how the audit recommendations formulated in the post-audit statement were utilized and on measures taken or reasons of not taking any measures (Article 62, see also Article 51),
- is entitled to notify the authority appointed to investigate crimes or misdemeanours or another competent authority in the event of a reasonable suspicion of a crime or misdemeanour or another act for which liability is provided by statute (Article 63), and to submit to the Sejm a statement containing charges resulting from audits concerning activities of the Members of the Council of Ministers, the Heads of central government authorities, President of the National Bank of Poland and the Heads of some other central government entities (Article 7(1)(6)).

Moreover, NIK may also influence the activities of the auditees in an indirect way – by submitting information about the audit results (incl. particularly the comments, evaluations and recommendations on the audited activity) and by submitting motions resulting from the audits to the competent state and local government authorities. Notably, NIK is entitled to:

- inform the following authorities about the audit results: the Sejm [first chamber of the Parliament] (Article 7, see also Article 20(1)), President, Prime Minister (Article 8), Voivodes and local self-government authorities (Article 9), other state and local government authorities, as well as the Heads of the superior authorities towards the auditees (Article 62a),
- submit motions concerning the change of the laws in force (Article 11a),
- submit motions to the Constitutional Tribunal (Article 11),
- request the audit, control and inspection entities operating within government administration and local self-governments to conduct certain audits (individually or together under the management of NIK) (Article 12).

Supreme Audit Office Act of 23 December 1994 (selected provisions)
(full text see <http://www.nik.gov.pl/plik/id,2759.pdf>)

Article 7. [Documents submitted to the Sejm]

1. The Supreme Audit Office shall submit to the Sejm:

1) analysis of the execution of the state budget and monetary policy guidelines,

- 2) *opinion on the vote of approval for the Council of Ministers,*
- 3) *communications on the results of audits ordered by the Sejm or its bodies,*
- 4) *communications on the results of audits performed upon request of the President of the Republic of Poland, the Prime Minister, and of other major audits,*
- 5) *recommendations on particular problems to be considered by the Sejm in relation to the activity of authorities performing public tasks,*
- 6) *statements containing charges resulting from audits concerning activities of the Members of the Council of Ministers, the Heads of central government authorities, the President of the National Bank of Poland and the Heads of the entities defined in Article 4 (1),*
- 6a) *follow-up analysis of how audit conclusions concerning the making or application of law have been used.*
- (...)

Article 8. [Documents submitted to the President and the Prime Minister]

- 1. *The Supreme Audit Office shall submit to the President of the Republic of Poland communications on the results of audits conducted upon request of the President and on the results of audits conducted upon order of the Sejm, its bodies, or upon request of the Prime Minister, as well as communications on the results of other major audits.*
- 2. *The Supreme Audit Office shall submit to the Prime Minister the communications on the results of audits performed upon request of the Prime Minister, and communications on the results of audits submitted to the Sejm and to the President of the Republic of Poland.*

Article 9. [Local information]

The Supreme Audit Office may provide:

- 1) *competent Voivodes [regional governors] with communications on the results of major audits concerning the activities of locally-based authorities of central-government administration,*
- 2) *competent Voivodes and local self-government authorities with communications on the results of major audits concerning the activities of local selfgovernments.*

Article 11. [Motions to the Constitutional Tribunal]

The President of the Supreme Audit Office may request the Constitutional Tribunal to:

- 1) *verify the compliance of statutes and international agreements with the Constitution,*
- 2) *verify the compliance of statutes with ratified international agreements whose ratification requires a prior consent expressed in a statute,*
- 3) *verify the compliance of legal regulations issued by central government authorities with the Constitution, ratified international agreements, and statutes,*
- 4) *verify the compliance of objectives or activities of political parties with the Constitution,*
- 5) *settle competence disputes between constitutional central authorities of the State.*

Art. 11a. [De lege ferenda motions (what the law ought to be)]

- 1. *The President of the Supreme Audit Office may move to the Marshal of the Sejm to request the Prime Minister to provide a statement on audit conclusions concerning the making and application of law.*
- 2. *The Prime Minister shall submit the statement referred to in paragraph 1, together with substantiation, to the Marshal of the Sejm, within 60 days of the request.*

3. If the statement referred to in paragraph 1 provides the need to amend generally applicable legal regulations, it shall define the timeframe for the initiation of legislative work for these amendments and the authority responsible for developing proposals for appropriate regulations.

