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Culmination of the Powers of the State Audit Office of Hungary within the Scope of New Legislation on Public Funds

SUMMARY: The regulatory framework serving the renewal of domestic public finances comprises the Fundamental Law and cardinal acts entering into effect following its adoption. Among cardinal acts, the first one to be adopted was the new SAO Act. In addition to its full consistency with international requirements, the act consolidated the SAO's independence and audit powers and, by clearly declaring the publicity of reports, improved the transparency of audits. Among the SAO's new powers, the power to sanction failure to fulfil the action planning and cooperation obligations, coupled together with general empowerment to issue administrative warnings has lent weight to the SAO's interventions and transformed its operation. The new act also vested new roles and rights related to preparing studies and analyses in the institution, as well as performing advisory and consultative activities. The SAO is free to avail itself of these tools within regulatory provisions having as its only mandatory task to prepare analyses in support of the Fiscal Council's work. By means of its new roles and leveraging publicity, the SAO has been effective in focusing its efforts on facilitating controlled behaviours to ensure the regular and efficient use of public funds.¹

KEYWORDS: SAO Act, obligation to cooperate, action planning, consultancy, analysis

JEL CODES: K19, M48

The Fundamental Law, being at the top of the hierarchy of legislation, has brought about one of the most profound changes by elevating the matter of public finances to the constitutional level. In its chapter on public funds, the Fundamental Law lays down guarantees pertaining to the central budget, public debt, national assets, transparency, sharing of public dues, the National Bank of Hungary, the Fiscal Council and State Audit Office.

The chapter on public funds stipulates, as a key principle, the requirement of balanced,

transparent and sustainable fiscal management. The debt rule has been placed at the heart of legislation on public finances. Fulfilling the debt rule depends not only on reducing public debt but also on increasing the gross domestic product (GDP), as a precondition of which the principle of a competition-based economy has also been strengthened at the constitutional level (Domokos et al., 2016a).

A disciplined fiscal policy is primarily the responsibility of the National Assembly and the Government, but other government agencies are also required to enforce this principle in

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performing their duties. Compared to the previous Constitution, an important shift in focus has been the role of the Constitutional Court not as a balance among the branches of power but as an institution that respects the country's efforts aimed at balanced and sustainable fiscal management. This is underpinned by the obvious truth that the economic possibilities set limits to the enforcement of rights. However, the budget policy of National Assembly and the Government is not left without balances, as a Fiscal Council with the right to veto in respect of observing the debt rule has been set up as a protector of this constitutional requirement (Domokos et al., 2016a). At the same time, the Fiscal Council's remit is relatively narrow and hardly goes beyond commenting on meeting the proposed budget or the debt rule.

As public finances grew in importance, so did – by necessity – the weight of the State Audit Office. As a bastion of the public finances system in its capacity as a financial audit institution, it had to integrate the protection of high-priority public finance objectives in its everyday work. The permissive provisions of the 1989 SAO Act did not ensure sufficiently strong powers for SAO to bear increased liability arising from this role and to support good governance, a goal formulated in its long-term strategy. It was necessary to strengthen SAO's independence and powers as well as creating an institutional role meeting the requirements of modern times.

Following the adoption of the Fundamental Law, the first cardinal act to be passed by National Assembly was the Act on the State Audit Office of Hungary. The new SAO Act provides that *“With its findings, recommendations and advice based on its audit experience, the State Audit Office of Hungary assists the National Assembly, its committees and the work of the audited entities, thus facilitating well-governed state operations”*.

The provisions of the new SAO Act had a

threefold effect on accomplishing the SAO's mission and role in society. The SAO's strengthened independence has created an institution that fulfils all requirements even by international standards of independence. Its augmented audit powers have been instrumental in ending an age of audits without consequences. This twofold change ensures that the institution makes objective and unbiased findings and freely chooses its audits and audit methodologies. According to the SAO's model of SAIs' contribution to good governance, SAIs' legal status, powers and independence are the foundations of activities supporting good governance (Domokos et al., 2016a). Furthermore, in order to attain its utilisation objectives, by performing new activities stipulated in the new SAO Act, the SAO can support the work of audited entities and the National Assembly in new roles as well.

ENHANCING SAO INDEPENDENCE

In respect of SAIs' independence, the International Monetary Fund, the UN and INTOSAI share the view that SAOs can only discharge their duties objectively and effectively if they remain independent of the audited entity and protected from external influence. In relation to its work, SAO audits the agencies of the executive branch of Government; makes recommendations to the Government, the ministers concerned and the audited entities; and presents, in its reports and studies, the systemic deficiencies identified in the functioning of public finances and the sources of hazards at the intersections of the public and private spheres (Domokos, 2010). Therefore, independence from the executive branch and its related guarantees enshrined in law came to be viewed as central issues when the constitutional situations of affected state audit offices were analysed.

Insuring independence in accordance with international standards is critical in the following areas: legal, organisational, personal, financial and functional independence.

