

THE EFFECTS OF SUBSEQUENT EXTERNAL FINANCIAL CONTROL

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Abstract

Being a component of economic control, financial control is based on a better knowledge of the ways of managing material or financial means by public institutions, as a means of preventing deficiencies, analyzing legality and finally restoring it when was violated.

In another sense, the ways of respecting the application of the legislation in the matter, and strengthening the discipline related to the organization of public units, in order to obtain more efficient results, are considered.

The article analyzes the validity and legality of some contrary control reports issued at the level of the county audit chamber, given that the respective public unit was subjected to periodic external controls that aimed at the same legal objectives.

Keywords: control; thoroughness; legality; institution; public.

JEL Classification: K34.

1. INTRODUCTION

Financial control fulfills a preventive role, through the measures taken by the control bodies in order to eliminate the possibility of illegality in the activity of the controlled unit, as well as documentation with an impact on the substantiation of some financial decisions, in order to generalize the experiences positives found in the activity of the respective units.

Apart from the preventive financial control, aiming at the analysis of the activities of certain units from the point of view of necessity, opportunity or legality, in order to prevent some negative facts and the appearance of dysfunctions, the concurrent control is exercised during the performance of the activities, having the role of operative knowledge of the way of fulfillment of tasks.

Last but not least, knowledge of compliance with the legality of the acts and operations of the controlled unit can be achieved in the form of a subsequent control, after the actual execution of the analyzed acts.

As a procedure, financial control (Șaguna, 2003) contains specific acts and operations, having as its object the organization, development, but also the final capitalization of the analysis of the controlled unit. Regarding the capitalization

of the control action, it refers to the potential results of the procedure, namely the drafting of control documents, the establishment of measures to remove deviations, the fulfillment of recommendations by the controlled unit, as well as the need to apply sanctions.

The Court of Accounts, as a financial control institution, carries out an external, periodic, total, subsequent and execution control, being represented at the territorial level through the county chambers of accounts.

2. THE OBJECT OF FINANCIAL CONTROL

Subsequent control can be internal or external (Costaş, 2021), respectively carried out by bodies outside the controlled unit, such as the Court of Accounts, with the object of ascertaining the lack of knowledge or the way of interpreting the legal provisions, the failure to ensure the supervision of the compartments at an internal level, analyzing the appropriateness, legality and efficiency of the procedures applied by the controlled unit, drawing recommendations and imposing sanctions, the principles according to which the control is carried out being the regularity, economy and effectiveness of acts and operations for the use of public funds (Gherghina, 2020).

This form of control is applied at the local level through the county accounting chambers, the execution control being related to the way of fulfilling the legal provisions in the matter by the controlled public unit, which must enjoy thoroughness and legality, within complex relationships of a legal and economic nature (Şova, 2011).

In this sense, one of the aspects that can be the object of such a form of subsequent control, can be represented by the analysis of the functioning of the internal audit department of the controlled unit, given that its dysfunction could endanger the functioning of the entire entity .

Following the control, in case of detection of malfunctions in the activity of the internal audit department, it leads to the introduction by the control inspectors, through the control report, of a measure aimed at non-compliance with the provisions of Law no. 672/2002 regarding the provision of the organizational and functional framework necessary for carrying out the internal public audit activity, the detected deviation is related to non-compliance with legality, respectively to the violation of legal norms regarding the audit activity within the respective institution.

The introduction of such a measure had to be related to the guilt of the controlled public unit, with reference to the description of the identified deficiency, when from the verification of the internal audit activity within the entity it emerged that although the organizational chart included an audit department with a number of two senior auditors, the structure however, it was non-functional, thus no internal audit mission was carried out during the controlled period.

Taking into account the provisions of art. 109 of the Regulation on the organization and conduct of activities specific to the Court of Accounts, as well as the capitalization of the documents resulting from these activities approved by the Court of Accounts plenary decision no. 155/2014, the external public auditor also has the right to proceed to extend the period subject to verification in the event of a violation being found.

In this sense, if following the extension it is found that even before the period subject to control in the controlled public entity, no audit mission was carried out, although the internal audit department was provided for, but only one auditor position was occupied out of the two that would have led to the achievement of its functionality, the measure imposed in the control report would have had a solid and legal foundation.

However, the situation is more complex in the conditions where the public unit has been subjected to a subsequent control several times, including by the same control body, but the control teams have different views on the legality of its activity.