Article 12. [Cooperation with other audit institutions]

Audit, control and inspection entities operating within government administration and within local self-governments shall cooperate with the Supreme Audit Office and shall be required to:

(...)

2) conduct certain joint audits under the management of the Supreme Audit Office,

3) conduct ad hoc audits upon order of the Supreme Audit Office.

Article 53. [Post-audit statement]

1. The auditor shall prepare a post-audit statement which is due to contain:

(...);

4) a concise description of the findings and assessment of the audited activity, including the irregularities found on the basis of the evidence included in the audit files, as well as the causes, extent, consequences and persons responsible for these irregularities,

5) comments and recommendations on how to remove the irregularities found;

(...)

2. The post-audit statement may also include an opinion that the person responsible for the irregularities identified at the entities referred to in Articles 2(1) and 4(1) is unsuitable for holding their position or function.

(...)

7. The assessment referred to in paragraph 2 may provide the ground for instituting a disciplinary procedure, terminating employment for the employee's fault without notice or dismissing them from the position or function.

Article 62. [Information obligations of the auditee]

Within the time limit specified in the post-audit statement but no shorter than 14 days of the receipt thereof, or, where objections are submitted, of the receipt of the resolution rejecting objections in whole or the modified post-audit statement, the Head of the auditee shall inform the Supreme Audit Office about how the comments and recommendations formulated in the post-audit statement have been used and implemented, as well as about the measures taken or grounds for failing to take them..

Article 62a. [Notification of the audit results]

1. The President of the Supreme Audit Office may provide in writing the head of the superior entity or the competent state or local-government authority with comments, evaluations and recommendations concerning the audited activity, as formulated in the post-audit statement. Article 53(2) shall apply accordingly.

2. The entities referred to in paragraph 1 shall inform the Supreme Audit Office, within time limit which may not be shorter than 14 days, about their position, the measures taken, or the reasons for failing to take them.

Article 63. [Notification of offences]

1. In the event of a reasonable suspicion of a crime or misdemeanour, the Supreme Audit Office shall notify the authority appointed to investigate crimes and/or misdemeanours and

shall inform thereof the Head of the auditee or of its superior unit and the competent state or self-government authority.

2. The authority appointed to investigate crimes and/or misdemeanours shall inform the Supreme Audit Office about the results of the proceedings.

3. In the event of disclosing other acts than those specified in paragraph 1, for which liability is provided by statute, the Supreme Audit Office shall inform the competent authorities thereof; the provisions of paragraph 2 shall apply accordingly.

(...)

Portugal

SAI legal instruments – Portuguese Tribunal de Contas

According to ISSAI 1- Lima declaration, Section 11- Enforcement of Supreme Audit Institution findings, paragraph 1, «The audited organisations shall comment on the findings of the Supreme Audit Institution within a period of time established generally by law, or specifically by the Supreme Audit Institution, and shall indicate the measures taken as a result of the audit findings.»

For that reason, our Supreme Audit Institution (SAI) establishes in its audit reports a timeline, usually six months, for the audited entities to inform about the measures that were meanwhile taken or are to be concluded in order to fully implement the correspondent SAI's recommendations.

However, and following ISSAI 1, paragraph 2, which states that «(...)Supreme Audit Institution shall be empowered to approach the authority which is responsible for taking the necessary measures and require the accountable party to accept responsibility.», there are some consequences if the audited entity disregards unjustifiably our recommendations.

