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**Developing Policy and Practice Frameworks for the Accounting
Chamber in the Context of Reforming Social Services**

Draft Report for Discussion

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List of Acronyms

| | |
|---------|--|
| AC | Accounting Chamber |
| ACU | Accounting Chamber Unit |
| ALI | Agency for Legislative Initiatives |
| BCU | Budget Code of Ukraine |
| CAO | Control and Audit Office |
| CCP | Code of Commercial Practice |
| FRSSU | Facilitating Reform of Social Services in Ukraine |
| GoU | Government of Ukraine |
| INTOSAI | International Organisation of Supreme Audit Institutions |
| LSA | Local State Administration |
| MoLSP | Ministry of Labour and Social Policy |
| NGO | Non-Governmental Organisation |
| SAI | Supreme Audit Institutions |
| UAH | Ukrainian Hryvnia |
| UNDP | United Nations Development Project |

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Developing Policy and Practice Frameworks for the Accounting Chamber in the Context of Reforming Social Services

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EXECUTIVE SUMMARY

General overview

This report is the extension of the current work of the Project on Facilitating Reform of Social Services in Ukraine. The main task of the Report is to develop, on the basis of the study of organization and status of the Accounting Chamber, a view of:

- legal regulation and practice of its auditory activities,
- interrelation with profile parliamentary committees, the Main Control and Auditing Office,
- the principles of policy and practical activities,

in particular with a focus on the social service sector.

The report defines the measures necessary to facilitate reform with a view to evolving the Ukrainian social services system towards:

- EU best practice; in line with
- MoLSP's Concept for the Reform of Social Services; and
- the Law of Social Services; by for example
- implementing the principles of the balance of services model of social service provision.

These measures would amount to a reorientation in the processes of performing financial and efficiency audit by the Accounting Chamber.

In the analysis in this report, the authors focus their attention on such issues as the:

- organization of the Accounting Chamber operation at the current stage;
- mechanisms of relations between the Accounting Chamber and local executive and self-governance authorities;
- correspondence of the principles of the Accounting Chamber operation to the principles set by the Lima Declaration, and International Organisation of Supreme Audit Institutions (INTOSAI) standards;
- potential influence of the constitutional reform on the status of the Accounting Chamber and its role in the exercise of financial control;
- measures necessary for the implementation of the constitutional reform provisions as concerns the extension of the Accounting Chamber powers;
- relations between Accounting Chamber and Parliamentary Committees; reasons of insufficiently effective cooperation between the Accounting Chamber and profile parliamentary committees;
- relations between the Accounting Chamber and the Main Control and Auditing Office; and the

- principles and mechanisms of planning, conducting financial and efficiency audit, reporting and oversight of audit results by Accounting Chamber, particularly in the area of social services.

Methodology

The project aim was achieved by a desk-study, which included:

- legal acts;
- reports of Accounting Chamber; and
- other sources of information on Accounting Chamber activities,

supplemented by interviews with staff of standing committees for social policy, finance and banks activities, MPs, staff of Main Control and Audit Office and the Accounting Chamber itself.

The Structure of the Report

The Report consists of five sections, following this Executive Summary. Each section contains its own specific conclusions:

- **Section 1.** Institutionalisation history of the Accounting Chamber and its present day operation. The Main attention is paid to a general overview of the development of legal basis of ACU structure, competence, budgetary financing, staff backing, formation and activities, current legal regulation and further directions of improvement of legal base of ACU activities, particularly in the context of constitutional reform and approximation to demands of the Lima Declaration.
- **Section 2.** Cooperation between the Accounting Chamber and the Verkhovna Rada. In this section general principles of cooperation between ACU and parliament are studied, differences between legal regulation and practice emphasized, and ways of further directions of improvement suggested.
- **Section 3.** Cooperation of the Accounting Chamber with the Main Control and Audit Office. Within the scope of this section comparison of ACU and CAO powers, subordination, staff, regional level activities, funding and transparency was made, and principles of ACU-CAO relationships are studied.
- **Section 4.** Analysis of auditing activities of Accounting Chamber and its staff potential. In this section types of audit exercised by the Accounting Chamber, its staff potential and audit procedure are studied.
- **Section 5.** Application of the study on the Accounting Chamber to social services reform. In this section ways of application of main report findings to social services reform are determined.

Main conclusions and recommendations

General Conclusions

A summary of the main highlights includes:

1. There has been a gap in the legal regulation of the Chamber operation – which remains largely void – resulting from the recent recognition that some of the key provisions of the Accounting Chamber Act are technically unconstitutional (in particular, those that set the scope of the Chamber's roles and responsibilities, objects of control etc) .
2. Even though the Accounting Chamber is an independent body of parliamentary control, it is governed not only by the parliamentary acts, but also by secondary acts issued by executive authorities (the President and the Government).

Analysis of the latter suggests that, unless the President or the Cabinet of Ministers instruct the executive authorities to “support” the Accounting Chamber or its local offices, or require that the Chamber’s recommendations be taken into account, the role of legislative acts (including the Accounting Chamber Act) in ensuring the Chamber’s operations remains quite low. In other words, the influence of the Accounting Chamber – and the Parliament as a whole – on the audited objects is dependent in nature, and can only be efficiently implemented if “authorised” by the executive branch.

3. There are ambiguous interpretations of the Constitutional Court Decision in the case of the Accounting Chamber in 1997 which result in the adoption of acts, the constitutionality of which is quite doubtful. For example, while the amendments to the Law on Public Procurements adopted in December 2005 help improve the auditing capacity of the ACU, they also reinterpret its role as a regulatory and decision making authority in public procurement. Thus, in light of the mentioned Constitutional Court Decision, these amendments , may in due course of the future be recognised as unconstitutional.
4. The legislation governing the Accounting Chamber is developed independently of the legislation regulating the activities of other financial control bodies. For example, on 15 December 2005, the Parliament adopted the Law On Amending Certain Legislative Acts of Ukraine to Prevent Financial Violations and Ensure the Efficient Use of Budget Funds, Public and Municipal Property. The Law introduced the concept of the state financial audit and defined the public authorities entitled to do the audit, in particular the Accounting Chamber and the divisions of the Control and Audit Office. However, the forms of financial audit and the powers through which auditing functions are exercised are specified only for the CAO.

This lack of unified approaches is also evident in legislative acts that govern cooperation among various financial control authorities. While the authorities responsible for internal financial control in the system of executive government jointly adopt orders to define mechanisms that govern cooperation between them, no elaboration is provided by secondary legislation for the framework of cooperation between the Accounting Chamber and other financial control authorities (e.g. the State Tax Administration, the Customs Service etc.).

5. There is a pressing need to develop and adopt a new version of the Accounting Chamber Act which would take into account the extension of the competence of the Accounting Chamber in the context of the 2005 constitutional reform, as well as positive innovations in the legislation governing the operation of other financial control bodies, in particular the Control and Audit Office. It is also important to pay more attention to the suggestion that the status of the financial audit authorities should be regulated in a comprehensive manner, in particular through adoption of the Public Financial Audit Act. This would establish the total system of relevant authorities and the principles of their cooperation with each other, and clearly separate their functions and powers.

6. The Constitution of Ukraine makes no definition of the grounds on which the powers of of the Head and other members of the Accounting Chamber can be terminated. Hence its provisions that do entitle the Verkhovna Rada to appoint and dismiss members of the Chamber can be interpreted as discretionary parliamentary powers. In fact, these entitle the Verkhovna Rada to dismiss members of the Chamber at any time and for any reason. , Furthermore, the risk of having political bias affect the way the posts within the Accounting Chamber are filled can potentially threaten the independence of the ACU officers from external influences of various branches of power, including the legislative one. Therefore the Constitution must, too, clearly specify the grounds on which the powers of the Accounting Chamber members can be prematurely terminated in the same way this is currently set out in the Accounting Chamber Act.
7. Despite the amendment made to Article 98 of the Ukrainian Constitution on 8 December 2004, the scope of the Chamber's powers still does not meet fully the recommendations of the Lima Declaration. In particular, the Accounting Chamber is deprived of the *legal* basis for performing an audit of the target funds outside of the State Budget, state-run companies and companies in which the state has interest. Even though in practice the Chamber can to some extent control the activities of such organisations, its efficiency can be improved by expanding the constitutional scope of the Chamber's control operations by amending Article 98 of the Constitution. Generally speaking, audit by the Accounting Chamber of the efficiency of the use of budget funds requires extension of its powers not only to the activities directly related to the use of budget funds, but also to the activities that are not directly related to the spending of the State Budget (management systems, division of functions and responsibilities, and accounting and reporting systems), in other words, the powers of the Accounting Chamber should embrace all financial, business and management activities of the organisations it audits. The need to specify the scope of the control competence of the Chamber is also called forth by the fact that unless this scope is clearly defined, no administrative penalties can be imposed on those failing to comply with the *legal* prescripts made by the Accounting Chamber (since the question of how *legal* these prescripts are cannot be decided). In addition, the issues of definition of the Chamber's control powers over the use of the State Budget funds, and aspects of Chamber's cooperation with other bodies exercising control in this area, such as the target funds, the State Tax Administration, the State Customs Service etc, still remain unsettled.
8. In practice, the Accounting Chamber has no efficient instruments to ensure the consideration, implementation and fulfilment of its recommendations by the audited institutions. Its ability to influence the operation of the audited institutions is limited to the notification of the management of the audited institutions, the law-enforcement authorities and the Parliament of the revealed violations and provision of recommendations on their correction, as well as the results of the consideration of the relevant recommendations. Therefore there is a need to increase the level of influence of the conclusions and recommendations of the Accounting Chamber by entitling the Accounting Chamber to file lawsuits with administrative courts in the interests of the state in order to cancel illegal acts of audited institutions. It is also necessary to specify the rights of the Accounting Chamber in commercial proceedings in the course of consideration of the lawsuits filed by the Accounting Chamber in the interests of the state.
9. Unlike the Main Control and Audit Office, the Accounting Chamber controls the use of the State Budget funds not by budget programmes, but rather by the budget funding priorities. Such a method of monitoring of the State Budget implementation is more comprehensive and requires considerable organisation, staff, and material resources, as well as on-site inspections. At the same time, the operation of the territorial offices of the Accounting

Chamber covers only half of the Ukrainian regions, where one office is sometimes responsible for 2-4 regions. It is for these reasons that the control activities of the Accounting Chamber have been mainly exercised at the *oblast* level (and only selectively), while the district and city levels have actually fallen out of control of the Accounting Chamber. Therefore, there is a need to set up a territorial office of the Accounting Chamber in all 27 regions, and to fix in legislation the principles of cooperation of these offices with regional offices of other financial control bodies (oblast control and inspection offices, tax administrations etc).

10. The Accounting Chamber gets irregular funding for its operations with considerable variations in the volumes of funding over the financial year. This has a negative influence on the financial and economic activity of the Accounting Chamber and decreases the efficiency of its work. This problem, however, should be solved not through amendment of the current regulations, but rather through timely transfer of funds to the State Budget managers, in particular the Accounting Chamber.
11. The level of independence of the Accounting Chamber and the extent of its control competence only partially meet the standards set by the Lima Declaration of Guidelines of Auditing Precepts. This needs to be addressed by the inclusion of specific legislation addressing the points above
12. To ensure more efficient Parliament-Accounting Chamber cooperation, it would be advisable to set up a special section in charge of the Chamber's relations with parliamentary committees, factions, and groups. This would attain a significant advisory role in terms of policies and strategies to enhance efficiency and accountability.
13. Even though the Accounting Chamber's findings often have a considerable focus on cases of illegal or inefficient use of the national budget funds, its proposals rarely go beyond general recommendations on the improvement of existing legislation. It would be reasonable for the Chamber to formulate such recommendations more clearly (e.g. to define the provisions which should be excluded from legislation or specific amendments which should be made). A specific provision should also be made for the Accounting Chamber to provide judgements not only on bills related to budget and finance (as is envisaged by the Accounting Chamber Act), but also as concerns other areas if the implementation of such bills can influence the national budget revenues or expenses. This links with point 12 above. Much more strategic value added could be gained from the Accounting Chamber's work and findings.
14. The most influential factors that decrease the parliamentary demand for opinions and recommendations of the Accounting Chamber include: (a) deliberate failure to observe laws by public executive authorities, which results in illegal and inefficient use of the national budget funds; (b) lack of response or formal reaction to the opinions and recommendations of the Accounting Chamber on behalf of law enforcement authorities, heads of institutions controlled by the Accounting Chamber, and the Parliament itself; and (c) inefficiency of the entire system of parliamentary control which deepens political irresponsibility of the Cabinet of Ministers and its subordinated authorities.

Even though solely legal methods can hardly be effective enough to impact upon what in some cases amounts to a problem of legal nihilism, the efficiency of the Chamber recommendations could be significantly strengthened by entitling it to file lawsuits to administrative and commercial courts to pursue certain audited institutions who are adjudged to have committed acts that are illegal. Such court proceedings could have an

important role in seeking redress to compensate for the losses made to the state arising out of illegal activities found by audit.

15. An increase of the efficiency of the Accounting Chamber-Parliament processes of cooperation also requires improvement of the procedure for formation and organisation of activities of the parliamentary committees. In particular, parliamentary committees relevant to the Accounting Chamber ought to be formed with due consideration of the principle of proportional representation of factions and groups; the Parliamentary Committees Act should provide for mechanisms to ensure openness of work of parliamentary committees. This would include: (a) disclosure of agendas of committee meetings, results of voting and consideration of issues etc; and (b) procedure and grounds for the organisation of joint committee meetings etc. It is also not advisable to preserve the present practice of voting without the actual presence of committee members.
16. Many Control and Audit Office (CAO) and Accounting Chamber functions overlap. The Accounting Chamber is, as noted, a constitutional authority and so is independent from the executive branch. At a certain stage it inevitably started to threaten the position and even the existence of the CAO, especially because the financial control performed by CAO was mainly fiscal, post-event, with control procedures aiming at finding deviations from the established norms and regulations, i.e. financial violations, as well as at discovering and punishing those guilty. The CAO has been perceived by the public, and retained as an enforcement authority, often used by businesses to fight competitors to gain control over markets and spheres of influence.
17. Partly in response, the CAO had to start to seek ways to improve its operations and achieve a more efficient way of functioning. As a result, the CAO was able to initiate carrying out qualified audit efficiency, to make its activities transparent for the society and to use its funds in an efficient manner, and so to provide an enhanced value. At the same time, and perhaps rather ironically, the Accounting Chamber demonstrates no such achievements, the fact that apparently stems from its strong position and confidence in the future.
18. The Accounting Chamber makes a full-scale legality audit and, in some cases, the correctness and efficiency audit. However, it performs no regular audits of financial statements of each state institution and provides no conclusions on the government's financial reporting in general. Furthermore, the Accounting Chamber carries out no real performance audits. As concerns this kind of audit (just as the correctness audit), currently the Accounting Chamber is lagging behind the CAO. As a result, the Chamber: (a) makes no meaningful assessment of the efficiency of the governmental policies and programmes; (b) does not assess the efficiency of distribution of the country's resources for the implementation of policies, programmes, and projects; and (c) does not assess the alternative ways and means of further operation of the governmental structures.
19. The Accounting Chamber has not yet adopted full use of modern audit analysis methods,. Instead it concentrates mostly on the inspection of whether the actual operations of public authorities comply with the current legislation. Thus, the recommendations developed by the Accounting Chamber are mostly general and aiming at organisational measures, to eliminate the existing discrepancies among laws and actual state of affairs. Unfortunately, these recommendations do not result in a significant revision of public policy by the relevant public authorities to implement the most efficient method of using limited public resources.

20. One of the provisions of the Accounting Chamber Act, where under the salaries of the Accounting Chamber staff must be 30% higher than the salaries of other categories of civil servants, is not implemented in practice. This is one of the realities which do not promote the necessary stability of the staff composition of the Accounting Chamber. Thus, there is a need to review the salaries established by the Cabinet of Ministers for the staff of the Chamber. Accounting Chamber leadership largely meets the requirements of quality staff selection, development and promotion. However, it would be advisable to hire more staff with business experience, and especially with experience in companies providing audit services. More employees ought to be covered by professional training. More funding should be provided to the improvement of staff qualification through in-service training and skills updating. Mandatory Professional Review System should be introduced for the Accounting Chamber experts. The staff should belong to and participate in the activities of professional expert organisations.
21. Despite the generality of the INTOSAI Public Finance Audit Standards, their comparison with relevant Chamber Standard reveals that the provisions of the INTOSAI Standards are more specific than the Ukrainian Accounting Chamber Standard. The non-specific nature of the Inspection Standard of the Accounting Chamber prevents the Accounting Chamber from both (a) effectively developing proposals on elimination of violations of the current legislation and (b) unveiling such violations and formulating judgements of how efficiently public finance has been used. Lack of specific provisions in the Chamber Standard will become even more critical if no other effective documents setting out the procedures for the Chamber to exercise its control functions are adopted. Due to the rather patchy regulation of the Accounting Chamber activities under present arrangements, one can doubt that the Chamber officials have detailed procedures for example, to review the internal management and control systems of an institution, or evaluate the mechanisms it employs to ensure management compliance with legal regulations.

Conclusions Specifically in Respect of Social Services and MoLSP and the other Line Ministries involved

Clearly the system of social services, as any other large government programme, has to have an appropriate system of accountability. This system should ensure that the money allocated to social services is used efficiently and in compliance with the existing legislation. It is also important that the accountability system takes into account the evolution of policy. This can be achieved partly through appropriate institutional frameworks, such as: (a) transparent formula-based rules on resource allocation; (b) investments in human capital of public servants involved in management of social service activities; and (c) establishing a competitive environment for social service provision.

Without an institution to monitor the overall effectiveness of public spending and consistency of spending with the regulations, misuse of funds and corruption are inevitable with any institutional framework of social services. This monitoring in Ukraine falls to the Accounting Chamber and Control Audit Office (CAO).

Is the current system of social services audited appropriately?

The current system of social services, mainly residential entities (internats), territorial centres, and some community based non-residential service agencies, could be audited relatively easily. But since its establishment, there are no reports of the Accounting Chamber audits of residential institutions providing social services. Rather, the Chamber has focused on audit of cash and in-kind social guarantees provided by the Ministry of Labour and Social Policy (MoLSP). This is justified

since these benefit payments account for more than 90% of MoLSP expenditures and the “residential institutions and NGOs funding ... account for around 1%¹”. As a rule, the AC does not audit specific budgetary programmes (such as expenditures on social services), but larger spheres, including several programmes or their parts. Limited financial and human resources of the Accounting Chamber preclude detailed regular audit of all entities, including the residential social services institutions for children, elderly and the disabled.

As noted, under the Resolution of Constitutional Court of Ukraine (1997) audited entities can refuse to submit documents and financial reports which do not record use of state budget funds by these entities. This means that audit of social service provision by the Accounting Chamber cannot necessarily estimate the overall efficiency of, for example, residential institutions when they use funds from the local budget. This problem could be solved by making further amendments to Article 98 of the Constitution.

Moreover, provisions in the Law on State Budget for some particular years contradict the Budget Code. Namely, irrespective of provision of Article 97 of the Budget Code, ‘Law on State Budget of Ukraine in 2002’ was issued without any statement on the distribution of the transfers on social programmes among local budgets (at city, municipal or rayon level). As a result, monies were not transferred directly from the State budget to the cities, municipalities and rayons, but firstly to an oblast budget and only then, from the oblast budget to the relevant local budgets. So, the Accounting Chamber could only audit the social transfers at the oblast level, and not at city, municipality or rayon levels². Nothing in the legislation prevents future audits from this flaw.

Would be the reformed social services system audited sufficiently?

Recently instigated reforms in social service provision, which facilitate “not for profit” (NGOs) as well as “for profit” (private sector) institutions to provide social services, are specified in the Law on Social Services and the MoLSP Concept for Reform (see Annex 4). Key to reform is the diversification of social services provision through the development of cost-effective community based activities, as an alternative and complement to services of residential entities, combined with decentralization, and more entities competing to provide pluralized services for the same amount of money.

The increased number of agents to be audited will further question the ability of AC to conduct this audit.

Furthermore, as noted there are only four Accounting Chamber regional offices, so audit of the decentralized entities providing social services will be difficult. Ten regional offices are planned for the 25 Oblasts, though offices on the territory of rayons, municipalities and cities are not envisaged. However, a branched system of regional offices of CAO, which cover each oblast, rayon, and city as well as city’s regions and inter regional offices is already in place and functioning.

Finally, as noted, the Accounting Chamber does not have substantial experience in the performance audits, which narrows the role and value of the Chamber especially in the reformed system of provision of social services and its evaluation.

Would there be any consequences for entities after auditing by AC?

¹ DFID-FRSSU “Assessment of Public Expenditures Management: Developing a Technical Framework for the Financial Reform of Social Services”, p.51.

² The transfers from oblast budget to city or rayon budgets are considered as local, rather than state budget transfers and, therefore, can not be audited by AC.

Assuming an improved ability of the Accounting Chamber in auditing, the question is then how to:

- oblige audited entities to improve their performance according to the Chamber's recommendations; or
- prosecute the officials or entities exhibiting inappropriate use of public funds?

The noted lack of collaboration of the Accounting Chamber with: (a) the executive branch of power; (b) law enforcement institutions; or (c) the Verkhovna Rada of Ukraine in an issue. The Accounting Chamber is directed not only by laws, but also by regulations issued by the executive branch of power (President of Ukraine and the Cabinet of Ministers of Ukraine). De facto, without pressure arising from the President or GoU, the legislation (mainly the basic law on the Accounting Chamber) can only play a negligible role in enforcement. These Presidential and GoU pressures used to take a form of special orders, to support the Accounting Chamber's recommendations. But only limited reaction of the Verkhovna Rada to the Accounting Chamber's findings are indicated by the repeated budget breaches despite their being documented by the Accounting Chamber. In addition, despite the Accounting Chamber Department on Social Policies and Public Administrations, and also the special committee of the Verkhovna Rada, the experts of these two agencies do not meet often, and are limited in practical cooperation

Clearly, improved collaboration between the Chamber and law enforcing institutions is of crucial importance to the accountability of the reformed, more diversified, provision of social services.

MoLSP and line ministries should be interested in a proper and efficient use of the social services funds and, thus, facilitate the audit process as well as eliminate the problems which are founded during audits. However, the complex environment and rent seeking behaviour of the institutions providing social services underline the need for an institutional and legal framework to facilitate adequate reaction of relevant government and non government institutions to the conclusions of an audit.

This leads to the following Specific Conclusions

In the context of reform it is important to:

1. separate the regular financial audit from performance audit, to capture the nature of reformed social service provision and examine efficiencies. The regularity audit should be performed by CAO, which has a branched regional structure and a large staff. The performance audit should be conducted by the Accounting Chamber - with the nature of its collaboration with the CAO clearly defined - since it has necessary independence for this kind of judgments.
2. upgrade and further train staff of the Accounting Chamber. Today the Chamber does not carry out performance audits. Launching a training program in performance audit of social services for AC staff seems to be necessary to fulfil recommendation 1 immediately above.
3. adapt relevant legislation, to ensure adequate reaction of law enforcement institutions, experts of the Verkhovna Rada and relevant ministries to the audit reports of Accounting Chamber, as well as of CAO. To ensure the effectiveness of Accounting Chamber performance audits, and to secure reaction to them, especially on local level, as social service reform continues, the legislation also should entitle the Accounting Chamber to file lawsuits with the administrative courts. Such

lawsuits would also facilitate abolition of regulations issued by the audited entities, which contradict national laws.

Section 1. INSTITUTIONALISATION OF THE ACCOUNTING CHAMBER AND ITS PRESENT DAY OPERATION

1. Development of the Legislation Governing the Accounting Chamber: General Overview

1.1. Ukrainian Constitution of 28.06.1996 and Accounting Chamber Act of 11.07.1996

The necessity to establish an independent body of external financial control – the Accounting Chamber – was first voiced in 1992 by Petro Hermanchuk, at that time deputy minister of finance. The Accounting Chamber bill, however, was submitted to the Parliament only on 17 November 1995. It generously endowed the Accounting Chamber with broad powers in terms of control of the use of public funds, which presupposed control of not only national budget expenses, but also revenues (national budget inflows, including the proceeds from the use of the state property, its privatisation and sale, administration of the state-owned property etc) and public assets beyond the national budget (money emission, gold reserves use, placement of gold and foreign currency reserves, state property use, observance of legislation governing the procedure for Ukraine to provide and receive loans, economic and other assistance; the use of the local self-governments' funds; the Pension Fund and other funds' assets; the use of funds by civil associations and companies that get either direct support from the national budget, or indirect assistance in the form of privileges etc). *Thus, as concerns the definition of the control powers and competence, the Accounting Chamber Act passed in 1996 was compliant with Lima Declaration of Guidelines of Auditing Precepts.*

To create proper conditions for the Accounting Chamber to exercise its functions, the Accounting Chamber Act also provided the Chamber with a number of imperative powers. Thus, its Article 12 set that the Accounting Chamber was entitled to seize documents of the audited objects should it reveal any forgery, falsifications, embezzlements or other abuses (the Ukrainian legislation vested similar powers into the inquiry and pre-trial investigation authorities); according to Article 13, the Accounting Chamber was entitled to issue mandatory for execution writs to the managers of the audited objects to clear the financial and business violations; should its writs be ignored, the Chamber was entitled to prohibit transactions on the accounts of the audited objects.

