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Performance auditing by the Portuguese Court of Auditors

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Abstract This paper aims at presenting the Portuguese Court of Auditor's work in what concerns performance audit. As for performance auditing in the Portuguese Court of Auditors, the paper describes the context in which it has been taking place, referring to the need of increasing accuracy, fairness and transparency in the accounts of the entities submitted to its jurisdiction and control and, furthermore, of assessing economy, effectiveness and efficiency in public expenditure and of analysing the new forms of public financial management, thus promoting an increasing accountability of public managers. It also describes how performance audits will contribute to accomplish the Court's strategic and operational goals for the period 2011–2013. The professional point of view about performance auditing of public services, given by an auditor–director at the Portuguese Court of Auditors, represents the main (practical) contribution of the paper.

1. Introduction

This paper aims at presenting the Portuguese Court of Auditor's work in what concerns performance audit. It gives notice of the Court's legal framework regarding its powers within both the jurisdictional function and the financial and performance control functions, the entities subject to its jurisdiction and control and the Court's organization, comprising three different specialized Chambers in the headquarters – the 1st Chamber for *a priori* and concomitant control of acts and contracts that generate public expenditure, the 2nd Chamber for *a posteriori* and concomitant financial and performance control and the 3rd Chamber for the enforcement of financial liabilities and appeals – and two regional Chambers, one in Madeira and one in the Azores.

As for performance auditing in the Portuguese Court of Auditors, the paper describes the context in which they have been taking place, referring to the need of increasing accuracy, fairness and transparency in the accounts of the entities submitted to its jurisdiction and control and, furthermore, of assessing economy, effectiveness and efficiency in public expenditure and of analysing the new forms of public financial management, thus promoting an increasing accountability of public managers. It also describes how performance audits will contribute to accomplish the Court's strategic and operational goals for the period 2011–2013.

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In the end, some future trends of the Court's action, keeping on track with the conclusions of the VIII Congress of the European Organization of Supreme Audit Institutions, are also approached.

The Court of Auditors, an independent Supreme Audit Institution, plays an important role in the context of the financial crisis, promoting transparency, namely regarding new financing models, and accountability of those who manage public financial resources. Performance auditing by the Court began in 1998 and has been substantially enlarged, as a result of different combined factors, the most important being the amendments of the Organization and Procedural Law of the Court of Auditors, passed by Parliament, concerning the range of entities submitted to its jurisdiction and control functions, the definition by the Court of its Working Plans and the self-development and implementation of adequate methodologies, most of which deriving from the International Standards for Supreme Audit Institutions (ISSAI).

As a result of the Court's work in this field, it has been possible to identify situations where the public interest was not sufficiently protected. The conclusions of the audit reports approved by the Court show that, in some cases, principles and rules are widely disregarded, in very different matters such as, for instance, public procurement and internal control. Those conclusions were communicated to the auditees and to the Parliament and Government and recommendations were made in order to sustain the misuse of public resources. The reports were disclosed by the Court, as a means to increase transparency and enhance public awareness.

The Portuguese Court of Auditors is particularly aware of the new challenges faced by the State and the civil society and willing to implement procedures that enable the fulfilment of its constitutional mission of promoting transparency of public accounts, by acting as the interface between public managers and society, and contributing to the implementation of the public accountability of those who manage public financial resources, involving all actors in its mission, as recommended by the VIII Congress of the European Organization of Supreme Audit Institutions.

2. The Court of Auditors

2.1. Main scope and status

The Portuguese Court of Auditors is, according to the Constitution (article 214), the supreme court with the power to control the legality and regularity of public expenditure. Its legal framework is settled by Act 98/97 of 26 August,[1] the Organization and Procedural Law of the Court of Auditors, passed by Parliament (hereinafter OPLCA).

The OPLCA states that the Court ''examines the legality and regularity of public revenue and expenditure, assesses sound financial management and enforces liability for financial offences[2]'' and that it ''(...) has jurisdiction and powers of financial control within the scope of the Portuguese legal system, whether on national territory or abroad[3]''.

