

THE FRENCH SYSTEM OF REGIONAL PUBLIC SECTOR AUDIT

General legal framework

A recent creation

Until 1982, under a legal system whose most recent elements dated back to 1934-1935, the auditing of all accounts prepared by public accountants within the territorial authorities and their public bodies was entrusted, directly or indirectly, to a single superior audit institution, the Court of Audit, created in 1807.

This was the sole “judge” of all public accounts, beginning with those of the State, financial accounting carried out by the Ministry of Finance, management accounting kept by the spending ministries, and as a secondary activity, the accounts of the territorial authorities, with only the most significant of these being examined directly by the Court. As far as the other accounts of territorial authorities is concerned, the local Ministry of Finance departments were responsible for the administrative auditing and verifying of accounts, while the Court of Audit retained sole jurisdiction in respect of those elements which might eventually call into question the actions of the accountant or the authorising official concerned.

The creation of the 26 regional and territorial chambers of audit¹ (chambres régionales des comptes, CRCs) formed part of a general movement towards decentralisation initiated by the Act of 2 March 1982 relating to the rights and freedoms of municipalities, departments (départements) and regions which are territorial authorities in their own right.

By applying the principle that “municipalities, departments and regions are free to administer themselves via elected councils”, this law put an end to the administrative and financial supervision previously exercised over these authorities by State representatives. In practice this was expressed in the form of a very extensive a priori audit, which in fact corresponded to a real right of veto on their actions.

The administrative supervision has been replaced by a simple legality audit carried out by the local State representative: his power is limited to referring to the administrative court any actions which he considers irregular, or negotiating adjustments to the actions in question.

The financial supervision has been replaced by a budgetary and financial control instigated by the administrative authority, but after the mandatory intervention of the

¹ The regional audit chamber for the French Antilles consists, in legal terms, of 3 chambers: Guadeloupe, Guyana, and Martinique, grouped together for functional purposes into one institution based at Pointe-à-Pitre (Guadeloupe).

local financial judicial authority, the regional audit chamber, an audit office with judicial status.

With the exception of cases where this budgetary control intervenes, the operations of local authorities are subject to a posteriori financial control, after the accounts have been submitted. This audit which, as we shall see later, has a judicial nature, is the main duty of regional audit chambers.

The regional audit chambers were created based on the organizational approach and investigation and judgement methods used by the Court of Audit.

The legislators wanted the budgetary, financial and accounting controls exercised over local authorities and public bodies with increased powers to be entrusted to independent institutions made up of skilled magistrates, geographically close to the authorities and bodies concerned.

Thus, 28 chambers of audit were set up, one in each of the 22 metropolitan regions and four overseas chambers: three for the three departments of the Antilles, with a single head office in Guadeloupe, and one in Saint-Denis (Réunion). The Referendum Law of November 1988 created a territorial audit chamber in New Caledonia, and since 2000, French Polynesia has been home to a second territorial audit chamber. In 2007, as part of sweeping reforms to the applicable law overseas, new territorial audit chambers were created for Saint-Pierre-et-Miquelon, Mayotte, Saint-Barthélemy and Saint-Martin.

Several laws and decrees have subsequently determined their powers and their methods of operation as well as the status of their members. All regional (and territorial) chambers of audit in France have more or less the same structure.

The existence of a regional audit chamber for each region (i.e. 22 regional audit chambers for 22 metropolitan regions) was called into question during the reform process that followed Law 2011-1862 of 13 December 2011 on the distribution of litigation and on reducing the burden of certain judicial procedures. As a result of Decree 2012-255 of 23 February 2012 on the location and jurisdiction of regional audit chambers, seven small chambers were ultimately merged with larger chambers. As of 2 April 2012, the metropolitan territory had 15 regional audit chambers including the territorial locations of the merged chambers. The law of 7 August 2015 on the new territorial organization of the Republic (called the NOTRe law) has led to the reduction of this number to 13 as of 1 January 2016.

Context

Before describing the organization, functioning and powers of regional audit chambers, it is necessary to bear in mind the general rules which govern the administration of public revenue and expenditure for both the State and the territorial authorities.

In France, public accounting is based on two main principles: the institutional separation of authorising officials and accountants on the one hand, and the personal and financial liability of accountants, on the other.

The authorising officials are the heads of the executives of the various public bodies: ministers or heads of state departments, local authority chairmen or mayors, chairmen or directors of national or local public organisations.

The authorising officials are the only ones with the power to commit the funds or assets of the authorities they administer. They then issue execution orders for the revenue and expenditure of the bodies they direct. The authority officials are responsible for the accounting of these bodies, but cannot themselves make or receive payments provided for in the budgets. They are obliged to act via a civil servant (usually working for the State), the public accountant.

The French system is therefore characterised by the existence of a national network of State public accountants working on behalf of the territorial authorities. Public accountants are the only ones with the power to handle public monies, in other words, to recover debts and pay out expenditure. They conduct and maintain an accounting system which encompasses all their actions. Public accountants are personally responsible for the funds within their control and for the regularity of the underlying operations. Thus they can be made to pay back any sums paid in error or not recovered.