To ensure independence of the Chamber members from any outside influence, the Act used to establish that the Head, the First Deputy Head, the Deputy Head, Chief Controllers, and the Secretary of the Accounting Chamber were immune from criminal prosecution and could not have been arrested or brought to the criminal account without the Parliament's consent.

Noteworthy is that the Chamber bill was considered in parallel with the new Ukrainian Constitution. Its final version signed by the President made the Accounting Chamber Act incompliant with it. Thus, Article 98 of the Constitution set that the Accounting Chamber was the authority exercising control only of the use (and not the receipt) of the funds, the funds being only those of the national budget, excluding the ones outside it (the Pension Fund and other funds assets, the local self-governments' assets received as the national budget subventions etc).

Inconsistencies between the almost simultaneously adopted Constitution and Accounting Chamber Act impelled the President to contest certain provisions of the latter at the Constitutional Court of Ukraine due to their incompliance with the Constitution.

1.2. Constitutional Court Ruling of 22.12.1997 on the Accounting Chamber Case

On 28 December 1996, the President contested a number of provisions of the Accounting Chamber Act at the Constitutional Court of Ukraine due to their incompliance with the Constitution. These provisions defined the Chamber's status, tasks, functions, and powers. A ruling on this case was issued almost in one year after the beginning of its consideration and had a considerable influence on the further operation of the Accounting Chamber.

First of all, the Constitutional Court did not agree with the place of the Accounting Chamber in the system of the public financial control bodies. In particular, Articles 1 and 3 of the Accounting

Chamber Act defined the Accounting Chamber as the supreme authority in the system of public financial and economic control bodies. In the opinion of the Constitutional Court, this definition considerably broadened the constitutional purpose of the Accounting Chamber set up only to control the use of the national budget funds in accordance with Article 98 of the Constitution.

Secondly, having interpreted the Constitution in a literal sense, the Constitutional Court concluded that the powers of the Chamber extended only to the use of public funds, and only to that part of them which was included to the national budget revenues. Thus, the Court recognised unconstitutional those provisions of the Accounting Chamber Act that entitled the Chamber to exercise control of the national budget *receipts*,³ as well as the financial and economic activities of the state beyond the national budget, i.e. money emission, the use of the gold and currency reserves, provision and receipt of loans, use of the property not subject to privatisation and other state property etc. In addition, the Court ruling noticeably narrowed the parliamentary control functions in relation to the local self-governance bodies, companies, institutions and organisations receiving direct (subventions) or indirect (tax bonanzas) support from the national budget – according to the ruling, the Chamber’s oversight powers were extended only to the operation of the relevant objects related to the use of the State Budget funds.

Thirdly, the Constitutional Court also recognised unconstitutional the provisions of the Act that vested regulatory functions into the Accounting Chamber, in particular the right to issue to the audited objects mandatory for execution writs, as well as suspend account transactions of the audited objects. The argument used by the Court were that the Chamber is a body with parliament-derivative functions, therefore the exercise of regulatory functions would run counter the principle of the division of power into legislative, executive, and judicial branches.

Finally, the Constitutional Court recognised unconstitutional the provisions of the Accounting Chamber Act that made the Head, the First Deputy Head, the Deputy Head, Chief Controllers and the Secretary of the Accounting Chamber inviolable to the criminal prosecution. The grounding used by the Constitutional Court was that the inviolability principle was an exclusion from the principle of equality of civil rights to the law which can be established exclusively by the Constitution and shall be extended only to the persons directly envisaged by the Constitution, in particular members of parliament and judges, in order to protect from illegal intrusion into their work. Instead, no such immunities are envisaged by the Constitution for the members of the Accounting Chamber.

The above conclusions of the Constitutional Court have caused *a number of problems which should have been solved through constitutional amendments or, at least, through fundamental amendment of the Accounting Chamber Act.*

Thus, the number of objects subject to the Chamber’s control and, consequently, the limits of the Chamber’s competence could have been extended through the amendment of Article 98 of the Constitution which was interpreted by the Constitutional Court in a literal way (the Chamber was entitled only to check-up the use of funds, and only those of the national budget).

The above ruling also called forth the need to specify the content of those provisions of the Chamber Act which were only partially invalidated by the Court. Thus, the Constitutional Court generally did not prohibit that the Chamber exercise control of the national budget inflows – the motivation part of the Ruling suggests that the Accounting Chamber was entitled to exercise such control through “expert and analytical, and information” measures, but without performing the actual audit. Consequently, there was a need to specify in legislation the Chamber’s analytical and

³ However, according to Paragraph 2 of the motivation part of its Ruling, the Constitution Court set that “the conclusion on the unconstitutionality of the above provisions (entitling the Chamber to exercise control of the national budget revenues – *the Authors*) does not extend to certain Chamber’s expert and analytical, information and other kinds of activities, not associated with control and audit and performed in relation *to the national budget revenues*, should such activities be necessary to control the use of the national budget in accordance with Article 98 of the Constitution”. Thus, having formally deprived the Chamber of its control function in relation to the national budget inflows, the Court has actually allowed the Chamber to exercise such control, but without performing audit measures. The problem, however, seems to be that in practice it is rather difficult to distinguish between the collections of information and audits, as the chamber audit is the process of receiving and analysing financial information without a visit to the audited object.

information powers, and set the criteria of their differentiation from the audit activities. Also, since the Accounting Chamber was deprived of the right to issue binding writs, it became necessary to introduce mechanisms which would allow the implementation of or, at least, response to the Chamber's conclusions on behalf of the audited objects.

However, before the constitutional amendments of 8 December 2004, no systemic changes were made either to Article 98 of the Constitution, or the Accounting Chamber Act (see Table 1). Today, the Chamber operates on the basis of the Accounting Chamber Act with a number of provisions recognised either partially or completely unconstitutional in 1997, as well as a number of other acts and regulations issued by the Parliament, the President or the Government.

Table 1. Legislative Initiatives to Improve the Legal Regulation of the Accounting Chamber Status

| Title | Date Registration Number Sponsors | Status | Content |
|---|--|---|--|
| On Amendment of Article 98 of the Constitution of Ukraine | 14.01.1998 No. 0991 190 MPs | Vetoed by the President on 10.04.2002 and not considered ever since | The Accounting Chamber shall be responsible for controlling the <i>formation</i> and implementation of the national budget and <i>local budgets</i> as concerns the funding of the powers of local state administration and executive powers delegated to the local self-governance bodies in relation to revenues and expenditures. The powers, procedure for the organisation and activities of the Chamber shall be defined by a special act. |
| On Amendment of the Constitution of Ukraine | 22.12.1998 No. 2339 Group of MPs | Was not considered by the parliament, later replaced by Bill No. 0999 | The Accounting Chamber shall be responsible for controlling the formation of the national budget revenues. |
| On Amendment of the Code of Arbitration Procedures (on the Accenting Chamber) | 19.11.1999 No. 3494-2 MP Raykovskiy | Vetoed by the President on 29.12.2000, reconsidered and passed with the presidential proposals, signed by the President on 18.01.2001 | On the results of its audits, the Chamber shall be entitled to file lawsuits with the High Arbitration Court of Ukraine in the interests of the state. |
| On Amendment of the Accounting Chamber Act | 16.12.1999 No. 3494-4 MP Raykovskiy | Vetoed by the President on 15.02.2001 and not considered ever since | On the results of its audits, the Accounting Chamber shall be entitled to file lawsuits with the arbitration (currently, commercial) courts in the interests of the state. |
| On Amendment of the Constitution of Ukraine | 23.02.2001 No. 0999 168 MPs | Prepared for the first reading, but not considered | The Accounting Chamber shall be able to control the national budget inflows. |
| On Amendment of the Accounting Chamber Act | 26.10.2001 No. 8219 MPs Chukmasov, Antonieva, Ioffe, Kondratenko, Potimkov | Not considered in the first reading | The Accounting Chamber shall be able to control the observance of the antimonopoly legislation. |
| On Amendment of the State Financial Control System Act | 03.06.2002 No. 1131 MP Karmazin | Not considered in the first reading | Establishment of the structure of the public financial control system, definition of functions and powers of the Accounting Chamber, and principles of its cooperation with other financial control bodies. |
| On Financial Control | 30.08.2002 No. 1131-1 Cabinet of Ministers | Not considered in the first reading | Establishment of the system, kinds and tasks of the public financial control, and coordination mechanisms for their operation – a framework bill with many provisions to be specified |
| On State Financial Control | 18.02.2004 No. 1132-2 MP Konovalyuk | Not considered in the first reading | Establishment of the structure of the public financial control system, definition of functions and powers of the Accounting Chamber, and principles of its cooperation with other audit authorities. The Accounting Chamber shall be the supreme authority in the system of the public financial control bodies with coordination functions in relation to other audit institutions. |
| On Amendment of the Accounting Chamber Act (on the Chamber functions) | 06.04.2004 No. 5367 MP Onishchuk | Not considered in the first reading | The Accounting Chamber shall be deprived of its function to make preliminary analysis of the reports of the Antimonopoly Committee in terms of controlling its observance of the antimonopoly legislation. |

Source: Web-Site of the Verkhovna Rada of Ukraine (www.rada.gov.ua)

1.3. Budget Code of Ukraine

On 21 June 2001, the Parliament approved the Budget Code of Ukraine (the BCU)⁴ which specified the controlling powers of the Accounting Chamber in terms of the use of the national budget. BCU Article 110 sets that the Accounting Chamber exercises control of:

- the use of the national budget funds in accordance with the State Budget Act;
- the creation, servicing, and repayment of the state debt;
- *efficiency* of the use and administration of the national budget; and
- the use of the national budget to fund the powers of the local state administration and executive powers on *revenues* and expenditures delegated to the local self-governance bodies.

In addition, according to the BCU, the Accounting Chamber shall:

- i) participate in the discussion of the State Budget Act proposed for the relevant year,
- ii) provide its agreement to the reporting forms for the national budget implementation established by the State Treasury of Ukraine;
- iii) receive from the State Treasury:
 - (1) monthly and quarterly reports on the national budget implementation,
 - (2) information on the implementation of national budget protected articles,
 - (3) information on the use of the Governmental Reserve;
- iv) receive from the collection authorities:
 - (1) monthly reports on the actual inflow of taxes, charges, and other budget revenues,
 - (2) monthly reports on tax arrears, and
 - (3) quarterly reports on the budget losses due to tax bonanzas.

BCU Article 62 sets that within two weeks, after the Cabinet of Ministers officially submits its annual national budget implementation report, the Chamber shall prepare its conclusion on the use of the national budget to be considered by the Parliament together with the governmental report.

The Budget Code has established all necessary preconditions to strengthen the control exercised by the Accounting Chamber of the use of the national budget. At the same time, certain BCU provisions need further legislative specification, including through the amendment of the Accounting Chamber Act. Thus, even though BCU Article 110 entitled the Accounting Chamber to control the funding of the local state administration powers and revenue powers delegated to the local self-governments, the mechanisms of such control still have not been defined by legislation.

1.4. Act on Public Procurement of Goods, Works and Services of 15.12.2005

In the initial version of the above Act, there was only one article to generally set the powers of the public executive authorities on the control of public procurements. The Act of 15 December 2005 introduced fundamental amendments,⁵ including an additional chapter which defined the powers of the Antimonopoly Committee, the Main Control and Audit Office, the State Treasury, the State Statistics Committee, and the Accounting Chamber as concerns control of the public procurements. The Act obliged the Accounting Chamber to issue annual report on the legality and efficiency of public procurements, as well as set up a Special Public Procurement Control Commission within the Chamber out of the representatives of the Chamber, the Main Control and Audit Office, the State Treasury (one from each), three representatives of profile parliamentary committee and three representatives of the Tender Chamber of Ukraine, as well as NGO members and researchers. The Commission shall provide its consent to making procurement from a certain tender participant, consider complaints on the violation of the public procurements legislation, control the efforts of the Antimonopoly Committee in the area of the public procurement oversight, and support the establishment of transparent public procurement procedures.

Although the above amendments to the Public Procurement Act deserve only positive assessment, since they strengthen the Chamber's control powers in the terms of public

⁴ Budget Code of Ukraine No.2542-III of 21.06.2001//Vidomosti Verkhovnoyi Rady Ukrayiny.- 2001 - No. 37-38.- Art. 189.

⁵ Act on Procurement of Goods, Works and Services at the Expense of Public Funds No. 3205-IV of 15.12.2005 // Vidomosti Verkhovnoyi Rady Ukrayiny. – 2006 – No. 14. – Art. 118.

procurement, their constitutionality, however, still remains questionable, as the Act actually gives the Chamber law enforcement and management (coordination) powers contested by the Constitutional Court in 1997.

1.5. Code of Ukraine on Administrative Infringements

For quite a long time the Ukrainian legislation did not foresee legal liability for the delayed or failed provision of information or provision of untrue information to the Accounting Chamber, and setup of obstacles to the exercise of its control powers. To resolve this issue, in 2003 the Parliament amended the Code of Administrative Infringements by supplementing it with Article 188-19 whereby it has established administrative liability in the form of a fine for the failure to fulfil the legal requirements of the Accounting Chamber, hindering its work, provision of deliberately wrong information, and delayed provision of the relevant information to the Chamber⁶. The legal construction of this Article features a number of drawbacks: firstly, it extends only to individuals (citizens) and cannot be applied to collective actions (by boards of directors or executive councils); secondly, with a number of the Chamber Act provisions recognised unconstitutional, the question of which Chamber's requirements should be seen as *legal* in practice remains open; and thirdly, provision of, for example, true, but incomplete information on the financial and business activities of the audited object is not listed among the actions subject to administrative liability.

Due to the above reasons, no sanctions envisaged by Article 188-19 of the Code of Administrative Infringements have ever been applied.

1.6. Code of Administrative Justice (6.07.05) and Code of Commercial Procedure (6.11.91)

One of the mechanisms to ensure the efficiency of the Chamber's opinions and recommendations and their consideration by the Chamber-audited objects is to provide the Accounting Chamber with certain rights in the judicial area, in particular the right to file lawsuits in the interests of the state, and administrative lawsuits to cancel illegal acts of the audited objects.

The current Ukrainian legislation has no unified approach to the definition of the Chamber's rights in legal proceedings. Thus, Article 2 of the Code of Commercial Procedure⁷ (the CCP) sets that the Accounting Chamber shall be entitled to file lawsuits with commercial courts in the interests of the state, i.e. it has the same powers as the public prosecutors. At the same time, the CCP does not specify the conditions and procedures for the Chamber's participation in the commercial proceedings, defines no consequences for the cases when the Chamber refuses from its lawsuits etc. Thus, unlike the procedural rights of public prosecutors in terms of the representation of the state interests in courts, the procedural status of the Accounting Chamber for the similar representation is not sufficiently specified.

Also, unlike the Ombudsman, which has the same legal nature as the Accounting Chamber, the Accounting Chamber has no special status in the administrative process. Thus, if in accordance with Article 60 of the Code of Administrative Justice⁸ the Ombudsman is entitled, in the interests of third persons, to file lawsuits with administrative courts to cancel or invalidate decision of public authorities, the Accounting Chamber does not have such powers.

Analysis of the procedural legislation suggests that the Chamber's place and role in various kinds of legal proceedings (commercial and administrative) is defined in a different manner – in some cases the Chamber is entitled to file lawsuits in the interests of the state, in other cases (like, the administrative proceedings), it does not have such powers. These legal irregularities weaken the influence of the Chamber's opinions on the operation of the audited objects.

⁶ Amendments to the Code of Administrative Infringements No. 1128-IV of 11.07.2003 // Vidomosti Verkhovnoyi Rady Ukrainy. – 2004 – No. 8 – Art. 65.

⁷ Code of Commercial Procedure No. No. 1798-XII of 06.11.1991 // Vidomosti Verkhovnoyi Rady Ukrainy. – 1992 – No. 6 – Art. 56.

⁸ Code of Administrative Justice No. 2747-IV of 06.07.2005 // Vidomosti Verkhovnoyi Rady Ukrainy. – 2005 – No. 35 – 37 – p. 1358 – Art. 446.

1.7. Presidential Decree No. 1074/2000 of 19.09.2000 on Measures to Increase Efficiency of Control of the National Budget Use

Operation of the Accounting Chamber is regulated not only by laws and codes, but also by by-laws, including presidential decrees. To ensure that the Accounting Chamber efficiently exercises its powers, on 19 September 2000, the President issued a decree on Measures to Increase Efficiency of Control of the National Budget Use. The Decree prohibited decreasing the annual funding of the Accounting Chamber and instructed the Cabinet of Ministers to take measures to clear the violations revealed by the Accounting Chamber. The Cabinet of Ministers also had to improve the salaries of the Chamber staff and develop, in cooperation with the Chamber, a bill to grade up its operation. The bill had to envisage a mandatory response to the resolutions and opinions of the Accounting Chamber, entitle the Chamber to file lawsuits with general and arbitration courts to protect the interests of the state, and also establish liability for the failure to fulfil the legal requirements of the Chamber officials. In addition, the public financial control institutions (the State Tax Administration, the State Customs Service, the Main Control and Audit Office, the State Treasury etc), as well as the Prosecutor General's Office were supposed to help the Accounting Chamber in getting information on their control measures and the national budget implementation data, and to properly consider the materials passed by the Chamber to law enforcement authorities.

The majority of the Decree provisions were rather declarative and advisory and envisaged no proper mechanisms for their implementation. Thus, the Cabinet of Ministers did not prepare any amendments to the Accounting Chamber Act, the necessity of which was emphasised by the Decree.

1.8. Accounting Chamber Standard of 28 January of 2005 on the Procedure for Preparation and Conduct of Audits and Proccession of Their Results

The basic act that regulates the procedure for the functioning of the Accounting Chamber – the Accounting Chamber Act – was changed only once after the invalidation of some of its provisions. However, the amendments made thereto did not solve the majority of the problems associated with the operation of the Chamber, which is why the Accounting Chamber solves its day-to-day problems independently, by adoption of its own acts that regulate the procedure for the organisation and conduct of audit. Such acts include the Standard approved by the Chamber on the Procedure for Preparation and Conduct of Audits and Proccession of Their Results.⁹

The Standard defines the objects subject to the Chamber control, the rights and obligations of the Chamber staff in the cause of audits, the rights and obligations of the officials of the audited objects, grounds, kinds, and procedure for the organisation and conduct of audits, reporting on audit results and their publication, post-audit control etc.

1.9. Parliamentary Resolution on Establishment of Territorial Offices of the Accounting Chamber of 15.06.04 and Governmental Resolution No. 1577 on Aspects of Establishment of Territorial Offices of the Accounting Chamber of 18.11.04

On 15 June 2004, the Parliament decided to set up territorial offices of the Accounting Chamber and instructed the Government to settle all issues related to the setup of such offices¹⁰. On 8 April of the same year, a similar decision was made by the President.¹¹ To implement this decision, on 18 November 2004, the Cabinet of Ministers passed its Resolution on Aspects of Establishment of Territorial Offices of the Accounting Chamber,¹² which envisaged the setup of 11

⁹ Accounting Chamber Standard No. 28-6 of 28 January of 2005 on the Procedure for Preparation and Conduct of Audits and Proccession of Their Results. Before the Standards was approved by the Accounting Chamber Board, the procedure for the conduct by the Chamber of its audits and inspections was regulated by the relevant instruction of the Accounting Chamber approved on 3 December 1999.

¹⁰ Parliamentary Resolution No. 1784-IV of 15.06.2004 on Establishment of Territorial Representative Office of the Accounting Chamber // Vidomosti Verkhovnoyi Rady Ukrayiny. – 2004 – No. 38 – p. 1494 – Art. 481.

¹¹ Presidential Decree No. 400/2004 of 8.04.2004 on Amendment of Presidential Decree No. 1074 of 19.09.2000 // Ofitsiynyi Visnyk Ukrayiny. – 2004 – No. 15 – p. 39 – Art. 1031

¹² Governmental Resolution No. 1577 of 18.11.2004 on Aspects of Establishment of Territorial Representative Office of the Accounting Chamber // Ofitsiynyi Visnyk Ukrayiny. – 2004 – No. 46 – p. 91 – Art. 3059.

territorial offices as structural units of the Chamber Secretariat and the jurisdiction covering several regions. Local state administrations were instructed to support the Accounting Chamber in terms of providing its territorial offices with premises, transport, communications, staff and help to settle other organisation issues

Due to the lack of proper funding, only 5 of 10 territorial offices have been set up so far (in Dnipropetrovsk and Zaporizhzhya oblasts; Lviv, Volyn, Rivne, and Ternopil oblasts; Odesa, Mykolayiv, and Kherson oblasts; Donetsk and Luhansk oblasts; and Kyiv City and oblast).

1.10. Conclusions

1. Recognition of a number of key provisions of the Accounting Chamber Act (in particular, those that set the limits within which the Chamber was supposed to fulfil its functions and powers, objects of control etc) unconstitutional resulted in a gap in the legal regulation of the Chamber operation which still remains void.

2. Even though the Accounting Chamber is an independent body of *parliamentary* control, it is governed not only by the parliamentary acts, but also by by-laws issued by executive authorities (the President and the Government). Analysis of the latter suggests that, if the President or the Cabinet of Ministers do not instruct the executive authorities to provide “support” to the Accounting Chamber and territorial office for them to be able to exercise their powers, and if they do not require that the Chamber’s recommendations are taken into account, the role of legislative acts (including the Accounting Chamber Act) in the support to the Chamber’s operation generally remains quite low. In other words, the influence of the Accounting Chamber on the audited objects has no independent nature, and may be efficient only if “authorised” by the executive branch. This is convincingly proved by the text of the Presidential Decree analysed above.

3. There are ambiguous interpretations of the Ruling of the Constitutional Court of 1997 on the Accounting Chamber which results in the adoption of acts the constitutionality of which is quite doubtful. In particular, the amendments made in December 2005 to the Public Procurements Act, even though they efficiency of the auditing function of the Chamber, but they actually gives the Chamber powerful and regulatory functions in the area of public procurements. Thus, in the light of the Ruling of the Constitutional Court the above amendments may be recognised unconstitutional.

Position of the Head of the Accounting Chamber on Priorities of the Legislative Regulation of the Operation of the Accounting Chamber and Other Public Audit Bodies

„Currently, there are innumerable state authorities and services of financial control set up and functioning in Ukraine: the State Treasury bodies, control and audit bodies, the Ministry of Finance, tax and customs authorities, control bodies of the main budget asset managers, the National Bank with its territorial offices, the Accounting Chamber of Crimea and the Accounting Chamber of Ukraine.

However, their tasks and powers have not yet been clearly separated among them. There is also no clarity as concerns the cooperation both among all controlling bodies, and with the audit institution operating outside the system of state financial control.

As a matter of fact, the current public control system is not just a simple combination of ministries, agencies, and institutions that fulfil uncoordinated, separated and disordered control functions. Their functions, status and areas of control are defined by various acts, presidential decrees, governmental resolutions and other regulations. However, paraphrasing a famous popular expression, one can say, that seven cooks spoil the finance. Often, the above legislative and legal acts not only fail to ensure systemic state financial control, but also cause replication and parallelism in its exercise. All these testify that there is an urgent need to set up a single system of state financial control in the country.

It is also important to develop and pass a law on the principles of the state financial control in Ukraine. For the sake of truth, it should be noted that there have been attempts to put some order and pass such legislation. Currently, there is about a dozen of bills registered in the Verkhovna Rada to resolve this issue; these attempts, however, have no success, primarily due to the lack of a concept which would define not only the state control bodies, but also their powers. This means that, first of all, it is necessary to develop a strategic conceptual document that would define methodological principles of formation and functioning of the single system of state financial control.”

Source: Vasyl Symonenko. Why We Need the Single State Financial and Economic Control System // Dzerkalo Tyzhnya. – 2005. – No. 15 (543).

4. The legislation governing the Accounting Chamber is developed independently of the legislation regulating the activities of other financial control bodies. Thus, on 15 December 2005, the Parliament passed amendments to certain legislative acts of Ukraine to prevent financial violations, to ensure the efficient use of the budget funds, public and municipal property.¹³ The Act introduced the concept of the state financial audit and defined the public authorities that were entitled to make the audit, in particular the Accounting Chamber and the control and audit services. At the same time, the forms of financial audit and powers, used to implement the audit functions were specified only for the control and audit service.¹⁴ There is no commonality in legislative acts governing the cooperation among various bodies of financial control – while the internal financial control bodies in the system of executive authorities define the mechanisms of cooperation among them by adopting joint orders,¹⁵ the principles of the Accounting Chamber cooperation with other bodies of financial control (e.g. the State Tax Administration, the Customs Service) remain unspecified at the level of by-laws.

5. There is an urgent need to develop and adopt a new version of the Accounting Chamber Act which would take into account the extension of the competence of the Accounting Chamber on the results of the 2005 constitutional reform, as well as positive innovations in the legislation governing the operation of other financial control bodies, in particular the control and audit service. It is also important to pay more attention to the idea suggesting that the status of the financial audit authorities should be regulated in a comprehensive manner, in particular through adoption of the Public Financial Audit Act to establish the system of relevant authorities and the principles of their cooperation with each other, and to clearly separate their functions and powers.

