

RECENT TRENDS IN ORGANIZATION OF SUPREME AUDIT INSTITUTIONS IN UKRAINE AND POLAND

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Abstract

This paper presents an overview of the recent developments in organizing a system of state financial control, as well as policy issues concerning functioning the supreme audit institutions (SAI) in the Republic of Poland and Ukraine. The authors highlight the evolution of the framework within cooperation on auditing between Ukraine and the Republic of Poland in the field of public financial control (audit). The paper is aimed at investigating current practice of organizing supreme audit control in the Republic of Poland and in determining recent trends in developing the cooperation between the States in public financial control area. Moreover, the recommendations proposed are aimed at proper organizing of the external public financial control (audit) on the basis of *International Organization of Supreme Audit Institutions* standards and methods, as well as exchange of the EU best practices in external control and public financial audit, paying particular attention to the independence of the relevant state bodies.

Key words: *Supreme Audit Institution, Public Financial Control, Auditing, Cooperation, International Organization*

INTRODUCTION

The modern period of public administration development in Ukraine challenges for fundamental improvements in government functioning, in particular in organizing the independent and effective public financial control system. It should be emphasized that public financial control performs preventive function and not only provides for taking faithful decisions in the field of financial management, but also serves as one of the basic conditions for adjusting the strategy and tactics of financial activities, both in public authorities and local governments.

Currently, Ukraine lacks a clear concept of creating a system of state financial control, both at the scientific and legislative levels¹. However, Ukraine has already determined the strategy for its further cooperation in the field of public finance management (including budget policy, internal control and external audit), aimed at harmonizing the Ukrainian legislation with European rules in accordance with the Art. 347, Chapter 3 of Title V (Economic and Sector Co-operation) of the *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part*. In particular, Ukraine has taken numerous commitments in organizing external public financial control (audit) on the basis of *International Organization of Supreme Audit Institutions* (hereinafter referred to as *INTOSAI*) standards and methods, as well as exchange of the EU best practices in the field of external control and audit of public finances, paying particular attention to the independence of the relevant bod-

¹ Numerous regulations have been adopted, but their norms have not been yet implemented, namely: "On Approval of the Strategy of Modernization of Public Financial Management System: Order of the Cabinet of Ministers of Ukraine dated 17.10.2007 No. 888-p. From: <https://zakon.rada.gov.ua/laws/show/888-2007-p>; "On the Strategy for the Development of Public Financial Management System": Order of the Cabinet of Ministers of Ukraine dated 01.08.2013 No. 774. From: <https://zakon.rada.gov.ua/laws/show/774-2013-p>; "On the "Ukraine 2020" Strategy Sustainable Development": Decree of the President of Ukraine dated January 12, 2015 No. 5. From: <https://zakon5.rada.gov.ua/laws/show/5/2015>; "On Approval of the Strategy for Reforming the Public Financial Management System for 2017-2020: Order of the Cabinet of Ministers of Ukraine 08.02. 2017 No. 142-p. From: <https://zakon.rada.gov.ua/laws/show/142-2017-p>.

ies. In Ukraine this function is exercised by the Accounting Chamber of Ukraine. Accordingly, Article 3 of the Law of Ukraine “*On the Accounting Chamber*” provides that the Accounting Chamber of Ukraine’s activity is based on the INTOSAI principles, as well as the European Organization of Supreme Audit Institutions (*hereinafter referred to as EUROSAI*) and International Standards of Supreme Audit Institutions (ISSAI). Despite the fact that the Accounting Chamber of Ukraine has been a full member of INTOSAI since 1998 (however, it is considered to be one of the youngest Supreme Audit Institutions among the member countries; hereinafter referred to as SAI) and is responsible for fulfilling the obligations as a member of this Organization, until now the Ukrainian legislation does not provide the SAI’s status for this body. In addition, the issues of state guarantees for the employees of such body, as well as state audit procedures and types remain unsettled.