In accordance with the principle of separation of authorising officials – who are administrators with authority over parts of the budget within defined spending limits – and accountants, the financial and personal liability of accountants cannot be called upon by those responsible for the bodies whose accounts they keep. There is one exception, however, within the finance departments (senior accountants and the Minister of Finance may, in accordance with their hierarchical powers, bring into play the financial and personal liability of accountants when those accountants – as is very often the case – are officials of the financial authorities). It is therefore an independent audit institution whose members have the required skills and which is, under the title of “accounting judge”, authorised to rule on the regularity of financial operations and the resulting liability for the accountant within a quasi-judicial procedure.

The accounting judge (the regional audit chamber) thus has the traditional task of judicial examination of all the accounts prepared by public accountants working for the territorial authorities and local public bodies (public bodies for inter-municipal cooperation, secondary education establishments, public low-cost housing offices², etc.), as well as the accounts of those persons who have been declared *de facto* accountants by the chambers (“*de facto*” accountant means a person who manages public funds without being entitled to do so).

But this is not the only power of an audit chamber: it puts its main emphasis in investigating the management or performance of local administrators and reviews the accounts and the management of the organisations, companies, associations and bodies to which the territorial authorities provide financial assistance in excess of a certain threshold laid down by law.

² HLM = low-rent housing. These bodies build and manage the majority of the social housing stock. Since 2007 they are known as “offices publics de l’habitat”.

Finally, an audit chamber also intervenes by giving advice during the monitoring accompanying of the budgetary activities of territorial authorities.

Main reference texts

The organization and rules of procedure of regional audit chambers are laid down in various legislative and regulatory texts.

Since 1994 the legislative provisions, arising mainly from the Laws of 2 March and 10 July 1982, have been collected together within the Code governing financial judicial authorities i.e. audit offices with judicial status (*Code des juridictions financières*).

The regulatory provisions were codified there by virtue of a Decree dated 14 April 2000.

Scope of the audit activity

Jurisdiction

Subject to certain exceptions or additions, regional audit chambers cover all legal entities under public law other than the State and its public bodies. This, therefore, includes the territorial authorities (municipalities, departments, regions), inter-authority cooperation organisations³, health bodies, medico-social establishments (retirement homes), and secondary education establishments (“collèges” and “lycées”). However, an administrative audit and verifying of the accounts by the senior accountants of the public finance office in the department or local receivers of funds is carried out for small and low-budget authorities, in other words, municipalities with fewer than 5,000 inhabitants and whose ordinary operating revenue does not exceed three million euros, and public bodies for inter-municipal cooperation with fewer than 10,000 inhabitants and whose ordinary operating revenue does not exceed two million euros. For these small authorities, public accountants render their accounts to the senior accountants of the public finance office, who are above them in the hierarchy. If the latter find any irregularities in the accounts, they may call on the liability of their subordinates before the regional audit chamber.

Whilst the jurisdiction of regional audit chambers over territorial authorities and their public bodies is mandatory and general, the same does not apply to other bodies within the public sphere of activity, arising most often under private law but dependent (financially or administratively) on the first group (semi-public companies, associations subsidised or supervised by territorial authorities, notably in the fields of culture, environment, sport, social action, tourism etc.). For these bodies, regional audit chambers have a discretionary power of audit, either on their own initiative or at the request of the relevant public authorities.

³ Semi-public associations, intermunicipal associations, urban associations, associations of towns and other associations of local authorities.

The jurisdiction of regional audit chambers is limited to local public bodies. Therefore, in principle they cannot audit national public bodies, even if these carry out their activities within the region and receive grants and subsidies from the local authorities.

However, the First President of the Court of Audit may, by order, delegate to the regional chambers the task of judging the accounts and assessing the performance of institutions which would normally be audited by the Court of Audit. This procedure is used in particular for hospitals and organisations representing business and social partners (chambers of commerce and industry, chambers of handicrafts). These duties are delegated for a fixed time period (usually five years). The Court of Audit has the power to call, by order, for accounts on which the regional audit chamber has not given a definitive ruling.

Powers

The law grants regional audit chambers the broadest powers of investigation based on documents and on-site, and states that they must take all measures to ensure the confidentiality of their procedures and the secrecy of the information collected.

- The right of access

This is very broad and covers all documents relating to the territorial authorities and other bodies subject to audit. The magistrates of regional audit chambers have the same powers in this respect as the officials responsible for the administration of taxes.

- The power to hear the parties

This allows auditors to question all representatives, administrators, civil servants, and members of the inspection or audit departments, as deemed necessary. These people must respond when summoned by the chamber, and are released from the requirements of professional secrecy in this connection.

- The power of inquiry

For its inquiries, the chamber may call on experts appointed by its president.

These powers may be used indiscriminately for all duties allocated to regional audit chambers.

Regional chambers have the power to impose sanctions, either directly in the form of capped fines for accountants who submit their accounts late, or by placing matters before the criminal courts when people try to prevent them from exercising their rights and carrying out their investigations (“impediment to duties” offence).

Regional chambers:

- * may deliver judgements when they give a ruling on accounts. These accounting judgements are appealable to the Court of Audit;

- * may produce administrative documents, advice and reports, as part of their examination of the performance of audited bodies. Other than in exceptional cases, the content of these documents cannot be subject to any appeal. They are aimed mainly at the authorities running the audited bodies. Matters may be brought before the authorities to which certain bodies are attached, and the ministries overseeing them, via the public prosecutor's office at the Court of Audit, in whole or in part.