2. Formation, Status, Competence, Structure and Organisation of Chamber Operation. Powers Related to Local Authorities

2.1. Appointment and Dismissal of the Chamber Head and Members, and Remunerations

2.1.1. Grounds and Procedure for the Appointment and Dismissal of Accounting Chamber Member: Requirements of the Constitution and the Accounting Chamber Act

Article 85.16 of the Ukrainian Constitution attributes appointment and dismissal of the Head and other members of the Accounting Chamber to the exclusive competence of the Verkhovna Rada of Ukraine. The appointment and dismissal procedures are set by the Accounting Chamber Act. For example, according to Article 10, the Head of the Accounting Chamber shall be appointed by the Rada on the submission of the Rada Chairman for the term of 7 years with the right of reappointment. The Head of the Chamber shall be appointed by secret ballot casting; a candidate is considered to be elected if on the results of the secret ballot such candidate gets the majority of votes of the constitutional composition of the Verkhovna Rada. Other members of the Chamber are appointed in the same way by secret ballot and for 7 years, but the candidacies are submitted not by the Rada Chairman, but by the Head of the Chamber.

¹³ Amendments to Certain Legislative Acts to Prevent Financial Violations, Ensure Effective Use of Budget Funds, Public and Municipal Property No. 3202-IV of 15.12.2005 // Vidomosti Verkhovnoyi Rady Ukrainy. – 2006 – No. 14 – p. 557 – Art. 117.

¹⁴ For the implementation of this Act, the Cabinet of Ministers of Ukraine passed the Regulation on the Financial Audit of Businesses by State Control and Audit Service (Governmental Resolution No. 361 of 25.03.2006 // Ofitsiynyi Visnyk Ukrainy. – 2006 – No. 13 – p. 147 – Art. 868). Substantial amendments were also introduced in March 2006 to the Regulation on State Financial Inspection of Implementation of Budget Programmes by Control and Audit Service (Governmental Resolution No. 1017 of 10.08.2004// Ofitsiynyi Visnyk Ukrainy. – 2004- No. 32 - p. 35 – Art. 2144.)

¹⁵ E.g. Joint Order No. 143/514 of 22.12.2001 issued by the Main Control and Audit Office and the State Tax Administration on Approval of the Procedure for Mutual Notification of Control and Audit Authorities and State Tax Authorities of Financial Violations and Measures Taken (Ofitsiynyi Visnyk Ukrainy - 2002- No. 3- p. 300- Art. 121.); Joint Order No. 439/551 of 29.07.2004 issued by the State Tax Administration and the State Tax Service on Approval of the Procedure for Cooperation Between Customs and Tax Authorities for Organisation and Conduct of Joint Regular Inspections of Foreign Business Operators (Ofitsiynyi Visnyk Ukrainy.- 2004 - No. 32- p. 132- Art. 2176)

According to Article 37 of the Accounting Chamber Act, the powers of the Head, the Deputy Head, the Secretary and chief controllers may be terminated only in certain cases:

- 1) due to the termination of the period of their powers;
- 2) on their personal resignation request;
- 3) when they become 65;
- 4) due to a prolonged disease impeding the official functioning; and
- 5) due to the violation of the Ukrainian legislation or abuse of office.

Also, only one person – the Chairman of the Verkhovna Rada – is entitled to initiate pre-term termination of powers of Accounting Chamber members in these cases which can be regarded as a mechanism to ensure their independence.

2.1.2. Appointment and Dismissal of Members of the Accounting Chamber: Collisions of the Constitution and the Accounting Chamber Act

Unfortunately, the Constitution gives no clear answer on whether Article 85.16 of the Constitution may be interpreted as giving the Parliament a discretionary power to dismiss the Head and members of the Accounting Chamber any time and on any grounds. On the one hand, the Constitution does not list the cases when the Chamber members may be dismissed, as well as does not refer to any acts that may contain the list of such cases. If Article 85.16 is to be interpreted in a literal way, then the Accounting Chamber Act which sets the grounds for the dismissal of the Chamber members may be considered as restricting the constitutional right of the Parliament to dismiss the Chamber members, or, in other word, it is unconstitutional. Another interpretation, proceeding from the spirit of the Constitution is also possible. Since the Accounting Chamber is an *independent* authority with a special constitutional competence, and specialisation at the level of a legislative act shall be a mechanism to ensure its independence, the Parliament shall be able to exercise its right to dismiss the Chamber members only in the exhaustive cases set by the relevant act.

| Grounds for Dismissal of Chamber Members: Certain Analogies with Heads of Local State Administrations |
|---|
| The Constitution sets similar grounds for the dismissal of the Accounting Chamber members and heads of local state administration (the LSA heads). Thus, according to Article 118 of the Constitution, the LSA heads are appointed and dismissed by the President on the submission of the Cabinet of Ministers; the Basic Law sets no exhaustive list of grounds for the dismissal of LSA heads. According to Article 85 of the Constitution, members of the Accounting Chamber are appointed and dismissed by the Verkhovna Rada, but like in the previous case, the Constitution also sets no list of grounds for dismissal. In both cases, such grounds are defined by the laws of Ukraine: by the Civil Service Act for LSA heads and by the Accounting Chamber Act for the Chamber members. Both acts protect LSA heads and Chamber members from political pressure on behalf of those who appointed them (Article 30 of the Civil Service Act establishes an exhaustive list of grounds for the termination of the civil service, while Article 37 of the Accounting Chamber Act sets a list of grounds for the dismissal of the Accounting Chamber members). However, in practice Article 118 of the Constitution is interpreted as giving the President a discretionary right to dismiss (on the submission of the Cabinet of Ministers) the LSA heads on any grounds. Often the presidential decrees on the dismissal of LSA heads contain no references to the Civil Service Act; the President mainly refers only to the relevant constitutional provisions. This practice has results in the politicisation of the offices of the LSA heads, and they are often dismissed either on political, or personal motives (the change of the government composition, formation of the new parliament, belonging of any LSA head to as certain political force, personal dislike of the head of state or government). In the light of the fact that the Constitution sets no grounds for the termination of powers of the Chamber members, there is a threat that the Accounting Chamber may be transformed into a political body that will be subordinated to the parliamentary majority and, consequently, the government. Therefore, it is advisable to set forward the grounds for the termination powers of the Chamber members directly in the Constitution. |

It should be noted that in between 1997 and 2006 there was no problem of variations in the interpretation of Article 85 of the Constitution. It came around, however, in the course of formation of the parliamentary majority in the new Verkhovna Rada. In particular, MPs inscribed into the Agreement on Creation of the Parliamentary Majority a provision according to which the Head of Accounting Chamber and the Ombudsman were included into the “package” of offices to be occupied by the representatives of the opposition upon creation of the parliamentary majority (the

implementation of the relevant provisions of the above agreement will result in the dismissal of the Ombudsman and the Chamber members).

Thus, to prevent any variations in the interpretation of the constitutional clauses that entitle the Parliament to dismiss the Chamber members, the Basic Law should stipulate that the Verkhovna Rada shall be entitled to dismiss the Chamber members only in accordance with the procedure and in the cases envisaged by law. This amendment to Article 85.16 of the Constitution will become a practical step aiming to ensure the independence of the Accounting Chamber from the political pressure on behalf of the legislative branch of power.

2.1.3. Remuneration of Accounting Chamber Members

| Non-Management Salaries in the Public Sector (Experts, Chief Consultants), 2006 | |
|---|---------------------|
| • Presidential Secretariat: | 830-1650 UAH |
| • State Administration Office: | 830-1550 UAH |
| • Cabinet of Ministers Secretariat: | 830-1700 UAH |
| • Parliamentary Secretariat, Parliamentary Committee Secretariats: | 830-1700 UAH |
| • National Security and Defence Council Secretariat: | 1500-1650 UAH |
| • Central Election Commission: | 830-1700 UAH |
| • Accounting Chamber: | <u>815-1495</u> UAH |
| • Ministerial Secretariats: | 625-1150 UAH |
| • Secretariats of Central Executive Authorities with Special Status (the Antimonopoly Committee, the State Property Fund): | 625-1100 UAH |
| • Secretariats of Other Central Executive Authorities: | 600-1000 UAH |
| • <i>Controllers, Auditors, Inspectors of the Main Control and Inspection Office and the State Tax Administration:</i> | 850-1260 UAH |
| • Oblast State Administrations: | 400-600 UAH |

1 USD = 5.05 UAH

The salaries of the Head, Deputy Heads, the Secretary and chief controllers of the Accounting Chamber generally approximate the salaries of the heads and deputy heads of the central executive authorities and are established by the Governmental Resolution of 30 June 2005.¹⁶ According to this Resolution, the remuneration of the Chamber members include: a) official salary (4648-5976 UAH); b) a service increment (up to 1859-2390 UAH), and c) monthly bonuses between 20% and 90% of the salary (up to 929-5378 UAH). Just for comparison: the official salary paid to the Head of the Accounting Chamber is higher than that paid to the Prosecutor General of Ukraine, the Chief Justice of the Constitutional Court and is equal to the salary of the Chairman of the Central Election Commission.

However, there is a considerable disproportion in the material support to the ordinary servants and leadership of the Accounting Chamber. Thus, the salary of a Chamber specialist (lower category of posts) is only 815-845 UAH¹⁷ which is equal to the salary of a specialist of any other state

financial control body. In other words, the provision of the Accounting Chamber Act according to which “salaries of the Chamber staff shall be 30% higher than the relevant salaries of civil servants” are not implemented into practice. This partially explains the instability of the Chamber staff over the entire period of its functioning: in 2000 the staff instability made by 19%, in 2001 – 10%, in 2002 – 11.1%, in 2003 – 4.1%, and in 2004 – 12.6%.

Generally, the existing scope of material support to the ordinary servants of the Chamber cannot be considered as stimulating the inflow of new and highly qualified staff to the Chamber, including from other state financial control authorities.

¹⁶ Governmental Resolution No. 519 of 30 June 2005 on the Remuneration of the Head, Deputy Heads, and Members of the Accounting Chamber // Ofitsiynyi Visnyk Ukrainy. – 2005 – No. 27 – p. 41 – Art. 1554.

¹⁷ Governmental Resolution No. 268 of 9 March 2006 on Regulation of the Structure and Remuneration of the Staff of Public Executive Authorities, Public Prosecution Offices, Courts and Other Authorities // Ofitsiynyi Visnyk Ukrainy. – 2006 – No. 10 – p. 245 – Art. 632.

2.1.4. Funding of the Accounting Chamber

Over the first five years of the Chamber functioning, the actual funding that it received was insufficient not only to cover the real needs, but also to meet the standards set for it by the State Budget Acts for the relevant years. Thus, in 1997 the Chamber received only 80% of its funding, which had a negative influence on the solution of its day-to-day problems related to the establishment of this authority.¹⁸ In 1999-2000, the funding of the Chamber was cut down to such an extent that about 80% of all the monies received were used for salaries, refurbishment of the premises, and purchase of office supplied. The insufficiency of the Chamber funding is particularly proved by the fact that in 2000 the Chamber had only 30% of the required office supplies.

Equally insufficient was also the funding received by the Chamber in 2001-2002. For example, the 2001 State Budget Act envisaged providing the Accounting Chamber with 11,474,400 UAH. However, on 21.06.2002 the Parliament approved amendments to the State Budget whereby the Chamber funding was decreased by 2,947,900 UAH. The final allowances for the maintenance of the Accounting Chamber were adjusted only at the end of 2002 by Act of 15.11.2002 with the funding established at the level of 10,473,500 UAH.¹⁹

The 2002 State Budget Act increased the expenditures for the Accounting Chamber to 16,830,900 UAH, but the real scope of funding was by 597,400 UAH smaller.

Between 2003 and 2005, the funding of the Accounting Chamber was rising and generally was approaching its real needs, but this was smeared by another problem – *irregularity of funding over the year*. In its 2002 Report, the Accounting Chamber mentions that it was receiving its funding in the last days of the month or the quarter which did not made it possible to fund the necessary expenses in due time or in full, and resulted in the violation by the Accounting Chamber of its commitments to the product suppliers.²⁰ The underfunding trends at the beginning of the year and over funding at the end of the year were also observed over 2003-2004: in the first quarter of the year the Accounting Chamber was receiving about 10% of its annual funding, and in the last – almost one third of the total scope.

Table 2. Accounting Chamber Funding (1997-2005)

| | Funding, Thousands UAH/Year | | | | | | | | |
|-------------------------|-----------------------------|--------|-------|-------|--------|--------|--------|--------|--------|
| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
| Approved Funding | 15,000 | 12,423 | 9,582 | 5,094 | 11,014 | 17,261 | 20,623 | 21,473 | 29,532 |
| Received Funding | 12,058 | 10,897 | 9,485 | 5,084 | 10,886 | 16,503 | 18,406 | 21,405 | 28,779 |

Insufficiency and irregularity of funding had an overall negative impact on the organisation of the functioning of the Accounting Chamber, and the rates of its institutionalisation as the Supreme Financial Audit Authority. In particular, over the four first years after its establishment, the Accounting Chamber focused not so much on the development of the financial control methods, but rather the development of proper labour conditions for its staff – timely payment of salaries, purchase of IT equipment and software, refurbishment of premises, instalment of fire safety systems etc. It is illustrative that over the recent 5 years, the Accounting Chamber allocated not more than 1% of its expenses for research and improvement of the staff qualification.

Table 3. Structure of Expenses of the Accounting Chamber 1999-2005

| | 1999 | 2000 | 2003 | 2004 | 2005 |
|---|--------|------|------|------|------|
| Salaries and Other Payments to the Staff | 25.30% | 54% | 35% | 43% | 66% |

¹⁸ Accounting Chamber Report 1997.

¹⁹ Accounting Chamber Report 2001.

²⁰ Accounting Chamber Report 2002.

| | | | | | |
|--|--------|--------|--------|-----|--------|
| Transport, Equipment Repairs, Maintenance Expenses, and Rent | 12.9%* | 21% | 8.40% | N/A | 10.80% |
| Overhaul Repairs | 28.60% | 10.20% | 25% | 5% | 3.30% |
| Computers, Signalling Systems, Long-Term Equipment | 27.60% | 5% | 17.87% | 14% | 0.75% |
| Household and Office Supplies, Press Subscription | 2.92% | 3% | 2.40% | 3% | 2.65% |
| Energy Supplies (Water, Gas, Heating), Municipal Charges and Communications | 12.9% | 3% | 4.70% | 5% | 4.50% |
| Missions | 1.10% | 3% | 2.90% | 3% | 2.30% |
| Staff Development and Research | 0.60% | 0.10% | 0.54% | 1% | 0.24% |
| IT System Deployment | - | - | - | 1% | - |
| Web Site Development | 0.75% | | | | |

* Including the payment of energy supplies, municipal services, and communications. Information for other years (1997, 1998, 2001, and 2002) is unavailable.
Source: Accounting Chamber Reports for 1999-2005

2.2. Organisation Structure

In 2004, the organisation structure of the Accounting Chamber was partially reformed aiming at more efficient distribution of powers among structural units of the Chamber and setup of its territorial offices.

Just like the previous, the new organisation structure of the Accounting Chamber is based on the sector and function principle, when certain units (departments) have a subject and sector competence, and others (e.g. independent Secretariat units) – functional.

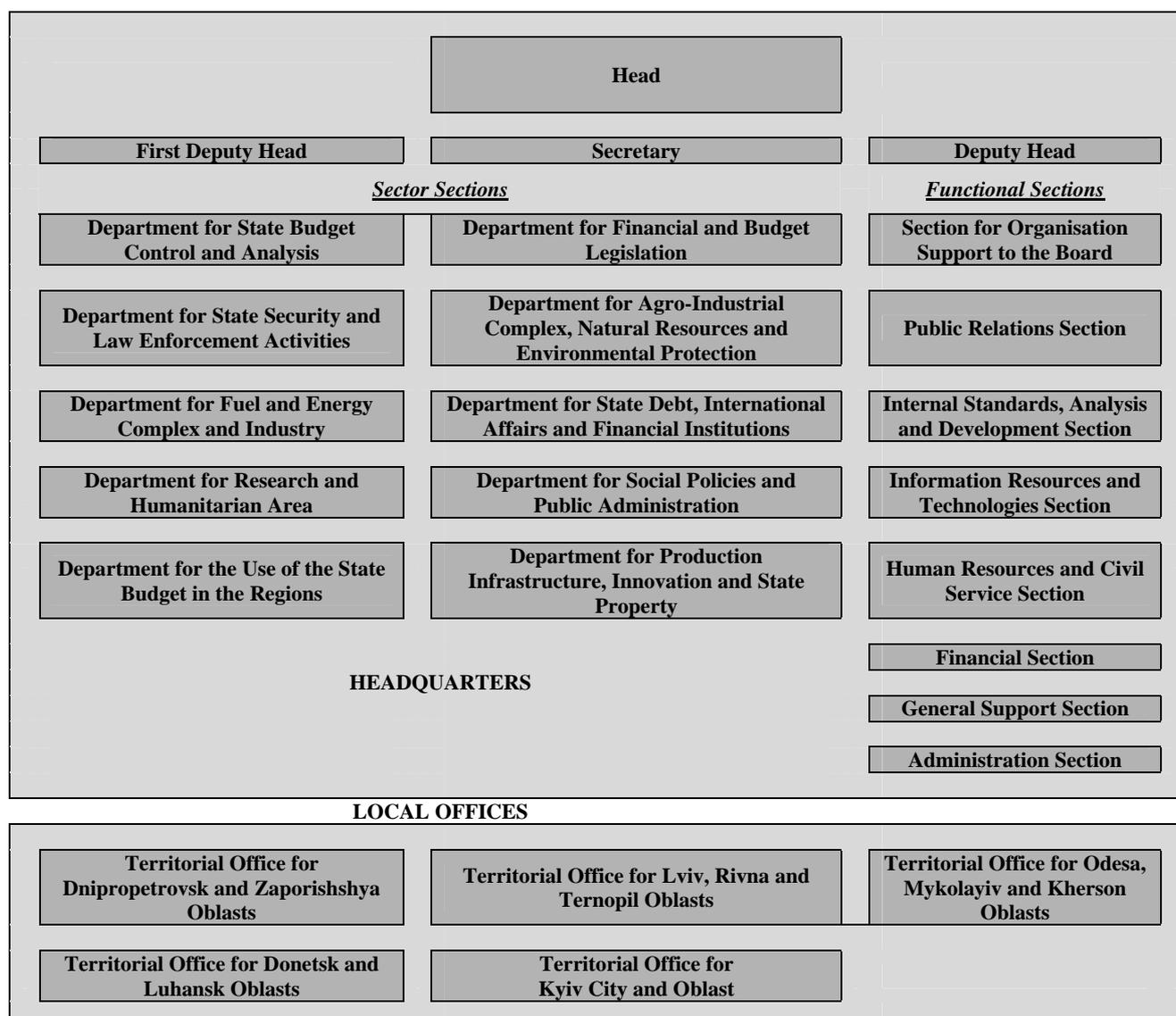
To improve the efficiency of the Accounting Chamber in the regions, in 2004 the Board of the Chamber decided on setting up 10 territorial offices as structural units of the Chamber Secretariat.²¹ However, due to the amount of funds available, only 3 out of 10 offices were established in 2004, and 2 were added in 2005. The territorial offices coordinate their operation with the departments of the Accounting Chamber and exercise the Chamber's control powers (inspections and audits) in the oblasts that they cover. According to Mr Chornutskyi, Director for Organisation Work of the Main Control and Audit Office (CAO), the Chamber's territorial offices have no direct relations with the CAO territorial offices, as such cooperation shall be performed exclusively at the level of headquarters of the Main Control and Audit Office and the Accounting Chamber and the stage of audit planning. It should also be noted, that unlike oblast control and audit offices, the Chamber territorial offices have no profile units with the main function of efficiency audit.

Currently, there is a need to develop a proper organisation and legal basis for the operation of territorial units, establishment of principles of their cooperation with the local financial control offices, increase of the funding of the Chamber to set up its territorial offices in all 27 regions.

The organisation structure of the Accounting Chamber is given in the chart below.

²¹ Accounting Chamber Board Resolution No. 15-3 of 19.07.2004.

Chart 1. Accounting Chamber Organogram since 1.09.2004



2.3. Scope of Competence: Legislation and Practice

The scope of competence of the Accounting Chamber is defined by the 1997 Ruling issued by the Constitutional Court on 8.12.2004. The content of the Constitutional Amendments suggest that the Accounting Chamber shall be entitled to control the inflow and use of only State Budget funds. Thus, *formally*, the Accounting Chamber shall not be entitled to control the activities of any operators which is not related to the use of budget funds, like the target funds, companies partially owned by the government (state and national joint stock companies), authorities that manage the state-owned companies (the State Property Fund), local self-government bodies that do not get direct subventions from the State Budget. However, despite of formal lack of powers, the Accounting Chamber exercises them in practice in a number of cases. This is explained by a number of reasons. For example, to assess the efficiency of the use of state budget funds provided for the maintenance of the State Property Fund (as any other manager of state budget funds), there is a need to audit its efficiency in general. This is how the Accounting Chamber constantly broadens its competence by extending its activities to the subjects that were taken out of its control by the 1997 Ruling of the Constitutional Court. Thus, in 2002, the Accounting Chamber analysed the formation and implementation of the Pension Fund budget, and did it not only in relation to the

money provided from the State Budget, but also as concerns the Fund's own resources, money received from the Unemployment Social Security Fund and the Fund for Security Against Production Accidents or Professional Diseases.²² Other examples may include the inspection by the Accounting Chamber of the use and repayment of foreign loans provided under the governmental guarantees to the UkrAgroTekhService Concern,²³ inspection and analysis of the financial and business operations of the state/national joint stock and holding companies,²⁴ the National Bank estimates²⁵ etc.

Also certain efforts to broaden the competence of the Accounting Chamber are made by the Parliament. In addition to amending in 2005 the State Procurement Act which empowered the Accounting Chamber to oversee and "coordinate" the activities in the area of public procurements through a Special Control Commission for Public Procurement set up at the Chamber, in 2006 the Parliament passed a resolution which allowed the Chamber to audit the operation of NaftoGaz Ukrayiny.²⁶

However, extension of the Chamber's control competence to the part of operation of audited objects not related to the use of the State Budget funds meets certain difficulties – in the light of the 1997 Ruling of the Constitutional Court, the audited object can always refuse to provide access to the relevant accounting, financial and other information which is not related to the legality and efficiency of the use of the state budget funds.²⁷ This considerably lessens the possibilities for the Accounting Chamber to perform a full-fledged audit. This problem may be solved only through further extension of the competence of the Accounting Chamber, in other words – by specification of the objects and boundaries of control powers of the Accounting Chamber in Article 98 of the Constitution.

2.4. Powers of the Accounting Chamber

By its 1997 ruling, the Constitutional Court deprived the Chamber of its regulation powers, in particular the power to seize documents, to issue binding writs, to stop transactions on the accounts of the audited objects etc. The Accounting Chamber Act vests three main rights into the Accounting Chamber:

²² Report on the Analysis of Formation and Implementation of the Pension Fund Budget / Prepared by the Department for Oversight of the Use of Target Budget and State Extra-Budget Funds and approved by Resolution No. 28-2 issued by the Accounting Chamber Board on 22.11.2002 – K.: Accounting Chamber of Ukraine, 2002. – Issue 18.

²³ Report on the Inspection of the Use and Repayment of Foreign Loans Provided under the Governmental Guarantees to the UkrAgroTekhService Concern / Prepared on the materials of the Report of the Department for the Oversight of the State Budget Debt and Activities of Banking Institutions approved by Resolution No. 6-3 issued by the Accounting Chamber Board on 02.04.2002 – K.: Accounting Chamber of Ukraine, 2002. – Issue 7.

²⁴ Report on the Inspection and Analysis of the Financial and Business Activities of State (National) joint Stock and Holding Companies in 2001-2003 approved by Resolution No. 27-4 issued by the Accounting Chamber Board on 07.12.2004 – K.: Accounting Chamber of Ukraine, 2005. – Issue 2.

²⁵ Report on the Inspection of the National Bank Estimates for 2003 / Prepared by the Department for State Debt, International Activities and Financial Institutions approved by Resolution No. 23-4 issued by the Accounting Chamber Board on 03.11.2004 – K.: Accounting Chamber of Ukraine, 2004. – Issue 21.

²⁶ See Parliamentary Resolution No. 3387-IV of 19.01.2006 on Unprofessional Actions of Public Executive Authorities as Concerns Provision of Ukrainian Consumers with Gas // Holos Ukrayiny Newspaper – 03.02.2006 – No. 21. According to Paragraph 1 of the above Resolution, the Accounting Chamber was instructed to make a comprehensive inspection of the financial and business activities of NaftoGaz Ukrayiny in 2004-2006 and its relations with RosUkrEnergo AG, a mediator in the supply of the natural gas to the territory of Ukraine.

²⁷ This explains the fact that the Accounting Chamber did not conduct a full-fledged inspection of the efficiency of the State Property Fund of Ukraine. The control powers of the Chamber as concerns the Fund were limited only to the analysis of the annual reports submitted for parliamentary consideration, as well as the study of indirect sources of information. For more details, please see the Information on the Implementation of the State Privatisation Programmes on the Results of the Analysis of Report of the State Property Fund of Ukraine / Prepared by the Department for the Control of Allowances to the Agro-Industrial Complex and Production Infrastructure – K.: Accounting Chamber of Ukraine, 2003. – Issue 4.

- a) *to receive information* from the audited objects (financial and business documents, certificates, accounting statements etc), banks (transaction documents), public authorities, and local self-government bodies;
- b) *to conduct inspections and audits* in accordance with the procedure established by the Accounting Chamber; and
- c) *to provide information* to the Verkhovna Rada and to heads of the audited organizations managing state budget funds, law enforcement authorities (should the violations revealed in the course of audits and inspections have any features of crime or administrative infringements) on the results of its control measures.

