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Attempts to Expand the Competencies of External Public Auditors into the Area of Consultancy — Case of the Romanian Court of Accounts

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Abstract: *This paper examines the potential effects of legislative proposals aimed at amending Law No. 94/1992 on the organization and functioning of the Romanian Court of Accounts. Primarily, it is observed that if these initiatives were adopted, they would allow public entities to request information, methodological clarifications, or detailed answers to various questions from the regional Chambers of Accounts. The responses would need to be provided in writing, in the form of an opinion, within 30 days. If the applicant finds the opinion unsatisfactory, they would have the right to challenge it, with justification, within 10 days of receiving the document. Subsequently, a specialized court would resolve the challenge within 10 days of its registration, either upholding or annulling the opinion, in whole or in part. However, the Legislative Council, in its advisory opinion, pointed out that assigning the Court of Accounts the obligation to provide periodic consultancy to interested parties contravenes its constitutional role. Such a mandate would diminish the institution's primary function—control—thereby questioning the balance and efficiency of its activities. Other opinions, discussed in the paper, also highlight delays in legislatively transitioning the Romanian Supreme Audit Institution from financial control to specialized consultancy. The structure of this study includes: (1) Introductory considerations on the creation and functioning of the Romanian Court of Accounts, (2) An analysis of parliamentary efforts to orient the Court's activity toward providing specialized consultancy to public entities (2.1 - An initial initiative focusing on guidance/prevention and discouraging auditor misconduct; 2.2 - Attempts to introduce provisions in Law No. 94/1992 establishing consultancy as a task for auditors), and (3) Conclusion.*

Keywords: *external public audit; efficiency; legislative initiatives; consultancy for audited entities; prevention of auditor misconduct; limits.*

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Introductory considerations on the establishment and functioning of the Supreme Audit Institution (SAI) in Romania

The Court of Accounts represents a fundamental institution in the rule of law, playing a distinctive role in financial control and external public audit, as well as in managing and administering public budgetary resources. External public audit, central to the control function of the Court of Accounts, involves the application of specific procedures aligned with its internal audit standards, which are based on universally recognized international frameworks (Boulescu et al., 2009; Bostan & Hurjui, 2014). The public audit institution has operated uninterruptedly in Romania for more than three decades (Bostan, 2023). Legally established through the 1991 Constitution, the Court of Accounts began its effective activity on August 1, 1993 (Bostan, 2011).

At that time, there was an urgent need to review budget executions for the 1989–1992 period, in a context where oversight of the management and use of the state's public and private assets had been virtually nonexistent (RCoA, 1996). From its inception, the institution made maximum use of its available human and material resources. The number of control and audit personnel increased gradually, reaching 12.7% of the approved total by August 1, 1993, 47% by December 31, 1993, 64.5% by the end of 1994, and 69.7% by the end of 1995. The first control reports, published in September 1993, revealed numerous irregularities, including the illegal disposal of assets, undervaluation of state property, non-performing bank loans, unjustified advances to private companies, and disadvantageous contracts concluded by state enterprises (Bostan, 2018).

Over time, legislative changes have profoundly influenced the functioning of the Court of Accounts. In 1999, the institution lost its competence to conduct preventive financial control, with this responsibility being transferred to the Ministry of Finance. Later, following the revision of the Constitution in 2003, the Court's jurisdictional powers, previously exercised through its own panels of financial judges and prosecutors, were transferred to ordinary courts along with the personnel involved. These legislative changes, which resulted in the relinquishment of its jurisdictional function, marked the transformation of the Court of Accounts into a Supreme Audit Institution. Today, the institution focuses its activities (Figure 1) on applying audit procedures to verify public budgets and assets, strengthening its role in ensuring the efficient and transparent management of state resources.

