

VIII EUROSAI Congress
Lisboa, 30 May – 2 June 2011

CONCLUSIONS AND RECOMMENDATIONS

Preamble

The VIII EUROSAI Congress held in Lisboa from 30 May to 2 June 2011 was focused on two main themes. Theme I was related to *Challenges, demands and responsibilities of public managers and the role of Supreme Audit Institutions*. This Theme was split, for discussion, in two sub-themes: sub-theme I.A, concerning *challenges and demands faced by public managers today*, and sub-theme I.B, referring to *the role of SAIs in the accountability and responsibilities of public managers*. The object of Theme II was *the audit of the Independent Regulatory Agencies by Supreme Audit Institutions*.

For each Theme (and sub-theme) a working group of SAIs was constituted, composed by a chair and a reporter, counting on the support of the SAI of Portugal. SAIs of Netherlands (chair) and Slovenia (reporter) for sub-theme I. A., SAIs of Spain (chair) and France (reporter) for sub-theme I. B, and SAIs of Poland (chair) and United Kingdom (reporter) for Theme II. These working groups prepared the principal papers and the discussion papers for the Congress.

EUROSAI's members contributed, with their country papers, to the exchange of experiences and to a broader basis for discussion and deliberation.

The speakers of the Congress gave a relevant contribution for a fruitful debate, which one was also enriched by the interventions of the participants.

The draft conclusions and recommendations of the VIII EUROSAI Congress are the result of the joint work of the mentioned SAIs and of all the contributions.

Theme I – Challenges, demands and responsibilities of public managers and the role of Supreme Audit Institutions

Conclusions

Considering that:

- the Country Papers received and the debate held during the VIII EUROSAI Congress highlight the emergence of new realities in society with a significant impact on public management, and, therefore, on accountability;
- Demographic and technological developments, the current financial and economic situation and the information-society are factors, which all governments need to face up to;
- The world is changing more rapidly than before and governments must now respond more quickly to meet the needs and expectations of their citizens;
- A changing public sector requires SAIs to adapt as well;
- There is no unique way to cope with these challenges, and that apart from the rational legal authority of the state, there is also a need for a more responsive, adaptable and open form of governance, within which ethical values are shared and respected;
- Accountability is a complex concept and a cornerstone in contemporary public management;

The members of EUROSAI, assembled at the VIIIth Congress, conclude that:

1. The above-mentioned developments call for high levels of transparency in government information, as well as the establishment of tools and approaches, which allow public managers to respond rapidly to these new realities;
2. Countries vary in their approach to the challenges, taking into consideration rules and the interpretation of rules, human resources, the ethics of public managers and also innovation and flexibility;

3. Transparency and accountability are both democratic values and are fundamental for good governance. Accountability is a broad concept including a wide range of responsibilities for public managers, such as professional and management skills, compliance with financial and other regulations, meeting performance expectations and ethical conduct;
4. If public managers are to retain public confidence, they need to be aware of citizens' expectations with regard to good governance. They can do this through education, communication, openness, enhancement of ethical values and giving more importance to accountability;
5. Most SAIs observe a challenging tension in government between careful democratic processes of legislation and control on the one hand and flexibility to deal with the rapid developments on the other hand. The governments are striving to achieve a balance between legal security and flexibility, whilst respecting the rule of law. EUROSAI members believe that there is no contradiction between flexibility and an open system model on the one hand, and accountability on the other hand;
6. Performance assessment and reporting play a key role in assuring the accountability of public managers, especially in a time when the rule-based approach is being enhanced by a principle based approach;
7. SAIs have an important role to play in promoting a culture of accountability and in facilitating the effective operation of the accountability process, such as by auditing, reporting, issuing recommendations, highlighting good practices and in some cases through their jurisdictional and sanctioning powers. They can also cooperate with other stakeholders to develop a principle-based accountability framework;
8. It is important that SAIs themselves operate on the basis of independence, transparency and efficiency in order to face the challenges in the public sector;
9. SAIs ensure that legal liabilities are addressed, each according to their mandate;
10. Through their audits and recommendations, SAIs play a role as catalysts for improvements in legislation and in administrative practices, thus strengthening accountability.