Types of audit

The duties assigned to regional audit chambers fall into three categories:

- 1 - administrative audit of budgets (budgetary control)
- 2 - judicial examination of accounts
- 3 – management or performance audit

Every year, local authorities and their public bodies adopt their budget which plans revenue and authorises expenditure. In some cases, the regional audit chamber may have cause to give advice on the conditions for adopting and implementing this budget: this is the audit of budgetary measures, which takes the form of a “contemporaneous” audit, preceding or accompanying the adoption of budgetary measures. Implemented a posteriori, the audit of the conditions of execution of budgets is made up of two parts: the regional audit chamber gives its opinion through judgements on the regularity of the accounts, this being the judicial audit, and the chamber also reports on the management of the authorising official, this being the management or performance audit.

Audit of budgetary measures

Legislators have given regional audit chambers the original role of auditing budgets, which is an examination of an administrative nature rather than a judicial one. This includes intervention intended to help redress situations characterised by a serious failure in the execution by the authority of its budgetary and financial responsibilities. The review of budgetary measures is a task carried out prior to the judicial auditing of accounts. Within this duty, the chamber prepares a detailed advice notice, which it forwards to the Prefect as representative of the State; it is the Prefect who takes any necessary corrective measures, but he cannot do this until he has received this prior ruling from the chamber.

Having thus inherited the financial supervision role formerly exercised by the Prefect, regional audit chambers review the budgetary measures of territorial authorities in four main circumstances:

1. The budget has not been passed within the prescribed time limits

Local authorities normally vote their budget before the beginning of the financial year. However, the law sets a deadline: 31 March. When the Prefect finds that an authority has not adopted its budget before that date, he calls in the regional audit chamber with a view to preparing a budget document.

When the Prefect places the matter before the chamber, the deliberating body (municipal council, department council, regional council, etc.) is relieved of its budgetary powers.

The chamber works out a draft budget, possibly along the lines of the unadopted budget draft if one exists, and retaining only such expenditure as is unavoidable or essential to the continuity of services. Having considered this draft, the Prefect settles the municipality's budget and makes it enforceable. A similar system is used for new authorities when it is their first budget.

2. An unbalanced budget has been passed

The law defines the concept of balance, stating that the budget must be balanced in real terms. It is in fact not unusual for an apparent balance to conceal an actual imbalance (overvaluation of revenue, undervaluation of expenditure). The Prefect must involve the audit chamber if the budget which has been passed is not balanced. The chamber confirms the imbalance and proposes necessary corrective measures. If these measures are not accepted by the authority, the procedure continues to the administrative "settlement" of the budget by the Prefect as described above. If the chamber finds that the budget is balanced, it notifies the Prefect of its decision, which is binding.

If an increase in revenue becomes unavoidable, an increase in local taxes is normally the last solution to be considered.

3. Deficit in the management account

When the statement of the municipal accounts shows a deficit in the execution of the municipality's budget amounting to 10% or more of the revenue of the budgetary subclass for running costs in municipalities with fewer than 20 000 inhabitants or 5% in other cases, the regional audit chamber will propose measures required in order to re-establish a balanced budget. When a municipality's budget has been the subject of corrective measures of this type, the Prefect refers the budget for the following financial year to the audit chamber.

In the three situations referred to above, if the Prefect departs from the chamber's proposals, he must give explicit reasons for doing so. In the context of the budgetary control task, the chamber plays only a consultative role: the Prefect is not bound by its opinion, and he may deviate from its decision, provided that reasons are given, except where a budget is found to be balanced.

4. Mandatory expenditure has not been included in the budget

In contrast with the three budgetary control cases described above, where only the Prefect reserves the right to involve the chamber, any person with an interest (notably a creditor – for example, a company – which considers itself a creditor of an authority) may call in the chamber if it is believed that the funds required to make a mandatory payment have not been budgeted for. Consequently, the chamber may confirm that an item of mandatory expenditure has not been included in the budget and order the

authority or body concerned to include it or, if appropriate, ask the Prefect to arrange for the funds to be included ex officio.

The chamber begins by checking whether the expenditure is mandatory, then suggests necessary amendments to the budget so as to make possible that the expenditure be paid.

If these amendments result in an imbalance in the budget, the chamber must ensure that balance is restored.

5. Legislators have allowed for some other types of controls by calling in the regional audit chambers:

* *Audit of the resolutions of public health bodies (hospitals):* The director of the regional hospital agency may place resolutions before the chamber if he believes that they will result in expenditure likely to threaten the balancing of the body's budget. If the chamber agrees, he may cancel the resolution called into question in this way.

* *Examination of market conventions or of local public service delegation contracts (outsourcing):* This examination takes place at the request of the authorised representative of the State or territorial authority (mayor, regional president, etc.).

Cases where *management accounts of public accountants are rejected*, or cases of *non-payment of interest on arrears*, take the number of possible audit situations to more than a dozen.

6. Procedure

The regional audit chamber normally has one month to give a ruling, but the procedure – even though it is restricted by a short time limit – must be transparent and must take into account the arguments of all the parties.

Where a budget has not been passed, the draft budget is sent to the Prefect who makes it enforceable by prefectural order.

In other budgetary control situations, the chamber's opinion is notified to the deliberating body. If this body does not adopt the recommended measures within a fixed time period, the chamber issues a new notice to the Prefect, who will make it enforceable by order.