That is why it is relevant to focus attention on the foreign experience in organizing the SAI’s activities, implementation of the independence principle by such entities, applying international auditing standards.

In this context, the practice of organizing the SAI in the Republic of Poland may be considered as the most significant, since the Polish model of state power organization and distribution is closest to the Ukrainian realities². Moreover, the experience of some Polish reforms has already been implemented in Ukraine. In addition, Ukraine and the Republic of Poland are strategic partners in all key socio-economic scopes, as proved by fruitful cooperation³.

The purpose of the paper is to investigate current practice of organizing the supreme audit control in the Republic of Poland and determine the recent trends of cooperation development between the States in public financial control area.

1. METHODOLOGY

Numerous scientific methods were used in preparing the research paper, namely: *analysis and synthesis method* concerning the analysis of regulatory legal background in state financial control; *comparative law method* in studying the organizing of the SAI’s practice in the Republic of Poland and Ukraine; *the formal logics and prognostic methods* - for theoretical generalization and development of proposals on improvement of financial legislation of Ukraine; *abstract-logical method* - for theoretical generalization and formulation of conclusions.

2. RESEARCH RESULTS

Chapter IX of the Constitution of the Republic of Poland (Section IX) is devoted to

2 It is about decentralization reform at the regional level, as well as in the field of governance and public service in Ukraine, following the Polish model. Mykola KRAT, Oleksandr SOFII. Comparative Analysis of Decentralization Process of Ukraine and Poland: an Analytical Note. K.: European Dialogue, 2017. From: <http://dialog.lviv.ua/wp-content/uploads/2017/10/Porivnyalnyi-analiz-protsesu-detsentralizatsiyi-Ukrayini-ta-Polshhi.pdf>.

3 As of 04.09.2019, 143 valid international treaties and agreements on cooperation in various socio-economic areas were signed between Poland and Ukraine. Legal basis between Ukraine and Poland. The official website of the Embassy of Ukraine in the Republic of Poland. From: <http://poland.mfa.gov.ua/en/ukraine-pl/legal-acts>.

the bodies of state control and protection of the rights. Article 202 states that the Supreme Chamber of Control (*Najwyższa Izba Kontroli, hereinafter - NIK*) is the chief body of state control, which acts on a collegial basis and subordinates solely to the *Sejm*, providing it with: 1) an analysis of the implementation of the State Budget and the main monetary policy provisions; 2) conclusion on the report of the Council of Ministers on implementation of the State Budget; 3) information on the results of audits, proposals and submissions specified by law. That is, the Constitution of the State recognizes and guarantees independence of the chief body of state audit from the branch of executive power. The appointing procedure for the President of *NIK* and establishing the boundaries of his immunity (Art. 205-206 of the Constitution of the Republic of Poland) is one of the key characteristics of organizing external supreme state financial control - the principle of independence. In particular, the President of *NIK* shall be appointed by the *Sejm* with the consent of the Senate, for a period of 6 years (re-election is possible only once). The term of office of the President of *NIK* and the Parliament do not coincide that thereby reinforces realization of the principle of independence of this body from one political party that has passed to the Parliament and has the majority.

In Ukraine, such a constitutionally designated state body, which does not belong to the state power branches, is the Accounting Chamber. It should be noted that its status requires some improvements, since the only constitutional norm determines the status of the Accounting Chamber of Ukraine, namely Article 98 of the Constitution of Ukraine, in accordance to which control on behalf of the Verkhovna Rada of Ukraine (Parliament) over the admission of finances to the State Budget of Ukraine and their use is exercised by the Accounting Chamber⁴.

The formation of a special supreme public financial control body and its independence from other state power branches meets the requirements for a proper public sector auditing, prescribed by the *Mexico Declaration on SAI Independence*, adopted by delegates of the XIX Congress of INTOSAI in Mexico City in November 2007. In particular, the SAIs are free from the control or interference of legislative and executive authorities. To ensure the principles of SAI independence, it is also emphasized by the recent Resolution adopted by the United Nations General Assembly on 19 December 2014 No. 69/228 *Promoting and fostering the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions*, which clearly states that SAIs can accomplish their tasks objectively and effectively only if they are independent of the audited entity and protected against external influences.