Particularly, in an a priori audit setting, where the financial control aims to verify whether the acts, contracts or other instruments, which generate expenditure or represent direct or indirect financial liability, are according to the law and whether the respective duties are covered by the suitable budgetary appropriation, the issuance of recommendations when authorizing some public expenditure in presence of illegalities which alter or could alter the respective financial result is possible. And if our SAI concludes, either within a priori, concomitant and/or ex post financial control actions, that the entity disregarded those recommendations, it may be refused to it the seal approval when submitting to our a priori financial control a new expenditure with the same illegality.

Also, our SAI may levy fines for repeated and non justified non-compliance with its recommendations. In fact, in addition to its competences of financial control – a priori, concomitant and ex post-, the Portuguese Court of Auditors has the power to impose fines, and, depending on the nature of the infringement, to order the payment of a sum corresponding to the damage caused to the State, to individuals in charge of the management of public funds and assets who have infringed the legal framework they are bound to respect, therefore incurring in financial liability.

The obligation to return the amount in which the State was damaged occurs, namely, in the event of embezzlement of public funds or assets, improper payments – that is, those which have not a return or whose return, goods or services, is inadequate for having no acceptable

connection with the activity developed by the entity where the individual is in charge –, in cases of deceitful practice, of authorization which imply the non-settlement, collection or delivery of revenues, in breach of applicable legal norms, and also when, as a consequence of the violation, the State or a public entity face the obligation to pay damages.

Subsidiary financial liability for restitution applies to members of the Government, managers, directors or members of the bodies of administrative and financial management or their equivalent, and revenue collectors for services, organisation and other entities subject to the jurisdiction of the Court of Auditors, if such a person was unaware of the fact when, for instance, in carrying out examination duties allocated to him or her, there were proceedings of grave error, specifically when the recommendations of the Court in order to establish internal control were not respected.

The initiative of presenting these cases to a trial by the Court is committed (among other entities²) to the Public Prosecutor Service which is represented in the Court by the Attorney General who may delegate his functions on one or more assistant attorney generals. Assistant attorney generals cooperate with the Court on a permanent basis and are informed of the results of all the Court's activities, namely audit reports. Findings of signs or evidence of financial violations included in audit reports are therefore examined by the assistant attorney generals who, when considering there is foundation enough, initiate a process which is sent for trial by this Court – if evidence is found that the same acts or omissions that entailed financial liability, or other acts or omissions, indicate the existence of other types of offenses, eventual trials will take place in criminal or civil Courts following the decision to be made by the assistant attorneys.

The fines the Court can impose have a lower limit and an upper limit which are updated every year by Governmental Decree.

The Court establishes the amount of the fines, as well as the obligation, or not, of returning the sums involved, taking into consideration the gravity of the facts and its consequences, the degree of guilt, the amount of material damage caused to public funds or assets, the hierarchical position of the individuals involved, their economic situation, the existence of previous events and the degree of implementation of recommendations made by the Court.

In sum, with regard to the impact of our legal instruments, according to the Organizational and Procedure Law of the Portuguese Tribunal de Contas³, there are several situations which imply the enforceable characteristic of this instrument. Below we refer specifically to some of them:

Article 62

Direct and subsidiary liability

“3. Subsidiary financial liability for restitution applies to members of the Government, managers, directors or members of the bodies of administrative and financial management or their equivalent, and revenue collectors for services, organisation and other entities subject to the jurisdiction of the Court of Auditors, if such a person was unaware of the fact when:

...

² See article 89 of Act 98/97, below (see also footnote 3).

³ Act 98/97, of 26 August, with the subsequent amendments. Cf. link to accede to it: http://www.tcontas.pt/en/documents/organisation_and_procedural_law.pdf

c) In carrying out examination duties allocated to him or her, there were proceedings of grave error, specifically when the recommendations of the Court in order to establish internal control were not respected.”

Article 64

Assessment of guilt

“1. The Court of Auditors assesses the degree of guilt according to the circumstances of the case, taking into consideration the duties with regard to the post or nature of each accountable party main functions, the volume and funds involved, the material amount of the public money or funds damage, the compliance degree of possible Court recommendations and the human and material resources existing in the service, body or entity subject to the jurisdiction of the former.”