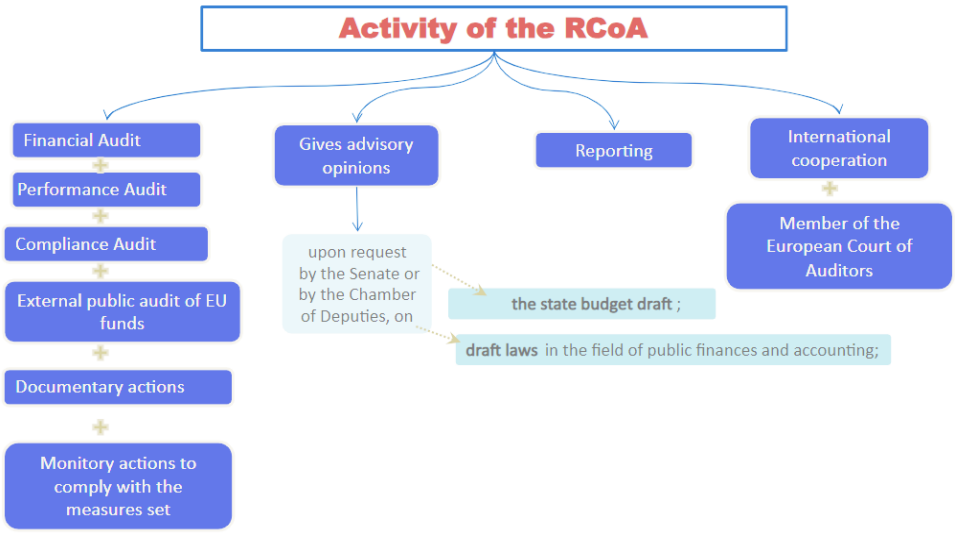


Figure 1. Organization and activities of the Romanian Court of Accounts (RCoA, 2014)

According to the current legislative framework, external financial audits conducted at public institutions led by primary credit budget holders are concluded by issuing an audit opinion. This opinion pertains to the audited financial statements and budget execution accounts, including the results of selective checks performed on the accounts of subordinated credit budget holders. The audit opinion is based exclusively on the audit report, which highlights key findings with financial impact, assessments of the audited entity's management and internal control systems, and recommendations for addressing deficiencies and improving processes.

It is worth noting that the new regulatory framework supports the expansion of external audit activities, particularly performance audits, through the adoption of specific standards by the Court of Accounts' Plenum. These standards are aligned with International Auditing Standards. Additionally, with Romania's accession to the European Union, the institution has gained additional competences for auditing the use of financial resources from the EU budget. Furthermore, its working procedures and some competences are under legislative review in light of numerous initiatives to amend the Court of Accounts Law.

In this context, the Romanian Court of Accounts' 30 years of continuous operation are part of a much longer history, though one marked by evident interruptions. Established in 1864, the institution's activity has been suspended several times, only to be resumed later, sometimes under

different names. For instance, between 1973 and 1990, it operated under the name „Superior Court of Financial Control". Today, Romania has a consolidated Supreme Audit Institution recognized at both European and international levels. It operates under clear legal norms (RP, 1992; RCoA, 2022) and is a member of prestigious organizations such as INTOSAI and EUROSAI.

The structure of this analysis includes: (1) Introductory considerations on the establishment and functioning of the Romanian Court of Accounts; (2) Analysis of parliamentary initiatives to orient the Court of Accounts' activity toward providing specialized consultancy for public entities (2.1 - A first initiative regarding guidance/prevention and discouraging auditor abuses; 2.2 - The attempt to introduce provisions into Law no. 94/1992 concerning consultancy as a task for auditors); and (3) Conclusion.

Analysis of parliamentary initiatives to orient the Court of Accounts' activity toward providing specialized consultancy for public entities

Public debate has repeatedly raised an important question for those involved in managing budgetary resources and state assets: should the Court of Accounts, as the Supreme Audit Institution, limit itself solely to the control function, or should it also include guidance and methodological consultancy activities to support entities subject to its audits? It is worth mentioning that this institution is led by a collegial body—the Plenum of the Court—composed of 18 account counselors appointed by Parliament for nine-year terms (Bostan, 2010a; Ispir, 2008). The Court of Accounts' activities cover a wide range of entities within its jurisdiction, including financial audits, performance audits, and thematic controls. Among these are national companies, state-owned enterprises, autonomous administrations of national and local interest, commercial companies with majority state ownership, and entities involved in banking, capital markets, or privatization processes.