The Constitution of the Republic of Poland also determines the directions of exercising the control powers by *NIK* regarding the legality, economic prudence efficacy and diligence of the activity of relevant entities, namely: 1) the activity of the bodies

4 The Constitution of Ukraine: the Law of Ukraine dated June 28, 1996 No. 254k. From: <https://zakon.rada.gov.ua/laws/show/254k/96-v>.

of government administration, the National Bank of Poland, state legal persons and other state organizational units;2) the activity of the bodies of local self-government, municipal legal persons and other communal organizational units;3) the activity of other organizational units and economic entities, to the extent to which they use state or communal property or resources and satisfy financial obligations to the State (Article 203 of the Constitution of the Republic of Poland).

Pursuant to the Constitution, the Law of the Republic of Poland “On the Supreme Chamber of Control” (NIK) was adopted on December 23, 1994, in order to ensure the organizational and legal mechanism for exercising external supreme state financial control in the State.

The structure of this Law, its logic and consistency is a matter of interest and positive appraisal. In fact, the single statute regulates such issues as: the NIK system and structure, the procedure for appointing employees (auditors) and their salaries’ (pensions) accruing, providing for state guarantees; Parliamentary control over expenditures of a budget and activities of the Chamber; the procedure for exercising supervisory powers by State inspectors (auditors); audit procedures and their types; providing rights and obligations for all participants in the supervision legal relations; documentation of supervision results and possibility to appeal; application of legal liability measures; coordination and cooperation with other state control bodies of the Republic of Poland and foreign partners.

In fact, a “special status” of NIK has been rolled out in the Republic of Poland, and is therefore in full compliance with international practice of organizing the financial control system. Indeed, such a status stipulates, primarily, other (by comparison with government control bodies) procedures for forming a relevant body, appointment and dismissal of managing staff, terms of officials’ remuneration, etc., as prescribed by the laws mentioned above.

In Ukraine, the stage of reforming and modernizing the Accounting Chamber according to the *INTOSAI* requirements actually started with the adoption of the Law of Ukraine “On the Accounting Chamber” on July 2, 2015. The marked improvements include: 1) providing the Accounting Chamber for organizational, functional and financial independence and its autonomy in planning inspections as external public financial control (audit) (paragraph 2, Article 3 of the Law); 2) prohibition of state authorities’ bodies, local self-government bodies, political parties and public associations, enterprises, other organizational units regardless of their ownership, to interfere with the Accounting Chamber’s activity (paragraph 5 of Article 3 of the Law); 3) establishing the transparent competitive selection procedures for recruiting candidates for the Accounting Chamber members (Article 19; paragraph 2 of Article 20 of the Law); 4) implementation of external auditing and external evaluation of the Accounting Chamber activities pursuant to the results of its annual report; and should be held every three years by an accounting company experienced in auditing according to international auditing standards (Article 43 of the Law). Such improve-

ments would provide essential background for formation of a politically independent, professional composition of the Accounting Chamber and would further increase confidence to its activities of the society and international community.

However, some challenges necessary to be overcome should be highlighted in order to comply with the European practice of *SAI*'s organization: 1) the Accounting Chamber's legal status as a supreme audit body in the country has not been determined yet, that, firstly, is incompatible with the above-mentioned ISSAI standards, and, secondly, a negative impact on the distribution of control powers between the Accounting Chamber and the State Audit Office to conduct the state audit, whereas in Ukraine, both of these bodies exercise control functions in the budgetary sector, while the coordination function has not been enshrined for the Accounting Chamber; 2) various types of audit were not defined by legislation: compliance; information technology, implementation of grants, financial aid from other countries and international organizations; 3) failure to prescribe in legislation countermeasures as a response to violations detected by the Accounting Chamber; 4) a number of provisions tend to be essentially formal in their nature and do not set forth any precise criteria for determining the scope of the Accounting Chamber's activity, empowering it with the sole function to control public funds flow within the state budget (Art. 7 of the Law). Consequently, the Accounting Chamber in Ukraine, comparing with the similar supreme body of state audit in Poland (NIK), has been deprived of appropriate authority to control over public finances' management in general (including local budgets, public finances and assets in general, others public resources of social importance). This trend of Ukrainian legislation contravenes European practice of *SAI*'s organization that monitor public funds, including local budgets⁵.