Recommendations

Considering the above mentioned conclusions, the members of EUROSAI, assembled in the VIII EUROSAI Congress, recommend that:

1. SAIs adapt to the innovation and changes in society;
2. SAIs find ways of engaging with civil society in their work;
3. SAIs promote respect for legal rules, sound management and ethical principles;
4. SAIs promote the different dimensions of accountability, externally, but also within their own organisations;
5. SAIs strive to broaden their scope to include legal, financial and performance accountability;
6. SAIs assume a pro-active role towards the legislature and the public sector, in order to foster accountability in public management;
7. SAIs report on their role in assuring legal liability;
8. Within the framework of the EUROSAI Strategic Plan adopted by this Congress, EUROSAI build upon this theme, *via* a structured dialogue or any other adequate form of joint efforts, such as a taskforce, in order to be able to meet the challenges of change and share the results with the wider INTOSAI community. *Mutual experience benefits all.*

Theme II. *The audit of the Independent Regulatory Agencies by SAIs*

Conclusions

The SAIs members of EUROSAI, assembled in its Congress, conclude that:

1. Independent regulators are an important, and growing, feature of the public sector landscape in many European countries. Their development is the result of a variety of factors, including:

- the privatisation of infrastructure industries, which has led to the need to enhance regulatory oversight in the private sector;
 - the drive to enhance the effectiveness of markets, both in terms of competition, deregulation and liberalisation, and the protection afforded to consumers; and
 - a concern at the risks posed by financial services activity to the general economy and to individual consumers.
2. As a result, there is no single, common definition of regulation. Regulatory roles and functions are many and differ from country to country. However, there are three primary groups of regulators across EuroSAI members:
 - a. Infrastructure regulators
 - b. Competition and consumer regulators
 - c. Financial services regulators
 3. While independent regulators are not typically large in terms of direct expenditure, they are significant economic actors. They cover significant parts of the GDP of their countries. And they make significant decisions – on market structures, on prices, and on individual actors like companies and individuals.
 4. The financial crisis has led to enhanced roles for financial regulators across the EUROSAI countries. In some cases, existing regulators have received enhanced powers to protect consumers and ensure financial stability; while elsewhere, new independent regulators are being established to address perceived shortcomings in the existing regulatory regime. In some countries, structural reforms have seen the expansion of the role of the central bank in overseeing financial stability. This can complicate the SAI's audit of regulation, because not all SAIs have audit responsibility for central banks.
 5. Whether the regulator focuses on infrastructure or general competition or financial services, the independence of the regulatory function from Ministerial decision-making is a common feature across Europe. This independence means that regulators can make

decisions – on individual actors (companies, individuals) and on general regulatory principles – free from political pressures.

6. Several features of governance underpin regulatory independence, including:
 - a. Clear and precise definitions of the regulator’s scope of task, mandates and responsibilities, typically set out in law.
 - b. Clear terms of office for the senior management of regulators, and a willingness to pay market-levels of salary to attract appropriately skilled individuals.
 - c. Financial independence from government.

7. Regulators and SAIs have much in common. They have differing remits to contribute to good governance and public sector management but both, at root, aim to protect the interests of citizens. Both rely on independence to do this. Both are authoritative and influential commentators in the plural and increasingly complex societies which they serve. There is therefore a persuasive case for dialogue and professional interaction between regulators and SAIs – a “wise” collaboration.

8. However, proper accountability relies on, and is strengthened by, the existence of proper challenge from the SAI. The independence of regulators and their significance as economic actors means that they should be scrutinised on behalf of Parliament to ensure that they have used their wide discretion appropriately. Most SAIs undertake the financial audit. But in many countries, the remit of the SAI extends no further than this; and even in those countries where the SAI remit permits some financial audit, this remit may be less extensive in the financial services sector.