The law acknowledges the independence of the Court, guaranteed by self-government and by the fact that Judges cannot be removed and are exclusively submitted to the Law. Furthermore, Judges can only be subject to civil, criminal or disciplinary liability in the result of the performance of their functions in the situations defined by Law. In fact, excluding situations where a judicial decision may incorporate a crime, liability for judicial decisions is always assumed, in the first line, by the State, who may subsequently prosecute the member of the Court.[4]

The President of the Court is, according to the Constitution, appointed by the President of the Republic on a Government's proposal and the other members of the Court are recruited within a competitive procedure.[5] The Deputy President, to whom the President may delegate powers and who may replace the President in the cases of vacancy, absence or legal disability, is elected from among the Court's members. The Judges of the Court of Auditors have honours, rights and other prerogatives equal to those of the Judges of the Supreme Court of Justice.[6]

2.2. Entities subject to jurisdiction and powers of financial control

The range of entities subject to the Court of Auditors' jurisdiction and powers of financial control has been substantially enlarged by the amendments introduced to article 2 of the OPLCA by Act 48/2006.

In fact, originally, the OPLCA considered that only the State and its services, the Autonomous Regions and its services, local authorities, their several associations or federations and its services, public institutes and social security entities were subject to the Court's jurisdiction and powers of financial control. In opposition, other entities such as public associations, associations of public entities or associations of public and private entities mainly financed by public entities or subject to their management control, public-owned companies, public-owned commercial enterprises and commercial enterprises partially owned by one or several public entities or within which the public entities played an important role, either by controlling the management or by appointing the managers, concessionaires, private law foundations and entities of any nature partially owned by public entities or receiving public funds or other public values were only subject to the Court's more tenuous powers of financial control.[7,8]

[1] This Act has had eight amendments, by Act 87-B/98, of 31 December, Act 1/2001, of 4 January, Act 55-B/2004, of 30 December, Act 48/2006, of 29 August, Act 35/2007, of 13 August, Act 3-B/2010, of 28 April, Act 61/2011, of 7 December and Act 2/2012, of 6 January.

[2] Article 1, point 1, of the OPLCA.

[3] Article 1, point 2, of the OPLCA.

[4] Article 6 of the OPLCA.

[5] Articles 214, point 2 of the Constitution and articles 16 and 18 of the OPLCA.

[6] Article 24 of the OPLCA.

[7] Only with the purpose of controlling the use of public resources.

[8] Act 14/96, of 20 of April, previous to the OPLCA, already stated that these entities were submitted to post-audit, but only within the powers of financial control.

In the first case, should infringements be detected, the OPLCA allowed the Court to enforce liabilities for financial offences, by condemning the accountable parties to restitute the sums comprised by offences such as arrears, embezzlements and improper payments, as well as non-collection of revenue, and by applying fines for their misbehaviour. Differently, in the second case, the Court would only be entitled to disclose audit reports containing recommendations.

Through the amendments introduced by Act 48/2006, the Court has nowadays jurisdiction and financial control powers over all these entities, regardless of their public or private nature, provided that they receive public funds, including European funds, or values. However, where private entities are concerned, the Court may only control the activities financed by public resources.

2.3. Essential and complementary powers

The Court of Auditors has the following powers[9]:

- To issue opinion on:
  - the General State Account, including the Social Security account;
  - the Parliament account;
  - the accounts of the Autonomous Regions and their Legislative Assemblies;
- To perform an *a priori* control on the legality and budgetary cover of acts and contracts of any nature which generate expenses or are representative of any direct or indirect costs and liabilities for most of the entities submitted to its jurisdiction[10] and for entities of any nature created by the State or by public entities to develop administrative functions originally incumbent on the Public Administration, provided, in this last case, that those costs are financed, directly or indirectly, by the entity that created them;
- To verify the accounts of the entities or services which are obliged to render their accounts to the Court;
- To enforce liabilities – both through restitution of sums and the levy of fines – for financial offences for anyone managing public resources, regardless of the nature of the entity involved;
- To assess the legality, economy, effectiveness and efficiency, according to technical *criteria*, of the financial management of most of the entities subject to its jurisdiction and control;
- To audit, on its own initiative or on the request of the Parliament or of the Government, the entities submitted to its jurisdiction and control;
- To examine, on the national level, the collection of resources that will be delivered to the European Union, as well as the use of the European funds; in this domain, the Court may act in cooperation with the competent European authorities;
- To issue, on the request of the Parliament or of the Government, opinions on legislative projects regarding financial matters;
- To carry out other functions assigned by law.

Beyond these main powers, the Court also has complementary powers,[11] namely to approve its internal regulations, to issue instructions to be observed by the entities subject to its jurisdiction and financial control[12] and to propose legislative and administrative measures that it deems necessary for the use of its powers.