In the light of the above, it seems appropriate to elaborate a Strategy Plan Towards Development of the Accounting Chamber of Ukraine, in order to improve functioning of the Accounting Chamber in Ukraine as a higher independent state institution, based on the experience of the *SAI* organization in the Republic of Poland (*NIK*).

Particular focus should be devoted to exploring the issue concerning international participation of *NIK* of the Republic of Poland in cooperation with various financial control bodies, as this is one of the key tasks of this body. Thus, *NIK* of the Republic of Poland is one of eight *INTOSAI* regional groups and cooperates with similar institutions in the EU Member States, the European Court of Auditors (ECA), International Board of Auditors for NATO (IBAN), European partners within *EUROSAI*. Heading the *EUROSAI* Working Group on Information Technologies, the *SAI* of Poland proposed the project "Control Space for e - Government Audit Project" (The CUBE) in order to strengthen audit of the electronic document government system.

⁵ In particular, Art. 4 of the Lima Declaration of Guidelines on Auditing Precepts enshrines the function of state audit regarding public funds, which include local budgets. The Lima Declaration (ISSAI 1). Approved at the IXth *INTOSAI* Congress, Lima / Peru 1977; *INTOSAI* Professional Standards Committee. From: https://www.intosai.org/fileadmin/downloads/documents/open_access/ISSAI_1_ISSAI_10/issai_1_en.pdf.

Such efforts have resulted in outcomes as follows: development of presentation tools for the document database of SAI's reports with analytical summaries; introduction of an effective search engine that enables the audit reports to be analyzed with regard to the risks identified within the control measures. As a result of work in such direction, in 2018, the digital format was available using interactive information technologies, which is currently being used for state auditing practice in Ukraine as well. Consequently, an IT audit was implemented with participation of *INTOSAI* experts in order to prepare SAIs for the creation of audit support software [*EUROSAI Magazine*, No.24-2018: 42-44].

The SAI of the Republic of Poland (NIK) continues to actively support Ukraine in organizing and developing the state financial control. Bilateral relations between the states in this area started in the 1990s, while the first attempts to establish such control were in Ukraine. Recognizing the significant role of the continuous development of a professional and effective state auditing, as well as independence of the supreme audit authorities as a core element of a democratic state, a number of agreements have been concluded between the States.

The first co-operation agreement between the Accounting Chamber of Ukraine and the Supreme Chamber of Control (NIK) of Poland was signed in 1998. This agreement envisaged general declarative provisions in regard to regular mutual consultations at management level biennially in order to exchange the ideas and experience in monitoring the use of public funds (Article 2 of the Agreement); implementation of parallel controls over shared areas (Article 3 of the Agreement); opportunities for organizing conferences, internships, workshops and other training events (Article 4 of the Agreement).

The following agreement was concluded in 2014 and formalized the previous arrangements between the States, furthermore, it referred to the principles of partnership and equality, as well as to compliance with the *INTOSAI* and *EUROSAI* required framework (Article 2 of the Agreement). In order to implement the provisions on cooperation by the States, a number of parallel audits have been organized and conducted: concerning checking the road crossings on the Ukrainian-Polish border; coordinated parallel *EUROSAI* audit on climate change; in regard to elimination of the consequences of natural and technological disasters and radioactive wastes; regarding preparation of Poland and Ukraine for organizing the "EURO 2012" European Football Championship final tournament.