The advice and decisions given on budgetary matters by a regional audit chamber are notified only to the Prefect (or the person concerned) who placed the matter before the chamber, and to the body concerned, except in the case of a budget which has not been passed in time, where the chamber's opinion must be displayed publicly.

As they are not judicial acts, the opinions given by the chamber on budgetary matters are therefore not appealable to the Court of Audit. It is the decisions taken by the

administrative authority in view of these opinions which may be challenged before the administrative courts⁴.

Judicial examination of accounts

Regional audit chambers are judicial authorities because they judge on the accounts of the local authorities in a quasi-judicial procedure. This historic task is therefore significant as it justifies the judicial character which forms the basis of the chambers' independence and impartiality.

However, rulings of the European Court of Human Rights⁵ have called into question the characteristics of the judicial procedures before the audit offices with financial status, contesting their fairness for those liable and criticising their excessive length. Since 2006, the procedural practices of the French audit offices with judicial status have evolved. The Law of 28 October 2008 and its implementing decrees of 19 December 2008 have completely reshaped these procedures to bring them into line with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

This large-scale reform had three objectives:

- To clarify the rules on opening proceedings, particularly reflected in the elimination of autonomous formation of the court and in the separation of the functions of instruction, prosecution and judgement; the public prosecutor has exclusive authority to open proceedings;
- To accelerate procedures: where the instruction does not give rise to litigation, the accountant's situation is ruled on by a "discharge order" delivered by a single judge and no longer by a judgement rendered collectively; in the event of litigation, the "double order" rule (provisional, then definitive) is abolished, with the audit office giving one single judgement;
- To reinforce the balance in litigation by further opening up the debate to the parties, generalising the public hearing and excluding the reporting officer and the public prosecutor from the deliberations.

The judicial examination of accounts is carried out based on three major principles:

1. Chambers judge the accounts, not the accountants

They never judge the authorising officials⁶, except when these are found to be de facto accountants.

⁴ Except where the chamber's opinion marks the end of the procedure. In such cases, the chamber's opinion may be brought before the administrative court.

⁵ See in particular ECHR, 7 October 2003 and 1 June 2004, *Richard-Dubarry v France*; ECHR 12 April 2006, *Martinie v France*.

⁶ See below the explanations concerning the Budget and Finance Disciplinary Court.

Those who improperly collect revenue destined for a public authority, or who extract public monies through fictitious mandates (via slush funds, semi-official bodies, faked invoices, etc.) are effectively at risk of being declared “de facto accountants” by the accounting judge. They must then give account of how the improperly managed funds have been used, justify the public benefit gained from such expenditure, and repay from their personal funds any expenditure not accepted by the judge. They may also be ordered to pay a fine up to the amount of the funds irregularly handled.

The Code governing financial judicial authorities states clearly in Article L.211-1 the principle of the judicial audit: “The regional audit chamber will judge all accounts issued by public accountants for territorial authorities and their public bodies within its jurisdiction”.

Judicial auditing looks at the regularity of operations authorised by public accountants, in relation to both revenue and expenditure. This procedure is formally ordained and hence mandatory, and regional audit chambers settle and clear the accounts by issuing judicial decisions, irrespective of whether any irregularities have been discovered. The purpose of the audit is not only to ensure that the accounts are regular, but also that the accountant has carried out all the checks which he is supposed to complete, notably those relating to the origin and amounts of revenue and expenditure, and that he has not negligently acted to the detriment of the authority concerned. These checks are carried out on-site, on the basis of documentary evidence.

Regional audit chambers deliver their judicial decisions after a contradictory procedure which allows the audited party a right of reply, whereupon they grant discharge to the accountant (no negligence, or the determined negligence did not result in any financial loss for the authority) or may leave him with a liability, in other words, require him to repay a specific amount to the authority concerned, where lack of diligence on his part has led to the authority suffering a financial loss.

These judicial decisions may be appealed before the Court of Audit. Rulings issued by that Court are, like any other rulings, appealable on points of law before the *Conseil d'Etat*, the highest administrative court in France.

The rules of a fair trial, as defined in article 6-1 of the European Convention on Human Rights and interpreted by the European Court of Justice, apply to all cases of leaving an accountant with a liability, in the first instance and on appeal. A public hearing is organised before any liability is conferred (or any judgement is given on an appeal that covers liability). The report and the conclusions of the public prosecutor are to be communicated to the parties before the hearing. The reporting officer and the representative of the public prosecutor may not participate in or attend the deliberations.

2. Public accountants for territorial authorities are obliged to render their accounts to the chamber responsible for the territory concerned

This obligation represents one of the fundamental elements of the French public accounting system. By failing to comply with it, the public accountant exposes himself

to be fined by the chamber at the request of the public prosecutor for financial matters⁷.

The obligation to render accounts applies to all public accountants for the territorial authorities and associated public bodies, or bodies which have a public accountant.

The first act invoking liability may no longer be performed beyond 31 December of the fifth⁸ year following the year during which the accountant presented his accounts to the accounting judge or, if he is not bound by this obligation, the year during which he presented the justifications of his operations. If no provisional or definitive charge against him is notified in this time period, the accountant is relieved of his management responsibilities for the financial year concerned. In the event that the accountant left his post during this financial year, and if no definitive charge against him exists or continues within this same time period for the entirety of his management period, he is considered to have been granted full discharge for his management.⁹

In other words, the discharge and the final full discharge are automatically granted to the accountant after the limitation period has expired, without this having been ascertained by the judge. This change to the system of liability, introduced by legislators in 2004, simplifies the personal situation of the accountant and authorises him, solely by the passage of time and without having to wait for a judicial decision, to release the securities established upon his coming into office.