Article 65

Sanctionary financial liabilities

“1. The Court of Auditors may levy fines in the following cases:

...

j) For repeated and non-justified non-compliance with the Court injunctions and recommendations.”

Article 67

System

...

“2. The Court of Auditors classifies the fines taking into consideration the seriousness of the facts and their consequences, the degree of guilt, the material amount of the public funds damaged or at risk, the hierarchical level of the responsible subjects, their economic situation, the existence of past records and the compliance degree with possible Court recommendations.”

Article 89

Powers to request a trial

“1 – The trial of cases referred to in article 58 based on the reports mentioned in article 57, irrespectively of the juridical qualifications of the facts included in the respective reports, may be requested:

a) By the Public Prosecutor Service;

b) By management bodies, superintendence or guardianship on the aimed entities, regarding the reports of the Court control actions;

c) By the internal control bodies responsible for the reports mentioned in paragraph b) of point 2 of article 12.”

...

Serbia

Please find below relevant articles of the Law on State Audit Institution of Serbia (published in the ‘Official Gazette of the Republic of Serbia’, no. 101/2005, 54/2007 and 36/2010).

*Completion of auditing
Article 39*

After completion of audit process with the auditee, the Institution makes a draft report on the conducted audit, and submits it to the auditee and responsible persons that were in charge for the operation in the audit reference period (hereinafter: responsible persons). In the audit report, the Institution gives its opinion on the auditee's operation.

The auditee i.e. responsible person shall be entitled to filing a rationalised complaint to the draft audit report within 15 days after the day of draft submission.

The Institution shall consider the justifiability of comments contained in complaints and it shall, within 15 days after the receipt of complaint, invite the responsible person from the auditee to debate on the draft audit report, during which these persons may provide additional evidence.

The debate under paragraph 3 of this Article is not necessary if the auditee informed the Institution in writing and within 15 days after the day of draft audit report submission that he did not contest any of the findings contained in the draft.

There may be several debates on the draft audit report. The first debate shall be held at least eight, and the last no later than 30 days after the date of submission of draft audit report.

The meeting for discussing the draft audit report shall be chaired by the responsible person from the Institution and it shall be held at the premises of the auditee.

If the legal representative of the auditee fails to take part in the debate, it is deemed that he/she does not disapprove of any finding from the draft audit report, unless the legal representative proves within three days from the established date of debate that he/she failed to take part in the debate for justified reasons.

During the debate, the legal representative of the auditee may:

- 1) Deny individual findings of the draft audit report;*
- 2) Provide explanations and additional evidence denying the audit findings.*

If the Institution establishes that the findings were justifiably denied, such finding shall be omitted from the audit report, whereas additional audit checks may be previously undertaken.

Explanations under item 2, paragraph 8 of this Article may be included in audit reports.

Following the debate, the authorised person from the Institution shall submit to a Council member or responsible Supreme State Auditor the draft audit report with possible comments of the auditee. The Council member or responsible Supreme State Auditor shall examine the audit reports and establish the justifiability of complaints and whether the conclusions are based on the evidence from the documentation i.e. whether the procedure was conducted in accordance with the audit standards. After assessing the comments and conclusions, the Council member or responsible Supreme State Auditor shall establish the proposal audit report which is submitted to the auditee and responsible persons, within 30 days after the date of debate finalisation.

If the debate on draft audit report is not necessary (paragraph 4 of this Article), the Council member or responsible Supreme State Auditor shall establish the proposal audit report within the period not exceeding 15 days after the receipt of the auditee's notification that it did not disapprove of any finding from the draft audit report.

The auditee i.e. responsible person from the auditee in the reference period for the completed audit, may complain against the finding of the report contained in the proposal audit report. The complaint shall be filed to the Institution within 15 days after the delivery of the proposal audit report to the auditee i.e. responsible person from the auditee in the reference period analysed in the report on the completed audit.

President of the Institution may obtain the opinion of an external expert on certain proposal parts or on the entire proposal audit report.

If the findings from the proposal audit report are contested (the complaint under paragraph 13 of this Article) or if the expert opinion referred to in the previous paragraph doubted the correctness of the findings, such findings are deemed disputable.

