

Petition 0712-21

Petitioner Information

Petitioner Mr. Arne Semsrott

Nationality Deutsch

Petition Details

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Public YES

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Title

Publishing the Commission's audit reports

Document

The petition aims to ensure that the EU Commission regularly publishes its audit reports on the use of EU funds in the Member States. So far, this only happens in exceptional cases. This restrictive practice is not in line with the standards of the International Organisation of Supreme Audit Institutions (INTOSAI), which the EU Commission is committed to applying. According to these standards, audit results must be summarised in a report and always made available to the public as soon as the final version of the report is completed.

On 23 April 2021, the EU Commission published its audit report on the subsidies granted from the EU budget to the AGROFERT Group in the Czech Republic. The report dealt with the conflicts of interest of the Czech Prime Minister, who controls the AGROFERT Group.

https://ec.europa.eu/regional_policy/en/information/publications/reports/2021/final-report-on-the-audit-of-the-functioning-of-the-management-and-control-systems-in-place-to-avoid-conflict-of-interest-in-czechia

This publication is to be welcomed, but unfortunately, according to the Commission, it should only be an exception. In the text accompanying the publication, the Commission's website states:

"Disclaimer: The Commission usually does not publish its audit reports or audit related information save for exceptional situations such as those in which there is an important public interest in transparency of the information.(...)".

This approach is not in line with the "Fundamental Principles of Government Auditing" adopted by the International Organisation of Supreme Audit Institutions (INTOSAI).

<https://www.issai.org/pronouncements/issai-100-fundamental-principles-of-public-sector-auditing/>

Paragraph 51 of the Principles states:

"The audit process involves preparing a report to communicate the results of the audit to stakeholders, others responsible for governance and the general public. The purpose is also to facilitate follow-up and corrective action. (...)"

It is clear from paragraph 7 of the Principles that this obligation to publish reports on the audits carried out applies to all public-sector audit engagements, irrespective of their form or context. The timing of publication is also specified. The reports are to be published as soon as the audited entities' responses have been considered. Publication should then also help to ensure that the recommended corrective and follow-up actions are implemented by the audited entities.

The Commission's observations

The Commission has analysed the primary and secondary Union legal framework, and the professional, corporative standards relevant for the request to decide whether there is an obligation to systematically publish individual audit reports¹.

1. Applicable secondary Union law sets out the extent of reporting duties of the authorising officer by delegation on their activities
 - Regulation (EU) No 1303/2013 sets out common rules applicable for European Structural and Investment funds, provides in Article 75(2a):

“The Commission shall provide the competent national authorities with:

- (a) The draft audit report ...:*
- (b) The final audit report”*

Regulation (EU) No 1303/2013 does not provide for the publication of audit reports drafted by the Commission. Under the provision on the Commissions powers and responsibilities, Article 75(2a), the Commission is obliged to provide the draft audit report and the final audit report to the *national competent authorities*. Commission audits are carried out in the framework of the relations between the Commission and the Member States², as set out in Regulation (EU) No 1303/2013, and – even though they may include audits of operations –in essence they aim at providing assurance on the functioning of the management and control systems of the Member States.

Similarly, the legal basis for the Common Agricultural Policy (Regulation (EU) No 1306/2013 and Regulation (EU) 2021/2116) does not provide for publication of audit reports drafted by the Commission. The legal basis- Article 52(3) of Regulation (EU) 1306/2013 only refers to:

“...the findings from the Commission's inspection and the Member State's replies shall be notified in writing...”

- Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union, provides in Article 74(9):

“The authorising officer by delegation shall report to his or her Union institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

- (a) the information contained in the report presents a true and fair view;*

¹ Our assessment refers to audit reports drafted by the Commission services on the basis of Article 75(2a)(a) and (b) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

² The Treaty on the Functioning of the European Union lays down in Article 339 the Principle of Professional Secrecy. Professional secrecy is the basis for a climate of mutual respect and trust between the Commission and the Member State.

(b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management; and

(c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.”

The annual activity report includes information on the operations carried out, by reference to the objectives and performance considerations set in the strategic plans, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems. The report includes an overall assessment of the costs and benefits of controls and information on the extent to which the operational expenditure authorised contributes to the achievement of strategic objectives of the Union and generates EU added value. The Commission prepares a summary of the annual activity reports for the preceding year.

The annual activity reports for the financial year of the authorising officers and, where applicable, authorising officers by delegation of Union institutions, Union bodies, European offices and agencies are published by 1 July of the following financial year on the website of the respective Union institution, Union body, European office or agency in an easily accessible way, subject to duly justified confidentiality and security considerations.

However, beyond the provisions on publication of the annual activity reports, no publication requirements for specific audit reports derive from EU-law provisions.