3. Regional audit chambers give an opinion, if the above-mentioned prescription period still runs, on the accounts submitted to them in this way, and discharge the public accountants or make them liable to the extent of any deficiencies found.

The auditors' reports at the end of judgement are communicated to the public prosecutor for financial matters. The opinion of the public prosecutor is decisive:

- If he concludes that there is no charge, the accountant may be discharged from his management by a simple order delivered by the president of the formation of the court (the audit office) or his deputy;
- If, on the contrary, the public prosecutor concludes that charges do exist, he files a prosecution case, which is communicated to the accountant concerned so that he knows what he is accused of and can prepare his defence before any judgement. Following this step, the procedure becomes contentious and adversarial: the proceedings are based on written exchanges and, if he so requests, oral exchanges with the accountant. The audit office only issues a judgement after these adversarial proceedings, once the reporting officer has

⁷ One of the changes introduced by a Decree of 19 December 2008 (Official Journal of 26 December 2008) is the change of name of the government commissioners. From now on, the representatives of the public prosecutor in the audit chambers are described as "public prosecutors for financial matters".

⁸ The limitation period fixed at six years by Law 2004-1485 of 30 December 2004, modifying the system of liability of public accountants, was reduced to five years by the Law of 28 October 2008. This reduction offers better judicial security to public accountants and prevents delayed complaints.

⁹ Article 125 of amended Law 2004-1485 of 30 December 2004.

drafted a report at the end of the judgement and in view of the public prosecutor's conclusions.

The judgement, issued after a public hearing, may grant discharge to the accountant for his financial management, if he has completed his control and payment duties correctly or if the determined negligence did not lead to any loss (discharge and final full discharge if he has left the post), or may make him liable, i.e. order him to pay to the authority from his own funds the amounts which he has failed to collect or has paid incorrectly.

In addition, the accounting judge now has the power to assess the consecutive circumstances of force majeure that constitute grounds for exoneration from responsibility.

Two types of appeal are possible against judicial decisions of regional audit chambers:

a) Rehearing the case

This review may be requested by:

- the accountant who, for example, has found the missing evidence
- the chamber itself
- the public prosecutor for financial matters who may act either at his own request or at the request of the Prefect or the local authority concerned

A review is not subject to any time limit.

b) External appeal

The Court of Audit acts as appeal judge for judgements and orders delivered by regional audit chambers.

The following persons may appeal:

- the accountant or his authorised representatives
- the legal representative of the authority concerned
- a taxpayer to that authority duly authorised by the administrative court
- the public prosecutor for financial matters attached to the regional audit chamber
- the Public Prosecutor at the Court of Audit.

The appeal must be lodged within two months of notification of the judgement or discharge order. A significant innovation of the reform that took place in 2008 results from the principle according to which appeals to judgements that pronounce a debit or a fine have suspensive effect. This is the first time that such a principle has been established in relation to an administrative judicial body. This should result in significant simplification of these procedures.

The Court delivers one or more rulings on the admissibility of the appeal and, if appropriate, on the merits of the case. An appeal on points of law may be submitted to the *Conseil d'Etat*.

Management or performance audit

Even if the members of the financial judicial authorities mainly perform a non-judicial function – examining the regularity and the performance of the local public management – their capacity as magistrate allows them to perform this function completely independently. It has, in fact, become the principal function of the regional audit chambers.

1. Nature of the investigations

The law states that the chambers shall “audit the management” of the territorial authorities. The Law of 21 December 2001 defined management audit as follows: “The audit of management or performance relates to the regularity of administrative actions, the economy of the funds applied, and the evaluation of the results achieved in relation to the objectives set by the deliberating assembly or body. The appropriateness of these objectives is not a matter for comment.”

In concrete terms, chambers must check the overall regularity of revenue and expenditure as well as the probity of public actions. However, the performance audit deals not only with questions of regularity concerning the management of authorising officials or directors, but also with issues of economy, efficiency and effectiveness of this management, the only exception being the appropriateness of objectives. It is a general “regularity audit” which goes beyond the financial and accounting aspects of the judicial audit and extends to become an audit of “sound management”.

Whilst the chamber may compel the accountant, through its judgement, to bear personally the financial consequences of any irregularity, it has no power over the authorising official. It brings to his attention comments about his management, which will become public at the definitive stage, after having been presented to the deliberating assembly of the institution concerned. Under the Law of 21 December 2001, final reports from regional audit chambers must be accompanied by written responses from the directors and former directors concerned and received within one month of notification of the provisional observations.

Besides the management of territorial authorities, chambers also examine the performance of hospitals and educational establishments.

This enables audit chambers to assess not the appropriateness of political choices made by the deliberating assemblies of the bodies under their jurisdiction, but the reliability of the accounts, the financial balance of operations and management actions, the economic application of resources, the results achieved in relation to those resources employed, and the effects of the actions taken: their area of authority thus includes the quality of management, and may lead them to express an opinion on local public policies, albeit within the limits of their powers.