In 2015, a multilateral agreement was concluded between the Republic of Poland, Georgia, the Republic of Moldova, and Ukraine. Here the Republic of Poland has made commitments, firstly, to coordinate joint activities towards organizing and facilitating state audit in a budget sector regarding collaborative issues. Secondly, it has assumed the obligations to share its experience in implementing European and international standards, as a country that has recently gone this route.

In 2018 Lviv Declaration on Cooperation and Partnership was concluded between the

Accounting Chamber of Ukraine and the Supreme Chamber of Control (NIK) of Poland, which stipulates the priority objectives for implementing an independent state audit in specified areas (Article 4 of the Agreement).

Primarily, this relates to the environment, as well as to prevention and elimination of disasters. To accomplish this task, a number of control measures are planned, in particular:

1. International coordinated audit of the compliance with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
2. International audit of the protection against the Bug River Catchment Area pollution;
3. International coordinated audit of the International East Carpathians Biosphere Reserve.

The second direction is a joint auditing in science and innovation, due to insignificant cooperation between trans-frontier innovative structures (e.g. transport and logistics, industrial parks, etc.) and ineffective capacity harnessing of border areas. Such audit is aimed at generating proposals for attracting supplementary financing and investment in the development of such territories. And the third group of tasks is provided for social policy making and protection of citizens' rights and freedoms.

In this respect, it is worth noting that Article 5 of the above-mentioned Agreement declares support by the Republic of Poland for the institutional development of the Accounting Chamber of Ukraine and establishment of a Training Center for the Accounting Chamber in Ukraine.

Numerous coherent measures within the framework of concluded agreements have already been implemented. The most significant ones refer to first scope of cooperation, in particular the environmental protection.

Given the fact that water contamination in the Western Bug catchment area is a matter of common concern for the coastal States, in 2006 the supreme bodies of financial control of the Republic of Belarus, Poland and Ukraine conducted an international coordinated audit of the protection against water pollution, as well as the water quality in this catchment area, and recommended the governments of the States to provide for complete implementation of their international commitments. The audit was coordinated by NIK of the Republic of Poland.

Later, in 2014, pursuant to *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a Framework for Community Action in the Field of Water Policy*, the NIK of the Republic of Poland with the Accounting Chamber of Ukraine initiated an international audit concerning protection against the Western Bug River Catchment Area from pollution, which was conducted as an audit in regards of implementing the recommendations.

The secondary international coordinated auditing was intended to assess the implementation of the SAI's recommendations, formed as the results of an international

audit completed in 2006. Moreover, throughout the secondary audit it was supposed to analyze the work of the responsible authorities of the Republic of Belarus, the Republic of Poland and Ukraine towards resolving the auditing issues specified by preceding audit, such as:

1. Insignificant international activity concerning border waters of the Bug River Catchment Area at national and regional levels;
2. Changes of water pollution levels, determined in accordance with national systems;
3. Lack of efficiency of investment activities, aimed at reducing water pollution of the Western Bug River Catchment Area, and sustainable management of water resources.

The subject matter of the international audit was primarily the state bodies' activities on protection against water pollution in the Western Bug River Catchment Area, in particular within the framework of international cooperation, as well as budgetary funds, allocated for protection against water pollution in the Western Bug River Catchment Area. This audit lasted from 2012 to 2014.

The outcomes of such auditing were recommendations towards harmonization of national policies and activities on the protection of the Western Bug River Catchment Area, then creation of a joint Belarusian-Polish-Ukrainian commission for drafting the documents concerning unification of monitoring systems and programed; introduction of a single database of qualitative and quantitative indicators of river water use; organization of joint environmental activities; and attracting additional investment from the UNDP's Global Environmental Finance.