Additionally, as a member state of the European Union, Romania fulfills specific obligations through the Audit Authority, an operationally independent entity from the Court of Accounts, responsible for auditing EU funds.

Before the COVID-19 pandemic, the Court of Accounts' jurisdiction covered 15,564 entities, categorized as follows (RCoA, 2017):

- 3,294 – primary credit budget holders;
- 199 – secondary credit budget holders;
- 10,117 – tertiary credit budget holders;

- 80 – national companies (including branches/subsidiaries);
- 62 – national enterprises (including branches/subsidiaries);
- 97 – autonomous administrations (including branches/subsidiaries);
- 193 – commercial companies;
- 97 – local autonomous administrations;
- 1,009 – local commercial companies;
- 3 – banking companies (including branches/subsidiaries);
- 402 – other public institutions;
- 11 – political parties.

In 2023, the value of errors and damages identified in the public finance and banking sector for activities carried out in 2022 continues to underscore the relevance of the Court of Accounts' activities, as illustrated in Figure 2.

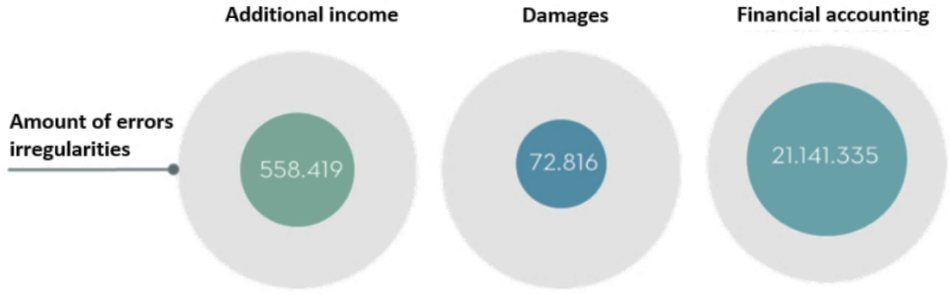


Figure 2. The value of errors/damages (Thousands of lei) identified in 2023 in the Public Finance and Banking Sector (for activities conducted in 2022) (RCoA, 2023)

A first initiative – guidance/prevention and deterrence of auditor abuses

Currently, a legislative initiative aimed at amending and supplementing Law no. 94/1992 on the organization and operation of the Court of Accounts (RP, 2017a) is under discussion in the Senate's standing committees. The proposed text, already approved by the Chamber of Deputies, focuses on two major aspects: providing guidance and preventing potential abuses by external public auditors.

The adoption of this law would enable the institution to offer „methodological guidance on the formation, administration, and use of the state and public sector's financial resources in accordance with the principles of legality, clarity, coherence, stability, and predictability." (RP, 2017b).

Specifically, public entities could request information, clarifications, or methodological details from the Chambers of Accounts, receiving written responses within 30 days. If the response does not satisfy the requester, it could be contested within 10 days, and a specialized court would rule on the appeal within another 10 days, either fully or partially upholding or annulling the contested opinion.

However, the Legislative Council expressed reservations in its opinion, emphasizing that assigning the Court of Accounts the responsibility to provide methodological guidance „does not align with the constitutional role of this institution" which is fundamentally one of oversight, not legal interpretation (RP, 2017c). According to the Constitution, the Court of Accounts is mandated to verify compliance with and application of the law in managing public funds, not to provide opinions on it.

Regarding situations where external public auditors knowingly breach their duties or exceed their mandates, the draft law proposes allowing the employing institution – the Court of Accounts – to recover damages directly from them. Additionally, the draft stipulates that any audited entity claiming harm from an act issued by the Court of Accounts can contest it in court. If the act is entirely or partially annulled as unfounded or unlawful, the Court would be held liable for the damages caused (RP, 2017d).

The Legislative Council noted that the current legislation already allows for the accountability of external public auditors, making additional regulations unnecessary. It remains to be seen how this legislative initiative will evolve, particularly given that a similar law with comparable provisions was previously entirely struck down by the Constitutional Court. Under the procedure, declaring a law unconstitutional before promulgation automatically halts the legislative process for that normative act.