2. Auditing certain bodies not subject to the public accounting rules

The chambers, on their own initiative, may call in for audit private bodies such as those subsidised by local public authorities or establishments (associations), or companies (semi-public companies), whose capital is held in its entirety or in its majority by those authorities, or local public establishments whose governing bodies are composed mainly of representatives of public authorities.

The audit covers the accounts and management, but the accounts are not “judged”, since they are not kept by a public accountant. This audit takes place mainly on site.

Since 1995, chambers may also audit the accounts which must be produced by the public service concession holder (for example; the company which holds the concession or leasing for a local public service consisting of supply of water, sewage treatment, disposal of household waste, etc.) to the delegating authority. These accounts record the operations carried out to execute the service which has been contracted out.

The resulting observations are brought to the attention of the body being audited, the authority (and its deliberating assembly) or public establishment concerned, and the State representative (Prefect). If necessary, they may be passed on to the relevant administrations or judicial authorities.

The significance of general interest activities, namely public service duties entrusted to subsidised associations, and of operations entrusted to semi-public companies – notably for the implementation of areas of economic activity, public housing or facilities, the operation of industrial and commercial services and service provision –, leads an increasing part of the audit activity carried out by chambers to be performed on these private organisations.

These audits of private bodies may also be carried out at the “justified request” of the State representative in the region, department or territorial authority (eg. the mayor in the case of a municipality).

The general legal rules about hearing both sides and about access apply to the audits carried out and to their consequences.

Relationships with other audit institutions

Regional audit chambers are unique institutions: institutions of the State, decentralised but independent, whose members have the status of magistrates. Along with the Court of Audit, they constitute the financial judicial authorities i.e. audit offices with judicial status. Subject to appeal procedures (these latter only in what refers to judicial activities), each chamber is free to govern the conditions under which it carries out its audit activities within its area of authority. The management of staff and resources allocated to the financial judicial authorities is ensured within an institutional system which closely links the Court of Audit and the regional audit chambers.

Thus, the presidents or chairmen of regional chambers come from the Court of Audit or, if they come from the chambers themselves, become members (magistrates) of the Court of Audit by virtue of their position. Similarly, in each regional audit chamber one or more public prosecutors for financial matters, chosen from amongst the chamber's magistrates, carry out prosecution duties: they are in contact with the Public Prosecutor at the Court of Audit (in other words, they represent the State within the chamber). Their duties include, in particular, promoting the uniformity of case law.

The relationships between the regional chambers and the Court of Audit are institutionalised through the High Council of the Regional Audit Chambers, chaired by the First President of the Court. The Council rules on all aspects relating to the careers of the magistrates and the operation of the chambers.

The Public Prosecutor at the Court of Audit provides guidance and co-ordinates the actions of the public prosecutors for financial matters attached to the regional audit chambers.

Regular meetings bring together the President of the Court of Audit and all the chairmen of the chambers. Cooperation amongst regional audit chambers and between the chambers and the Court takes the form, in particular, of "horizontal" inquiries which involve several regional chambers and, in some cases, one or more departments (chambers) of the Court. A liaison office and a methods committee co-ordinate inquiries and methods which are common to the Court and the regional chambers.

The definition of areas of authority does not prevent the provision of reciprocal services to serve the interests of the respective duties of the regional chambers and the Court of Audit. This applies in particular to documentation and training.

Audit procedures

In broad outline, the working methods of the institution are as follows: first of all, the regional audit chamber acts independently to decide on its annual programme.

To carry out this programme, the president gives each magistrate a certain number of cases. The magistrate investigates these cases, either alone or as part of a team, with the help of one or more audit assistants, in other words, he examines the accounts of the body concerned, goes to the site, and brings together the elements which he considers necessary, making use of the investigative powers at his disposal.

Within the framework of the general directives to the financial judicial authorities, or directives specific to the bench to which he belongs, the reporting officer (*rapporteur*) has full responsibility for conducting the investigation. At the end of it, he submits his report. This shows the reporting officer's findings and recommendations for consultation of the college of the chamber: on a certain point, charging the public accountant with paying back sums paid incorrectly; on another point, writing to the mayor, or even placing the matter before the prosecutors at the criminal courts, if he believes there are grounds to suspect a criminal offence, etc.

The report is sent to the public prosecutor for financial matters at the chamber who lodges his “conclusions” that is to say, gives an opinion on the recommendations made by his colleague who prepared the report.

The report is examined by a collegial decision-making body: a plenary or limited assembly of the members of the chamber or section. The reporting officer presents the case which he has investigated; he takes part in the consultations, except in judicial matters. The reviewer (*réviseur*) is a magistrate – a member of the formation of the court – who may only be designated after the completion of the investigation and therefore does not take part in the latter. The reviewer is charged with advising his colleagues and preparing the draft of the judicial decision over which they are deliberating. The chamber gives a ruling, if necessary, by vote, with the president having no casting vote. The number of counsellor-members, including the president, must be uneven.

As a general rule, the session during which the audit report is examined is not public: neither the accountant nor the other interested parties are allowed to attend the session. However, sessions devoted to setting the charges, the fines imposed on the accountants concerned, and those relating to judgements on de facto management, are public and satisfy the requirements of a fair trial. That is why mechanisms exist to ensure all the parties are heard, as is essential to all good justice.