The disputable findings in the proposal audit report shall be decided upon by the Council decision, within 30 days following the receipt of complaint under paragraph 13 of this Article.

The Council may decide:

- *to omit the disputable findings from the audit report;*
- *to keep the disputable findings in the audit report in unchanged form;*
- *to include the disputable findings in the audit report in the form as decided by the Council.*

The audit report shall be submitted to:

1. *the auditee;*
2. *responsible person in the auditee in the reference period for the completed audit;*
3. *Assembly;*
4. *other bodies that in the opinion of the Council should be informed about the audit findings.*

If the auditee i.e. responsible person in the auditee in the reference period for the completed audit filed a complaint against the findings contained in the proposal audit report, the submitted audit report shall be accompanied by the reply to complaint. The reply to complaint shall be established by the Council.

The reply to complaint under paragraph 18 of this Article is not subject to legal redress.

The draft and proposal audit reports shall be confidential.

Procedure following the realised audit

Article 40

The auditee, whose business operation demonstrated certain irregularities or inappropriateness that were not eliminated during the audit, shall submit to the Institution the report on elimination of detected irregularities or inappropriateness (hereinafter: response to the audit report), with the exception of cases under paragraph 3 of this Article. This report shall be submitted by the auditee within the timeframe determined by the Institution, between 30 and 90 days, starting from the day following the delivery of the audit report.

The response to the audit report shall be furnished in writing, signed and verified by the responsible person in the auditee. When necessary, this document is subject to verification by the Institution. The response to the audit report is a public document.

The response to the audit report shall not be required if the audit report contains the statement that relevant measures and activities were already taken during the audit procedure for elimination of the detected irregularities and inappropriateness.

The Institution may verify the response to the audit report by comparing it with the audit results.

If the Institution estimates that the response to the audit report does not indicate the adequate elimination of the detected irregularities or inappropriateness, it shall be deemed that the beneficiary of public funds violates the obligation of good business practice. If the elimination of significant irregularities or significant inappropriateness is not adequate, it shall be deemed that there is a severe violation of the obligation of good business practice.

The violation i.e. severe form of violation of good business practice by the auditee shall be estimated in accordance with the guidelines passed by the Council.

In case of violation of good business practice, the Institution may request the undertaking of appropriate measures. Such request shall be addressed to the authority that it deems competent for undertaking measures against the beneficiary of public funds that violated the good business practice.

The authority to which the request for undertaking the measures under the previous paragraph was addressed shall, within 30 days after the receipt of the request, inform the Institution on the measures i.e. provide the rationale for failing to take appropriate measures.

In case of serious violation of good business practice, the Institution shall inform the Assembly thereof.

The Assembly working body, competent for supervision of budget and other public funds, following the realised hearing whereto the beneficiary of public funds is invited as well, passes the decision on recommendations and measures that ought to be undertaken due to severe violation of good business behaviour.

In case of severe violation of good business practice or in case of violation of paragraph 9 and 10 of Article 38 of this Law, the Institution shall also:

- 1) issue the request for dismissal of the responsible person;*
- 2) inform the public.*

The Institution's request under item 1, paragraph 11 of this Article shall also contain the name of the person or several persons that should be dismissed. The request for their dismissal shall be submitted to the body which is assessed as competent for implementing or instituting the dismissal procedure.

The body which was submitted the request for dismissal of the responsible person shall pass the decision and inform the Institution thereupon within 15 days after the submission of the request.

Initiation of misdemeanour of criminal proceedings and notification of the public prosecutor Article 41

The Institution is required to submit without delay a request for instituting misdemeanour proceedings or criminal charges to the competent body if during the audit it uncovers materially significant actions indicating the existence of the elements of a misdemeanour or a criminal offence.

The Institution is required to notify the public prosecutor of cases where damages were done to public property by an action of the subject of audit or a legal entity doing business with the subject of audit.

The bodies referred to on paragraphs 1 and 2 of this Article are required to notify the Institution of their decisions.