The Accounting Chamber has got individual powers from other legislative acts, like the Code of Commercial Procedure (to file law suits in the interests of the state), or, ad hoc, by State Budget Acts for the relevant year. Thus, the 2003 State Budget Act and 2004 State Budget Act entitled the Chamber to exercise control of the accuracy of budget repayments to VAT payers.

The powers of the Accounting Chamber *as concerns the local authorities* – local state administration and local self-government bodies – are defined by the Budget Code, mainly being the inspection of the use of the state budget funds in accordance of the budget funding priorities at the level of individual *oblasts*. There are a number of reasons for that.

Firstly, the Accounting Chamber acts not so much by budget programmes, but rather by funding priorities (medicine, anti-flood measures etc), which, due to the scale of the inspection, does not allow making a full audit of the state budget managers on the basis of the material, staff and other resources disposed by the Accounting Chamber.

Secondly, powers of the Chamber territorial offices extend only to individual oblasts; in some regions, such offices are still missing. This complicates the audit of the use of state budget funds at the level of districts and cities.

Thirdly, in some cases provisions of the State Budget Act for a certain year run counter the norms of the Budget Code of Ukraine and exclude audit possibilities at the level of districts and cities. Thus, in contradiction to Article 97 of the Budget Code, the 2002 State Budget Act was approved without the distribution of subventions for state social protection programmes among cities and districts (this means that money was first transferred to oblast budgets and them to district and municipality budgets)²⁸. Since the Accounting Chamber does not control the use of the local budget funds, it was not able to oversee the use of the funds transferred from oblast budgets to the district and municipality budgets.

To improve the efficiency of how the Accounting Chamber exercises its powers, including at the level of districts and cities, it is advisable to do the following:

- a) *to entitle the Chamber to file administrative lawsuits with administrative courts in the interests of the state, in particular as concerns the abolishment of acts issued by the audited objects due to their incomppliance with the Ukrainian law (this approach will improve the efficiency of the audit of the legality of the use of the State Budget funds; relevant amendments should be made to the Code of Administrative Justice;*
- b) *to specify the procedural rights of the Accounting Chamber as concerns its participation in the commercial proceedings related to the lawsuits filed in the interests of the state (amendments should be made to the Code of Commercial Procedure);*
- c) *to specify the scope of the Chamber competence to define the legality of the Chamber control powers in practice; and*
- d) *to set up territorial offices of the Chamber in all 27 regions.*

²⁸ Report on the Formation, Transfer and Use of Subventions from the State Budget by the Local Budget in Accordance with Article 34.4-5 of the 2002 State Budget of Ukraine / Prepared by the Department for the Oversight of the Use of State Budget Funds in the Regions and approved by Resolution No. 2-1 issued by the Accounting Chamber Board on 28.01.2003 – K.: Accounting Chamber of Ukraine, 2003 – Issue 7.

2.5 Compliance of the Scope of Competence and Powers and Degree of Independence of the Accounting Chamber with Lima Declaration of Guidelines of Auditing Precepts

2.5.1. Independence of the Accounting Chamber

According to Sections 5 and 6 of Lima Declaration, Supreme Audit Institutions shall have functional and organisational independence required to accomplish their tasks. The necessary degree of their independence shall be laid down in and guaranteed by the Constitution. Section 7 sets that Supreme Audit Institutions shall be provided with the financial means to enable them to accomplish their tasks, and, if necessary, it shall be entitled to apply directly for the necessary financial means to the public body decided on the national budget.

However, no above principles to ensure the independence of the Accounting Chamber have been reflected either in the current Constitution or other legal acts. Thus, on the one hand, the Accounting Chamber, proceeding from the 1997 ruling of the Constitutional Court, is an “*independent* body with special constitutional competence” defined by Article 98 of the Basic Law. Also, the above ruling also sets that the Verkhovna Rada shall not take over the powers of the Accounting Chamber. On the other hand, provisions of Article 85.16 of the Constitution, which set no grounds for the termination of powers of the Head and other members of the Accounting Chamber, can be interpreted as providing the Verkhovna Rada with a discretionary right for pre-term termination of powers of the Head or another other members of the Accounting Chamber. The fact that an exhaustive list of grounds for pre-term termination of powers of members of the Accounting Chamber is set by the Accounting Chamber Act shall not be considered as a mechanism protecting the Chamber members from ungrounded dismissal on political motives, since the constitutional clauses may be interpreted as having a priority in terms of their obligations as compared to the Accounting Chamber Act. In other words, in the light of too vague constitutional provisions, it is enough to refer to Article 85 of the Constitution to dismiss any member of the Accounting Chamber.

The Accounting Chamber is also far from being fully independent from the executive authorities as well. The practice proves that in fulfilling its functions and exercising its powers, the Chamber has been put into dependence form the timeliness and completeness of the transfer of funds for the support of its operation. Even though the problem of completeness of the Chamber funding has recently lost its significance (in the recent years, the Chamber has been getting the funds secured by a special article of the State Budget Act), there is still a problem of *timelines* of funding – the funds to support the operation of the Chamber are provided in an irregular manner, when less funding is provided at the beginning of the financial year with its accrual by the end of the year. Insufficient independence of the Accounting Chamber from the executive branch is also proved by the analysis of certain by-laws, like the presidential decrees which require that public executive authorities take into account the opinions and recommendations of the Accounting Chamber in their activities, support the operation of the Chamber territorial offices etc (in other words, the control activities of the Accounting Chamber in relation to the audited objects is to some extent indirectly authorised by the President). *Thus, the legislative guarantees of the Chamber independence need to be further strengthened, including through constitutional amendments to define an exhaustive list of grounds for preterm termination of powers of the Chamber members.*

2.5.2. Scope and Limits of Control Powers

Section 18 of Lima Declaration sets all financial operations, regardless of whether are reflected in the national budget, shall be subject to audit by Supreme Audit Institutions. According to Section 19 of the Declaration, Supreme Audit Institutions shall be empowered to audit the collection of taxes as extensively as possible and, in doing so, to examine individual tax files. The Lima Declaration attributes to the control competence of Supreme Audit Institutions also control of

industrial and commercial companies with public participation, organizations receiving subsidies, and control of public procurement of works and services.

Currently the competence of the Accounting Chamber is defined by Article 98 of the 1996 Constitution, the 1997 Ruling of the Constitutional Court, as well as the Constitutional Amendments of 8 December 2004, the Budget Code of Ukraine, and the Public Procurements Act of 15 December 2005. According to the above acts, the Accounting Chamber shall exercise control of the use of the State Budget funds, the State Budget revenues, as well as control of the implementation of local budgets as concerns their revenues and expenses, and control of public procurements.

In this context, it should be noted that the new version of Article 98 of the Constitution, the functions of the Chamber as concerns the control of the State Budget *revenues* remain unspecified and require proper mechanisms to be setup for their implementation by defining in the Accounting Chamber Act the powers related to the exercise of the relevant functions (in particular, as concerns the introduction of the mechanisms of cooperation among the Accounting Chamber, the State Customs Service, the State Tax Administration, target funds in the area of control of the State Budget revenues, information exchange, access to tax and customs files etc). The Accounting Chamber is also not able to exercise its powers envisaged by the Budget Code as concerns the control of the *local budget revenues* in the part that is not related to the inter-budget relations (local taxes, own revenues of the local self-government bodies) due to the lack of the legislative procedure for the exercise of such powers and the doubtful constitutionality of the relevant Budget Code clauses. Even though in practice the Accounting Chamber exercises some control of the operation of the state/national joint stock companies or target funds, with their financial resources being separated from the State Budget, such control lacks proper legal basis – provisions of the Accounting Chamber Act which would empower the Chamber to control the financial and business operation of the above subjects related to the use of “non-budget funds” were recognised unconstitutional in 1997. *Thus, the legislative limits of the Chamber competence do not meet the limits set by the paragraph 3 of Section 18 and Section 23 of Lima Declaration. Extension of the scope of control competence of the Accounting Chamber needs further amendment of Article 98 of the Constitution of Ukraine with further specification of the provisions of Article 98 of the Accounting Chamber Act.*

2.6. Conclusions

1. The Constitution of Ukraine lists no grounds for the pre-term termination of powers of the Head and other members of the Accounting Chamber, hence those its provisions that entitled the Verkhovna Rada to appoint and dismiss members of the Chamber may be interpreted as discretionary parliamentary powers, i.e. those that entitled to the Verkhovna Rada to dismiss members of the Chamber any time and due to whatever reasons. Furthermore, the risk of having political bias affect the way the posts within the Accounting Chamber are filled can potentially threaten the independence of the ACU officers from external influences of various branches of power, including the legislative one. Therefore the Constitution must, too, clearly specify the grounds on which the powers of the Accounting Chamber members can be prematurely terminated in the same way this is currently set out in the Accounting Chamber Act.

2. The norms of the Accounting Chamber Act whereunder the salaries of the Accounting Chamber staff shall be 30% higher the salaries of other categories of civil servants are not implemented in practice. This is one of the facts which do not promote stability of the staff composition of the Accounting Chamber. Thus, there is a need to review the salaries established by the Cabinet of Ministers for the staff of the Chamber.

3. Despite of the amendments made to Article 98 of the Ukrainian Constitution on 8 December 2004, the scope of the Chamber’s powers still does not meet fully the recommendations of the Lima Declaration. In particular, the Accounting Chamber is deprived of the *legal* basis for performing an audit of the target funds outside of the State Budget, state-run companies and

companies in which the state has interest. Even though in practice the Chamber can to some extent control the activities of these subjects, its efficiency can be improved by expanding the constitutional scope of the Chamber's control operations by amending Article 98 of the Basic Law. Generally, the audit by the Accounting Chamber of the efficiency of the use of budget funds requires extension of its powers not only to the activities directly related to the use of budget funds, but also to the activities that are not directly related to the spending of the State Budget (management systems, division of functions and responsibilities, and accounting and reporting systems), in other words, the powers of the Accounting Chamber should embrace all financial, business and management activities of the organisations it audits. The need to specify the scope of the control competence of the Chamber is also called forth by the fact that unless this scope is clearly defined, no administrative penalties can be imposed on those failing to comply with the *legal* prescripts made by the Accounting Chamber (since the question of how *legal* these prescripts are cannot be decided). In addition, the issues of definition of the Chamber's control powers over the use of the State Budget funds, and aspects Chamber's cooperation with other bodies exercising control in this area, such as the target funds, the State Tax Administration, the State Customs Service etc, still remain unsettled.

4. In practice, the Accounting Chamber has no efficient instruments to ensure the consideration, implementation and fulfilment of its recommendations by the audited institutions. Its ability to influence the operation of the audited institutions is limited to the notification of the management of the audited institutions, the law-enforcement authorities and the Parliament of the revealed violations and provision of recommendations on their correction, as well as the results of the consideration of the relevant recommendations. Therefore there is a need to increase the level of influence of the conclusions and recommendations of the Accounting Chamber by entitling the Accounting Chamber to file lawsuits with administrative courts in the interests of the state in order to cancel illegal acts of audited objects, as well as by specifying the rights of the Accounting Chamber in the commercial proceedings in the course of consideration of the lawsuits filed by the Accounting Chamber in the interests of the state.

5. Unlike the Main Control and Audit Office, the Accounting Chamber controls the use of the State Budget funds not by budget programmes, but rather by the budget funding priorities. Such a method of monitoring of the State Budget implementation is more comprehensive and requires considerable organisation, staff, and material resources, as well as on-site inspections. At the same time, the operation of the territorial offices of the Accounting Chamber covers only half of the Ukrainian regions, where one office is sometimes responsible for 2-4 regions. It is for these reasons that the control activities of the Accounting Chamber have been mainly exercised at the *oblast* level (and only selectively), while the district and city levels have actually fallen out of control of the Accounting Chamber. Therefore, there is a need to set up a territorial office of the Accounting Chamber in all 27 regions, and to fix in legislation the principles of cooperation of these offices with regional offices of other financial control bodies (*oblast* control and inspection offices, tact administrations etc).

6. The Accounting Chamber gets irregular funding for its operations with considerable variations in the volumes of funding over the financial year. This has a negative influence on the financial and economic activity of the Accounting Chamber and decreases the efficiency of its work. This problem, however, should be solved not through amendment of the current regulations, but rather through timely transfer of funds to the State Budget managers, in particular the Accounting Chamber.

7. The level of independence of the Accounting Chamber and the extent of its control competence only partially meet the standards set by the Lima Declaration of Guidelines of Auditing Precepts. This needs to be addressed by the inclusion of specific legislation addressing the points above.

Section 2. COOPERATION BETWEEN THE ACCOUNTING CHAMBER AND THE VERKHOVNA RADA

1. General Overview of the Legislative Principles of the Chamber-Parliament Cooperation

The main legislation that regulates the relations between the Accounting Chamber and the Parliament are the Accounting Chamber Act, the Budget Code of Ukraine, the Rules of Procedure of the Verkhovna Rada, and the Parliamentary Committees Act.²⁹ Three latter acts establish only the procedure for the appointment and dismissal of Chamber members by the Parliament (the Rules of Procedure), the principles of cooperation among the parliamentary committees and the Accounting Chamber (Article 31 of the Parliamentary Committees Act), and the procedure for the Chamber-Parliament cooperation in the budgeting process. Accordingly, *the Accounting Chamber Act is regulates the cooperation between the Accounting Chamber and the legislative authority in the most detailed.*

The *forms* of cooperation between the Accounting Chamber and the Verkhovna Rada defined by the above Act can be divided into mandatory and optional, which are used at the discretion of the Accounting Chamber upon the decision of its Board.

The first form of cooperation includes:

- Instructed by the Parliament development of legislation on the State Budget of Ukraine, budget and financial policies, public target and governmental programmes funded by the national budget, and international treaties of Ukraine;
- Implementation of appeals of not less than 150 members of parliament on the issues related to the competences of the Chamber (organisation of inspections, audits, provision of information etc);
- Provision of information to the Parliament on the implementation of the State Budget, results of inspections and audits, the revealed facts of abuses and corruption, and on the submission of the relevant materials to the law enforcement bodies; and
- Submission of the annual written general report on the results of implementation of instruction of the Parliament, conducted inspections and audits, and expenses used for the Chamber control activities.

The second form of cooperation includes:

- Conduct of extraordinary inspections on the basis of resolutions and instructions of the Parliament, requests committees and members of Parliament; and
- Provision of conclusions and written replies to the questions attributed to the Chamber competence on the instructions of parliamentary committees, as well as interpellations and requests of members of parliament.

2. Practical Aspects of Parliament-Chamber Cooperation

Currently, the Accounting Chamber has no special unit to be in charge of its relations with the Parliament. The interviews with the upper staff of the parliamentary committees for social policy and labour, and finance and banking have revealed that the main cooperation takes place at the level of the Chamber, Parliament and profile committees' leadership. However, when the most important financial and budget related bills are considered at committee meetings, usually, members of staff of the profile Chamber sections, who are well-aware of the relevant aspects, are present at such meetings. At the same time, in his interview to the Agency for Legislative Initiatives, MP Onischuk mentioned that the Accounting Chamber is not efficient enough in its cooperation with parliamentary factions and groups; its representatives do not participate in round tables, seminars and other public events on the issues related to the Accounting Chamber.

²⁹ Parliamentary Committee Act No. 116/95-BP of 04.04.1995 // Vidomosti Verkhovnoyi Rady- 1995- No.19- Art. 154.

2.1. Cooperation with Parliamentary Committees

„We have known about what is described in the opinions of the Accounting Chamber for a long time. That's why, unlike the Budget Committee, our Committee has not had close cooperation with the Chamber. As concerns the lawmaking, we are more interested in cooperation with trade unions”.

From an interview with a member of staff of the Social Policy Committee

Analysis of the newsletters published by the Accounting Chamber and our interviews with the officials of the parliamentary committees suggest that the Accounting Chamber has established the closest relations with the budget committee which takes into account the majority of the Chamber proposals in the budgeting process. Enlargement of the number of targets audited by the Chamber have activated its cooperation with other parliamentary committees, like those on finance and banking, national security and defence, and construction, transport, and communications. *However, the Chamber does not support any active contacts with the majority of other parliamentary committees.*

2.2. Participation in Legislative Work and the Weight of Chamber Recommendations

Mainly, participation of the Accounting Chamber in the legislative process is limited by making legislative proposals on the national budget of Ukraine for the relevant year, as well as on the acts that have a direct impact on the efficiency of how the Chamber exercises its functions and powers, in particular those on the public audit system in Ukraine, on control and audit service, on the state debt, on the State Treasure, the draft Code of Commercial Procedures, the Rules of Procedure of the Verkhovna Rada of Ukraine etc. The majority of the relevant proposals are aiming at establishing a proper legislative framework for the operation of the Accounting Chamber.

„Materials of the Chamber are taken into account only when the Budget Committee is working on its bills; in individuals' cases, it is also done by the Committees on Economic Policy, on Finance and Banking, and on Social Policy and Labour.”

From an interview with MP Ponomarenko (the Communist Faction)

„All parliamentary committees receive the Chamber newsletters published on the results of their audits. Normally, the Finance and Banking Committee takes into account the suggestions made by the Chamber as concerns the current laws. The Accounting Chamber has not right of legislative initiative, and thus it is unable to initiate legislative amendments. Having received the Chamber opinions, the Committee puts them aside until any member of parliament submits a bill related to the laws the deficiency of which was mentioned in the opinions. The recommendations of the Chamber are taken into account at the stage when relevant bills are developed at the committee. Thus, the proposals of the Chamber were taken into account for the purpose of improving the procedure for the sale of seized property.”

From an interview with a member of staff of the Finance and Banking Committee

The study of the Chamber reports suggests that the Chamber recommendations are mainly taken into account in the course of the budgeting process and consideration of the budget related bills. If the Chamber reveals any drawbacks and gaps in the legal regulation, this usually does not result in the shrinking of national budget programme funding, or development of legislation to settle the problems revealed by

the Accounting Chamber. Thus, the Chamber has many times discovered numerous violations in the area of public procurements, but relevant facts did not find any parliamentary response. In 2005, the legislation on public procurement was amended, however, the common expert opinion is that the conceptual problems of public procurement still have not been solved.³⁰ Lack of proper response on behalf of the Parliament to the conclusions and recommendations of the Accounting Chamber is also proved by the identical budget violations which the Chamber reveals year in year.³¹

Generally, the Accounting Chamber is not particularly active in other areas of legislative work (i.e. social, educational, cultural and other sections). As a rule, the Chamber does not develop clear legislative proposals in these areas, confining itself only to the conclusions on the imperfection of the current legislation, discover of drawbacks in the regulation system etc.

2.3. Chamber's Participation in the Budgeting Process

³⁰ See *Procurement Bedlam* by Yu. Skolyatnyi // *Dzerkalo Tyzhnya*. – 2006 – No. 14 (593).

³¹ Accounting Chamber Reports 2002, 2003, and 2004.

The main forms of the Chamber's participation in the budgeting process are defined by the Budget Code and the Accounting Chamber Act:

- a) Making proposals on the national budget act submitted by the government and amendments thereto;
- b) Provision of the Parliament with conclusions on the implementation of the national budget act for certain periods (three and six months) or for a year.

The Chamber's cooperation with the profile parliamentary committees is most efficient only when the budget act is considered – this is when the majority of the Chamber's proposals are taken into account as concerns the individual budget articles. At the same time, there is no particular "demand" for the conclusions on the implementation of the national budget since after the budget act is passed, the Parliament actually loses any efficient levers to influence the budgeting process up till the time when a new budget will need to be adopted. But since every new budget is considered under the conditions of different macroeconomic indicators and status of legislation, and very often in an accelerated manner, the Chamber conclusions on the implementation of the previous budget act remain unneeded.

2.4. Control Measure on the Parliamentary Initiative

Operationally, the Accounting Chamber is not independent from the Parliament, therefore it performs the majority of its inspections and audits on the instruction of the Parliament, its committees or individual members of parliament. Thus, in 2001, on the initiative of the above subjects, the Accounting Chamber performed 9 control and analysis measures (on parliamentary resolutions, request of a temporary investigation commission, the parliamentary committee for health, mother and child care, and individual MPs). In 2002, the number of such measures went up to 15 (on parliamentary resolutions, parliamentary requests and interpellations, requests of parliamentary committees on budget; on finance and banking; on pensioners, veterans and disabled individuals; on youth policies, physical training and sport; and the Ombudsman); and in 2003 – to 6 (on the parliamentary resolutions, instructions of the Chairman of the Rada, requests of the parliamentary committee on agrarian policies and land relations; individual MPs).

2.5. Reporting to the Verkhovna Rada

There are three methods used by the Accounting Chamber to report to the Parliament on its efforts:

- a) By forwarding to MPs letters with its conclusions on inspections and audits, as well as related materials;
- b) By submitting for the parliamentary consideration an annual report on its activities;
- c) By replying to the MP requests.

The Chamber annual reports normally have the same structure which includes:

- a) Summary of the control efforts of the Chamber;
- b) Reaction of the audited objects to the Chamber's conclusions and recommendation;
- c) Information on organisation, logistics and staff support to the Chamber in the year under report.

The Accounting Chamber Act sets no specific dates for the submission of the annual reports and forms of the Parliament's response to the reported information. Therefore, in 1998 the Parliament made no decisions on the consideration of the Chamber reports. It should also be noted that in some years the Chamber submitted no "full-fledged" reports at all. Thus, in 1998 the Chamber prepared only a press release describing the main progress made its operation, and in 2006 it just reported on the use of the budget funds received for its support in 2005 (no 2005 Report was submitted by the Chamber for parliamentary consideration).

„In its opinions and recommendations done either on re results of the study of the national budget implementation, or audits and other control measures, the Accounting Chamber always focuses on the definition of the cause-effect relations that result in various violations.”

From an interview with MP Ponomarenko (the Communist Faction)

3. Reasons of Insufficient Efficiency of Chamber-Parliament Cooperation

3.1. Inefficiency of Chamber-Parliament Cooperation at the Institutional Level

Unlike ministries and other central executive authorities, the Accounting Chamber has not structural unit in charge of cooperation with the Parliament at the political level. As a rule, the Accounting Chamber cooperates with the parliamentary committees, leadership and factions either at the level of the leadership of the Accounting Chamber and relevant authorities, or at the level of the Chamber experts who participate in the meetings of the parliamentary committees during the discussion of bills on which the Accounting Chamber prepares its expert opinions. At the same time, the Head of the Chamber is too busy with ensuring the Chamber’s operation which does not give him with too many possibilities to make formal and informal visits to the leaders of parliamentary factions and groups, committees or individual members of parliament.

„The Accounting Chamber should pay more attention to its cooperation with factions and relevant profile committees in Parliament. There is a need for new forms of cooperation with them (committee hearings, round tables etc).”

From an interview with MP Onishchuk

Thus, *the function of political cooperation between the Accounting Chamber and the Parliament should be put on a special structural unit, like the Department for Relations with the Parliament.*

3.2. Unclear Recommendations of the Chamber

The majority of the opinions prepared by the Accounting Chamber lack specific proposals on amendments to the current Ukrainian legislation, while the opinions themselves also have quite general character, and therefore cannot be an efficient instrument to form public policies, or define priorities in legislative work and funding. The most typical examples can be found below.

Examples of Chamber Opinions and Recommendations to Improve Legislation

- Ukraine lacks an integral public procurements system which would be compliant with the Public Procurements Act and ensure achievement of the optimal and rational use of public funds. The established violations are systemic, and the reasons that cause them are present at all levels of public procurement management, starting with the legislative support and ending with organisation of the internal control system in this area... Dependence of the choice of the procurement procedure on the value limit set for the procurement item, as envisaged by Articles 2, 14, and 32 of the Public Procurements Act, provokes the customer’s tender committees for various manipulations to avoid an open auction (division of the procurement item, seeking grounds for making a procurement from one participant etc). Existence of the norm which requires that a specially authorised public executive body provides its consent for making procurement from one participant (Article 33) creates an environment for corruption and other abuses.
- The experiment launched by the Act of Ukraine on Reconstruction and Paid Use of Kyiv-Odesa Highway (No. 855-IV of 22.05.2003) as concerns organisation, funding and performance of works for the reconstruction (construction) of highways in Ukraine has not confirmed its efficiency and should not be used in this form in the future.
- “Currently, there is no legislation that would establish specific priorities and procedure for the use of the national budget funds allocated to the reconstruction of the coal industry.
- Legislative support to the forestry relations is not developed well enough. Obligations of a private owner as concerns recreation of reforestation, forest care and protection are not defined in legislation. There is also no public control mechanism to supervise how forest users observe the forest and nature protection legislation.
- The legislative support to the operation of the Fund for Security of Private Deposits in Ukraine and procedure for formation and use of public funds that mainly originate from the national budget is incomplete and not well-developed, which essentially limits the Fund’s powers as compared to the international practice. This prevents the Fund from participation in the readjustment of the problematic banks that participate in the Fund, controlling the efforts of bank liquidators and involved agent banks as concerns the guaranteed return of savings to the depositors... Also no regulation has been proposed to govern relations associated with the possibilities to invest the assets of the Fund in the absence of public securities auctions, their placement on the deposits of the National Bank of Ukraine, payment for the use of temporary free remainders of the Fund’s assets by the National Bank of Ukraine, making additional payments to individuals should the guaranteed amounts of repayments be increase, which has a negative influence on the formation and use of the Fund’s assets.

3.3. Special Feature of the Audit Performed by the Chamber

The Accounting Chamber performs audits not by budgetary programmes, but rather by individual funding priorities (e.g. audit of the Ministry of Interior is performed not in full, but only as concerns funding of staff training). This approach to the audit causes a number of problems.