2.4. Organization and powers of the Court's Chambers

The Court of Auditors is composed of the President, the Deputy President and seventeen other Judges. The President and sixteen Judges perform their functions in the headquarters. The Court has two regional Chambers, in Madeira and in Azores, each of them having a different Judge.

The Court also has support services[13] in the headquarters and in the regional Chambers.

The Public Prosecutor Service is represented, at the headquarters, by the Attorney General or by one or more of the assistant-attorney-generals and, at the regional Chambers, by the magistrate appointed by the Attorney General for this purpose. The Public Prosecutor Service intervenes officiously and in accordance with the OPLCA and with the Court's regulations and is provided with all the reports and opinions approved following all control actions.

In the headquarters, the Court comprises three specialized Chambers. The number of judges of each Chamber is determined by the general plenary. Nowadays, the 1st Chamber is composed of four Judges, the 2nd is composed of 9 Judges and the 3rd of three Judges.

The 1st Chamber deals with *a priori* and concomitant controls, having as main powers to decide upon the approval of acts and contracts submitted by law to the *a priori* control and to order audits concerning the exercise of *a priori* and concomitant control and to approve the related reports.

The *a priori* control aims to verify whether the acts and contracts[14] set by the OPLCA – documents that generate

[9] Article 5 of OPLCA.

[10] State and its services, Autonomous Regions and their services, local authorities and their services, public institutes, social security institutions, public associations, associations of public entities or associations of mixed public and private entities, which are mostly financed by public entities or subject to its management and control, public companies, including state owned companies and regional, intermunicipal and municipal companies.

[11] Article 6 of OPLCA.

[12] For instance, instructions on how to render accounts or on how to organize the documents that should be sent to the *a priori* control of acts and contracts.

[13] In the end of 2011 there were 529 members of staff of these services, 445 in the headquarters and 42 in each regional Chamber.

[14] The acts and contracts submitted to *a priori* control are set in article 46 of OPLCA. The exemptions are set in articles 47 and 48. It should be noted that Act 48/2006 and Act 61/2011 enlarged the scope of the *a priori* control, the first one in what concerns the types of acts and contracts and the second in what regards the range of public entities submitted to this control. In fact, Act 61/2011 states that associations of public entities or associations of mixed public and private entities, which are mostly financed by public entities or subject to its management and control, public companies, including state owned companies and regional, intermunicipal and municipal

public expense or represent direct or indirect liabilities – are according to the law and also whether they have suitable budgetary cover. For acts and contracts which generate public debt, it aims to verify, namely, if they comply with the limits of indebtedness and with the purpose set by the Parliament. In cases where the Court concludes that the acts or contracts are null, that there is no budgetary cover for them or that they are illegal in such a way that can alter their financial outcome,[15] the Court can refuse the prior approval.

The acts and contracts submitted to the prior approval may, in general, be effective before it, except for the payments resulting from them, which can only occur after the prior approval. However, if their financial value is above the threshold of €950,000, those acts or contracts are totally ineffective before the prior approval, unless they are based in a direct award allowed by the special urgency brought about by events unforeseeable by the contracting authority, that it is not responsible for, and that do not enable it to meet deadlines inherent in other procedures prescribed by law. The refusal of prior approval only generates the ineffectiveness of the act or contract after the decision's notification to the public entity involved.

As for the concomitant control, when performed by the 1st Chamber, it derives from audits to the proceedings and administrative acts regarding staff expenses, acts and contracts not submitted to the *a priori* control by the law[16] and also the execution of acts and contracts that have been previously approved within the *a priori* control. These audit reports may be used as instruments for the analysis of the rendered accounts or to the enforcement procedure for financial responsibilities.

It is thus obvious that the 1st Chamber is mostly concerned with compliance to law and regulations, unlike the 2nd Chamber.