9. In addition to financial audit, individual regulatory decisions (eg on infringements by particular companies) are typically subject to review on appeal, either through courts or thorough alternative administrative reviews, This is however a less common feature of most SAIs’ remits. SAIs also carry out effectiveness, or value for money, audits of regulators. This type of audit is most common for infrastructure regulators, and least common for financial services regulators.

10. Such audits have different scopes and approaches. But at heart, the SAI is seeking to provide Parliament and society with assurance over the way in which an independent regulator has used its discretion to achieve its objectives. For most SAIs audits of regulators cover:

- the way it prioritises its work load;
- its enforcement strategies;
- its compliance with legal obligations;

Some SAIs also have the option to comment on the regulators

- economic decisions such as the prices that infrastructure companies may charge; or its overall approach to assessing effectiveness.

11. A key factor for SAIs is the distinction between issues of professional management and political accountability. If this boundary is not well defined and understood SAIs run a risk that their reports, conclusions and recommendations may be seen as an inappropriate extension into areas of policy. However, the XX INCOSAI in Johannesburg in 2010, in adopting the report of the INTOSAI Task Force on the Global Financial Crisis, commented that by conducting Performance audits of the Regulatory Agencies SAIs may also be alert to strategic risks and shortcomings in the regulatory system and play a constructive oversight role from the outset of a Government's response to a crisis.

12. SAIs are evaluating whether regulators are achieving optimal allocation of resources. This is a technically complex question, and involves judgements about not only the internal management of regulators, but the economic impacts those regulators have achieved. SAIs are more able to form these judgements where the regulators themselves undertake regular, rigorous assessment of their economic impact.

13. With increasing globalization our economies are affected more than ever by the experiences, weaknesses and strengths of others beyond our borders, we need to work together more closely and cross border in order to increase the effectiveness of our work as SAIs. Consideration of the Theme by EUROSAI members has revealed a serious audit gap in

relation to the public audit of national and supranational financial institutions financed by national contributions. It is essential that these organisations are fully transparent and subject to appropriate external audit. To fulfil their national mandates SAIs should be put in the position to report to their Parliaments on the performance of these organisations.

14. However, in pressing for extended mandates, SAIs should recognise that such rights can, in time, become duties. In seeking out and undertaking such audits – at a national or supranational level – the SAI needs to ensure that it has the necessary skills and competencies.

Recommendations

Considering the above mentioned conclusions, the SAIs members of EUROSAI, assembled in the VIII EUROSAI Congress, recommend that:

1. Even though there are a wide range of remits, the independent discretion available to regulators means that they should be subject to rigorous external scrutiny, including from SAIs, in both their use of financial resources and their effectiveness.
2. This congress therefore supports the case for comprehensive SAI remits to audit independent regulators, including those responsible for financial supervision (including central banks where they discharge this function).
3. SAIs need to consider the institutional context within which regulators operate, particularly the governance mechanisms designed to ensure the regulator's independence.
4. Where regulators have been established with a clear decision-making independence, a primary question an SAI should ask concerns the risks that the regulatory independence is compromised, either by capture by regulated industries, or by political interference from central government departments.



5. The economic environment has a significant impact on the work of regulators and the recent financial crisis has prompted many changes. SAIs should therefore adapt their audit work on independent regulators to the economic context, focusing on emerging economic risks and the most effective way of using limited resources.
6. SAIs should encourage regulators themselves to conduct regular evaluation and management of their impact and effectiveness, based on a comprehensive performance management framework that links inputs, activities, outputs and outcomes to each regulator's ultimate objectives.
7. The opinion of an objective, independent body such as a SAI may in itself impact on markets and behaviours. SAIs should be sensitive to this possibility in deciding how and when to publish their reports and findings.
8. The Congress also hopes that the data gathered under Theme II might be of further interest and use to colleagues in EU SAIs in their consideration of specific audit arrangements for EU financial mechanisms, including the European Stability Mechanism.