

## **NEW FORMS OF FINANCING FOR AND OUTSOURCING OF PUBLIC FUNCTIONS AND THE CHALLENGES THAT THESE POSE FOR EXTERNAL PUBLIC SECTOR AUDIT INSTITUTIONS**

### **- A CONTRIBUTION FROM AN AUSTRIAN VIEWPOINT -**

#### **I. New forms of financing for and outsourcing of public functions**

##### 1. Outsourcing as the divestiture of public functions

Under an outsourcing, public tasks are not fulfilled directly by the administration under the guidance of the supreme government bodies but are handed over to **other, legally independent entities** and are consequently performed from outside the Public Administration. From the viewpoint of regional and local authorities, outsourcing has the advantage of circumventing various legal, financial and organisational obligations incumbent upon Public Administration by choosing the legal form of the divested entity. Since the beginning of the 1990s, regional and local authorities have viewed the divestiture of public functions as an **essential component of administrative reform**, the number of divested entities has therefore soared in the last 15 years. It should be noted that:

- A divestiture is **not necessarily** associated with a **privatisation** of public functions.
- In recent times, **even sovereign functions** have increasingly been divested. However, according to the judicature of the constitutional court, **core functions**, which ultimately constitute the essence of the state, are not amenable to divestiture through simple laws. A complete withdrawal by the government from the fulfilment of sovereign functions is therefore impossible by virtue of the constitution.

- Compared with execution within the Public Administration, divestiture of public functions is always **exceptional by nature** and this requires **objective justification** for each individual outsourcing procedure. A specific divestiture benefit therefore has to be demonstrated before each outsourcing initiative, which may not lie in evading the weaknesses and defects of Public Administration. Each outsourcing scheme must therefore examine the benefits of divestiture in detail for each individual case and clearly define its objectives; merely stating sweeping reasons for justification is not sufficiently convincing. It is precisely here that the results of audits performed by external auditing institutions in this field can provide valuable input and force decision makers to justify their decision in depth.

## 2. New forms of financing

The public sector is no longer able – particularly but not exclusively in the case of infrastructure – to finance the investment needed because of budget restrictions. New forms of financing that should be mentioned include **public private partnership projects, financing from the EU budget and payments to divested entities.**

## **II. Conclusions for external public sector financial control**

- **Increasing importance of external public sector financial control:** the more varied and complex these new schemes for outsourcing and financing become, the more important external public sector audit, which objectively identifies the advantages and disadvantages of these schemes and consequently provides important recommendations for future actions, becomes.
- **The new schemes do not provide any opportunity to escape financial control**
- **Audit criteria:** it is precisely in the case of new schemes for divestiture and financing that the legality audit should form an important component of the

external audit process, especially with PPP projects where the legal structure is very complex.

- **External public sector financial control as ongoing guidance – no contradiction with the function as ex-post control:** according to the Austrian constitution, audits performed by a court of audit are conceived as ex-post controls. From the viewpoint of the taxpayers, who have entrusted the resources to the administration on trust, it would certainly be desirable for the courts of audit to make their expertise available as soon as possible and to highlight defects in projects sufficiently early for undesirable developments to be rectified. The greatest challenge for external public sector audit bodies lies in offering the administrative authorities the best possible advice without, at the same time, casting doubt on their role as independent audit offices.

This consultancy role, which may not lead to involvement in the conception and implementation of a concrete project, may be effected initially by the transfer of expertise: because of the expertise and experience they have acquired in the course of audits performed previously, the external audit bodies are able to assess the new schemes for financing and outsourcing public functions objectively, describe weaknesses and strengths (examples of best practice) and work out factors for success and sources of mistakes.

Ex-post control does not necessarily mean either that only completed projects may be inspected. Individual (stand-alone) sections, such as the decision on a PPP project or a divestiture scheme, may be the subject of audits performed by a court of audit. A prompt review of stand-alone sections of a project of this kind allows "concomitant control" by the courts of audit and guarantees that undesirable developments can be countered in good time through concrete recommendations.