The 2nd Chamber performs successive control,[17] aimed at verifying the public entities' accounts, evaluating internal control systems and analysing the legality, economy, efficiency and effectiveness of financial management. It also examines the national contribution to the European Union and the way in which European funds are spent and has the power to control the State direct public debt, not only in order to assess its compliance with the rules set by Parliament on debt limits and other general conditions, but also to assess its costs.[18]

In order to make use of these powers, the 2nd Chamber analyses, internally or *in loco* the accounts that some public entities, set by law,[19] are complied to render, performs audits of various kinds – financial audits, oriented audits, integrated audits, systems audits, performance audits, follow-up audits, environmental audits – and prepares the opinion on the General State account, including the Social Security account and the Parliament account, both of them to be approved by the general plenary of the Court.[20]

The audit reports approved by the two aforementioned Chambers main contain, beyond the audit's findings and conclusions, recommendations and/or trigger facts that lead to financial liability. The reports that trigger possible liabilities[21] are sent to the Public Prosecutor Service. In fact, this Service, along with management and supervision bodies of the auditees in the case of audit reports approved by the Court[22] and the internal control bodies within the scope of their own reports,[23] are the ones responsible for requesting the trial of the triggered offences, which will take place before the 3rd Chamber.[24]

The 3rd Chamber is, therefore, the one that trials and enforces financial liabilities, besides judging some appeals.

Finally, the regional Chambers have the powers set in articles 104 to 109 of OPLCA, including the ones referring to the approval of the opinion on the regional accounts,[25] the prior approval of acts and contracts, the approval of concomitant or successive audit reports and the trial of some appeals, always within the regional level.

3. Performance audit in the Court of Auditors

3.1. Background

The Court of Auditors has always been aware of the need to increase accuracy, fairness and transparency in the accounts of every entity that manages public financial resources and, for the past nearly two decades, this institution has been also dedicated to the analysis and assessment of economy, effectiveness and efficiency in public expenditure and to the new forms of public financial management, many of which imply an increasing closeness to private law instruments. As can be read in the Report on the Court's activity in 2011, this institution constantly seeks better results of public financial administration in what regards promoting truth, quality and responsibility in public resources' management. For this purpose, the Court has been stressing the need for an increasing accountability of all the managers of public money or resources.

Lately, and in the context of the financial crisis, the State has been facing new challenges that have to do with an urgent need to implement the fiscal consolidation, reducing the budget deficit and the public debt in order to obtain

companies became submitted to this control. It is therefore clear that this kind of control has been substantially extended since 1997, even in what regards entities mainly submitted to private law.

[15] In this particular case, the Court can either refuse the prior approval or issue recommendations to the public body so that it can overcome, in future procedures, the identified illegality.

[16] For instance, contracts of additional works or services.

[17] This Chamber is entitled to perform concomitant audits, as well. However, these audits have a different scope from the one of concomitant audits performed by the 1st Chamber: they are aimed at assessing the financial activity of the public entity before the end of each year.

[18] Article 50 and article 49, point 1, of the OPLCA.

[19] Article 51 o the OPLCA.

[20] Articles 51–55 and 75(a) of the OPLCA.

[21] Not only the reports approved by the 1st and 2nd Chambers of the Court, but also reports of internal control bodies with the same kind of content, as set in article 57 of the OPLCA.

[22] Only for the cases in which the Public Prosecutor Service declares not to request the trial (article 89), point 2, of the OPLCA.

[23] Only for the cases in which the Public Prosecutor Service declares not to request the trial (article 89), point 2, of the OPLCA.

[24] Article 89 of the OPLCA.

[25] These opinions are approved by the President and the two judges of regional Chambers, as set on article 42° of the OPLCA.

financial sustainability, without disregarding the obligations deriving from the welfare-state, many of which are set in the Constitution, which impose the delivery of quality services, namely in areas such as education, health or transports. This dilemma brought about the importance of the implementation of new financing models, such as, for instance, the public–private partnerships. However, new models raise new issues to be discussed and brought to the citizen's knowledge, concerning the costs and benefits of the new solutions in face of the ones resulting from the direct delivery by the State of the goods and services in question and the fact that they may jeopardize public resources that will only be obtained by future generations.

The State is also faced with other challenges such as demographical and technological pressures on social security and employment that bring to light the need to face a constantly changing world in the private and public spheres.

To face the new challenges, the State should be opened to a broad debate that could contribute to find new and more flexible good governance and management models, so that value for money is effectively obtained and public resources may continue to be allocated to the granting of citizens rights. That debate may only be fruitful if all parties act in a responsible, ethical and transparent way and are fully informed. In this framework, accountability is essential to maintain the confidence of the citizens in those, elected or appointed, that manage public resources.

