

INTERNAL CONTROL IN ROMANIA MALFUNCTIONS – PERSPECTIVES

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Abstract:

The phrase "internal control" highlights the responsibility of all hierarchical levels for the management of all internal processes carried out to achieve the general and specific objectives.

The implementation and development of a solid internal control system is a time-consuming process adapted to the legislation, organizational, personnel, financing etc. of each individual public entity and which requires significant efforts from the entire staff of the entity and, in particular, from the employees with leading positions.

The internal control system of any public entity operates with a variety of procedures, means, actions, provisions that address all aspects of the entity's activities, being established and implemented by the entity's management in order to have good control over the entity's activity as a whole as well as over each activity / operation.

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1. General considerations on the concept of internal control

The necessity and the obligation of organizing the internal control in the public entities was imposed by OG no. 119/1999.

According to this normative act, the internal control is defined as an ensemble of the control forms exercised at the level of the public entity, established by the management in accordance with its objectives and with the legal regulations in force, in order to ensure the administration of the public funds economically, efficiently and effective.

The implementation of the internal control at the level of the main credit ordinarators started in 2006, when the main objectives of this type of control were established through OMFP no.946 / 2006.

At that time, however, internal control only concerned the financial side of public institution management.

For this reason, essential changes in the organization and implementation of internal control have been performed through OUG no.86 / 2014 and Law no.174 / 2015.

In order to implement the stipulations of the two normative acts, Order no.400 / 2015 of the General Secretariat of the Government was issued, which established the main ways of implementing the internal control.

The following substantive changes have been made by the mentioned normative acts:

- A new organization and subordination of the structure that aims at the implementation of the internal control by creating a Directorate for Internal Managerial Control at the level of the General Secretariat of the Government.

- The number of standards has been reduced from 25 to 16, combining some standards and introducing new ones;

- A Monitoring and Risk Management Committee have been set up at each public entity level;

In the current context, the legislation in the field of internal control is largely made up of general principles of good practice, accepted internationally and in the European Union.

The way in which these principles are transposed into the internal control system is specific to each country, being determined by legislative, administrative and cultural conditions.

The organization of the internal control system of any public institution takes into account the achievement of at least three categories of objectives that are subject to changes depending on the implementation stage and which can be grouped as follows:

- a) Objectives regarding the effectiveness and efficiency of working - includes objectives related to the goals of the public entity and to the use in conditions of economy, effectiveness and efficiency of the resources, including objectives for protecting the public entity's inadequate use or loss of resources, and also the identification and the management of liabilities;
- b) Objectives regarding the reliability of external and internal information - includes the objectives of maintaining appropriate accounting, the quality of the information used in the public entity or disseminated to third parties, as well as by the protection of

documents against two categories of fraud: the concealment of fraud and the distortion of results ;

- c) Objectives regarding the compliance with domestic laws, regulations and internal policies - includes the objectives of ensuring that the entity's activities are carried out in accordance with the obligations imposed by laws and regulations, as well as with respect for internal policies.

The design, the implementation and the continuing development of a viable internal control system are possible only if the system complies with the following requirements:

- a) To be adapted to the size, complexity and the specific environment of the entity;
- b) To target all levels of management and all activities / operations;
- c) To be built with the same "instruments" in all public entities;
- d) To provide reasonable assurance that the entity's objectives will be achieved;
- e) The costs of implementing the internal control system are inferior to the benefits resulting from it;
- f) To be governed by the minimum management rules contained in the internal control standards.

The establishment of the internal control system is the responsibility of the management of each public entity and must take into account the internal control standards.

Internal control systems need to be developed taking into account the legal, organizational and financial specifics of each public entity.

2. Malfunctions in the current internal control system

By OSGG no.201 / 2015, the Methodological Norms for accomplishing the verification missions and methodological guidance were established, in order to be achieved by the Directorate of Internal Managerial Control of the General Secretariat of the Government, to the public institutions that have the quality of principal orderers.

The verification missions of the Directorate of Internal Managerial Control of the General Secretariat of the Government as well as the Court of Auditors highlighted a series of malfunctions regarding the inadequate implementation of the internal control in the entities and also the causes that generated this situation.

An in-depth analysis of the Methodological Norms concerning the implementation of the internal control established by OSGG no.400 / 2015 and OSGG no.200 / 2016 highlights the fact that the stipulations are not

clear and precise, leading to interpretations or even the impossibility of applying in practice mandatory rules of the internal control system.

This way we exemplify:

- According to the stipulations of Article 3 paragraph 2: "The Monitoring Committee includes the heads of departments in the organizational structure, which shall be updated whenever necessary and it is coordinated by the President, who holds the leading position."