In accordance with the law, all procedures conducted by or before the audit chamber must hear the arguments of all the parties (contradictory procedure). This principle, which can take several forms, comes into play at various stages of the procedure. In matters of management audit, a “prior” interview between the report’s author and the authorising official concerned takes place before any written comments from the chamber are sent: this conversation allows the presentation to the audited authority of the recommended actions envisaged by the investigating magistrate.

The “provisional observations¹⁰”, forwarded to the authorising official after deliberation by the chamber acquaint him with the comments, questions and remarks which the chamber considers should be brought to his attention. These are both confidential and provisional: the recipient is required to respond to them before they are formally adopted by the chamber.

This response may be accompanied by a request for a hearing. Where a third party is involved, that person or body receives an extract of the observations that concern him/her/it, and may respond and also request a hearing.

The “definitive report” is produced at the end of a further session of deliberations of the collegiate decision-making body, having regard to the responses given. It may take up the initial observations or revoke them based on the explanations provided and on any other matter which may arise.

¹⁰ Under the Law of 21 December 2001, the term “letter of observations” is replaced by “provisional observations” and “definitive report”

Where several authorising officials have succeeded one another during the period under examination, each of them who was in the post at the time of the facts in question is required to provide a written response to the provisional observations.

The procedural form which allows all the parties to be heard also applies to the accountants. No charge against the accountant may be fixed unless there has first been a public hearing.

MANAGEMENT AUDIT (according to the Law of 21 December 2001)

- * *On-site investigation by a magistrate on the basis of documentary evidence*
- * *Preliminary interview between the authorising official and the reporting magistrate*
- * *Investigation report*
- * *Deliberations by the regional audit chamber*
- * *Provisional observations (confidential) to the authorising official + extracts to the persons concerned*
- * *Responses from the authorising official and other persons concerned and hearings, if applicable*
- * *Deliberations by the regional audit chamber*
- * *Definitive report*
- * *Written response from the authorising official and, if appropriate, from his predecessor(s)*
- * *Notification of all results (definitive report and responses) to the authorising official for presentation at the next meeting of the deliberating assembly*
- * *All results (definitive report and responses) may then be published*

Addressees of reports

The reports of investigation produced by the magistrates remain confidential, except in the case of judicial matters (see below). They are not subject to any communication outside the regional audit chambers.

The main recipients of the observations produced after the audit reports have been examined are:

1°) The executive (the mayor, the president of the department council), then the assembly of the audited territorial authority or the director of the audited body (chairman of the association) and in the latter case - and for the definitive report - the territorial authority to which it is attached.

2°) The Court of Audit

The chambers may, via the public prosecutor for financial matters, send “administrative” comments to the Public Prosecutor’s office at the Court of Audit with a view to possible intervention with ministers, thus raising awareness to the problems posed by the application of certain legal texts. They may suggest, if appropriate, reform via injunction from the First President of the Court of Audit, or letters from its Public Prosecutor (known as Communication from the Public Prosecutor).

The public annual and individual reports from the Court of Audit, which draw their material from the observations made by the regional audit chambers, are submitted to the President of the Republic and to Parliament. They are published in the Official Journal and widely reproduced by the media.

3°) The relevant Prefect, for definitive reports and advice relating to audits of budgetary measures.

4°) The general administrator of public finances in the department (the accountant’s superior) for judgements on accounts presented by his subordinates.

5°) The chambers may send “administrative” comments to the local State representatives, usually via the public prosecutor for financial matters (tax departments, etc.)

6°) The criminal justice system

The chamber may have cause to refer a case to the prosecutors of a criminal judicial authority, if the audit revealed circumstances liable to be described as offences (interference, corruption, unjustified advantages relating to public procurement, etc.) or crimes (falsification of public documents committed by a public authority). It is the public prosecutor for financial matters, in the role of prosecutor within the chamber, who refers the case to the criminal judicial authority, either after deliberation or, in urgent cases, immediately in accordance with the Code of Criminal Procedure.

7°) The chamber may also refer to the Budget and Finance Disciplinary Court¹¹ at the Court of Audit any non-elected authorising officials who have violated the rules relating to the handling of revenue and expenditure of the bodies under their jurisdiction. Two

¹¹ Amended Law 48-1484 of 25 September 1948, now codified (Book III of the French Code of financial judicial authorities)

grounds also allow the chamber to initiate proceedings against elected officials before the Budget and Finance Disciplinary Court: failure to carry out judicial decisions, or incorrect and abusive use of the right of requisitioning of public accountants. This measure is significant since it represents the first exception to the long-held absolute principle that elected officials' responsibility is solely political, except for civil or criminal effect, by virtue of the mandates they exercise. However, cases in this area submitted to the Budget and Finance Disciplinary Court are extremely rare.

8°) The assembly of the audited authorities

The definitive reports must be brought to the attention of the deliberating assembly of the audited body at the time of its first meeting after the report and responses have been sent (see box). Through this publication, citizens may learn about the observations made by regional audit chambers on the management of the authority or body concerned. However, any publication of the definitive observation is prohibited for a period of three months in the event of local elections (Law of 21 December 2001).

Communicability and publication of reports

At the end of the day, the public are informed. The decision to disseminate the definitive reports from the regional audit chambers lies with the main recipients of the reports, that is, the territorial authorities and the local public bodies. But there is free access to the contents of the definitive decisions following the audit, in other words, the judgements on the accounts and the definitive reports on the management carried out by the authorising officials: these are available on request, on CD-ROM, and, in the case of the most recent reports, on the internet server of the financial judicial authorities (www.comptes.fr).