3. INTERNAL FINANCIAL CONTROL

The internal control action can also be carried out by public auditors from the internal public audit service of the relevant ministry, the superior public entity of the controlled unit, in which case the inspectors can find that the approved organization chart also included an internal audit department. As a result of the analyzed data and the finding of the lack of functionality of the internal audit department, the recommendation imposed in the control report required its organization and operation in the presence of at least two auditors, according to the provisions of art. 2 letter f of Law no. 672/2002 of the internal public audit.

If only one auditor position was occupied in the controlled unit, the organization of the compartment was to be carried out by means of supplementing the number of positions, including by redistribution from other structures within the unit, and if this was not possible, by delegating specific duties to the head of internal audit department to the internal auditor already existing in the unit.

The recommendation of the control inspectors had initially to be followed by the issuing of a provision by the executive director of the controlled unit, by which the official who held the public office of auditor execution was mandated to exercise the powers of the head of the internal public audit department, with him to obtain the opinion of the internal public audit service of the relevant ministry, which would have allowed the coordination of the activity of drawing up and updating the Charter of the internal auditor, as well as the drawing up of multi-year and annual internal audit plans.

The compliance of the management of the public institution with the recommendation of the control report, by carrying out the duties of mandate of the internal public auditor for the purpose of coordination, is not sufficient, however,

in the event that he has not obtained the necessary approvals to obtain the position of head of the audit department internally, resulting in the impossibility of actually carrying out audit missions within the controlled unit.

However, the situation becomes interpretable under the conditions in which the mandated auditor, although he did not raise any objection to the new delegated duties, being relieved including of the previous tasks and did not criticize the decision of the management of the controlled unit for illegality, regarding his obligation to obtain the opinion of the Audit Service internal public of the relevant ministry, it did not comply with the order received.

We mention that, with reference to the provisions of Law no. 672/2002 on internal public audit, only the mandated auditor, after obtaining the approval of the relevant ministry and exercising the powers of the head of the internal public audit department, could approve the appointment by the management of the public unit of a second internal auditor, thus constituting the internal public audit department of the entity.

The question is thus raised whether, after taking steps at the level of the controlled unit to organize a functional audit department, followed by the achievement of this goal of entry into legality, there is a possible deviation from legality at the level of the controlled public institution, which could have subsequently to determine the application of appropriate sanctions. We take into account the fact that, the agreement of the responsible ministry regarding the alternative ways of organizing the internal audit activity at the level of the controlled unit was followed by the compliance with the recommendations of the control report, with management taking steps in this regard, but without as the final goal of the control action to be achieved, namely that of creating the conditions for carrying out internal audit activities.

It can thus be concluded that at the level of the controlled unit, the necessary measures have been taken to ensure the organizational and functional framework necessary for carrying out the internal audit activity, including the subsequent presentation of the reasons why the recommendation regarding the delegation of the specific duties of the head of the audit department to the internal auditor already existing in the unit did not determine the intended effect.

The measures necessary to ensure the organizational and functional framework necessary for carrying out the internal audit activity included the transmission to the competent ministry of the data regarding the existing situation within the public unit regarding the impossibility of carrying out the internal audit activity, but also the potential effects, in order to dispose at the level of the main orderer of the required legal measures, in application of the provisions of art. 11 letters a and f and 12 para. 2 of Law no. 672/2002.

In this sense, the law provided that the appointment of the head of the internal public audit department of subordinate public entities is carried out with the approval of the hierarchically superior public entity, the head of the subordinate

public entity maintaining a functional internal public audit department with the agreement of the superior public entity, the lack of agreement leading to the performance the audit by the internal public audit department of the public entity that decided this.

On the other hand, according to art. 22 paragraph 3 of Law 672/2002, internal auditors could not be involved in carrying out activities that they could potentially audit or in the development and implementation of the internal control systems of those public entities.

As a result, the non-functioning of the internal audit department could lead to the non-fulfillment of the general objective of the internal public audit within the entity, namely the improvement of management, by not auditing the financial activities or with financial implications carried out by the entity from the moment the commitments are made until the funds are used by the final beneficiaries, the payments assumed through budgetary and legal commitments, the administration of the patrimony, the establishment of public revenues, the allocation of budgetary credits, the accounting system and its reliability, the decision-making system, management and control systems, as well as the risks associated with such systems.