3.2. The point of view of international organizations of Supreme Audit Institutions

The Supreme Audit Institutions, mainly because of their independence in face of the Parliament and of the Government – set by the Constitution in the Portuguese case, of their powers of investigation and of their expertise, have a relevant part to play in these matters, as was recognized by the Lima Declaration adopted in 1977 by the IX Congress of the International Organization of Supreme Audit Institutions. In its preamble, it was highlighted that ''*the specific objectives of auditing, namely, the proper and effective use of public funds; the development of sound financial management; the proper execution of administrative activities; and the communication of information to public authorities and the general public through the publication of objective reports, are necessary for the stability and the development of States in keeping with the goals of the United Nations*''. And when setting the purpose of audit, it was stated that ''*The concept of audit is inherent in public financial administration as the management of public funds represents a trust*''. These old-aged words have proven to be wise ones, as they continue to make sense in more complex and troubled societies like ours.

The Lima Declaration specifically referred to performance audit, recognizing that its importance was equal to legality or regularity audit, and that each Supreme Audit Institution should ''*determine its priorities on a case-by-case basis*''.

The important role of the Supreme Audit Institutions still continues to be recognized worldwide. In the conclusions formulated in the VIII Congress of the European Organization of Supreme Audit Institutions, held in Lisbon in the first semester of 2011, the role of Supreme Audit Institutions was again brought to evidence. Their independence, transparency and efficiency are set as prerequisites for the ability to face the challenges coming from the public sector and it is stressed that they ''*play an important role in promoting an accountability culture (...) namely by performing controls, reporting, formulating recommendations, valuing good practises, and, in some cases, through their jurisdictional and sanctioning powers*''. The Supreme Audit Institutions role in promoting better legislation and good practices within public administration is also highlighted, as a means to enhance accountability.

3.3. Onset and evolution of performance audits in the Portuguese Court of Auditors

The Court of Auditors traditionally performed financial, legality and regularity audits. However, after the entry into force of Act 14/96, it began to fulfil its tasks regarding performance audit. Therefore, performance audit reports have been issued since 1998. At that time, Act 98/97 in its first version was still into force and some of the entities set by that Act were only submitted to the powers of financial control, and not to the jurisdiction of the Court. It should be stressed as well that some of those entities, such as public owned companies, were mostly ruled by private law, which is traditionally less binding than public law, once it is basically founded on the principle that people are free to enter contracts and to design their clauses, once they obey a minimal set of binding rules. So, when performance audits started making their way, by the late nineties, the Court adopted mostly a preventive and pedagogical point of view, formulating recommendations to the auditees and to Government and publishing the audit reports, in order to raise and increase a constant social awareness regarding these matters. Since 1998, a large number of performance audit reports were issued, covering many economic sectors, European funds expenditure, concessions and public–private partnerships.

Later on, because of the amendments introduced in Act 98/97 by Act 48/2006,[26] the entities previously submitted only to the powers of financial control began to be also submitted to the jurisdiction of the Court.

It should be noted that nowadays, because of the enlargement of the range of entities submitted to the jurisdiction of the Court, performance audits may also aim at assessing compliance with binding rules and may lead to the identification of financial offences generating financial liabilities.

3.4. Strategic and operational goals for the period 2011–2013

What has been said so far explains that in the Court's three-year plan of activities 2011–2013 two of the three strategic goals involve carrying out performance audits.

[26] In fact, this Act introduced a new offence that could lead to financial liability: the repeated and unjustified failure to comply with the Court's recommendations.

The first of these strategic goals is to systematically assess the implementation of public policies and programmes within the scope of the financial crisis, as well as of their effects on financial sustainability and intergenerational equity, aiming, namely, at obtaining a systematical assessment of the policies set by the Stability and Growth Programme.

The second strategic goal is to intensify the external control over large financial cash-flows, over higher risk areas and over innovation areas in financial management. In this area, the Court plans to increase financial control regarding public–private partnerships, to carry out value for money audits on the management of public-owned companies, including local ones, to reinforce financial control on public entities ruled mostly by private law and on foundations and associations mostly financed by public entities or whose management is controlled by them and to prevent factors that lead to major financial slippage and to the systematical extension of deadlines within public procurement.

3.5. Working plans for 2011 and 2012 and results in 2011

The working plans approved by the Court for the years 2011 and 2012 include about 40 audits either clearly defined as performance or integrated audits or in which it is possible to include some performance assessment. These audits cover a large spectrum of entities,[27] most of the economic sectors and allow the control on huge sums of public resources. In particular, they refer to areas so different as public procurement, outcomes of the Lisbon Strategy, European funds co-financed programmes, relationships between public Universities and private law entities, public-owned companies, hospital management, access to National Health Service specific programmes, financing models of hospitals characterized as public enterprises or run within a public–private partnership, value for money of the outsourcing model within public hospitals, costs and risks of public–private partnerships in the sectors of the road and rail sectors and, finally, concessions.