„The Main Control and Audit Office audits budget programmes, while the Chamber inspects funding priorities. The CAO makes a more complete, comprehensive, and detailed audit.”

From an interview with a representative of the Main Control and Audit Office

Firstly, quite often, there is need to check not only individual operations from a selective circle of managing organisations in a certain area (thus, training of staff for the Interior Ministry is performed not only by this ministry, but also by the Ministry of Education and Science). This does not make it possible to assess the general efficiency of the management system at the audited organisations, or study the efficiency of the use of funds for the

priorities for which the audited organisations are not in charge. This makes the audit quite superficial. In addition, audits of funding priorities raise another question: which parliamentary committee shall ensure the implementation of the Chamber opinion? If such opinion concerns a number of public executive authorities supervised by different committees, it is practically impossible to define the main committee which should implement the recommendations of the Chamber. Especially, because the very mechanism of cooperation among various parliamentary committees in legislative and control areas still has not been specified at the legislative level. The Chamber prepares its opinions and recommendations not for specific committees, but rather for the entire Parliament. *That is why we believe that there is a need to review the structure of monitoring employed by the Accounting Chamber to oversee of the implementation of the national budget.*

3.4. Violations

Analysis of the reports prepared by the Accounting Chamber suggests that illegal and inefficient use of the national budget funds is caused not so much by undeveloped legislation, but rather by *their deliberate violation. In other words however perfect any act may be, it will always be violated under the Ukrainian conditions.*

Thus, contrary to the Chamber opinion and provisions of the Budget Code, the State Budget Act is year in year passed with individual inconsistencies with the Budget Code.

The Accounting Chamber always draws attention to the fact that ministries and other public authorities fail to perform or perform improperly their duties vested into them by law. It is important to take the note of the dynamics of the facts of illegal (untargeted) use of funds by fund-managers – it hardly changes from year to year even after the Chamber performs repeated inspections at the audited organisations.

„Efficiency of the Chamber is essentially decreased due to the drawbacks of the Accounting Chamber Act. Currently, the status of the Chamber is regulated in a much worse manner as compared to the control and audit service. The Chamber Act should entitle the Chamber to set up its territorial offices, define the concept of “financial audit” and “efficiency audit”. However, the problems in the Chamber operation include not only drawbacks of the legislation. If you look into the Chamber’s opinions, you will see that it focuses mainly on the failure to observe laws, rather their deficiencies.”

From an interview with a member of staff of the Finance and Banking Committee

3.5. Lack of Mechanisms to Ensure Implementation of the Chamber’s Recommendations by the Audited Organisations

The current legislation envisages no efficient mechanisms which would make it possible for the Accounting Chamber to influence the implementation of its recommendations by the audited organisations. Traditionally, the response to the opinions of the Chamber comes to the following:

- a) development of plans for the improvement of the fund management at the audited organisations;
- b) amendment of certain internal acts;

- c) providing the Accounting Chamber with a formal answer that “some measures are taken to eliminate violations” without specifying the content of such measures;
- d) reproaching (in the majority of cases) the guilty employees of the audited organisations or dismissal of the guilty employees (in individual cases).

In other words, the Chamber’s recommendations are implemented *only formally*. The same problem, according to the interviews with the Main Control and Audit Office, is characteristic of the operation of not only the Accounting Chamber, but also the above Office: when it reveals any violations, including those that have any criminal features, however, due to its status (the control and audit service is a body in the system of the Ministry of Finance and does not have a status of the ministry) cannot enforce the implementation of its recommendations; in a number of cases, the public prosecution offices do not react to the materials sent by the CAO.

„Efficiency of the Accounting Chamber may be improved through improvement of its regulations, amendment of the Accounting Chamber Act, revision of the Chamber Rules of Procedure, priorities of the Chamber departments etc. The main thing, however, lies not in the legislation, but rather in the necessity to ensure proper response on behalf of the leadership of the audited organisations to the official documents issued by the Accounting Chamber as concerns the adjustment of the revealed deficiencies.”

From an interview with MP Ponomarenko (the Communist Faction)

3.6. Drawbacks in the Formation and Organisation of Committee Work

Poor Chamber-Parliament cooperation is to some extent explained by drawbacks in the organisation of work of parliamentary committees. Unlike many other countries, parliamentary committees in Ukraine are often formed with *violation of the principles of proportional representation in parliamentary factions* (certain factions are represented in a committee, while others have no their representatives there at all), the number and degree of work load on parliamentary committees and their members

is not even (certain committees consider from 5 to 10 bills per year and have less than 10 members, while other work with about 200 bills per year with only around 20 members). Powers among various committees are distributed without proper grounding (e.g. support to the administrative reform is provided by two committees). Other drawbacks in the operation of parliamentary committees include quite frequent absence of quorum at the committee meetings which often results in “absentee” voting (when members of the committee are not present at the meeting and do not participate in the discussion), absolute non-transparency of the committee operation (out of 24 committees set in the 4th Parliament only 6 ones had their web-sites, which were not properly updated, however; the records and minutes of the committee meetings and voting results were not published anywhere and there is no access to them). *The existing in Ukraine model of “weak committees” when the main legislative work is done mainly in the parliamentary session hall, and not at the committee meetings, does not promote the cooperation between the Accounting Chamber and parliamentary committees.*

Table 1. Work Load by Parliamentary Committees in 2003- 2005

| Committee | Annual Average Work Load Per Member of Committee in 2005 (Number of Bills Submitted Per Member of Committee Over a Year) | Number of Bills Developed by Committees in Charge, by Years | | |
|--|---|---|------|------|
| | | 2003 | 2004 | 2005 |
| 1) Health, Mother and Child Care | 4 | 18 | 21 | 36 |
| 2) Pensioners, Veterans and Disabled Individuals | 7 | 54 | 62 | 67 |
| 3) Culture and Morality | 2 | 12 | 18 | 19 |
| 4) Youth, Policies, Physical Training, Sport and Tourism | 1 | 11 | 14 | 13 |
| 5) European Integration | 1 | 1 | 5 | 5 |
| 6) Freedom of Speech and Information | 2 | 25 | 26 | 22 |
| 7) Science and Education | | 33 | 28 | 36 |
| 8) Human Rights, National Minorities and Interethnic Relations | 2 | 21 | 16 | 24 |
| 9) Social Policies and Labour | 4 | 68 | 43 | 54 |

| | | | | | |
|--|---|----|-----|-----|-----|
| 10) | Environmental Policies, Use of Natural resources, and Elimination of Consequences of Chornobyl Disaster | 2 | 35 | 22 | 35 |
| 11) | Legislative Support to Law Enforcement Activities | 5 | 80 | 80 | 82 |
| 12) | National Security and Defence | 3 | 46 | 37 | 40 |
| 13) | Fighting Organised Crime and Corruption | 1 | 12 | 6 | 11 |
| 14) | Rules of Procedure, Parliamentary Ethics and Organisation of Work of the Verkhovna Rada | 1 | 12 | 5 | 11 |
| 15) | Public Authorities and Local Self-Government Development | 5 | 35 | 71 | 88 |
| 16) | Foreign Affairs | 3 | 71 | 58 | 49 |
| 17) | Legal Policy | 4 | 68 | 75 | 78 |
| 18) | Industrial Policy and Entrepreneurship | 1 | 20 | 19 | 26 |
| 19) | Construction, Transport, Housing, and Communications | 2 | 39 | 30 | 38 |
| 20) | Agrarian Policies and Land Resources | 4 | 84 | 40 | 90 |
| 21) | Economic Policy and Management, Property and Investments | 6 | 123 | 128 | 136 |
| 22) | Finance and Banking | 11 | 214 | 228 | 289 |
| 23) | Fuel and Energy Complex, Nuclear Policy and Safety | 1 | 22 | 19 | 19 |
| 24) | Budget | 3 | 95 | 127 | 113 |
| Average Annual Work Load per Committee | | | 49 | 48 | 55 |

3.7. General Inefficiency of Parliamentary Control and Political Responsibility of the Government

The effect that the Chamber's conclusions have on the operation of the audited objects and their importance for the Parliament reflect the general efficiency of the parliamentary control. The parliamentary practices prove general inefficiency of control activities, in particular due to:

- Lack of clear separation among different forms of parliamentary control, like the parliamentary hearings and Government Days in the Parliament;
- Lack of any official response on behalf of the Parliament to the Government's reports on implementation of State Budget of Ukraine (it was only once since 1999 when the Parliament passed any decisions upon having considered the Government's reports);
- Futility of operation of the majority of temporary investigation commissions set up by the Parliament;
- Frequent recognition of the government's efforts dissatisfactory/in sufficient without bring the government to political account;
- Discovery of the same problems that have not been solved by the Government in the course of the parliamentary control (e.g. since the parliamentary hearings dedicated to the problems related to the closure of Chornobyl nuclear power station, the Verkhovna Rada annually requested that the Cabinet of Ministers created a register of the people that had suffered from the consequences of Chornobyl disaster; similar recommendations can be also found in one of the opinions of the Accounting Chamber; however, no real steps have been taken so far to take the above recommendations into account).

4. Conclusions

4.1. To ensure more efficient Parliament-Accounting Chamber cooperation, it would be advisable to set up a special section in charge of the Chamber's relations with parliamentary committees, factions, and groups. . This would attain a significant advisory role in terms of policies and strategies to enhance efficiency and accountability.

4.2. Even though the Accounting Chamber's findings often have a considerable focus on cases of illegal or inefficient use of the national budget funds, its proposals rarely go beyond general recommendations on the improvement of the existing legislation. It would be reasonable for the Chamber to formulate such recommendations more clearly (e.g. to define the provisions which should be excluded from legislation or specific amendments which should be made). A specific provision should also be made for the Accounting Chamber to provide judgements not only on bills related to budget and finance (as it is envisaged by the Accounting Chamber Act), but also as concerns other areas if the implementation of such bills can influence the national budget revenues

or expenses. This links with point 12 above. Much more strategic value added could be gained from the Accounting Chamber's work and findings.

4.3. The most influential factors that decrease the parliamentary demand for opinions and recommendations of the Accounting Chamber include:

- a) Deliberate failure to observe laws by public executive authorities, which results in illegal and inefficient use of the national budget funds;
- b) Lack of response or formal reaction to the opinions and recommendations of the Accounting Chamber on behalf of law enforcement authorities, heads of objects subordinated to the Accounting Chamber and the Parliament itself; and
- c) Inefficiency of the entire system of parliamentary control which deepens political irresponsibility of the Cabinet of Ministers and its subordinated authorities.

Even though solely legal methods can hardly be effective enough to impact upon what in some cases amounts to a problem of legal nihilism, the efficiency of the Chamber recommendations could have been significantly strengthened by entitling it to file lawsuits to administrative and commercial courts to pursue certain audited institutions who are adjudged to have committed acts that are illegal. Such court proceedings could have an important role in seeking redress to compensate the losses made to the state (see Section 1 for more details).

4.4. An increase of the efficiency of the Accounting Chamber-Parliament processes of cooperation also requires improvement of the procedure for formation and organisation of activities of the parliamentary committees. In particular, parliamentary committees relevant to the Accounting Chamber ought to be formed with due consideration of the principle of proportional representation of factions and groups; the Parliamentary Committees Act should provide for mechanisms to ensure openness of work of parliamentary committees. This would include: (a) disclosure of agendas of committee meetings, results of voting and consideration of issues etc; and (b) procedure and grounds for the organisation of joint committee meetings etc. It is also not advisable to preserve the present practice of voting without the actual presence of committee members.

Section 3. COOPERATION OF THE ACCOUNTING CHAMBER WITH THE MAIN CONTROL AND AUDIT OFFICE

Unlike the Control and Audit Office (the CAO), the Accounting Chamber is a constitutional authority. According to the new version of Article 98 of the Ukrainian Constitution, “on behalf of the Verkhovna Rada of Ukraine, the Accounting Chamber control the State Budget revenues and expenses” (previously, the Constitution entitled the Accounting Chamber to control only the expenses of the national budget).

1. Powers

The main difference between these two organisations lies in the scope of their powers. Even though their powers are regulated by special laws that set out their functions, authorities and duties in greater details, we have decided to make the comparison on the basis of the Budget Code of Ukraine (see the Table).

Table. Powers of the Accounting Chamber and the Control and Audit Office as Concerns the Observance of the Budgetary Legislation

| Accounting Chamber (Article 110) | Control and Audit Office (Article 113) |
|--|---|
| 1) Control of the use of the national budget funds in accordance with the State Budget Act; 2) Control of the emergence, servicing, and repayment of the state debt of Ukraine; 3) Control of the efficiency of the use and administration of the national budget funds; 4) Control of the use of national budget funds as concerns the funding of powers of local state administration and executive revenue and income powers delegated to the local self-governance. | 1) Control of target an deficient use of the national and local budgets; 2) Control of target use and timely repayment of government-guaranteed loans; 3) Control of the accounting procure and reliability of the reports on the implementation f the national and local budgets, and estimates. |

Thus, the Accounting Chamber control only expenses and financial transactions related to the national budget, while the CAO oversees both the national and local budgets. Oversight of the state debt is exercised exclusively by the Accounting Chamber.

In addition, the Accounting Chamber has powers related to the international affairs (as the supreme audit institution in Ukraine) and the budget process for the coming year. It analyses the implementation of the current budget, and after 1 January 2006 (according to the new Constitution, the Accounting Chamber also controls the national budget revenues.

As to the CAO, it oversees the public funds and conducts audits and inspections of the use and preservation of the national and communal property, including the leased property.

For the CAO there is a also a cap level of controllability. It is entitled to control ministries and other public executive authorities, institutions funded by the national budget, and state-run companies, as well as enterprises and organisations which are receiving (or received in the audited

The current Ukrainian legislation defines a range of organizations that exercise individual functions and tasks of public control. It should be admitted, however, that there is still no cleat definition of tasks and powers. There is no clarity in the cooperation of all controlling authorities among each other, or with the audit institution operating outside the control system. Lack of coordination among the oversight authorities, as well as single information and methodology basis considerably decreases the efficiency of the general work and makes it more difficult to achieve the final aim. The thing is not only in the fact that lack of coordination results in multiple deviations of forces of oversight authorities and audited organisations, but also that having different task, the oversight authorities on the basis of the same outgoing data, from the positions of the same control principles (efficiency, legality, totality) may make (and they are making) different conclusions.

Vasyl Symonenko, Head of the Accounting Chamber

period) money from budgets of various levels and public funds or using (used in the audited period) public or communal property.³² The CAO's competence does not extend to the authorities managing national budget funds with higher than ministerial status, like the Cabinet of Ministers, the Verkhovna Rada, judicial authorities, the Presidential Secretariat, the National Security and Defence Council, the Accounting Chamber, the Central Election Commission and a number of other authorities. The CAO may exercise any control efforts in relation to such authorities only upon their initiative. It is the Accounting Chamber that has the competence over such authorities.³³

Generally, the CAO inspects and audits individual institutions and organisations (and also audits the efficiency of public programmes), while the Accounting Chamber focuses on the audit of legality (with elements of efficiency audit) of a certain priority or area of activities. For example:

- the use of the national budget funds provided to the Ministry of Science and Education to train workers;
- efficiency of the public authorities in their operations with seized property and property without owner; or
- the use of the national budget funds for the social protection of war veterans.

2. Subordination

The Accounting Chamber, as the majority of supreme audit institutions is subordinated to the Verkhovna Rada of Ukraine, while the CAO is a part of the Ministry of Finance.

We initiate audit of functions (e.g. audit of efficiency of the public procurement system) which is somewhat similar to the audit of funding priorities performed by the Accounting Chamber.

From an interview with one of the CAO experts.

I do not think that there is no need for the Accounting Chamber, and that the CAO can perform all its functions. The CAO is subordinated to the Cabinet of Ministers, and thus it is not independent from the executive branch, and it cannot criticise the Cabinet of Ministers. The CAO does whatever the Cabinet of Ministers orders it to do... While the Accounting Chamber can make independent conclusions.

From an interview with a parliamentary committee expert

3. Staff

As of 1 January 2005, the Accounting Chamber staff included 340 people, 320 of whom were civil servants, while on 1 January 2006, the CAO had 8,600 people, 6,000 of whom are controllers and auditors. In 2004, the Accounting Chamber conducted 563 control, analytical, and expert measures, while the CAO performed 31,780 audits and inspections. Thus, the Accounting Chamber conducts 1.7 inspection per employee in one

year, and CAO – 3.7.

4. Regional Offices

The Accounting Chamber started establishing its regional offices only since the mid-2004, after the Parliament passed its Resolution No. 1784-IV of 15.06.2004 on the Setup of Territorial Office of the Accounting Chamber, whereupon the Accounting Chamber Board passed its own resolution No. 15-3 of 19.07.2004 to establish 10 territorial offices. Currently, only 5 such offices are functions (in Dnipropetrovsk, Donetsk, Kyiv, Lviv, and Odesa. It seems, however, that no detailed planning or grounding of the territorial offices has been made.

Why the Chamber's offices are setup not in all oblasts? The number of offices reflects the amount of funds allocated...

From an interview with a parliamentary committee expert

Quite to the contrary, the CAO has a rather branchy regional structure with its offices in every oblast and rayon, in Crimean Republic, Kyiv and Sevastopol, various cities and city districts, as well as interdistrict units.

5. Funding

³² State Control and Audit Service Act No. 2939 of 26.03.1993, Article 2.

³³ Guarding the Public Good, K. Piramida, 2005, p.131.

The Accounting Chamber is funded directly from a special national budget article, while the CAO as a part of the Finance Ministry, gets its funds from the money allocated to this ministry. In 2005, the Accounting Chamber received 28.8 mln UAH and the CAO – 210.6 mln UAH. This means that the Accounting Chamber got 84,700 UAH per employee, and CAO – 24,500 UAH per employee. Since the lion's share of the expenses in both organizations is used to pay salaries, the difference in salaries explains the above distinctions. However, it is still remains to be proved that higher salaries of the Accounting Chamber staff are grounded by higher productivity and efficiency of the staff (at least, the CAO performs more inspections per employee).

6. Transparency

Just a very general analysis of the material available to the public suggests that the CAO is more transparent in its activities than the Accounting Chamber.

- ⇒ Unlike the Chamber, the CAO discloses its inspection plans on its web-site;
- ⇒ The Accounting Chamber has only one audit standard (the Procedure for Preparing and Conducting Inspections and Formalisation of Its Results),³⁴ while the CAO has nine of them³⁵:
 1. Terminology of the Public Audit Standards;
 2. Public Audit Planning;
 3. Audit Organisation and Conduct;
 4. Result Documentation and Audit Material Formulation, Procession and Use Procedure;
 5. Implementation of Control Measures due to Electronic Preservation and Procession of Audited Information
 6. Assessment of the Internal Audit Status
 7. Prevention of Violations on Behalf of the Public Audit Subjects and Their Officials
 8. Disclosure of the Public Audit Results
 9. Cooperation with Law Enforcement Authorities

Despite of the fact that the Chamber Standard contains many aspects and replaces a number of CAO standards, the Chamber Standard is still more general (it contains less specific provisions), thus giving more freedom for the voluntary interpretation of the issues related to the audit quality.

- ⇒ The Accounting Chamber publishes its annual reports later than CAO.³⁶ Thus, on 15 May 2006, the CAO published a report on its activities in 2005 on its web-site, while the Chamber presented its report only on the use of funds in 2005 (the full report available on the Chamber's web-site was dated to 2004). In addition, the CAO issued a user-friendlier report in terms of its structure and content.
- ⇒ The CAO officials are easier to get contacted. This is proved by the time that it took our agency to set up meetings with the experts of the above two institutions: meetings with the CAO required much less efforts and were far more productive.

³⁴ Resolution of the Chamber Board No. 28-6 of 27 December 2004 registered by the Justice Ministry on 28.01.2005.

³⁵ See CAO Order No. 168 of 9.08.2002 on Approval of the Public Financial Control Standards for the Use of the National Budget Funds, State and Municipal Property registered by the Justice Ministry on 17.09.2002 and CAO Order No. 185 of 13.07. 2004 on Approval of the Public Financial Control Standards for the Use of the National Budget Funds, State and Municipal Property registered by the Justice Ministry on 28.07.2004.

³⁶ An example of free interpretation of legislation can be Article 35 of the Accounting Chamber Act, according to which the Chamber shall annually submit to the Parliament a general written report on the results of its performance of parliamentary instructions, inspections, audits, and examinations not later than 1 December. The Act, however, does not specify which year is meant – the one under report, the following one, or the one to come in 5 years.

7. CAO-ACU Cooperation

According to Accounting Chamber Act, the Chamber cooperates with other audit institutions on the basis of accountability of these authorities to the Accounting Chamber, and not college or parity cooperation.

Article 21 of the Accounting Chamber Act

All audit authorities set up under the Ukrainian law... shall support the operation of the Accounting Chamber and, upon its request, provide it with information on the audits and inspections that they conducted. Within its competence, the Accounting Chamber may involve into its audit activities other public audit institutions and their representatives.

To improve the cooperation and establish clear coordination between these authorities, as well as to avoid any audit overlap, the Chamber and the CAO have approved the Chamber-CAO Cooperation Procedure for the Audit of the Use of Public Finance.³⁷ It sets the following main forms of cooperation between these authorities:

- Planning coordination for the audit organisation and conduct;
- Conduct of joint meeting of CAO and Chamber Boards, as well as round tables and seminars;
- Exchange of information on the issues within the competence of the Chamber and CAO.

In practice, however, this coordination is rather weak.

It is quite difficult to cooperate with the Chamber. However, there are less audit overlap these days, then previously, but still happen sometimes...

From an Interview with a parliamentary committee expert

The CAO bodies in Crimea, regions, Kyiv and Sevastopol make part of the public audit services and are subordinated to the Main CAO of Ukraine,³⁸ while the Chamber territorial offices have been set up as structural units of the Chamber Secretariat.³⁹ Thus, the

Chamber territorial offices and the CAO authorities cooperate only through their central headquarters.

The imperfection of the Chamber-CAO cooperation is also proved by the fact that out of three efficiency reports, provided by the CAO as an example of its work, two reports repeated the audits conducted by the Chamber in the same period of time.

Thus, the Audit of the Public Procurement Efficiency in Ukraine performed by CAO in 2006 and covering the period of 2004-2005 resembles the Reports on the 2005 Chamber Audits of Public Procurements, and Public Order Formation and Placement (published in 2006) and on Results of 2004 Chamber Audits of Observance by Budget Fund managers of the Public Procurement Act while Using the National Budget Funds. The CAO Audit Report on Efficiency of the Use of the National Budget to Support the Live Stock-Breeding and Plant Cultivation in the System of the Ministry of Agrarian Policy in 2002-2005 published in 2006 is similar to the Chamber Reports on the Inspection of the Use of National Budget Funds Allocated in 2003-2004 and First Quarter of 2005 for the Financial Support of Live-Stock and Plant Production and on Results of Analysis and Inspection of the Efficiency of the Use of the National Budget Funds for the Implementation of Target Programmes for the Support of Agricultural Producers in 2004.

8. Conclusions

As mentioned above, many CAO and Accounting Chamber functions overlap. The Accounting Chamber is, as noted, a constitutional authority and so is independent from the executive branch. At a certain stage it inevitably started to threaten the position and even the existence of the CAO, especially because the financial control performed by CAO was mainly fiscal, post-event, with

³⁷ Approved by Chamber Resolution No. 27-4 of 22.11.2001 and Chamber Board Resolution No. 20 of 19.10.2001.

³⁸ The Public Control and Audit Service of Ukraine (No. 2939 of 26.03.1993), Art. 4.

³⁹ Governmental Resolution of 18.11.2004 on the Setup of the Accounting Chamber Territorial Offices, Clause 1.

control procedures aiming at finding deviations from the established norms and regulations, i.e. financial violations, as well as at discovering and punishing those guilty. The CAO has been perceived by the public, and retained as an enforcement authority, often used by businesses to fight competitors to gain control over markets and spheres of influence.

Partly in response, the CAO had to start to seek ways to improve its operations and achieve a more efficient way of functioning. As a result, the CAO was able to initiate carrying out qualified enough audit efficiency (as it is described in the relevant section), to make its activities transparent for the society and to use its funds in an efficient manner, and so

to provide an enhanced value. At the same time, and perhaps rather ironically, the Accounting Chamber demonstrates no such achievements, the fact that apparently stems from its strong position and confidence in the future.

Generally, since apart from the Chamber and CAO, there are multiple other authorities in Ukraine entitled to exercise control of the financial and business activities of companies, institutions and organizations, with the overlapping powers, today there is a need to pass a public audit act which would define the single legal and organisational principles of audit, basic structure, subjects and objects of control.

In all countries, especially those moving towards their European integration, there is no such an organisation as our Control and Audit Office; it is a rudiment of the planning socialist system. For some reason, in our country it turns from relic to the advanced; it makes an impression of mutating.

*Vasyl Symonenko, Head of the Accounting Chamber;
From an interview to the Stolychni Novyny Newspaper,
(No. 23, 2002)*

Section 4. ANALYSIS OF AUDIDITING ACTIVITIES OF ACCOUNTING CHAMBER AND ITS STAFF POTENTIAL

1. Types of Audit Exercised by the Accounting Chamber

We have analysed the extent to which the Accounting Chamber has introduced and been using each of these standards on the basis of the general Chamber reports, newsletters, and official messages dedicated to the control of expenses for the social area and social policies.