Legal independence

Legal independence rests on the international professional community's broad-based support and agreement. Subject to the Lima Declaration incorporating the core principles of the International Organisation of Supreme Audit Institutions (INTOSAI), the establishment of a supreme audit institution must be declared in the Constitution, i.e. it is the Constitution (Fundamental Law) that must state that a State Audit Office operates within the Hungarian legal system. The State Audit Office of Hungary has been declared to be the financial and economic audit organisation of the National Assembly since its establishment first by Act XX of 1949 (hereinafter Constitution Act) and then by the Fundamental Law replacing the above.

Another requirement stipulated in the Lima Declaration provides that the degree of independence must be declared at the constitutional level. The Fundamental Law also determines the degree of independence from a personal, organisational and functional aspect. The Fundamental Law ensures the personal independence of the SAO's President by stipulating a 12-year term of office while the President is under an obligation to report to the National Assembly. The SAO's detailed Rules of Organisation and Operation are determined in a cardinal act. *Smuk* (2010) points out that in the case of rules/decisions to be adopted by qualified majority, the current political majority cannot have a "sense of ownership" of this office. The substantive elements regulated under a cardinal act become independent of the executive branch. In re-

spect of functional independence, the Fundamental Law stipulates that the SAO performs audits within its statutory remit and performs the same in consideration of the aspects of the regularity, expediency and efficiency.

In respect of the SAO's legal status and constitutional standing, a critically important rule and safeguard is a provision of the SAO Act stipulating that any provision related to SAO's legal status and competence can only be included in the Fundamental Law and in the SAO Act. Prior to 2011, legislation only included the term "by law", which had a much more limited value in terms of safeguards.

Organisational independence

With regard to organisational independence, more marked changes have taken place. The new SAO Act declared that in performing its audit activities, the SAO remains independent of any other organisation, which provision set a new and more subtle yardstick of independence. The former SAO Act referred to independent legal status using wording to the effect that the SAO was only subordinated to the National Assembly and legislation. This wording was not only inaccurate but also gave rise to a legal misconception as it identified legal status subordinated to the National Assembly with the notion that only sources of law issued by the National Assembly were applicable to the SAO. Article R of the Fundamental Law declares that "*The Fundamental Law and legal regulations shall be binding on everyone.*" The SAO – as an organisation functioning within a constitutional jurisdiction – is subordinated *ab ovo* not only to legislation but also to lower level sources of law constituting a part of the jurisdiction in respect of life conditions and hence it is governed by the entire spectrum of legal regulations. This is the view reflected in the Lima Declaration as well.

By declaring functional independence in a cardinal act, safeguards required for a state audit office to be able to conduct the audits that it finds necessary in terms of the topics designated by it at its own discretion (Alventosa, 2014).

In clarifying the SAO's legal status, an important step was the revocation of the Secretary General's statutory mandate related to managing the administrative organisation. From 27 June 2004 to 30 June 2011 (until the new SAO Act's entry into effect), the Secretary General, in respect of the SAO as a stand-alone chapter within the central budget, exercised the rights of the head of the organisation responsible for supervision of the chapter, while at the same time it had no direct responsibility (accountability) towards Parliament for its activity performed in this capacity. The rights conferred to the President of the SAO in the fields of economic, financial and organisational independence were impaired due to these licences, however, they were still personally held accountable by the National Assembly for the functioning, financial management and task performance of the organisation. With the impairment of the powers of the President of the SAO, the institutional guarantees for the independence of the SAO also diminished, because in the case of the selection or dismissal of the Secretary General, the rules on conflict of interest were not enforced that would have ensured their independence and impartiality in political and economic matters. We can state that in that position the Secretary General had weak legitimacy, but powerful licences.

Personal independence

Based on the Lima Declaration, the President's independence must be guaranteed by the Constitution. The Fundamental Law ensures

the President's independence by introducing the rule of election by an absolute two thirds majority and a 12-year term of office overarching several parliamentary cycles.

A pivotal rule regarding the President's election is included in the Fundamental Law, the cases of terminating the office being regulated by the cardinal SAO Act. Pursuant to the Act on the National Assembly, the termination of the office of President requires a two thirds majority of MPs' votes, whereby the objective of the Lima Declaration is attained, namely that the rules of termination should not have an adverse impact on the President's independence. The level of source of law and the provisions set out in the cardinal Act provide sufficient guarantee for that. It can be concluded in respect of the cases and conditions of termination that they do not have an adverse impact on the President's independence.

The new regulatory environment also retained the safeguards of independence built around the President's immunity and non-removal from office. In respect of non-removal from office, one of the expectations is the independence of the appointment and dismissal procedure of the executive. In Hungary, neither the former nor the new SAO Act granted any powers to the Government related to the SAO's President, such powers being exercised by the National Assembly. The President's sufficiently long term of office guarantees that he/she discharges his/her duties independently of the election cycle(s). Hungarian law grants the right of immunity to the SAO's President at the highest level, the same as that granted to MPs.