In this period, the International Coordinated Audit of the International East Carpathians Biosphere Reserve was conducted [Manchenko 2011]. The purpose of the audit was to evaluate the activities within the territory of the International East Carpathians Biosphere Reserve by the national and landscape parks of the Republic of Poland, the Slovak Republic and Ukraine being parts of the reserve. This audit was initiated by the Supreme Chamber of Control (NIK) of Poland as an audit coordinator. The Supreme Control Management Chamber of the Slovak Republic and the Accounting Chamber of Ukraine participated within the framework of the EUROSAI environmental audit working group. The audit lasted from 2012 to 2016. Results of the audit revealed that the state bodies of Ukraine, the Republic of Poland, and the Slovak Republic have not yet concluded an agreement on cooperation regarding the International East Carpathians Biosphere Reserve. As a consequence, the purpose and overall strategy for functioning of the International East Carpathians Biosphere Reserve at the state level have not been developed. The legal regulation of the nature reserve fund is incomplete, and the organizational background of their activity needs further improvements, since this creates the risks of non-conservation of their nature reserve fund.

The Supreme Financial Control Authorities of the Republic of Poland, the Slovak Re-

public and Ukraine, based on the results of the parallel audit, focus on the necessity of taking measures towards concluding an intergovernmental agreement on functioning the International East Carpathians International Biosphere Reserve. Implementation of such measures would make it possible to determine joint or coordinated protection policies, the priorities and goals of the reserve activity as a single organizational complex, which would be aimed at exercising its functions and goals of its creation. Such an agreement would form the background for designating the International East Carpathians Biosphere Reserve governance body with specific responsibilities for developing and implementing joint or coordinated protection strategies as required by UNESCO. The supreme financial control authorities of the Republic of Poland, the Slovak Republic and Ukraine highlight that consistent implementation of the aforementioned measures by competent state authorities of the International East Carpathians Biosphere Reserve would determine the amount of funding required accomplishing the tasks by each group country. It would also make it possible to apply for funds from other sources, in particular from the European Union⁶.

To sum up, the modern world tends towards shifting the priority from domestic centralized regulation and control to international ones. This is particularly acute in international economic relations, thereby the formation of supranational financial-legal institutions and establishment of appropriate regulatory and legal background for their activities is essential in this field. In particular, O. Manchenko, analyzing social development of states, substantiates specific regularity, namely, that the social system covers all spheres of the society organization (political, economic, legal, spiritual), where Politics performs the functions of achieving domestic goals; Culture is maintaining a synergy template function; and Economics and Law aimed at international adaptation [Manchenko 2011: 149]. Economics and law are exactly the public spheres, where utmost approximation and unification of international cooperation principles are acceptable and feasible. The economic and social development background of each participating state depends on joint efforts, common resources and interests in international community. In the light of the above, organization of the supreme financial control body in Ukraine, is a matter of priority to be adjusted significantly as a result of adaptation to European legislation and as a kind of synthesis of Law and Economics.

CONCLUSION

Substantive research of SAI's organization (NIK) of Poland is of great importance for Ukrainian auditing practice, in particular, as a significant factor for further institutionalization of the Accounting Chamber of Ukraine and improvement of legal framework, through which the state ensures the legality and effectiveness of independent

⁶ There are no PL-SK-UA tripartite programmes in the financial perspective for 2014-2020. However, country-specific programmes allow for non-competitive co-financing applications, for example: Poland-Ukraine-Belarus Cross-border Cooperation Programme 2014-2020 and Interreg V-A Programme, Poland-Slovakia 2014-2020.

financial control. The outcomes of this work are regarded to be as follows: 1) drafting a strategic development plan for the Accounting Chambers of Ukraine on the example of the SAI organization (NIK) of Poland; 2) to amend the Constitution of Ukraine, by providing the SAI status for the Accounting Chamber of Ukraine; 3) comprehensive implementation of international and European standards on state audit, given the commitments of Ukraine according to the Association Agreement; 4) identifying and expanding the scope of public audit concerning public finances, including local self-government authorities; 5) organizing and conducting parallel audits by the SAI of Poland (NIK) and the Accounting Chamber of Ukraine concerning the innovation and social policy areas, protection of human rights and freedoms.

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