1.1. Regularity Audit

Since we had no access to the primary documents – audit statements and acts, we do not have any direct evidence proving the

performance of the inspection/assessment of accounting documentation and preparation of an opinion on financial reports. The indirect evidence, however, like a statement that some NGO “Association of Young Political Scientists and Politicians” (AMUPP) “admitted doubtful financial transactions through intermediaries when making printing orders and organising seminars for the total amount of 210,000 UAH”⁴⁰, proves that the Chamber makes such an audit.

In addition, it looks that the assessment of how the audited object observes current legislation, as well as the correctness audit and advisability of administrative decisions made by the audited object, are the main kinds of audit performed by the Accounting Chamber. In all available Chamber reports the main accent is made on the audit of legality with the main questions being: whether the relevant legislation is observed by the audited object and whether the funds allocated from the national budget for certain purposes have been used for the established purpose.

The Chamber, however, does not perform regular audits of financial statements of each state institution and does not make conclusions on the financial statements of the Government in general: the reports contain results of multiple subject audits in various areas, but there is no general assessment of the status of public finance.

1.2. Efficiency Audit

A wonderful example of the cost-effectiveness audit, as well as the assessment of policy reconciliation and its results is the audit of the efficiency of the management of forestry resources in the Carpathian region of Ukraine⁴¹ published in 2004. Even though this study has been made within the framework of the project for the support of the Accounting Chamber funded by the European Commission and with the assistance of foreign experts, there is no doubt that it proves the Chamber’s ability to perform such types of audit.

INTOSAI Auditing Standards

1.0.40 Performance audit is concerned with the audit of economy, efficiency and effectiveness and embraces:

(a) audit of the economy of administrative activities in accordance with sound administrative principles and practices, and management policies;

(b) audit of the efficiency of utilisation of human, financial and other resources, including examination of information systems, performance measures and monitoring arrangements, and procedures followed by audited entities for remedying identified deficiencies; and

(c) audit of the effectiveness of performance in relation to the achievement of the objectives of the audited entity, and audit of the actual impact of activities compared with the intended impact.

1.0.41 In practice there can be an overlap between regularity and performance auditing, and in such cases classification of a particular audit will depend on the primary purpose of that audit.

⁴⁰ The Study of the Use of the National Budget Funds for the Implementation of the Youth and Social Programmes / On the Basis of the Accounting Chamber Materials of 20.12.2000; Issued by the Social Area and Science Allocations Control Department - Kyiv: Accounting Chamber of Ukraine, 2001. - Issue 2. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=154271&cat_id=38966

⁴¹ Issue 1. Report on the Audit of Forest Resources Management Efficiency in the Carpathian Region of Ukraine – http://www.ac-rada.gov.ua/achamber/control/uk/publish/category/main?cat_id=38962&page=1

On the other hand, apart from this reports, there not many others that would demonstrate that the Chamber has been using the cost-effectiveness audit. There are only individual conclusions made by high officials which remind the cost-effectiveness audit, but mainly they are not based on such audit. This is proved inter alia by the what Vasyl Symonenko, Head of the Accounting Chamber, said: :

„Introduction of new mechanisms to encourage companies to create jobs for disabled individuals and organisation of home jobs instead of dispersing money for 16 different priorities, which mainly have indirect relation to the recovery of disabled individuals, would make it possible, with due financial basis, to fully ensure the needs of the disabled individuals for employment and avoid inefficient use of the national budget funds”⁴²

Or one of the reports:

„When planning expenses for the improvement of health of orphanages, or children without parent care, or those coming from families with many children, or children inclined to crime, one can observe lack of state interest... For the total number of children belonging to the above categories, which is 130,000, there are foreseen only 30 kopecks per person. At the same time, at a 7-day conference in July 2000 in Crimea for the citizens of Kyiv within the framework of the programme “Conference for Young Researchers”, over 1000 UAH has been paid per person.”⁴³

The Accounting Chamber actually performed no efficiency audit.

1.3. Performance Audit

Usually, the legality audit also includes the performance audit in the sense that the declared aim of the programme is compared with the relevant results. For example:

„On the basis of the analysis of the use of the national budget funds, allocated for the implementation of the Grain of Ukraine Programme 2001-2004, the Accounting Chamber Board has made a conclusion that the funding system introduced by the Government to fund the Programme at the expense of the national budget... did not make it possible to ensure the achievement of the main Programme aim, namely the increase of the gross grain production.”

Or

„The aim defined by the Comprehensive Programme to provide accommodation to military servants and their family members has not been achieved.”⁴⁴

Thus, the Accounting Chamber performs full-scale legality audit and, most obviously, the financial audit. There are also plans to perform other kinds of audit. Thus, the Chamber audit standards⁴⁵ contain a definition of what the efficiency is as an economic category (this definition, by the way, include also productivity, and performance, and cost-effectiveness, i.e. it covers the efficiency, performance, and cost-effectiveness audit), as well as a requirement to define the criteria for the assessment of the use of public funds in the audit programme, if the programme aims to assess efficiency. In addition, in the 2004 Chamber Report it is mentioned that:

*"the structure of the revealed violations in the use of the budget funds proves that in the recent years the analytical component in the performance of audit measures, i.e. **introduction of***

The Accounting Chamber does not perform the efficiency audit

Interview with a CAO official

⁴² Majority of Jobs Created for the Disabled Individuals Have Been Conventional. Chamber Official Message of 22.11.2005. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?showHidden=1&art_id=465283&cat_id=502&ctime=1134035157480.

⁴³ The Study of the Use of the National Budget Funds for the Implementation of the Youth and Social Programmes / On the Basis of the Accounting Chamber Materials of 20.12.2000; Issued by the Social Area and Science Allocations Control Department. - Kyiv: Accounting Chamber of Ukraine, 2001.- Issue 2. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=154271&cat_id=38966

⁴⁴ Accounting Chamber Report 2004, Kyiv 2005. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art_id=374984&cat_id=32826#To1

⁴⁵ Resolution No. 28-6 of 27.12.2004 of the Accounting Chamber Board on Approval of the Chamber Standard for the Procedure of Audit Preparation and Performance, and Formalisation of Its Results registered by the Justice Ministry on 28.01.2005.

efficiency audit elements into practice to audit the efficiency of the use of national budget and public extra-budget funds, and assess the efficiency of the management decisions made by the Government, ministries, and other audited central executive authorities, institutions, organisations, and companies, has become quite common."⁴⁶

Thus, the Chamber recognises that currently it uses only individual elements of the cost-effectiveness, efficiency, and performance audit. It seems rather improbable that the Accounting Chamber will be able to assess the policy pursued by the government, including in the area of social services, only after it improves the above kinds of audit. In addition, the Accounting Chamber will need to improve certain aspects related to the performance of the correctness audit, in particular: to be able to make the general assessment of the status of the government's financial statements basing on the audit of accounting documents of state organisations consuming the national budget funds.

To find out which analytical procedures are used for the audit, we looked into the Chamber reports related to the provision of social services, in particular:

- On the Audit of the Use of the National Budget Funds for the Social Protection of War Veterans Published in 2006 and covering 2004 and the first six months of 2005;
- On the Results of Analysis and Audit of Formation and Fulfilment of the Pension Fund Budget published in 2005 and covering 2004 and the first six months of 2005;
- On the Results of the Audit of the Use of the National Budget Funds in 2002 for the Payment of Annual Lump Assistance to War Veterans published in 2002.

All above reports focus on the following:

- Provision of information on the state of affairs (legislation giving the basis for the provision of certain social services; the number of persons eligible to such services; planned and actual expenses from the national budget to secure the fulfilment of the legislation; and the extent to which the legislation is fulfilled);
- Establishment of the facts of deviation from the state of affairs which should have been ensured in accordance with the Ukrainian legislation;
- Discovery of reasons (mainly gaps in legal regulation) which have caused the failure to fulfil certain norms of legislation.

The above reports contain no deep analysis of the statistics, factors of dynamics, management system and internal control, possibilities of alternative expenses and other approaches that can be used for the performance audit purposes.

1.3. Performance/Efficiency Audit by the CAO

It should be noted that, as concerns the development of the methodological basis (at least, the one available to the general public) for the efficiency audit, the CAO has left the Accounting Chamber far behind. Thus, the CAO is governed by the governmental resolution passé in August 2004⁴⁷ (and amended in March 2006) which approves the efficiency audit procedure. It defines the main tasks of this type of audit, ways of its performance, methods of disclosure etc. Even though, the CAO performs this kind of audit once per ten financial statement or legality audits, and their reports have not been disclosed, the messages in media suggest that a certain progress has been made in this area. One of the examples is the article called "Social Care System: Innumerable Problems All Which Needs to Be Solved" by the CAO Director in Dnipropetrovsk oblast.⁴⁸

⁴⁶ Accounting Chamber Report 2004, Kyiv 2005. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art_id=374984&cat_id=32826#To1

⁴⁷ Governmental Resolution No. 1017 of 10.08.04 on Approval of the National Budget Programme Financial Audit Procedure for Public Control and Audit Authorities

⁴⁸ V.M. Chayka, *Social Assistance System: Multiple Problems and All Need to Be Solved*. – Financial Control No. 1 of 30.01.2006 – http://www.dkrs.gov.ua/kru/control/uk/publish/article?art_id=35431&cat_id=35403

In addition, at a meeting with CAO officials, we received a number of audit reports assessing the efficiency of individual national budget-funded programmes and priorities of the state sector operation. These audit reports offer detailed analysis of the reasons why such programmes are inefficient with examination of statistics, discovery of drawbacks in procedural and operation processes. Also, the interviews of the interested parties have been used to develop proposals for the improvement of the relevant priorities and programmes.

1.4. Conclusions

The Accounting Chamber makes a full-scale legality audit and, in some cases, the correctness audit; however, it performs no regular audits of financial statements of each state institution and provides no conclusions on the government's financial reporting in general. In addition, the Accounting Chamber makes no performance audit. As concerns this kind of audit (just as the correctness audit), currently the Accounting Chamber is lagging far behind the CAO.

As a result, the Chamber makes no assessment of the efficiency of the governmental policies and programmes, does not assess the efficiency of distribution of the country's resources for the implementation of policies, programmes, and projects, as well as it does not assess the alternative ways of further operation of the governmental structures.

In addition, the Accounting Chamber has not been (by this time) using the modern analysis methods, concentrating mostly on the inspection of whether the actual operation of the public authorities complies with the current legislation. Thus, the recommendations developed by the Chamber Board are mostly general and aiming at organisation measures to eliminate the existing discrepancies among laws and actual state of affairs. Unfortunately, these recommendations do not result in the drastic revision of the public policy by the relevant public authorities to implement the most efficient method of using limited public resources.

2. Staff Potential

One of key methods to ensure efficiency of the functions vested into the Accounting Chamber is the staff having the relevant level of education, skills and motivation to work efficiently and at high quality level. Among other, this envisages the following:

2.1. Quality Staff Selection Process

This can be ensured through an open competition for the vacancies available. Highly qualified professionals can be also attracted by adequate salaries.

Brief account of the article "Social Care System: Innumerable Problems All Which Needs to Be Solved" by the CAO Director in Dnipropetrovsk oblast

According to the article, the CAO performed the efficiency audit of social services and revealed the following problems:

- not all citizens are able to use privileges given to them by law. Thus, in accordance with the legislation, all war participants shall be entitled to free travel by city transport. But certain war participants live in cities and make two-tree travels per day, while other reside in rural areas with practically no transport infrastructure. Thus, certain citizens are able to fully use its right to a transport privilege, while others do not have such possibilities.
- unregulated budget mechanism for forecasting and planning budget funds for such purposes. There are more than 30 legislative acts and regulations governing about 55 different privileges for more than 60 privileged categories whereby almost 40% of the Ukrainian population receives various kinds of social assistance. The article proposes to summarise all regulative documents that govern the provision of privileges in the Social Code making it possible to provide privileges in accordance with single rules mandatory for all.
- Weak logistic support provided to relevant local authorities and undeveloped system of departmental financial control restrains the introduction of an efficient mechanism for the system of privileges and subsidies.

Lima Declaration:

In recruiting staff for Supreme Audit Institutions, appropriate recognition shall be given to above-average knowledge and skills and adequate professional experience

As of 31.12.2004, there were 340 people employed by the Chamber, including 320 civil servants. The Accounting Chamber consists of the Head, the First Deputy Head and the Deputy Head, chief controllers, and the Secretary. The above officials, excluding the chief controllers who do not direct any department, are also members of the Chamber Board. For its operations purposes, the Chamber has a secretariat with the staff list approved by the Board on the submission of the Head of the Chamber within the limits of the national budget funds allocated for its support (See also Annex 1).

The Head of the Accounting Chamber is appointed by the Verkhovna Rada on the submission of its Chairman for the period of 7 years with the right of re-election. The Head of the Chamber is appointed by secret ballot. The candidate is considered to be appointed if he/she gets the majority of votes of the constitutional composition of the Parliament. The same procedure is established for the appointment of the First Deputy Head and the Deputy Head of the Chamber, chief controllers and the Secretary with the only difference that the candidacies thereto are proposed by the Head of the Accounting Chamber.

The civil servant positions are filled through a competition, which, however, often provokes questions as its openness. There is a widespread opinion in Ukraine about the low salaries in the public sector (even though the official statistics demonstrates quite big salaries, there are no shadow remunerations here, at least as concerns the payments made by the employer). Therefore, potentially highly qualified people do not strive to work for the Chamber (as one of public institutions). Therefore, selecting the staff, there is a need to stress the size of the salaries, especially because the salaries of the Chamber employees are 30% higher than the salaries of the civil servants, which is good motivation to work for the Chamber. The Chamber leadership is motivated even better: starting with 2005 the salaries in the public sector have been considerably increased, and currently every members of the Accounting Chamber can count for monthly payments of 5,500-7,500 UAH, and the Head of the Chamber gets just below 14,000 UAH.⁴⁹

INTOSAI Standards

2.1.4. SAI personnel should possess suitable **academic qualifications** and be equipped with **appropriate training and experience**. The SAI should establish, and regularly review, minimum educational requirements for the appointment of auditors

The Chamber leadership and staff is characterised by the following features:

- Complete higher education – 98.8% of civil servants;
- 8 employees study at higher learning institutions and getting their second degree;
- 3 employees received their second and third degrees;
- Economic education – 221 employees; legal education – 34 employees; technical and other education – 85 employees;
- One employee holds a doctoral decree, and 11 people are candidates of sciences (4%);
- 5 people have the title of the Honourable Economist of Ukraine.⁵⁰

The eligible candidates for appointment as the Head, the First Deputy Head, the Deputy Head and chief controllers shall be citizens of Ukraine with higher education and professional experience in the area of public administration, audit, economy, finance, and law. The Head of the Chamber shall also confirm his/her professional knowledge during the discussion of his/her candidacy following a special procedure established by the relevant parliamentary committee in accordance with the current Ukrainian legislation.

The majority of the Chamber Board members are economists (there are also two layers). Their professional experience meets the requirements of the law. Previously, all of them worked either in the civil service or the public prosecution system. However, they have less experience of

⁴⁹ See Governmental Resolution No. 519 of 30.06.2005 on Remuneration of the Head, Deputy Heads and Members of the Accounting Chamber.

⁵⁰ Accounting Chamber Report 2004, Kyiv 2005. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art_id=374984&cat_id=32826#To1

working in the real sector (only the Head of the Chamber used to manage an industrial plant and also two other members of the Board worked in the same sector).

In 2004, the staff flow made up 12.6%. 130 employees (38.2%) have worked at the Chamber for more than five years, and 80 employees (23.5%) – between three and five years. Over 2004, four young experts were appointed to managing positions.⁵¹

The general conclusion is that the Chamber leadership meets the requirements of quality staff selection. However, it would be advisable to hire more staff with business experience, and especially in companies providing audit services.

2.2. Staff Training Improvement

Lima Declaration

Special attention shall be given to improving the theoretical and practical professional development of all members and audit staff of SAIs, through internal, university and international programmes. Such development shall be encouraged by all possible financial and organisational means. Professional development shall go beyond the traditional framework of legal, economic and accounting knowledge, and include other business management techniques, such as electronic data processing.

INTOSAI Standards

2.1.11. Audit of financial systems, accounting records and financial statements requires training in accounting and related disciplines as well as a knowledge of applicable legislation and executive orders affecting the accountability of the audited entity. Further, the conduct of performance audits may require, in addition to the above, training in such areas as administration, management, economics and the social sciences

2.1.12. The SAI should encourage its personnel to become members of a professional body relevant to their work and to participate in that body's activities.

Normally, staff training and retraining includes the following:

- ⇒ initial training (helps new comers to learn the rules and methods of operation of the organisation). To a certain extent, such training is common for all organisations including the Accounting Chamber;
- ⇒ Professional retraining (ensures methodological knowledge and skills for high-quality and efficient audit planning, performance, and reporting);
- ⇒ Manager training (it is considered that management and control of audit performance requires certain management skills; therefore, for upper offices in the supreme audit institutions there is a need for addition (desirably formal) training of leadership, strategic planning etc);
- ⇒ Continuous education (certain supreme audit institutions require that their auditors have a number of hours/days of formal education).

In 2004, the Accounting Chamber published the following information on its staff retraining:

- 20 civil servants were trained under professional programmes; all passed exams with excellent marks, and received state diplomas;
- 80 civil servants were trained at short-term seminars organised by the Accounting Chamber;
- 34 civil servants were trained at short-term seminars organised by other organisations in Ukraine; out of them 2 persons received state diplomas, 1 person – a certificate; and 3 persons – a document proving their functional social care training;
- 64 civil servants were trained at regular seminars organised within the framework of the TACIS Project “Public Finance Audit”;

⁵¹ Accounting Chamber Report 2004, Kyiv 2005. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art_id=374984&cat_id=32826#To1

- 7 civil servants were trained under the other TACIS projects; 4 of them received certificates on application of the international accounting standards;
- 4 civil servants went abroad to improve their qualification and study the advanced experience of supreme audit institutions operation in other countries (under the TACIS, INTOSAI, UNDP and other programmes); two of them received certificates upon completing their training.⁵²

Thus, about 200 out of 320 civil servants or 63% of staff were retrained; the Accounting Chamber funded the training of 130 of the above individuals (excluding the TACIS programmes) or 40%.

In 2005, 65,000 UAH (0.23% of all expenses) was used for the staff retraining, including performance of technical research, or 200 UAH per employee. This amount is very impressive even by the Ukrainian standards and evidences, as a matter of fact, the quality of such retraining.

In 2004, one of the Chamber employees, Mr Shakh, Internal Standards, Analysis and Development Director, participated in the Long-Term Education Project of the INTOSAI Development Programme and received a Specialist Diploma of the INTOSAI Adult Education Development Programme.

Generally, the drawbacks of the staff retraining may include three factors: **professional training covers insufficient number of staff; the staff members do not belong to professional organizations (as required by INTOSAI); and the funding of education programmes is insufficient.**

2.3. Staff Development

The staff development shall ensure the highest possible professional level of every auditor and their training for the performance of more difficult tasks. In addition to improving the qualification, the main element here is Performance Appraisal System where every auditor is assessed by his/her director under the professional standard system attributed to the post occupied by any relevant auditor. As a rule, such assessments are done on the annual basis or upon the completion of every audit. Such appraisal results are used for drafting the Expert Individual Development Plan.

All civil servants of Ukraine shall undergo mandatory attestation every three years.

2.4. Promotions

It is quite important to offer the vacant upper posts to the deserving professionals from the lower level. It is also no less important to ensure that this process is transparent and fair, which can be ensured through an open competition with participation of everybody who wants to take part.

In 2004, 62 employees were appointed to upper posts from the staff reserve, which is 19.4% of the total number of the working civil servants, while 64 civil servants (20%) were awarded higher ranks.⁵³

2.5. Efficient Use of the Staff

For the efficient use of the staff, there is a need to define which experts are needed on the permanent basis and which of them will be involved as necessary.

The Accounting Chamber is entitled to contract for its inspections and audits highly qualified experts from other institutions and organisations, and employees of other state control, tax,

⁵² Accounting Chamber Report 2004, Kyiv 2005. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art_id=374984&cat_id=32826#To1

⁵³ Accounting Chamber Report 2004, Kyiv 2005. – http://www.ac-rada.gov.ua/achamber/control/uk/publish/article?art_id=374984&cat_id=32826#To1

and law enforcement authorities. If necessary, the Chamber remunerates their efforts at the expense of its own funds.⁵⁴

2.6. Conclusions

Generally, it may be assumed that the leadership of the Accounting Chamber meets the requirements of the qualified staff, development and service promotion.

The wishes may include the following:

- ⇒ More management staff shall have business experience, especially in the companies providing audit service;
- ⇒ More employees shall be covered by professional training;
- ⇒ More funding shall be provided to the improvement of staff qualification;
- ⇒ The mandatory Professional Appraisal System should be introduced for the Chamber experts;
- ⇒ The staff should belong to and participate in the activities of professional expert organisations.

3. Chamber Audit Procedure

The main document by which the Accounting Chamber is governed is the Chamber Board Resolution No. 28-6 of 27 December 2004 on Approval of the Chamber Standard of the Procedure for Audit Preparation, Performance and Formalisation of Its Results. To assess the quality of this Standard, we have compared it with the INTOSAI Standards in Annex 2 and made the following conclusions:

The Chamber Standards mainly contains a description of rights and obligations of the parties involved in the audit and the procedure of their cooperation, rather than detailed actions necessary for the performance of high quality audit of public finance.

It is clear that without a detailed Standard, the Chamber officials fulfil their functions getting instructions from the Audit Programme (the content of which is described by the Chamber Standard), at the meetings and in the course of information communication. However, apart from the provisions informing the Chamber staff on their responsibility, aims and objectives of the organisation, the Standard should have contained at least a description of all procedures which the staff shall or can follow in the course of the audit.

Specific discrepancies between the INOTSAI and Chamber standards are given below.

3.1. Audit planning

The INTOSAI Standards especially focus on independence from legislative and executive authorities as a necessary condition for the independent audit and objective results.

INTOSAI Standards

2.2.9. While the SAI must observe the laws enacted by the legislature, adequate independence requires that **it not otherwise be subject to direction by the legislature in the programming, planning and conduct of audits**. The SAI needs freedom to set priorities and program its work in accordance with its mandate and adopt methodologies appropriate to the audits to be undertaken.

The Accounting Chamber Act, having made the Chamber independent from any public authorities, nevertheless limited it by having subordinated the Chamber to the Parliament (Art. 1). Moreover, this Act restraints the Chamber's independence as concerns the audit planning, since in the process of planning the Chamber shall plan for fulfilling the requests of the Parliament and

⁵⁴ Accounting Chamber Act (No. 315/96-BP of 11.07.1996), Art. 7.

proposals of the President and the Government; in other words, the Chamber is obliged to consider the instructions of not only the legislative, but also the executive authorities.

Accounting Chamber Act

Article 15. Planning of the Accounting Chamber Operation

The audit is organised and conducted by the Chamber **on the basis** of annual and current plans prepared with due consideration of all kinds and priorities of operation of the Accounting Chamber and specific **instructions of the Parliament and its committees.**

The plan of work of the Accounting Chamber shall obligatory include the fulfilment of requests of no less than one third of the constitutional composition of the Parliament, submitted in accordance with the Parliamentary Rules of Procedure. **The plans of work of the Accounting Chamber are developed with obligatory consideration of requests and proposals of the President of Ukraine and the Cabinet of Ministers of Ukraine.**

Extraordinary audits are performed on the decision of the Accounting Chamber Board **on the basis of resolutions and written instructions of the Parliament,** requests of the parliamentary committees and Parliament-backed interpellations of members of parliament.

Thus, the Ukrainian legislation does not ensure the observance of the basic INTOSAI principle, namely the provision of the Chamber with the impendent status, including due to a possibility of independent audit planning.

According to the INTOSAI, when planning its audits, the Chamber shall ensure the efficiency of such audits.

INTOSAI Standards

3.1.1 The auditor should plan the audit in a manner which ensures that an audit of high quality is carried out in an **economic, efficient and effective way** and in a timely manner.

Considering that the Chamber's independence is to some degree only declared, the extent to which the Chamber is able to ensure the most efficient audit depends on the extent to which the Chamber fulfils its internal control function, and the extent to which the Chamber itself can be subject to external independent control. Unfortunately, the documents which could help to define the status of Chamber's internal control are not freely available; the independent control shall be exercised by the Verkhovna Rada, even though the Verkhovna Rada may not have the necessary experts for that.

Accounting Chamber Act

Article 33. Analysis of Audits and Fulfilment of Parliamentary Instructions

The Parliament shall periodically, but not less than twice a year, instruct its relevant committee to analyse the results of audits and fulfilment of instructions given to the Accounting Chamber over the year. If necessary, the Parliament shall hear information on the work, audits, inspections, and examinations performed by the Chamber and **assess its audit efforts** in the areas defined hereby.

It should be noted that the audit planning procedure is regulated by the Chamber Standard in a rather vague and contradictory manner. Thus, it is not clear why in the course of preliminary examination of the audited object and subject, the Chamber members shall study the composition of their audit group.

Chamber Standard

2.2.1. Before drafting the Audit Programme, the Chamber member in charge of its performance shall organise the preliminary study of the following aspects of the audited object and subject:

...

6) composition of the audit group of the audited subject;

The above suggests a conclusion that the audit planning process envisaged by the Standard only partially meets the requirements of the INTOSAI Standards and contains no specific planning procedures.