In 2011 the 2nd Chamber of the Court and the regional Chambers performed one hundred and sixteen audits in the scope of the successive control and concluded eighty three, of which more than a half are performance or integrated audits or at least may contain performance assessment in some way.

3.6. Methodologies for performance audits

When the Court of Auditors began to control the performance of public entities, methodologies with this scope were not as developed as they are today. In fact, the Audit and Proceedings Manual of the Court, containing merely general topics relating to this kind of audit, was still being prepared and would only be approved in 1999.

Feeling the need for more detailed knowledge on this subject, the staff involved attained training in the National Audit Office of the United Kingdom and started applying its methodologies, complementing them with the ones set in other Supreme Audit Institutions' Manuals. As time went by, there were significant improvements in this area, as the International Organization of Supreme Audit Institutions started ruling these methodologies, by approving ISSAI 3000[28] in 2003, and ISSAI 3100 in 2010.[29]

The INTOSAI, when approving the ISSAI mentioned in the first place, acknowledging that many Supreme Audit Institutions had pointed out the need for specific guidelines for this kind of audit, ''*thought wise to develop separate guidelines for performance auditing*[30]''. This ISSAI is divided into five parts and seven appendices. Part 1 designs the concept of performance auditing; part 2 adapts Government Auditing principles to performance auditing; part 3 helps initiating and planning a performance audit; part 4 gives the auditor field standards and guidance on how to conduct a performance audit – for instance regarding data to be collected, handling of conflicting environment and procedures that could be used to draw the audit's conclusions; part 5 regards the audit report and its distribution, as well as follow-up processes. In the appendices, further information is given, for instance, on evidence and documentation and on communication and quality assurance and ''Performance auditing and information technology'' or ''Performance audits of activities with an environmental perspective'' are also approached.

ISSAI 3100 intends to outline ''*a common understanding of what defines high quality work in performance auditing*'', and contains the key principles for each audit phase.

In 2008, the Court of Auditors approved a document called ''Guidelines for controlling public private partnerships'', based on the applicable rules, including budgetary rules, and on its own experience of controlling this new financing and operating model. This document is divided into four parts, the most important of them being the ones related to the institutional, legal and budgetary framework of the Public–Private Partnerships, the guidelines and proceedings to perform these audits and the methodology for assessing the project planning, the procurement process, the contract, and the public and private partners performance. It also includes four appendices, among which Appendix 1 contains a summary of two Guidelines issued by the International Organization of Supreme Audit Institutions, one on best practices for the audit of risk in public–private partnerships[31] and the other on best practices for the audit of public–private finance and concessions[32] and Appendix 2 contains a set of good practices regarding the study, development and management of public–private partnerships.

[27] Some of these audits have a horizontal scope, covering several entities.

[28] ''*Standards and Guidelines for performance auditing based on INTOSAI's Auditing Standards and practical experience*''.

[29] ''*Performance Audit Guidelines: Key Principles*''.

[30] Preamble of ISSAI 3000.

[31] Issued in 2004.

[32] Issued in 2001 and revised in 2007.

3.7. Main conclusions of performance audit reports

The Court of Auditors publishes on its website,[33] among other acts, the reports approved by its 2nd Chamber. Full reports are published in Portuguese language, but some of them have an executive summary translated into English, also available on the website.

Many performance audit reports were approved and published by the Court in the last fourteen years, and it would be impossible to summarize here all its relevant conclusions. Therefore, some examples were chosen in order to present below a few of its main conclusions. However, the reading of the full text reports or of their executive summaries is recommended for those who are interested in these matters.