This normative provision can not be applied by large public entities with many compartments in the organizational structure and located in different places. This is because, if the organizational structure includes 50 compartments, then the monitoring committee should consist of 50 members, who should be convened, monitored, coordinated to take decisions in the field of internal control, which would be impossible or unwarrantable in terms of costs in relation to the benefits obtained. There is also the risk of encouraging formalism, that is, the committee to meet fictitiously and only to sign the documents;

- According to the stipulations of art.3 paragraph (2) and art.5 paragraph (4) of the OSGG no.200 / 2016, the head of the internal audit department would be part of the monitoring committees, which is contrary to the stipulations of art.22 paragraph (3) of Law No. 672/2002 on public internal audit, republished, as amended and supplemented, states that "Internal auditors should not be involved in any way in the accomplishment of the activities they are potentially able to audit, nor in the preparation and the implementation of control systems for public entities".
- According to the stipulations of art. 3, paragraph (6) of OSGG no.200 / 2016, "the Monitoring Committee analyzes and prioritizes the significant risks that may affect the achievement of the general objectives of the functioning of the public entity by establishing the risk tolerance limits annually, approved by the management of the entity, which are mandatory and are transmitted to all application compartments. "

Regarding to this stipulation, it is not clear how it is applied in practice, which limits of risk tolerance are transmitted by the monitoring committee to the compartments and whether they are transmitted only for the risks related to the general objectives or to all the objectives of the entity, including the specific ones of the compartment's activity ;

- According to art. 5 paragraph (4) of the OSGG no.200 / 2016, "The risk management team includes the department managers or their substitutes, from the organizational structure, is updated whenever necessary and is coordinated by the president , a person who holds a

leading position and is different from the person who coordinates the Monitoring Committee. "

If the Risk Management Team (EGR) is made up of heads of compartments, it is in fact a superposition of the monitoring committee, the two "teams" being different only through their chairperson.

In our opinion, this way of working would create bureaucracy, duplication of documents and activities (Regulation of Organization and Functioning of the Monitoring Committee, Regulation of Organization and Functioning of the EGR, EGR meeting papers, etc.). If the EGR were made up of substitutes for heads of departments, this would require them to take decisions on the establishment of risk management measures and, also, on cost decisions, over the heads of departments responsible for this action. This leads to excessive bureaucracy in the implementation of risk management.

- According to the stipulations of point 3.2.5 of the Code of internal managerial control, it is mandatory for the heads of the departments of the public entity to ensure, for each employee, participation in professional training courses each year in his field of competence. Or, according to the stipulations of Article 194 in the Law no.53 / 2003 - Labor Code, with subsequent amendments, the employer is responsible to ensure participation at training courses at least 2 times a year (for entities with more than 21 employees) or triennial (for entities with less than 21 employees).

In our opinion, the introduction of a stipulation more restrictive than the stipulations of the law governing professional training contravenes art. 16 para. (1) and (2) in the Law no.24 / 2000 on the technical legislative acts norms for the elaboration of normative acts, which state that in the law-making process it is forbidden to introduce the same regulations in several articles or paragraphs of different normative acts, and in the case of parallelism, they will be removed by repeal or the concentration of the matter in unique regulations.

- According to the stipulations of point 2.2.6 of the Standard 2 - Duties, functions and tasks: "The management of the public entity identifies sensitive functions and functions considered to be particularly exposed to corruption and establishes an adequate policy of management of the personnel in charge of such functions".

In our opinion, the text from OSGG no.200 / 2016 is unclear and does not delimit the terms: sensitive functions / functions exposed to corruption. Thus, it is not clear whether there is a difference between sensitive functions and the ones that are exposed to corruption, or the two terms are similar, contrary to the stipulations of Article 37 (2) of Law No.24

/ 2000, which states that "If a notion or a term is not consecrated or can have different meanings, its significance in the context is determined by the normative act which establishes them, within the general establishments or in an annex of the lexic, and becomes compulsory for the legislation of the same field".

- According to the stipulations of section 2.2.8, "The management identifies sensitive functions based on the inventory of sensitive functions and the list of employees occupying these sensitive functions. When the management decides to declare the existence of sensitive functions, it will develop a plan in order to rotate the staff at intervals of at least 5 years. If the management of the public entity decides not to declare certain sensitive functions, then it will necessarily implement additional control activities or other measures on the flow of that process so that the effects upon the activities carried out within the entity should be minimal in the risk management process".

In our opinion there are uncertainties and difficulties in applying the stipulations regarding the identification and management of sensitive functions in the current text, as follows:

- "The entity's management identifies sensitive functions based on the inventory of sensitive functions and the list of employees occupying these sensitive functions ...": Sensitive functions are identified / established first and then the inventory / list of sensitive functions is drawn up followed by the list of employees occupying the sensitive functions.
- "In the event that he decides to declare the existence of sensitive functions, he shall draw up a plan in order to rotate the staff at intervals of at least 5 years.": The manager of the entity may decide, as he wants, to declare or not the sensitive functions, which is not correct in the case where they are identified or they exist. Also, the term of rotation is at least 5 years, which means it is legal that staff rotation never intervenes.
- "If the manager of the public entity decides not to declare certain sensitive functions, then it will necessarily carry out additional control activities ...". There is a contradiction with the previous paragraph, in the sense that only some functions may not be declared, but control measures are required for these functions, which in fact do not exist and are not declared.