3.2. Performance of Audits

(a) Oversight of Audit Performance:

Comparing the relevant standards on the further actions of the auditor or audit group in relation to the revealed errors or violations, we have discovered the following:

INTOSAI Standards

3.2.4. (b) all errors, deficiencies and unusual matters have been properly identified, documented and **either** satisfactorily resolved **or** brought to the attention of a more senior SAI officer(s)

Chamber Standard

3.8.2. All violations and deficiencies revealed shall be properly documented; **either** resolved, **or** brought to the attention of the officials of the audited object.

- INTOSAI focuses on the proper method of revealing the errors, while the Chamber Standard makes emphasis the proper manner of their documentation. This evidences the Chamber is less demanding as concerns the legality of the methods used to collection information, as compared to the information itself. Due to the lack of reservations related to the legality, the controllers may apply doubtful methods to collection information, which may further result in the contestation of the audit results in the court and decrease the efficiency of the Chamber;
- INTOSAI establishes that all errors, deficiencies and unusual matters shall be both properly identified, documented, AND either satisfactorily resolved OR brought to the attention of more senior SAI officers. The Chamber Standard requires only one of the above actions: either documented evidence of the error OR its resolution, OR notification of the officials of the audited object. Thus, it is possible that the errors may not only fail to be documented (probably, with the exception of the documentation of the work performed by the auditor in his/her working papers), but also will not be resolved, as they will only be brought to the attention of the officials of the audited object.
- It is also not clear why the Chamber Standard requires that the unresolved errors shall be brought to the attention of the audited object, while the INTOSAI sets that the unresolved errors shall be brought into attention of the SAI senior officers (i.e. the Accounting Chamber).
- Even though Paragraph 4.1.2 of the Chamber Standard sets that the act drafted on the results of the audit shall reflect ALL violations of the legislation and revealed deficiencies, and only the leader of the audit group shall be personally liable for the objectivity of the act. Since Paragraph 3.8.2 makes it possible that NO errors at all may be documented, the leader of the group may appeal to this paragraph should he/she be made liable for the objectivity of the act.

As the Chamber Standard makes no reference to the registration of improvements” revealed in the course of audit, as required by the INTOSAI Standards, this suggests that the Chamber pays less attention to the improvement of the efficiency of its work.

Стандарту INTOSAI

3.2.4. (c) changes and improvements necessary to the conduct of future audits are identified, recorded and taken into account in later audit plans and in staff development activities

(b) Study and Evaluation of Internal Control

The Chamber and INTOSAI also have different approaches to the role and place of internal control in the course of the audit. This, the INTOSAI Standards suggest that the internal control system shall be studied to define the scope of the audit, while the Chamber Standard requires that this system is studied at all stages of the Chamber’s efforts – audit preparation (main attention), in the course of the audit and preparation of results.

INTOSAI Standards

3.3.1. The auditor, in **determining the extent and scope of the audit**, should study and evaluate **the reliability of internal control**

Chamber Standard

2. AUDIT PREPARATIONS.... 2.2.2. The preliminary study of the audit objects and subject shall include the analysis of: ... 4) the audited object structure;
3. AUDIT PROCEDURE... 3.3. The audit shall include the application of: 1) the methods for the organisation of the audited object's operations;
4. FORMALISATION OF AUDIT RESULTS ... 4.2. The assessment of the audit results shall be presented in a Report... The Report shall contain ... the assessment of the efficiency of management decisions and the status of internal control...

In addition, the Accounting Chamber pays excessive attention to the analysis and assessment of the internal control system used by the audited object. This is evidenced by the fact that the assessment of the internal control status is, according to the Chamber Standard, the aim of the audit (in parallel with such fundamental and general aim as “establishment of the state of affairs as concerns the use of the State Budget funds and nationwide target funds...”).

Chamber Standard

1.3. The audit aims at establishing the status of the use of the State Budget funds, the nationwide target funds, currency and loan resources, as well as other public funds related to the State Budget of Ukraine and its assessment from the perspective of legality, efficiency, and advisability, as well as assessment of the internal control status of the audited object, provision of proposals on the eliminations of violations of the current Ukrainian legislation.

The Chamber Standard contains no provisions on the inspection of the status of the automated accounting systems, while the INTOSAI standards especially focus on the possibilities and dangers emerging from the widespread use of computers. In the cases when the audited object uses the modern information technologies at the extensive level, it is important that the auditors have not just basic understanding and computer skills, but would also be able to study quickly the system used by the audited object. This is especially important for Ukraine at this stage, since decisive steps are made for active introduction of information technologies into all management areas. It is important that the Chamber auditors do not lag behind this process.

Стандарти INTOSAI

3.3.4. Where accounting or other information systems are computerized, the auditor should determine **whether internal controls are functioning properly to ensure the integrity, reliability and completeness of the data**.

Chamber Standard

2.2.3. The preliminary study of the audited subject shall include the analysis of: ... 3) the reporting and monitoring system of the audited object in order to receive **objective and reliable information** on the results of its activities;

(c) Observance of Legislation:

The Accounting Chamber Standard sets that it is necessary to audit the compliance of the audited object's operation with the current legislation. This is the kind of audit that the Accounting Chamber performs in an especially professional and detailed manner (see the Section “Kinds of Audit Performed by the Chamber”). However, the Chamber defines no Standards for this audit, while the INTOSAI Standards are quite detailed on it (See Annex 2, Paragraph 3.4 “Observance of Legislation”).

(d) Supporting Information:

Apart from setting that the evidence needs to be reliable, the Chamber Standard does not set any additional requirements as concerns the necessity to check the reliability of the data received from the information systems. Thus, it is possible that when the data is really received from the information system of the audited object (and can be deemed reliable), but due to the weak

development of such system, they may not be adequate enough to reflect the proper status of affairs at the audited object (which makes them unreliable).

INTOSAI Standards

3.5.2. ...When **computer-based system data** are an important part of the audit and the data reliability is crucial to accomplishing the audit objective, auditors need to satisfy themselves that the data are **reliable and relevant**

Chamber Standard

3.5....The evidence shall be sufficient and reliable.

The Chamber Standard defines the approaches to the audit in a general manner. All of them, except one, set not the procedure for the collection of evidence, but rather the kinds of studies performed. The Standard sets the requirements to the observation act as a form for the discovery and documentation of facts that are important for the audit subjects. This approach seems to be a bit astonishing, since other procedures (investigation, request, and confirmation) are also applied and are critically important for Ukraine. Since the Chamber Standard does not recognise any other, but observation techniques (methods or procedures) of audit, it also does not establish how to check whether the applied methods are enough to reveal errors and violations.

INTOSAI Standards

3.5.3 Auditors should have a sound understanding of techniques and procedures such as inspection, observation, enquiry and confirmation, to collect audit evidence. The SAI should ensure that the techniques employed are sufficient to reasonably detect all quantitatively material errors and irregularities.

Chamber Standard

3.3. The audit shall involve [the following approaches]:

- 1) a study of the methods of organisation of work of the audited object;
- 2) a study of the results of the audited object's operation;
- 3) a study of the specific facts and situations revealed at the audited object;
- 4) a study of all available data; and
- 5) **review of documents.**

Unlike the INTOSAI standards, the Chamber Standard does not ensure the completeness and specificity of the collected information for the accurate reflection of the audit results for the preparation of the conclusions and sets no even general requirements to the procedure which shall be applied to the maintenance of the working papers.

INTOSAI Standards

3.5.7. The auditor should bear in mind that the content and arrangement of the working papers reflect the degree of the auditor's proficiency, experience and knowledge. **Working papers should be sufficiently complete and detailed to enable an experienced auditor having no previous connection with the audit subsequently to ascertain from them what work was performed to support the conclusions**

Chamber Standard

3.7. ... **The working papers shall be maintained in a free form** and shall be kept together with the audit materials.

(e) Study of Financial Statements

The Chamber Standard sets that the financial statements shall be studied as part of the preliminary study of the audited object. The fact that the study of the financial statements is not further mentioned in the Standard does not mean that such a study may not be undertaken at further stages of the audit. The Standard, however, does not specify what to focus on while studying the financial statements, which is described in minor details in the INTOSAI Standards. (See Annex 2, Paragraph 3.6.).

3.3. Reporting

Like into the previous cases, the approach adopted in the Chamber Standard to the reporting is less specific than the INTOSAI Standards.

Thus, the Chamber Standard makes no reference to the opinions in the audit conclusions on financial statements (in the case of legality audit). The INTOSAI Standards look into such opinions in quite a detail (See Annex 2 Paragraphs 4.0.9- 4.0.16): they indicate the cases when an unqualified opinion is given (Paragraph 4.0.10), when “emphasis of matter” should be singled out into a separate paragraph (Paragraph 4.0.11.), when auditors are not able to express unqualified opinions (Paragraph 4.0.12.), situations adverse opinions are presented (Paragraph 4.0.14.) etc.

Also, the INTOSAI Standards focus on how the reports on the results of the audit shall be drafted (Paragraphs 4.0.21-4.0.23), which is missing in the Chamber Standard.

4. Conclusions

The non-specific nature of the Inspection Standard of the Accounting Chamber prevents the Accounting Chamber from both (a) effectively developing proposals on elimination of violations of the current legislation and (b) unveiling such violations and formulating judgements of how efficiently public finance has been used. Examples can be seen in Annex 2, which shows that the INTOSAI Standards (left column) are often not sufficiently reflected in the Chamber’s Standard (write column).

Lack of specific provisions in the Chamber Standard will become even more critical if no other effective documents setting out the procedures for the Chamber to exercise its control functions are adopted. Due to the rather patchy regulation of the Accounting Chamber activities under present arrangements, one can doubt that the Chamber officials have detailed procedures, for example, to review the internal management and control systems of an institution, or evaluate the mechanisms it employs to ensure management compliance with legal regulations.

On the whole, despite the generality of the INTOSAI Public Finance Audit Standards, their comparison with relevant Ukrainian Accounting Chamber Standards reveals that the provisions of the INTOSAI Standards are more specific than the Accounting Chamber Standard.

Lima Declaration

Section 17. Method of reporting

1. The reports shall present the facts and their assessment in an objective, clear manner and be limited to essentials. The wording of the reports shall be precise and easy to understand.

2. The Supreme Audit Institution shall give due consideration to the points of view of the audited organisations on its findings.

Section 5. APPLICATION OF THE STUDY ON THE ACCOUNTING CHAMBER TO SOCIAL SERVICES REFORM

Clearly the system of social services as any other large government program has to have appropriate system of accountability. This system should ensure, among others, that the money allocated to social services is used efficiently and in compliance with the existing legislation. Partially, this could be achieved by setting appropriate institutional framework (such as transparent formula-based rules on resource allocation, investments in human capital of public servants involved in management of social service activities, establishing competitive environment in the sphere of social services).

On the other hand, without an institution which would routinely monitor the effectiveness of public money spending and the consistency of spending with the regulations, misuse of funds and corruption are inevitable with any institutional framework of social services. In Ukraine the role of such institution(s) is to be performed by Accounting Chamber (AC) or CAO.

Is the current system of social services audited appropriately?

The current system of social services, that consists mainly of residential entities and a few community based non-residential service agencies (relatively new ones) can be audited relatively easy. Nonetheless, from 1997 (the year of establishing the AC) there were no reports of AC devoted to the residential institutions which provide social services. Rather it did audit cash and in-kind social guarantees provided by the Ministry of Labour and Social Policy (MOLSP). This is not surprising since these benefit payments account for more than 90% of MOLSP expenditures and the “residential institutions and NGOs funding ... account for around 1%⁵⁵”. As a rule, the AC does not audit the budgetary programs (such as expenditures on social services), but a larger sphere, that usually includes several programmes or their parts. Due to limited resources (financial as well as human) of the AC, it cannot perform detailed regularity audit of all the entities audited, including the residential social services institutions (for children, elderly and the disabled).

Under the Resolution of Constitutional Court of Ukraine issued in 1997 the audited entities can always refuse to submit the documents and financial reports, which are not relevant to the use of state budget funds by these entities. The applications to the social service provision means that AC can not estimate the overall efficiency of, for example, residential institutions when they use funds from the local budget. This problem could be solved by making further amendments to article 98 of the Constitution.

In addition, the provision of the Law on State budget for some particular years contradicts the Budget Code. Namely, irrespective of provision of article 97 of the Budget Code, ‘Law on State Budget of Ukraine in 2002’ was issued without any statement on the distribution of the transfers on social programmes among local budgets (at cities’ and rayons’ level). As a result these money were not transferred directly from the State budget to the cities and rayons, but firstly to an oblast budget and then, from the oblast budget to the relevant local budgets. So, the AC, which has the power to audit State budget expenditures (including transfers from the state budget) could audit the social transfers at the oblast level only, but not at city or rayon levels⁵⁶. Despite the Law on State budget

⁵⁵ DFID-FRSSU “Assessment of Public Expenditures Management: Developing a Technical Framework for the Financial Reform of Social Services”, p.51.

⁵⁶ The transfers from oblast budget to city or rayon budgets are considered as local, rather than state budget transfers and, therefore, can not be audited by AC.

in each particular year may not contain this type of contradiction, nothing in the legislation prevents the future laws from this flaw.

Would be the reformed social services system audited sufficiently?

Recently, a wide ranging reform of social service system in Ukraine has been initiated. The fundamental changes to the existing system, which made it possible for non for profit as well as for profit institutions to provide social services, were specified in the Law on Social services adopted in 2003. It is deemed that the driving force for these legislative initiatives was European Social Charter. Among the key issues of the reform was the diversification of social services provision through the development of cost-effective community based activities as an alternative to the low quality services provided by residential entities. The proposed reform envisages the shift towards the decentralization, and more entities would be competing for the same amount of money. The increased number of agents to be audited will further question the ability of AC to conduct this audit.

Furthermore, there are only a few AC's regional offices (in Dnipropetrovs'k, Donets'k, Kyiv, L'viv, and Odesa) and it would be extremely difficult to perform regularity audits for all these decentralized entities involved in the provision of social services. The establishment of regional offices is planed only for a limited number of oblasts (five in addition to those, which currently exist, totalling in 10 offices for 25 regions, cities of Kyiv and Sebastopol) and the regional offices on the territory of rayons or cities are not envisaged. However, one should notice a branchy system of regional offices of CAO, which cover each oblast, rayon, and city as well as city's regions and inter regional offices is already in place and functions.

Finally, as it was discussed earlier, AC does not have any substantial experience in the performance audits, which narrows the role of AC even in the reformed system of provision of social services.

Would there be any consequences for entities after auditing by AC?

Even assuming that the ability of AC in auditing would be improved, the question that remains is how to force the audited entities to improve their performance according to recommendations of AC or prosecute the officials caught with inappropriate use of public funds. The problem is in the lack of collaboration of AC with the executive branch of power as well as with the law enforcement institutions or with the Verkhovna Rada of Ukraine. As it is discussed above, the activity of the AC is directed not only by laws, but also by regulations issued by the executive branch of power (by President of Ukraine and the Cabinet of Ministers of Ukraine). De facto, without a pressure arising from the President or GoU, the legislation (mainly the basic law on AC) that defines how AC should perform its duties plays only a negligible role. These pressures used to take a form of special orders to support the investigation of the AC by requesting to provide of the relevant information, and to take into account AC's recommendations.

The absence of the proper reaction of the Verkhovna Rada to the AC findings is supported by the fact that the same budget breaches have been repeatedly mentioned (and documented by AC) from year to year (see AC reports for 2002, 2003, and 2004). In addition, despite there are a division of the AC specially devoted to social issues (the Department on Social Policies and Public Administrations) and also a special committee of the Verkhovna Rada, the experts of these two agencies do not meet often and are sceptical of their cooperation. As it was found out during an interview with the relevant committee of Verkhovna Rada, the most remembered form of

cooperation with AC is the regular reception of AC's analysis of state budget execution (though not only from AC, but also from MinFin, State Treasury provide this kind of information to the parliamentary committee).

Clearly, the alteration of these practices and the improvement of collaboration between AC and the law enforcing institutions are of crucial importance to the accountability of the reformed provision of social services.

MOLSP as well as other line ministries theoretically should be interested in a proper and efficient use of the social services funds and, thus, facilitate the audit process as well as eliminate the problems which are founded during audits. However, a complex environment and rent seeking behaviour of the institutions providing social services question the theory's application in Ukraine and underlines the need to create an institutional framework (mainly legislation) for adequate reaction of relevant government institutions to the conclusions of an audit.

Having in mind all these pitfalls we can propose the following:

- To separate the regularity audit from performance audit in respect to the reformed social service provision. The regularity audit should be performed by CAO, which has a branchy regional structure and quite a large staff. The performance audit should be conducted by the AC (with possible collaboration with the main office of CAO) since it has necessary independence for this kind of judgments.
- To train staff of the AC. Nowadays AC does not carry out performance audits. Launching a training program in performance audit of social services for AC staff seems to be necessary.
- To change relevant legislation. The changes should be streamlined to ensure adequate reaction of law enforcement institutions, experts of the Verkhovna Rada and relevant ministries to the audit reports of AC as well as of CAO. To ensure the effectiveness of AC activities, especially on local level, the legislation also should entitle the AC to file administrative lawsuits with the administrative courts, in particular in case of abolishment of regulations issued by the audited entities, which contradict to national laws (though such a provision also would require more resources needed by the AC).

Annex 1.

Comparison of INTOSAI Standards and the Chamber Training and Audit Standards

| INTOSAI | Accounting Chamber of Ukraine |
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| INTOSAI AUDITING STANDARDS | On Approval of the Accounting Chamber Standard on the Procedure for the Audit Preparation and Conduct and Formalisation of its Results Resolution No. 28-6 of the Accounting Chamber Board on 27 December 2004 Registered by the Ministry of Justice of Ukraine 28 January 2005, No. 115/10395 |
| 3.1 Planning | |
| 3.1.1 The auditor should plan the audit in a manner which ensures that an audit of high quality is carried out in an economic, efficient and effective way and in a timely manner. The following paragraphs explain planning as an auditing standard. | Article 33. Study of Audit Results and Fulfilment of Parliamentary Instructions The Parliament shall periodically, but not less than twice a year, instruct its relevant committee to study the audit results and fulfilment of instructions given to the Accounting Chamber over the year. If necessary, the Parliament shall hear information on the work, audits, inspections, and examinations performed by the Chamber and assess its audit efforts in the areas defined hereby. |
| The following paragraphs explain why planning is included in audit standards. | |
| 3.1.2 The SAI should give priority to any audit tasks which must be undertaken by law and assess priorities for discretionary areas within the SAI's mandate. | |
| 3.1.3 In planning an audit , the auditor should: | 2.2.2. ... The preliminary study of the audit objects and subject shall include the study of: |
| (a) identify important aspects of the environment in which the audited entity operates; | 2.2.2. ... 1) the legislation related to the audited subject; 2.2.3. ... 1) how the objects operation meets the requirements of the current Ukrainian legislation; the status of development and observance of documents necessary for the efficiency of such activity; 2.2.2. ... 4) the audited object's structures; |
| (b) develop an understanding of the accountability relationships; | 2.2.3. ... 2) distribution of functions, powers, and responsibilities at each level of management of the audited object; |
| (c) consider the form, content and users of audit opinions, conclusions or reports; | |
| (d) specify the audit objectives and the tests necessary to meet them; | 2.3.2. The Audit Programme shall set, in particular: 1) the audit aim; 3) the list of specific issues that will be audited; |
| (e) identify key management systems and controls and carry out a preliminary assessment to identify both their strengths and weaknesses; (f) determine the materiality of matters to be considered; (g) review the internal audit of the audited entity and its work program; (h) assess the extent of reliance that might be placed on other auditors, for example, internal audit; | 2.2.2. ... 3) financial and statistics statements compiled by the audited object; 2.2.3. ... 2) distribution of functions, powers, and responsibilities at each level of management of the audited object; 2.2.3. ... 3) the system of reporting and monitoring of the operation of the audited object to receive objective and reliable information on its operation; |
| (i) determine the most efficient and effective audit approach; | |
| (j) provide for a review to determine whether appropriate action has been taken on previously reported audit findings and recommendations; and | 2.2.2. ... 6) materials of preliminary inspections performed by the Chamber on the audited issues, and inspections undertaken by other auditing authorities; |
| (k) provide for appropriate documentation of the audit plan and for the proposed fieldwork. | |

- 3.1.4 The following planning steps are normally included in an audit:
- (a) collect information about the audited entity and its organization in order to assess risk and to determine materiality;
 - (b) define the objective and scope of the audit;
 - (c) undertake preliminary analysis to determine the approach to be adopted and the nature and extent of enquiries to be made later;
 - (d) highlight special problems foreseen when planning the audit;
 - (e) prepare a budget and a schedule for the audit;
 - (f) identify staff requirements and a team for the audit; and
 - (g) familiarise the audited entity about the scope, objectives and the assessment criteria of the audit and discuss with them as necessary.

2.2. Preliminary Study of the Audited Objects and Subject

2.2.1. Before drafting the Audit Programme, the Chamber member in charge of the audit shall organise the preliminary study of the following aspects of audited objects and subject:

- 1) audited subject;
- 2) audited objects;
- 3) operation priorities of each audited object;
- 4) information sources;
- 5) audit dates;
- 6) composition of the audit group of the audited subject; and
- 7) other issues.

2.2.2. The preliminary study of the audited objects and subject shall include the study of:

- 1) the legislation related to the audited subject ;
- 2) data on budget allocations and actual expenses from the State Budget of Ukraine related to the audited objects and subject;
- 3) financial and statistical statements compiled by the audited object;
- 4) audited object's structure;
- 5) how the audited object fulfils the national budget-funded programmes and other powers related to the use of the public funds;
- 6) materials of the previous inspections performed by the Accounting Chamber on the audited issues, as well as results of the inspections performed by other auditing authorities; and
- 7) materials received from the media.

If necessary, the auditors shall hold consultations with independent institutions, organisations and experts to reveal the achievements made in the audited area and the possibilities of their application to improve the operation of the audited objects.

2.2.3. The preliminary study of the audited subject shall focus on the following issues:

- d) how the audited object's operation meets the requirements of the current Ukrainian legislation; the status of document development and adoption to support the efficiency of this operation;
- e) distribution of functions, powers, and responsibilities at each level of management of the audited object;
- f) the system of reporting and monitoring of the operation of the audited object to receive objective and reliable information on its operation;
- g) procedures and measures to ensure preservation of financial and material resources etc.