Resources

Financial resources

The financial resources needed for the operation of the chambers are included in the State budget. Since 2006, they have been listed in a self-contained budget programme managed by the First President of the Court of Audit.¹² The financial resources are administered either centrally by the Court of Audit or locally by the presidents of the chamber acting as secondary authorising officers.

Human resources

The chambers are made up of magistrates (president, public prosecutors for financial matters, counsellors), external reporting officers in some cases, audit assistants and administrative staff.

¹² Programme no. 164.

The president or chairman of the chamber is appointed by decree from the President of the Republic on the recommendation of the First President of the Court of Audit, following advice from the High Council of the Regional Audit Chambers and the consultative committee of the Court of Audit. He is a magistrate of the Court of Audit. He is tasked with the general management of the chamber. He sets out the audit programme after taking advice from the Public Prosecutor's office, and divides up the work between the magistrates. He presides over sessions and takes part in voting, but does not have a casting vote. If he is absent or prevented from working, he is replaced by the most senior of the magistrates.

The chairman of the section organises the work of the section over which he presides. He is involved in drawing up the annual programme and makes suggestions for the allocation of work between the magistrates and other reporting officials in his section. He sets the agenda and presides over section meetings, but does not have a casting vote. The chairman of the section takes the measures necessary for the section's operation. He reports to the president of the chamber on the execution and follow-up of work allocated to the magistrates and reporting officers in the section. He defines the duties of the audit assistants attached to his section. He may, in the place of the president of the regional audit chamber and after being authorised to do so, sign documents, judgements, opinions, decisions and observations. In case of prevention, the chairman of the section is replaced by the oldest magistrate on the highest grade working at that section.

The first counsellors and counsellors in the regional audit chamber are a body of irremovable magistrates whose status is determined by a law dated 10 July 1982. This body is recruited from E.N.A. graduates (National School of Administration) or externally. In addition, exceptional competitive examinations have been held since 2012. Nominations are by decree from the President of the Republic. Nominations within the various grades, and transfers (assignment to a specific chamber) are made by simple decree. With the exception of the person appointed with the task of public prosecutor for financial matters, the counsellors are responsible for leading the audits entrusted to them, and for considering all reports.

The public prosecutor for financial matters is a first counsellor appointed to provide technical legal advice to the chamber and, in a few cases, to carry out prosecution functions for the chamber. He supervises the production of accounts, refers to the chamber any actions assumed to represent de facto management, and gives conclusions on the reports, with a view in particular to promoting consistency of jurisprudence. He calls for fines in the circumstances provided for in the legislation, attends sessions, and may, at the request of the judicial authority, communicate with those responsible for the audited bodies, as well as with the State representative and the heads of outside departments. Unlike the magistrates of the chamber, he can be removed.

The audit assistants take part in the audit tasks for which the magistrates are responsible. They belong to the administrative bodies of the financial judicial authorities, or are recruited on secondment from the various public administrations. Audit assistants are appointed by the President of the Court of Audit on the recommendation of the president of the regional audit chamber. They play a vital role, since they institute the examination of supporting documents for income and

expenditure, uncover irregularities or anomalies in management, and suggest suitable follow-up actions to the magistrate, taking into account a judicial analysis and the circumstances of the case.

The administrative services in the chamber are managed by the general secretary under the authority of the president: they comprise the clerk's office, the archives, documentation and the secretariat.

Regional chambers are organised into sections, which are judgement bodies varying in number according to their size (from 1 to 8).

The Court of Audit has the ongoing task of inspecting the regional audit chambers.

Europe and the regional audit chambers

Thirteen regional audit chambers¹³, in the beginning especially those in border areas, have links with their European counterparts which audit regional and local authorities in their respective countries.

This international openness is growing. Firstly, recent international treaties and agreements have provided for the auditing of transfrontier cooperative bodies with Belgium, Germany, Italy, and Spain, among others. Secondly, public funds are increasingly becoming funds of Community origin. To the extent that these funds, for the most part, are paid to and spent by public bodies, auditing them comes under the remit of the European Court of Auditors, leading to increasingly frequent contacts between this Community institution and the financial judicial authorities.

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In conclusion, the effectiveness of the regional audit chambers depends on their status as "judicial authorities", with all the associated obligations and guarantees: independent magistrates, collegial decision-making, respect for the rules of procedure and, in particular, the principle of hearing all the parties. This effectiveness is also the result of work carried out on-the-spot at the audited bodies by the magistrates and their assistants. For all these reasons, and due to the quality of their teams at all levels (magistrates, audit assistants, administrative staff), regional audit chambers have succeeded in becoming part of the local institutional landscape.

¹³ Regional Audit Chamber (CRC) of Alsace, Champagne-Ardenne, Lorraine; CRC of Aquitaine, Limousin, Poitou-Charentes; CRC of Auvergne, Rhône-Alpes; CRC of Lower Normandy, Upper Normandy; CRC of Brittany; CRC of Burgundy, Franche-Comté; CRC of Centre, Val de Loire; CRC of Corsica; CRC of Île-de-France; CRC of Languedoc-Roussillon, Midi-Pyrénées; CRC of Nord-Pas-de-Calais, Picardy; CRC of Pays de la Loire; CRC of Provence-Alpes-Côte d'Azur.