Attempt to introduce provisions on consultancy as a task for auditors in Law no. 94/1992

Another draft law, tacitly approved by the Chamber of Deputies (following the expiration of the 45-day deadline, per Article 75, paragraph 2, third sentence of the Constitution), proposes amendments to Law no. 94/1992 concerning consultancy. This time, the proposal refers to consultancy provided by the Court of Accounts personnel in support of Parliament. The draft is currently „under review" in the Senate's standing committees (RP, 2020a).

The legislative amendment suggests introducing a new article allowing the Court of Accounts to contribute directly to „the evaluation of public policies by Parliament". This initiative would include the possibility of

involving „specialized companies or authorized experts, entering contracts with them to carry out specific activities." (RP, 2020b). Activities would be conducted through permanent subcommittees established within the Budget, Finance, and Banking Committees, with the role of monitoring public funds usage and evaluating public policies.

The Court of Accounts' role in this context would include: (i) The obligation to respond to assistance requests from subcommittee presidents for evaluating public policies; (ii) Conducting any investigations requested by parliamentary subcommittees regarding the management of financial resources by public entities (RP, 2020b).

Although the draft received favorable opinions from the Legislative Council, the Economic and Social Council, the Government, and the Public Administration Committee, the Executive submitted critical observations to the Senate. It warned that transforming the Court of Accounts into a parliamentary assistance body contradicts its constitutional role. Moreover, obliging the Court to respond to subcommittees' requests and conduct investigations at their demand undermines the institution's autonomy. According to the Executive, only the full Chamber of Deputies or Senate can assign duties to the Court of Accounts, not parliamentary subcommittees (RP, 2020c).

The Legislative Council also noted that the proposal does not comply with constitutional provisions. According to the Council, the Court of Accounts is tasked with overseeing the formation, administration, and use of the state's and public sector's financial resources. Parliamentary assistance for evaluating public policies does not fall within its scope of competences (LC, 2020).

Given the numerous constitutional issues identified, it is expected that these proposals will not be adopted in their current form, especially considering they belong to the category of organic laws. The Chamber of Deputies is the first notified chamber in this case. Considering the legislative process's evolution, it is unlikely that the Supreme Audit Institution will rapidly expand its responsibilities to include advisory or consultancy activities, despite the potential benefits anticipated by the initiators.

Conclusion

So far, attempts in the Romanian Parliament to assign new responsibilities to the Court of Accounts, such as transitioning from traditional financial oversight to providing specialized consultancy, have not resulted in the adoption of definitive legal norms. Similarly, no clear legal

regulations have been developed and adopted to prevent and discourage potential abuses by auditors in the exercise of their duties.

Although these legislative initiatives to amend Law no. 94/1992 on the organization and functioning of the Court of Accounts had some practical and theoretical justifications, they faced numerous obstacles. These included findings that certain legislative proposals conflicted with the Romanian Constitution and other legal norms and fundamental principles.

This context has significantly slowed the process of revising the institutional and normative framework governing external public audit in Romania. However, it is not impossible that such initiatives may be resumed in the future. For them to succeed, legislators must draw inspiration from best practices and applicable norms in other European Union member states with a stronger tradition and extensive experience in public auditing. Such an approach could help align national legislation with European standards and ensure a proper balance between efficiency, transparency, and respect for the constitutional framework.

Research limitations:

The analysis reveals constitutional issues with the legislative proposals, limiting the applicability of conclusions regarding the expansion of the Court of Accounts' role. The study focuses on a potential expansion of the Court of Accounts' responsibilities but does not explore in depth the impact of this transformation on the institution's main activities (financial oversight and auditing).

Future research directions:

Future research could evaluate the potential effects of introducing advisory and consultancy activities on the overall efficiency and capacity of the Court of Accounts to fulfill its primary responsibilities. A detailed comparison with other Supreme Audit Institutions could help identify effective models for integrating advisory or parliamentary evaluation activities into their mandates. Additionally, the integration of economic and political dimensions (multidisciplinary approaches), the assessment of resources required for new roles, tracking the evolution of legislative proposals, and analyzing the benefits of consultancy provided by the analyzed institution are equally important in this context.

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