Slovakia

Our opportunities are arising from the Act on the SAO SR (articles 13, 15, 18 and 21). In case that a natural person (staff of audited entity) fails to fulfil obligations under the Article 18 of the Act in this regard, we can imposed to him or her disciplinary penalty. But we have no any other additional legal instruments how to force audited entities to adopt our recommendations.

Rights and duties of the Office and audited entities

Article 13

- (1) (...)
- (2) *The Office may make recommendations to audited entities and to relevant bodies on how to deal with weaknesses and shortcomings identified during the exercise of its competence.*

Article 15

- (1) *In carrying out audits, the auditors must:*
- g) *discuss the content of the report and its amendment, if any, with the statutory body of the audited entity and draw up minutes of their discussion in which the Office shall impose the statutory body of the audited entity an obligation to submit, within a specified time period, a written statement of measures taken to remedy weaknesses and shortcomings identified by the audit and a written follow-up report,*
- (...)

Article 18

- The audited entities and their employees shall be obliged:*
- e) *to take measures to remedy weaknesses and shortcomings identified by the audit and to submit them to the Office, within the time periods specified by the Office, in writing and to submit to the Office, within the time periods specified by the Office, a written follow-up report; if the measures taken to remedy weaknesses and shortcomings identified by the audit are inadequate or are insufficient to remedy all the shortcomings identified by the audit, the Office shall be entitled to return them to the statutory body of the audited entity which shall amend or supplement them within the time period specified by the Office.*
- (...)

Article 21

- (1) *Any natural person, who has interfered with the audit due to his or her failure to fulfil obligations under the Article 18 (...) of this Act, can be imposed a disciplinary penalty of up to EUR 3 319.*
- (...)
-

Sweden

Riksrevisionen does not undertake any a priori audits and has no other means to exert influence than through recommendations and qualified opinions.

Turkey

Turkish Court of Accounts (court with jurisdictional powers) has no other additional instruments apart from judicial and audit reports. For detailed information see TCA law.

the European Court of Auditors

The European Court of Auditors (ECA) performs its audits within the framework laid down by the Treaty on the Functioning of the European Union (TFEU).

The TFEU confers upon the ECA the main task of carrying out the Union's audit with the dual aim of improving financial management and reporting on the use made of public funds by the authorities responsible for their management: 'The Court of Auditors shall carry out the Union's audit' (TFEU, Article 285).

The ECA's role and legal instruments are laid down in TFEU, Article 287:

1. *The ECA examines the accounts of all revenue and expenditure of the Union and also examines the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union, in so far as the relevant constituent instrument does not preclude such examination.*

The ECA provides the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which is published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity.

2. *The ECA examines whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, the Court has to report in particular on any cases of irregularity. (...)*
3. *After the close of each financial year the ECA draws up an annual report that is forwarded to the other institutions of the Union and published, together with the replies of these institutions to the observations of the Court, in the Official Journal of the European Union.*

The ECA may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union. (...)

The European Court of Auditors also assists the European Parliament and the Council in exercising their powers of control over the implementation of the budget.
(...)

The Financial Regulation⁴, Title X: External audit and discharge – Chapter 1: External audit (articles 158 - 159 - 160 - 161 - 162 - 163) and Chapter 2: Discharge (articles 164 - 165 - 166 – 167), sets out the rules and procedure on the performance of the audit, the ECA's right of access, specific provisions for the annual and special reports and for the discharge procedure.

The ECA publishes the results of its audit work in a variety of reports – annual reports, specific annual reports and special reports – depending on the type of audit.

In addition to its audit reports, the ECA is called upon to provide its opinion on legislative proposals with an impact on EU financial management. Opinions can also be delivered at the request of one or other of the EU institutions. The ECA may also produce opinions on its own initiative.

The ECA also publishes position papers and ad hoc publications on EU public finance issues, like landscape reviews, a new type of publication that considers broad themes on the basis of the ECA's research and accumulated experience, in relation to issues directly related to the ECA's remit.

⁴ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002