Also, the effects concerned the impossibility of carrying out the types of audits provided for in art. 14 of law 672/2002, respectively the audit of the in-depth assessment system of the management and internal control systems, the performance audit which assesses whether the results are in line with the objectives, as well as the regularity audit regarding the examination of actions on the financial effects on account of public funds, procedural and methodological rules.

4. THE VALIDITY AND LEGALITY OF THE ACT OF EXTERNAL FINANCIAL CONTROL

With regard to the subsequent control of the county board of accounts, it may have as its object the way of organizing the functional internal audit department, taking into account the previously ordered measures, respectively to ensure the organizational and functional framework necessary to carry out this activity within the public unit controlled, representing a form of external administrative control (Vedinaş, 2009).

However, the failure to achieve the organizational and functional framework necessary to carry out the public audit activity within the unit is not always an effect of the lack of action of the entity's management. In this sense, in parallel with the failure of the authorized internal auditor of the institution to obtain the approval requested for the position of head of the audit department, the budgets allocated by the relevant ministry did not allow new hires with the blocking of positions during the Covid-19 pandemic, these cumulative situations determining

the impossibility of achieving the functional framework of the internal public audit activity.

In addition, although the competent ministry had issued recommendations for the organization of a functional audit department by means of supplementing the number of positions or by redistribution from other structures within the unit, later a smaller number of positions was approved compared to those already existing in organizational chart of the controlled unit. The fact that the relevant ministry did not respond to the addresses of the controlled unit, through which it requested a reanalysis of the created situation, ultimately led to the impossibility of ensuring the internal audit department, a conditional aspect and the entry into force of Law no. 33/2021 for the approval of GEO no. 183/2020 regarding the holding during the state of alert of competitions for the filling of vacant positions within some institutions of the justice system, as well as within the Court of Accounts, which later allowed compliance by starting the procedures for the organization of contests to fill the vacancies related to the public function of auditors.

The method of carrying out the ordered measure was presented in the report of the chamber of accounts, a document that highlighted the fact that the ordered measure was fully implemented, even if there was still no functional internal audit department, under the conditions in which the controlled unit carried out all steps necessary for compliance, subsequently presenting to the relevant ministry the existing situation of the audit activity.

The report of the Chamber of Accounts stated that the ordered measure had an effective impact at the level of the controlled unit, in the sense of improving management, by implementing the previously imposed measures and by taking steps in this regard, a definitive act on the controlled aspects, affected by the presumption of legality and thoroughness.

In this sense, it can be considered that another subsequent effective control on the same aspects and which would cover the same period, would not give the possibility to another control team within the same control body to pronounce in a totally different way.

The context is obvious, since a control report mentioned the absence of deficiencies in the activity of the controlled public unit, the aspects having already been analyzed by the representatives of the chamber of accounts, they not identifying any deviation in the management of the entity for the controlled period.

However, under the conditions in which the external control of the court of accounts is periodic, another control team within the same control body cannot proceed to analyze the way of organization of the respective public unit in a contrary way, finding the existence of a deviation from ensuring the organizational and functional framework necessary for the performance of the public audit activity within the same entity.

As a result, the ruling on the same aspects at a new periodic control organized by another control team within the same county accounting chamber, could not

establish the violation by the public institution of the provisions of Law no. 672/2002, namely the failure to ensure the internal public audit activity, a fact contested by another previous control report in which legal compliance was mentioned.

5. CONCLUSIONS

The control fulfills a function of evaluating the situation found at the level of the controlled public unit, regarding the way of carrying out its activity under conditions of legality and reality.

On the other hand, the object of the control is related to the operations of the control team, in the analysis of the operations carried out by the controlled public unit, under conditions of legality, efficiency, operability, reality and economy.

Regarding the financial control documents, the main document is the control report, which contains the observed deviations, deficiencies, identified causes and consequences, an administrative document that enjoys thoroughness and legality.

In this sense, the effects of a control report issued by the inspectors of a county audit chamber, having as its object the duties or operations of a public unit in a certain period of time, cannot be canceled by issuing a second control report subsequently issued by another control team within the same control body.

As a result, if a first control report highlighted the fact that a measure ordered as a result of the control was fully implemented, with the public institution carrying out all the necessary steps that exclude the existence of a certain deviation, a second one having the same object would not be able to establish the existence of a deviations from legality.

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