2. International audit standards do not mention the publication of the audit report drafted by the Commission, either. The audit standard ISSAI 100 “Fundamental principles of public sector auditing”, mentions in particular the following:

*“7) ISSAI 100 Fundamental Principles of Public-Sector Auditing establishes fundamental principles, which are applicable to all public-sector audit engagements, irrespective of their form or context. ISSAI 200 Financial Audit Principles, ISSAI 300 Performance Audit Principles and ISSAI 400 Compliance Audit Principles build on and further develop the principles to be applied in the context of financial, performance and compliance auditing respectively. **The principles in no way override national laws, regulations or mandates or prevent SAIs from carrying out investigations, reviews or other engagements which are not specifically covered by the existing ISSAIs.**”*

The petitioner refers to paragraph 51 of the ISSAI 100 principles: *“51) Auditors should prepare a report based on the conclusions reached. The audit process involves preparing a report to communicate the results of the audit to stakeholders, others responsible for governance and the general public.”*

ISSAI 4000 are the main applicable standards which the European Commission audit services follow when auditing ESF Funds. ISSAI 4000 does not refer to the public disclosure of the audit report, which is fully and duly shared with the auditee, including for a due contradictory procedure before a final audit report is issued, in line with the said standards. This is also in accordance with paragraph 101 of ISSAI 4000 that mentions that the auditor should identify the “intended users” and should “communicate” the audit results accordingly:

“101) The auditor shall explicitly identify the intended user(s) and the responsible party and consider the implication of their roles in order to conduct the audit and communicate accordingly.”

Therefore, it follows from paragraph 51 of ISSAI 100 and paragraph 101 of ISSAI 4000, that the report should be communicated to the intended user of the report, including for a due contradictory procedure before a final audit report is issued, in line with the said standards. As mentioned above, the audit reports drafted by the Commission are communicated to the competent national authorities under Article 75(2a)(a) and (b) of Regulation (EU) No 1303/2013, as well as Article 52(3) of Regulation (EU) No 1306/2013.

No obligation for the Commission to publish its audit reports can be derived from the above-mentioned audit standards.

3. Access to documents

While it follows from the above that there is no obligation for the Commission to systematically publish its individual audit reports, it should be borne in mind that in the context of access to documents Article 15 (3) TFEU enshrines the principle of transparency and, in particular, the right of access to documents of the Union's institutions, bodies, offices and agencies. The general principles and limits on grounds of public or private interest governing this right are laid down in Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents. The latter specifies under Article 4(2), third indent, that “The institutions shall refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits”. This exception, as specified by the case law of the EU Courts, may apply to the documents forming part of the administrative file of an audit as long as the audit procedure is ongoing and not closed³ (judgment of the General Court of 21 May 2015 in case T-480/11, Technion v Commission, paragraphs 55-65.), unless there is an overriding public interest in disclosure. This exception can be supplemented by those laid down in Article 4(1)(b) (protection of privacy and integrity of individual), Article 4(2), first indent (protection of commercial interests) and Article 4(3), first subparagraph (protection of Institution’s decision-making process) of the said Regulation.

Access may be given to final audit reports for closed audits upon request from a citizen, subject to legal assessment aimed at protecting particular public or private interests involved (such as e.g. commercial interests of a natural or legal person, including intellectual property, as well as the privacy and the integrity of individuals, protection of court proceedings or public security and defence matters). This means that some sensitive and personal data may have to be redacted.

Conclusion

There are no rules requiring the proactive systematic publication of individual audit reports drafted by the Commission. Such reports are intended for the competent national authorities.

Following a specific assessment, disclosure of audit reports may undermine, in particular, the purpose of the audit, the protection of legitimate commercial interests or the protection of pending judicial proceedings in case the audit procedure subsequently becomes subject to a Court proceeding or National security. Therefore, even when the audit is definitively closed, the Commission may be obliged to refuse access to individual audit reports or part of them, unless there is an overriding public interest in disclosure.

However, based on the above legal and regulatory provisions, all Commission services publish an annual report about their activities, including an analysis of the risks for the expenditure, the measures taken to mitigate these risks, the audit and control results, and a detailed information about the assurance obtained per programme. The latest Annual Activity Reports of all Commission Directorates-General, including of Directorate-General for Regional and Urban Policy, is publicly available at https://ec.europa.eu/info/strategy/reporting/annual-activity-reports_de.

³ The Commission will close the audit after the Member State has accepted and/or implemented all the recommendations/actions proposed in the final audit report. Where the Member State has not accepted or implemented the recommendation(s)/action(s) proposed, the Commission will apply appropriate measures (e.g. launch the financial correction procedures). Only when the recommendations and/or (corrective) actions are implemented (i.e. followed-up) or irregularities sanctioned, the audit will be definitively closed and its purpose attained.