a. **Report n. 17/2009 – 2nd Chamber** ''Audit to five public works developed through direct State management'':
   i. In 4 cases, the technical documents belonging to the construction project were not properly conceived, and that implied the need to alter quantities of materials; in these cases, the public entities did not go through a new procurement procedure, disregarding competition and therefore raising costs;
   ii. Procurement procedures aimed at granting supplies and services' contracts were directly awarded, without consulting other economic operators; awards were not sufficiently justified, disregarding the principle of transparency and the market rules;
   iii. Open procedures sometimes lacked transparency and publicity and procurement procedures sometimes lacked accuracy;
   iv. Awarded contracts were not sufficiently penalizing for the private economic operators in cases of breach of contract;
   v. In the 5 cases, there were additional costs of public works that rose to 52.6% of the awarded values; in 2 cases, the cost slippage went up to 136.92% and to 228%; this corresponds to a widespread phenomenon of cost slippage in public works in Portugal;
   vi. In 2 cases of public works, there was not an estimated value for the procurement procedure;
   vii. Supplies and services contracts also followed the same tendency, with a medium cost slippage of 54%;
   viii. There were major delays in all the five cases, representing about 100% of the time before which, according to the contract, works should be concluded;
   ix. Those deadline deviations were due, namely, to delays in expropriating lands, obtaining environmental impact documents, work suspensions and changes in the technical projects;
   x. The implemented monitoring and control system, mostly carried out through outsourcing, was, in 4 cases, inadequate and ineffective; in opposition, in 1 case, the contract was terminated by the public contractor's initiative and that proved to be the right decision;
   xi. There were no post-assessments of the way in which the works were developed, and that prevented the public contractors to gather ''lessons learned'' and set up guidelines for the projects to come.

b. **Report n. 12/2010 – 2nd Chamber** ''Audit to Metro do Porto, SA''[34]:
   i. Metro do Porto, SA is a State owned enterprise which provides urban public transport services in Oporto;
   ii. Globally, the enterprise provided very satisfactory services which led Oporto inhabitants to use public transports more often, thus improving their quality of living;
   iii. The company was short of capital and showing a growing debt; in fact, the construction and operation of the light-rail system was financed through borrowing arrangements and, if indebtedness is not kept within reasonable limits, it may seriously endanger the financial sustainability of the company, jeopardizing the agreed quality of the service and the use of public money already spent in the project;
   iv. The State did not set in the contract either the public service duties of Metro do Porto, SA or the company's financing system; the failure to set the second aspect led to the company's growing deficit;
   v. Differently, Metro do Porto, SA set a detailed sub-concession contract, specifying the sub-concessionaire's duties, namely regarding service quality; that contract's implementation was thoroughly monitored, and that contributed to the quality of the services being delivered.

c. **Report n. 8/2011- 2nd Chamber** ''Audit to the internal audit function in the State owned enterprises'':
   i. There was no specific guidance on best practices for State owned enterprises that could contribute to clarify the standards set by the Institute of Internal Auditors and by national legislation;
   ii. The State owned enterprises belonging to the sample did not completely assimilate the concept of internal auditing set by the Institute of Internal Auditors and did not follow the international standards or best practices, in spite of the legislative reinforcement of the internal audit function as a means to achieve good governance;
   iii. In the beginning of the audit, only 16 from 20 entities had an Internal Audit Department; however, 3 of them created that Department during the audit and one of them clarified that that function was performed by other enterprises of the same group;
   iv. In about half of the 16 enterprises with an Internal Audit Department, the control functions performed did not allow the Department to be an effective strategic partner in management activities; sometimes, the Department would not even cover the activities of all the other Departments;
   v. 29 of the 199 internal auditors of the sample had previously been working in management positions; in the Court's point of view, that circumstance could

[33] www.tcontas.pt.

[34] This is one of the four audits to public transport State owned enterprises, each having a separate report. In the end, a general report was also approved: Report 16/2010 – 2nd Chamber.

jeopardize the independence of the Internal Audit Departments;

vi. 5 of the these enterprises had not set benchmarks regarding the Internal Audit Department's outputs;

vii. Most of these State owned enterprises did not submit the outputs of the Internal Control Departments to an external independent assessment.

As said before, these conclusions, as well as the related findings and recommendations were publicized by the Court. Recommendations in order to prevent future misconducts and to promote good governance were addressed to the auditees and recommendations regarding the need to make law or regulation's amendments or to build new guidelines were, whenever necessary, addressed to Parliament and Government.

Many other performance audits have been approved since 1998, regarding public hospitals transformed into State owned enterprises,[35] specific healthcare programmes[36] and public owned enterprises. In 2011, a performance audit report on the sustainability of public owned enterprises was published by the Court.[37] All these reports contain recommendations.

It is therefore a major challenge to the Court to comply with the principles set by the International Organization of Supreme Audit Institutions on the need to follow-up the implementation of such recommendations, either by performing follow-up audits or by simply asking for periodical information, and to apply sanctions in case they are disobeyed. However, the Court has been performing several follow-up audits and collecting further information on the audited entities behaviour towards recommendations.