It is also unclear how to approach the objectives, performance monitoring indicators, risks and procedures for entities that have implemented ISO 9001 and that have the obligation to implement OSGG no.400 / 2015, also being a risk of the documents to be duplicated (for example - procedures), the occurrence of conflicts by using different models on ISO or OSGG no.400 / 2015 etc.

In conclusion, we consider that the current version of the text in OSGG no.400 / 2015 emphasizes the elaboration of documents in the damage of the implementation of the internal control, having the risk of lowering the interest of the management of the entities in the application of the internal control as a result of its perception as an excessively bureaucratic activity. The current form also requires resource consumption in the public sector (for the development of a big number of internal control documents) with little application to practice.

In the context of the aforementioned, we consider that it is necessary to amend and supplement the OSGG no.400 / 2015 and OSGG no.200 / 2016, aiming at simplifying / reducing the number of documents, in agreement with the difficulties and ambiguities highlighted above, the news brought by the control reviewed by COSO in 2013, and also clarifying how to integrate ISO 9001 into the entity's internal control system. Regarding the review process, we consider it necessary to consult the public entities, as well as to carry out public information activities on drafting and implementing the draft normative act in order to receive proposals and debates for insuring stability in the application in practice of the Code of internal managerial control.

3. Perspectives regarding the implementation and development of the internal control system in Romania

Internal control is now perceived as a difficult concept, difficult to apply in practice and without positive effects in the public entity's activity.

Therefore, a simpler framework needs to be created, with limited resources (human and material), with standardized documents that must produce immediate effects for the entity's manager.

Internal control should highlight responsibilities to all hierarchical levels in the way of managing the internal processes developed for the achievement of the general and specific objectives.

The internal control system must be regulated so as to ensure a general framework of organization with flexible and adaptable application to each type of entity, to ensure highlighting of strengths and weaknesses and to highlight significant risks that must be known by the entity's manager, and the development and standardization of operational and system procedures for all activities, thus contributing substantially to the entity's objectives.

In the context of the above, we consider that a series of changes to the orders governing the internal control are required, and which mainly consists of:

- Establishing in all entities a position of Counselor with responsibilities in the field of internal control, similar to the Ethics

Advisor, regulated in this moment for public institutions. The role of the counselor for the internal control would be to periodically inform the manager of the entity about the way the Monitoring Committee works.

- Modify the composition of the Monitoring Committee to include only the main entity structures (resources, legal, economic) in it, and periodically completing it with the structures within the entity that are involved in the endorsement of the procedures. In this way, the Monitoring Committee can operate without affecting the entity's current activities.
- Abolish the risk management team and set up a technical secretariat to monitor the risk management. This would remove the excessive bureaucratisation of risk monitoring activity, and the Monitoring Committee could conduct its work and inform the entity's management of the possible risks to be achieved.
- Collecting informations about risks through a senior manager at the highest level of the entity, department or directory. The number of staff collecting risk information would be eliminated; for this moment there is a person nominated to be responsible with the risk management for each compartment, office, service, direction.
- There should be a situation at the level of the entity with its general and specific objectives and the measures to be taken to achieve them, for the moment there is only a limited inventory with the main objectives.
- The risk register should be reviewed periodically by the monitoring committee and amended and completed according to the concrete cases in practice. At this time, the once-completed risk register is not considered as a major source of risk-related information.
- An explanation of the phrase "sensitive functions", an inventory of all entity-sensitive functions and the creation of an appropriate framework for periodic review and the establishment of preventive measures for the possibility of the appearance of significant risks.

In current regulations, sensitive functions are limited to functions pertaining to corruption, this way a series of common facts are eliminated, such as those relating to service offenses, etc.

In conclusion, we believe that the internal control system must be the main tool by which the new or the older manager of the entity can obtain informations on which he can take decisions in a speedy manner to ensure the fulfillment of his tasks.

References

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2. OG no. 86/2014 regarding the establishment of some reorganization measures at the level of the central public administration and for the modification and completion of some normative acts;
3. OSGG no. 400/2015 for the approval of Internal managerial Control Code for public entities;
4. OSGG no. 200/2016 for the modification and completion of OSGG no. 400/2015 for the approval of Internal managerial Control Code for public entities;
5. The project "The consolidation of the Implementation of Internal Control Standards at the Central and Local Level" - SIPOCA 34, funded by the Operational Capacity Administrative Program, in partnership with the Ministry of Regional Development, Public Administration and European Funds, co-financed by the European Social Fund through the Operational Capacity Administrative Program , Priority Axis 2: Accessible and Transparent Administrative and Judicial System, Specific Objective 2.2: Increasing Transparency, Ethics and Integrity within Public Authorities and Institutions.