Audit procedures

3.2. Supervision and Review

3.2.1. The field standards include
The work of the audit staff **at each level and audit phase** should be properly supervised during

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| the audit, and documented work should be reviewed by a senior member of the audit staff (see paragraph 3.0.3b). | |
| The following paragraphs explain supervision and review as an auditing standard | |
| 3.2.2 Supervision is essential to ensure the fulfilment of audit objectives and the maintenance of the quality of the audit work. Proper supervision and control is therefore necessary in all cases, regardless of the competence of individual auditors. | |
| 3.2.3 Supervision should be directed both to the substance and to the method of auditing. It involves ensuring that: | |
| (a) the members of the audit team have a clear and consistent understanding of the audit plan; | |
| (b) the audit is carried out in accordance with the auditing standards and practices of the SAI; | |
| (c) the audit plan and action steps specified in that plan are followed unless a variation is authorised; | If the audit may require amendment or reduction of the Audit Programme, the amendments shall be introduced in accordance with the procedure envisaged for the approval of the Programme. The Audit Programme ... shall be approved by the Head of the Accounting Chamber, the First Deputy Head or the Deputy Head, and, if necessary, by the Chamber Board. |
| (d) working papers contain evidence adequately supporting all conclusions, recommendations and opinions; | |
| (e) the auditor achieves the stated audit objectives; and | |
| (f) the audit report includes the audit conclusions, recommendations and opinions , as appropriate. | 4.2. The Report shall contain ... conclusions and proposals . Conclusions and proposals of the Report shall proceed from the facts established by the audit. |
| 3.2.4. All audit work should be reviewed by a senior member of the audit staff before the audit opinions or reports are finalised. It should be carried out as each part of the audit progresses . Review brings more than one level of experience and judgement to the audit task and should ensure that: | 3.8. The audit group leader shall supervise all work performed by its members. Such supervision shall be performed over the entire audit to ensure that: |
| (a) all evaluations and conclusions are soundly based and are supported by competent, relevant and reasonable audit evidence as the foundation for the final audit opinion or report; | - all assessments and conclusions are confirmed by sufficient and reliable evidence ; |
| (b) all errors, deficiencies and unusual matters have been properly identified, documented and either satisfactorily resolved or brought to the attention of a more senior SAI officer(s) ; and | - all violations and deficiencies are properly documented; or corrected; or brought to the attention of the audited object officials. (Paragraph 3.8.2) |
| (c) changes and improvements necessary to the conduct of future audits are identified, recorded and taken into account in later audit plans and in staff development activities. | |
| 3.2.5 This standard operates differently in SAIs organised in a collegiate form. In such a structure, decisions, except those of a routine nature, are taken on a collegiate basis at a level appropriate to the importance of the matter. Such an entity, as a whole, decides on the scope of the examination, the tests to be undertaken and the methods to be used. | |
| 3.3. Study and Evaluation of Internal Control | |
| 3.3.1 The field standards include | 2. AUDIT PREPARATIONS.... 2.2.2. The preliminary study of the audit objects and |

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| <p>The auditor, in determining the extent and scope of the audit, should study and evaluate the reliability of internal control (see paragraph 3.0.3c).</p> | <p>subject shall include the analysis of: ... 4) the audited object structure;</p> <p>3. AUDIT PROCEDURE... 3.3. The audit shall include the application of: 1) the methods for the organisation of the audited object's operations;</p> <p>4. FORMALISATION OF AUDIT RESULTS ... 4.2. The assessment of the audit results shall be presented in a Report... The Report shall contain ... the assessment of the efficiency of management decisions and the status of internal control...</p> |
| <p>The following paragraphs explain internal control as an auditing standard.</p> | |
| <p>3.3.2 The study and evaluation of internal control should be carried out according to the type of audit undertaken.</p> | <p>2. AUDIT PREPARATIONS... 2.2.3. The preliminary study of the audit objects and subject shall include the analysis of:</p> |
| <p>In the case of a regularity (financial) audit, study and evaluation are made mainly on controls that assist in safeguarding assets and resources, and assure the accuracy and completeness of accounting records.</p> | <p>4) procedures and measures to ensure preservation of financial and material resources etc;</p> <p>3) the system of reporting and monitoring of the operation of the audited object to receive objective and reliable information on its operation;</p> |
| <p>In the case of regularity (compliance) audit, study and evaluation are made mainly on controls that assist management in complying with laws and regulations.</p> | <p>1) how the audited object's operation meets the requirements of the current Ukrainian legislation; the status of document development and adoption to support the efficiency of this operation;</p> |
| <p>In the case of performance audit, they are made on controls that assist in conducting the business of the audited entity in an economic, efficient and effective manner, ensuring adherence to management policies, and producing timely and reliable financial and management information.</p> | <p>2) distribution of functions, powers, and responsibilities at each level of management of the audited object;</p> <p>2.3. Requirements to the Audit Programme ... 2.3.3. ... The efficiency criteria ... may also include the regulation-established and grounded by internal document of the audited object standards of work and control that can be used for a comparative analysis and assessment of tasks, functions, and individual operations and financial transactions. i.e. the achieved results.</p> |
| <p>3.3.3 The extent of the study and evaluation of internal control depends on the objectives of the audit and on the degree of reliance intended.</p> | <p>1. GENERAL PROVISIONS</p> <p>1.3. The audit is aiming to establish the state of affairs as concerns the use of the State Budget funds, the nationwide target funds, currency and loan resources, other public finance related to the State Budget of Ukraine and to study it from the perspective of legality, efficiency, and advisability, as well as to assess the internal control of the audited object and provide proposals to clear the violations of the current legislation of Ukraine.</p> |
| <p>3.3.4 Where accounting or other information systems are computerized, the auditor should determine whether internal controls are functioning properly to ensure the integrity, reliability and completeness of the data.</p> | <p>3) the system of reporting and monitoring of the operation of the audited object to receive objective and reliable information on its operation;</p> |

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| <p>3.4 Compliance With Applicable Laws and Regulations</p> | |
| <p>3.4.1. The field standards include: In conducting regularity (financial) audits, a test should be made of compliance with applicable laws and regulations. The auditor should design audit steps and procedures to provide reasonable assurance of detecting errors, irregularities, and illegal acts that could have a direct and material effect on the financial statement amounts or the results of regularity audits. The auditor also should be aware of the possibility of illegal acts that could have an indirect and material effect on the financial statements or results of regularity audits.</p> | <p>2.2.3. The preliminary study of the audit objects and subject shall include the study of: 1) how the objects operation meets the requirements of the current Ukrainian legislation; the status of development and observance of documents necessary for the efficiency of such activity; The Report shall contain, in particular, a brief description of the revealed facts and assessment of their compliance with the current Ukrainian legislation.</p> |
| <p>In conducting performance audits, an assessment should be made of compliance with applicable laws and regulations when necessary to satisfy the audit objectives. The auditor should design the audit to provide reasonable assurance of detecting illegal acts that could significantly affect audit objectives.</p> | |
| <p>The auditor also should be alert to situations or transactions that could be indicative of illegal acts that may have an indirect effect on the audit results. The regularity audit is an essential aspect of government auditing. One important objective which this type of audit assigns to the SAI is to make sure, by all the means put at its disposal, that the State budget and accounts are complete and valid. This will provide Parliament and other users of the audit report with assurance about the size and development of the financial obligations of the State. To achieve this objective the SAI will examine the accounts and financial statements of the administration with a view to assuring that all operations have been correctly undertaken, completed, passed, paid and registered. The audit procedure normally results, in the absence of irregularity, in the granting of a "discharge" (see paragraph 3.0.3d)</p> | <p>The Report shall contain ... the criteria for the assessment of efficiency of the use of budget funds and assessment of the facts revealed in accordance with this criteria, ... the status of budget planning, the scope, characteristics, and classification of budget violations and inefficient use of the national budget funds, as well as the reasons that have cause violations and deficiencies, potential problems, conclusions and proposals.</p> |
| <p>The following paragraphs explain compliance as an auditing standard.</p> | |
| <p>3.4.2 Reviewing compliance with laws and regulations is especially important when auditing government programs because decision makers need to know if the laws and regulations are being followed, whether they are having the desired results, and, if not, what revisions are necessary. Additionally government organisations, programs, services, activities, and functions are created by laws and are subject to more specific rules and regulations.</p> | <p>1.3. The audit is aiming to establish the state of affairs as concerns the use of the State Budget funds, the nationwide target funds, currency and loan resources, other public finance related to the State Budget of Ukraine and to study it from the perspective of legality, efficiency, and advisability, as well as to assess the internal control of the audited object and provide proposals to clear the violations of the current legislation of Ukraine.</p> |
| <p>3.4.3 Those planning the audit need to be knowledgeable of the compliance requirements that apply to the entity being audited. Because the laws and regulations that may apply to a specific audit are often numerous, the auditors need to exercise professional judgement in determining those laws and regulations that might have a significant impact on the audit objectives.</p> | |
| <p>3.4.4 The auditor also should be alert to situations or transactions that could be indicative of illegal acts that may indirectly impact the results of the audit. When audit steps and procedures indicate that illegal acts have or may have occurred, the auditor needs to determine the extent to which these acts affect the audit results.</p> | |
| <p>3.4.5 In conducting audits in accordance with this standard, the auditors should choose and perform audit steps and procedures that, in their professional judgement, are appropriate in the circumstances. These audit steps and procedures should be designed to obtain sufficient, competent, and relevant evidence that will provide a reasonable basis for their judgements and</p> | |

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| conclusions. | |
| 3.4.6 Generally, management is responsible for establishing an effective system of internal controls to ensure compliance with laws and regulations. In designing steps and procedures to test or assess compliance, auditors should evaluate the entity's internal controls and assess the risk that the control structure might not prevent or detect non-compliance. | |
| 3.4.7 Without affecting the SAI's independence, the auditors should exercise due professional care and caution in extending audit steps and procedures relative to illegal acts so as not to interfere with potential future investigations or legal proceedings. Due care would include consulting appropriate legal counsel and the applicable law enforcement organisations to determine the audit steps and procedures to be followed. | |
| 3.5 Audit Evidence | |
| 3.5.1 The field standards include | |
| Competent, relevant and reasonable evidence should be obtained to support the auditor's judgement and conclusions regarding the organisation, program, activity or function under audit (see paragraph 3.0.3e) | |
| The following paragraphs explain audit evidence as an auditing standard. | |
| 3.5.2 The audit findings, conclusions and recommendations must be based on evidence. Since auditors seldom have the opportunity of considering all information about the audited entity, it is crucial that the data collection and sampling techniques are carefully chosen. When computer-based system data are an important part of the audit and the data reliability is crucial to accomplishing the audit objective, auditors need to satisfy themselves that the data are reliable and relevant. | 3.5...The evidence is the collected and documented information used by the auditor to ground the audit results. |
| 3.5.3 Auditors should have a sound understanding of techniques and procedures such as inspection, observation, enquiry and confirmation, to collect audit evidence. The SAI should ensure that the techniques employed are sufficient to reasonably detect all quantitatively material errors and irregularities. | 3.3. The audit shall involve [the following approaches]: 1) a study of the methods of organisation of work of the audited object; 2) a study of the results of the audited object's operation; 3) a study of the specific facts and situations revealed at the audited object; 4) a study of all available data; and 5) review of documents. |
| 3.5.4 In choosing approaches and procedures, consideration should be given to the quality of evidence , i.e., the evidence should be competent, relevant and reasonable. | The evidence shall be sufficient and reliable. |
| 3.5.5 Auditors should adequately document the audit evidence in working papers, including the basis and extent of the <u>planning, work performed and the findings of the audit.</u> | |
| 3.5.6 Adequate documentation is important for several reasons. It will: | |
| (a) confirm and support the auditor's opinions and reports; | |
| (b) increase the efficiency and effectiveness of the audit; | |

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| (c) serve as a source of information for preparing reports or answering any enquiries from the audited entity or from any other party; | |
| (d) serve as evidence of the auditor's compliance with Auditing Standards; | |
| (e) facilitate planning and supervision; | |
| (f) help the auditor's professional development; | |
| (g) help to ensure that delegated work has been satisfactorily performed; and | |
| (h) provide evidence of work done for future reference. | |
| 3.5.7 The auditor should bear in mind that the content and arrangement of the working papers reflect the degree of the auditor's proficiency, experience and knowledge. Working papers should be sufficiently complete and detailed to enable an experienced auditor having no previous connection with the audit subsequently to ascertain from them what work was performed to support the conclusions. | [In addition to the materials collected in the course of the audit], the auditor shall document in the working paper. The auditor shall maintain the working papers only on the basis of the information received in the course of audits. The working papers shall be maintained in a free form and shall be kept together with the audit materials. |
| 3.6. Analysis of Financial Statements | |
| 3.6.1. The field standards include In regularity (financial) audit, and in other types of audit when applicable, auditors should analyse the financial statements to establish whether acceptable accounting standards for financial reporting and disclosure are complied with. Analysis of financial statements should be performed to such a degree that a rational basis is obtained to express an opinion on financial statements (see paragraph 3.0.3f). | 2.2.2. The preliminary study of the audit objects and subject shall include the analysis of: ... 3) financial ... statements prepared by the audited object; |
| The following paragraphs explain analysis of financial statements as an auditing standard. | |
| 3.6.2 Financial statement analysis aims at ascertaining the existence of the expected relationship within and between the various elements of the financial statements, identifying any unexpected relationships and any unusual trends. The auditor should therefore thoroughly analyse the financial statements and ascertain whether: | |
| (a) financial statements are prepared in accordance with acceptable accounting standards; | |
| (b) financial statements are presented with due consideration to the circumstances of the audited entity; | |
| (c) sufficient disclosures are presented about various elements of financial statements; and | |
| (d) the various elements of financial statements are properly evaluated, measured and presented. | |
| 3.6.3 The methods and techniques of financial analysis depend to a large degree on the nature, scope and objective of the audit, and on the knowledge and judgement of the auditor. | |
| 3.6.4 Where the SAI is required to report on the execution of budgetary laws, the audit should include: | |

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| (a) for revenue accounts, ascertaining whether forecasts are those of the initial budget, and whether the audits of taxes and duties recorded, and imputed receipts, can be carried out by comparison with the annual financial statements of the audited activity; | |
| (b) for expenditure accounts, verifying credits to assist budgets, adjustment laws and, for carryovers, the previous year's financial statements. | |
| Section IV. Reporting Standards in Government Auditing | |
| 4.0.1 It is not practical to lay down a rule for reporting on every special situation. This standard is to assist and not to supersede the prudent judgement of the auditor in making an opinion or report. | |
| 4.0.2 The expression "reporting" embraces both the auditor's opinion and other remarks on a set of financial statements as a result of a regularity (financial) audit and the auditor's report on completion of a performance audit. | |
| 4.0.3 The auditor's opinion on a set of financial statements is generally in a concise , standardised format which reflects the results of a wide range of tests and other audit work. There is often a requirement to report as to the compliance of transactions with laws and regulations and to report on matters such as inadequate systems of control, illegal acts and fraud . In some countries, constitutional or statutory obligations may require the SAI to report specifically on the execution of budgetary laws, reconciling budgetary estimates and authorisation to the results set out in the financial statements. | 4.2. ...The Report shall contain, in particular, a brief description of the facts revealed and the assessment of their compliance with the current Ukrainian legislation , the criteria for the assessment of efficiency of the use of budget funds and assessment of the facts revealed in accordance with these criteria, assessment of efficiency of management decisions, status of internal control , budget planning, the scope, characteristics and classification of budget violations and inefficient use of the national budget funds , as well as the reasons that have cause violations and deficiencies, potential problems, conclusions and proposals. |
| 4.0.4 In a performance audit, the auditor reports on the economy and efficiency with which resources are acquired and used, and the effectiveness with which objectives are met. Such reports may vary considerably in scope and nature, for example covering whether resources have been applied in a sound manner, commenting on the impact of policies and programs and recommending changes designed to result in improvements. | 4.2. ... The Report shall contain, in particular, ... the criteria for the assessment of efficiency of the use of budget funds and assessment of the facts revealed in accordance with these criteria. |
| 4.0.5 In order to recognise reasonable user needs, the auditor's report in both regularity and performance auditing may need to have regard to expanded reporting periods or cycles and relevant and appropriate disclosure requirements. | |
| 4.0.6 For ease of reference in this chapter, the word "opinion" is used to mean the auditor's conclusions as a result of a regularity (financial) audit, and may embrace the matters described in paragraph 4.0.3; the word "report" is used to mean the auditor's conclusions following a performance audit, as described in paragraph 4.0.4. | |
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| The reporting standards are | |
| (a) At the end of each audit the auditor should prepare a written opinion or report, as appropriate, setting out the findings in an appropriate form; its content should be easy to understand and free from vagueness or ambiguity, include only information which is supported by competent and relevant audit evidence, and be independent, objective, fair and constructive. | 4.1. ...The audit results shall be set forth in the objective, reliable, grounded, and clear manner with an exhaustive description of the revealed facts and data. The act cannot contain any assumptions and unconfirmed data on the management, business, and financial activities of the audited object. 4.4. ... proposals – [shall] logically proceed from the conclusions made. ... The Report shall not contain exaggerations and excessive emphasising of the revealed |

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| | deficiencies and violations. ... The Report shall focus ... on specific proposals for the improvement of the operation of the audited object. |
| (b) It is for the SAI to which they belong to decide finally on the action to be taken in relation to fraudulent practices or serious irregularities discovered by the auditors. | 4.5. ...Should the audit reveal facts of non-target use of the national budget funds, and other violations that are subject of criminal or administrative liability, the Chamber Board shall pass the audit materials to the General Prosecutor's Office, other law enforcement authorities or to the court in accordance with the procedure established by the legislation. |
| With regard to regularity audits, the auditor should prepare a written report, which may either be a part of the report on the financial statements or a separate report, on the tests of compliance with applicable laws and regulations. The report should contain a statement of positive assurance on those items tested for compliance and negative assurance on those items not tested. | |
| With regard to performance audits, the report should include all significant instances of non-compliance that are pertinent to the audit objectives. | |
| The following paragraphs explain reporting as an auditing standard. Paragraph 4.0.8 relates both to opinions and reports, paragraphs 4.0.9 - 4.0.20 relate to opinions and paragraphs 4.0.21 - 4.0.26 to reports. | |
| 4.0.8 The form and content of all audit opinions and reports are founded on the following general principles: | |
| (a) Title. The opinion or report should be preceded by a suitable title or heading, helping the reader to distinguish it from statements and information issued by others. | |
| (b) Signature and date. The opinion or report should be properly signed. The inclusion of a date informs the reader that consideration has been given to the effect of events or transactions about which the auditor became aware up to that date (which, in the case of regularity (financial) audits, may be beyond the period of the financial statements). | The audit act... shall be signed by the authorised officials of the audited object, and all members of the audit group. |
| (c) Objectives and scope. The opinion or report should include reference to the objectives and scope of the audit. This information establishes the purpose and boundaries of the audit. | 4.1. The audit results shall be documented in an act stating the audit grounds, aim, and subject. |
| (d) Completeness. Opinions should be appended to and published with the financial statements to which they relate, but performance reports may be free standing. The auditor's opinions and reports should be presented as prepared by the auditor. In exercising its independence the SAI should be able to include whatever it sees fit, but it may acquire information from time to time which in the national interest cannot be freely disclosed. This can affect the completeness of the audit report. In this situation the auditor retains a responsibility for considering the need to make a report, possibly including confidential or sensitive material in a separate, unpublished report. | 4.3. ... 1) members of the audit group shall draft a preliminary report to be considered by the Chamber member in charge; 2) if necessary members of the audit group shall finalise the report with due consideration of the proposals made by the Chamber member in charge. ... |
| (e) Addressee. The opinion or report should identify those to whom it is addressed, as required by the circumstances of the audit engagement and local regulations or practice. This may be unnecessary where formal procedures exist for its delivery. | |
| (f) Identification of subject matter. The opinion or report should identify the financial statements (in the case of regularity (financial) audits) or area (in the case of performance audits) to which it relates. This includes information such as the name of the audited entity, the date and period covered by the financial statements and the subject matter that has been audited. | 4.1. The audit results shall be documented in an act stating the audit grounds, aim, and subject, audited object(s), audit period , the composition of the audit group, and the actual state of affairs revealed at the object with presentation of the evidence. |
| (g) Legal basis. Audit opinions and reports should identify the legislation or other authority providing for the audit. | 4.1. The audit results shall be documented in an act stating the audit grounds ... |
| (h) Compliance with standards. Audit opinions and reports should indicate the auditing standards | |

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| or practices followed in conducting the audit, thus providing the reader with an assurance that the audit has been carried out in accordance with generally accepted procedures. | |
| (i) Timeliness. The audit opinion or report should be available promptly to be of greatest use to readers and users, particularly those who have to take necessary action. | 4.3. The Audit Report shall be prepared ... within the dates envisaged by the Audit Programme. |
| 4.0.9 An audit opinion is normally in a standard format, relating to the financial statements as a whole, thus avoiding the need to state at length what lies behind it but conveying by its nature a general understanding among readers as to its meaning. The nature of these words will be influenced by the legal framework for the audit, but the content of the opinion will need to indicate unambiguously whether it is unqualified or qualified and, if the latter, whether it is qualified in certain respects or is adverse (paragraph 4.0.14) or a disclaimer (paragraph 4.0.15) of opinion. | |
| 4.0.10 An unqualified opinion is given when the auditor is satisfied in all material respects that: | |
| (a) the financial statements have been prepared using acceptable accounting bases and policies which have been consistently applied; | |
| (b) the statements comply with statutory requirements and relevant regulations; | |
| (c) the view presented by the financial statements is consistent with the auditor's knowledge of the audited entity; and | |
| (d) there is adequate disclosure of all material matters relevant to the financial statements. | |
| 4.0.11 Emphasis of Matter. In certain circumstances the auditor may consider that the reader will not obtain a proper understanding of the financial statements unless attention is drawn to unusual or important matters. As a general principle the auditor issuing an unqualified opinion does not make reference to specific aspects of the financial statements in the opinion in case this should be misconstrued as being a qualification. In order to avoid giving that impression, references which are meant as "emphasis of matter" are contained in a separate paragraph from the opinion. However, the auditor should not make use of an emphasis of matter to rectify a lack of appropriate disclosure in the financial statements, nor as an alternative to, or a substitute for, qualifying the opinion. | |
| 4.0.12 An auditor may not be able to express an unqualified opinion when any of the following circumstances exist and, in the auditor's judgement, their effect is or may be material to the financial statements: | |
| (a) there has been limitation on the scope of the audit; | |
| (b) the auditor considers that the statements are incomplete or misleading or there is an unjustified departure from acceptable accounting standards; or | |
| (c) there is uncertainty affecting the financial statements. | |
| 4.0.13 Qualified Opinion. Where the auditor disagrees with or is uncertain about one or more particular items in the financial statements which are material but not fundamental to an understanding of the statements, a qualified opinion should be given. The wording of the opinion normally indicates a satisfactory outcome to the audit subject to a clear and concise statement of the matters of disagreement or uncertainty giving rise to the qualified opinion. It helps the users of the statements if the financial effect of the uncertainty or disagreement is quantified by the auditor although this is not always practicable or relevant. | |
| 4.0.14 Adverse Opinion. Where the auditor is unable to form an opinion on the financial statements taken as a whole due to disagreement which is so fundamental that it undermines the position presented to the extent that an opinion which is qualified in certain respects would not be adequate, an adverse opinion is given. The wording of such an opinion makes clear that the financial statements are not fairly stated, specifying clearly and concisely all the matters of | |

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| disagreement. Again, it is helpful if the financial effect on the financial statements is quantified where relevant and practicable. | |
| 4.0.15 Disclaimer of Opinion. Where the auditor is unable to arrive at an opinion regarding the financial statements taken as a whole due to an uncertainty or scope restriction which is so fundamental that an opinion which is qualified in certain respects would not be adequate, a disclaimer is given. The wording of such a disclaimer makes clear that an opinion cannot be given, specifying clearly and concisely all matters of uncertainty. | |
| 4.0.16 It is customary for SAIs to provide a detailed report amplifying the opinion in circumstances in which it has been unable to give an unqualified opinion. | |
| 4.0.17 In addition, regularity audits often require that reports are made where weaknesses exist in systems of financial control or accounting (as distinct from performance audit aspects). This may occur not only where weaknesses affect the audited entity's own procedures but also where they relate to its control over the activities of others. The auditor should also report on significant irregularities, whether perceived or potential, on inconsistency of application of regulations or on fraud and corrupt practices. | |
| 4.0.18 SAIs which have a jurisdictional statute have the ability to take action on certain irregularities discovered in financial statements. They may be authorized to reconcile the accounts prepared by the accountants and impose fines with regard to accountants, and in certain circumstances can cause their suspension or dismissal. | |
| 4.0.19 In reporting on irregularities or instances of non compliance with laws or regulations, the auditors should be careful to place their findings in the proper perspective. The extent of non-compliance can be related to the number of cases examined or quantified monetarily. | |
| 4.0.20 Reports on irregularities may be prepared irrespective of a qualification of the auditor's opinion. By their nature they tend to contain significant criticisms, but in order to be constructive they should also address future remedial action by incorporating statements by the audited entity or by the auditor, including conclusions or recommendations. Also included should be the opinion of the organisation being audited as well as the auditor's own judgements and findings. | Results of the adverse opinion [should the authorised person of the audited object disagree with the facts presented in the act, their grounding and evidence] shall be presented as a separate reference and signed by the leader of the audit group. The adverse opinion and the reference shall be attached to the audit act and be its indispensable part. Should the dates for the submission of the adverse opinion be violated, such opinion will not be taken into account. |
| 4.0.21 In contrast to regularity audit, which is subject to fairly specific requirements and expectations, performance audit is wide-ranging in nature and is more open to judgement and interpretation; coverage is also more selective and may be carried out over a cycle of several years, rather than in one financial period; and it does not normally relate to particular financial or other statements. As a consequence performance audit reports are varied and contain more discussion and reasoned argument. | |
| 4.0.22 The performance audit report should state clearly the objectives and scope of the audit. Reports may include criticism (for example where, in the public interest or on grounds of public accountability, matters of serious waste, extravagance or inefficiency are drawn to attention) or may make no significant criticism but give independent information, advice or assurance as to whether and to what extent economy, efficiency and effectiveness are being or have been achieved. | |
| 4.0.23 The auditor is not normally expected to provide an overall opinion on the achievement of economy, efficiency and effectiveness by an audited entity in the same way as the opinion on financial statements. Where the nature of the audit allows this to be done in relation to specific areas of an entity's activities, the auditor should provide a report which describes the circumstances and arrives at a specific conclusion rather than a standardised statement. Where the audit is confined to consideration of whether sufficient controls exist to secure economy, | |

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| efficiency or effectiveness, the auditor may provide a more general opinion. | |
| 4.0.24 Auditors should recognise that their judgements are being applied to actions resulting from past management decisions. Care should therefore be exercised in making such judgements, and the report should indicate the nature and extent of information reasonably available (or which ought to have been available) to the audited entity at the time the decisions were taken. By stating clearly the scope, objectives and findings of the audit, the report demonstrates to the reader that the auditor is being fair. Fairness also implies the presentation of weaknesses or critical findings in such a way as to encourage correction, and to improve systems and guidance within the audited entity. Accordingly the facts are generally agreed with the audited entity in order to ensure that they are complete, accurate and fairly presented in the audit report. There may also be a need to include the audited entity's responses to the matters raised, either verbatim or in summary, especially where the SAI presents its own views or recommendations. | |
| 4.0.25 Performance reports should not concentrate solely on criticism of the past but should be constructive. The auditor's conclusions and recommendations are an important aspect of the audit and, where appropriate, are written as a guide for action. Generally these recommendations suggest what improvements are needed rather than how to achieve them, though circumstances sometimes arise which warrant a specific recommendation, for example to correct a defect in the law in order to bring about an administrative improvement. | |
| 4.0.26 In formulating and following up recommendations, the auditor should maintain objectivity and independence and thus focus on whether identified weaknesses are corrected rather than on whether specific recommendations are adopted. | |
| 4.0.27 In formulating the audit opinion or report, the auditor should have regard to the materiality of the matter in the context of the financial statements (regularity (financial) audit) or the nature of the audited entity or activity (performance audit). | |
| 4.0.28 For regularity (financial) audits, if the auditor concludes that, judged against the criteria most appropriate in the circumstances, the matter does not materially affect the view given by the financial statements, the opinion should not be qualified. Where the auditor decides that a matter is material the opinion should be qualified, having determined the type of qualification (paragraphs 4.0.12 - 4.0.15). | |
| 4.0.29 In the case of performance audits that judgement will be more subjective as the report does not relate so directly to financial or other statements. Consequently the auditor may find that materiality by nature or by context is a more important consideration than materiality by amount. | |