4. Conclusions and future trends

In the recent VIII Congress of the European Organization of Supreme Audit Institutions, the issues connected to the new challenges and demands for public management, as well as the role of Supreme Audit Institutions in this field, were approached.

The Congress was particularly alert to aspects such as demographical and technological evolution, information society, and the need to build prompt answers to the constant changes affecting the States and the citizens all over the World. From the Congress' point of view, ''*there is not a unique answer to these challenges, and beyond the rational legal authority of the State, there is also the need to find a governance model able to reply in an open and flexible manner, in which ethical values should be respected and shared*''. It was also stressed that accountability of public managers, in a broad concept, including professional and management requirements, the ability to comply with legal rules and with principles and proper conducts regarding performance and ethics, should be envisaged as one of the pillars of contemporary public management. Plus, in order to maintain or raise public trust in the new governance models, public managers should carry out their mission in a transparent way, thus reinforcing the concept of accountability.

The Supreme Audit Institutions have a prominent role in promoting a culture of accountability in public management, through controlling and reporting, formulating recommendations to the auditees and to Parliaments and Governments, suggesting best practices and the approval of more effective legislation, but also through sanctioning improper conducts, whenever they are empowered to do so.

With such a framework, the Congress addressed the Supreme Audit Institutions, among others, the following recommendations:

- To adapt to the innovations and changes in society;
- To find ways of involving society in their mission;
- To promote compliance with the rules of law, good performance standards and ethical principles;
- To strive to enlarge their scope, so that it would meet the needs of legal, financial and performance accountability;
- To acknowledge a proactive attitude towards the legislator and the public sector, as a means to deepen public management accountability.

The Portuguese Court of Auditors is particularly aware of the new challenges and willing to implement the procedures that enable the fulfilment of its mission in face of constitutionally set bodies, auditees and general public, thus contributing to the major shared task of promoting transparency of public accounts and management and to the implementation of the broad concept accountability of public managers.

In order to do so, the Court may have to redesign or reinforce control procedures, namely where performance control is concerned. However, this cannot be achieved without a broad and deep study and discussion of the issues involved. Therefore, the few ideas that will be presented at this stage may only be used within a preliminary brainstorming and are not, by any means, binding to the Court of Auditors.

Considering the scarcity of resources, especially human resources, in face of the universe of entities that is submitted to the jurisdiction and control powers of the Court of Auditors, it would be important to allocate them to the control of major risk areas and/or to areas where huge sums of public money are at stake. The accomplishment of a rational allocation of resources depends on an informed planning of the Court's activities and, with that purpose, the Court and its supporting services may consider to increase the systematic collection and organization, for instance developing new databases, of relevant information, gathered by all available means, including answers to questionnaires periodically addressed to public-owned companies, concessionaires and managers of public–private partnerships. In what regards the questionnaires, they could prove to be an important instrument to analyze weaknesses and risks associated to companies, contracts or projects, thus enabling the Court to address them directly and timely.

Also with the aim of enlarging the scope of control, the Court could reinforce the performance of thematic

[35] For instance, Audit report n. 17/2011 – 2nd Chamber, related to the managers' wages and fringe benefits and to good governance in hospitals transformed into State owned enterprises.

[36] For instance, Audit Report n. 48/2010 – 2nd Chamber, related to an eye-surgery programme.

[37] Audit Report n. 29/2011 – 2nd Chamber.

or horizontal audits, covering wider ranges of entities, contracts or projects and controlling increasing financial cash-flows.

Another line of action could be the reinforcement of the monitoring of recommendations. In fact, periodical monitoring would contribute to the effectiveness of recommendations, and would provide the Court with updated information on their implementation or on the difficulties faced by the auditees. Moreover, that information could be given to the Parliament and/or the Government, especially in cases where additional provisions or rules of law could make the implementation of recommendations easier to the auditees. In this context, it should be stressed that the OPLCA has, since the amendment introduced in 2006, favoured the effectiveness of recommendations by empowering the Court to levy fines in cases of repeated and unjustified failure to comply with the recommendations.

Last, but not least, it will continue to prove essential that the Court keeps reinforcing the mechanisms of disclosure of transparent, objective and clear information to the public in general through all means available, including *media* and internet, thereby promoting the interface between public managers and society and involving all actors in its mission, as recommended by the VIII Congress of the European Organization of Supreme Audit Institutions.