The new SAO Act introduced a rule whereby following the termination of the President's term of office, the President shall remain in office until the National Assembly elects a new President. The above is justified by historical experience, i.e. it is a challenge in a multi-party parliamentary democracy to reach a consensus required for the election of an official. That is

because the degree of necessary consensus is the same as the degree of consensus needed to adopt the Fundamental Law and, therefore, two thirds of the (affirmative) votes of MPs are required. *Domokos* (2014) gives a detailed analysis of operational risks facing the SAO without an elected leader – due to obligations that can only be fulfilled by the President personally -, which can give rise to functional deficiencies and the organisation's failure to comply with constitutional and other statutory obligations. Under the former SAO Act, there were two occasions – in 1996–1997 and 2009–2010 – where the SAO operated without an elected leader.

The audited entities shall not have the right to influence the auditors, and the auditors shall not be dependent on the audited entities. That is guaranteed by the inclusion of a conflict of interest provision in the SAO Act applicable to auditors as well. The entire auditing staff must comply with the highest-level and strictest conflict of interest regulations and so the SAO's President, Vice-President, officers and auditors enjoy wide-ranging protection from engaging in activities violating the public interest and serving other interests.

Financial independence

The question of financial independence is also treated as a priority by both the Lima and Mexico Declarations. According to the Lima Declaration, the minimum requirements ensuring financial independence include the following: adequacy of financial sources, right of direct access to the National Assembly and freedom of utilising financial assets. The Declaration of Mexico clarifies the guarantees by emphasising that the executive branch should not exercise any control over the material, human and financial resources of the supreme audit institution, and these resources

should be provided by the National Assembly or by one of its committees.

Concerning the SAO's independence, one of the farthest-reaching interventions in the new SAO Act has been the consolidation of financial independence. Ever since its inception, the SAO has had a dedicated chapter in the structure of the central budget and as such has been an independently operating and self-managed budgetary organisation performing its activities with financial independence. The first augmented statutory guarantees thereof were included in the SAO Act as of 27 June 2004. It stated that the SAO was responsible for drafting a proposal concerning the relevant budget chapter and the execution of the budget. The new SAO Act has supplemented this provision by elevating a pre-existing and functioning – albeit unenacted – practice to the level of legislation, whereby the Government now submits the SAO's proposed budget to the National Assembly unmodified and proceeds in the same manner with regard to the report on the execution of the budget.

The new SAO Act puts an even more significant and – even by international standards – unique check on the National Assembly's interventions by stating that the SAO's budget must be determined so that it does not amount to less than it was in the previous year's central budget. The new Act also declares that in addition to the tasks stipulated in the SAO Act “any other tasks can be assigned to the State Audit Office of Hungary by law only if the funds necessary for the performance of such tasks are also provided at the same time.” Thanks to these safeguards, the organisation's functioning cannot be paralysed and burdened with additional duties without resources or by means of curbing its budget in nominal terms.

The remuneration and benefits due to the SAO's President, Vice-President, officers and auditors are regulated by the SAO Act and,

therefore, the current system of remuneration also adds to the organisation independence. The Government is not in a position to influence auditors' remuneration, which was theoretically possible under the previous legislation.

Functional independence

Room for manoeuvre related to the performance of audit work is provided to supreme audit institutions by authorisations guaranteeing independent audit activities, which at the same time carries the responsibility of creating added value. It is for this reason that we attach heightened importance to the stipulation in the new SAO Act that the SAO remains independent of any other organisation in performing its audit activity. The State Audit Office performs its audits under the provisions of law in topics and locations selected at its own discretion and based on the requests of organisations duly authorised by law.

With regard to functional independence, Hungary had traditionally recognised the freedom to choose audit topics and audit types; the range of ex-ante and ex-post audits; and topics auditable subject to limited audit powers. These subject areas were always regulated by the current SAO Act in consistency with international requirements. The choice of audit topics was and has remained free in addition to the mandatory range of areas ordered to be audited by the SAO Act, with the SAO having conducted and continuing to conduct a significant number of audits with topics selected at its own discretion. However, it was only the new SAO Act that included a safeguard provision stipulating that the institution's audit plan must be approved by the SAO's President.

The Fundamental Law gives a mandate to the SAO to conduct audits on regularity (com-

pliance), effectiveness and expediency alike. In order to verify criteria of efficiency and economy, the SAO also has powers which can be derived from other regulations. According to the Act on Public Finances, the goal of the controls on public finances – and as such the goal of the State Audit Office representing the external level of public finance controls – is to ensure the effective, efficient and economic management of the national wealth. This can be interpreted as a direct mandate and also a duty for the SAO, based on which it can carry out compliance or performance audits.

This does not impair the SAO's audit role, on the contrary, international standards also recognise statutory audits with limited auditing powers. For example, audits on the use of funds disbursed to parliamentary party factions; the National Bank of Hungary's financial management and its other non-core functions; use of block and categorical grants disbursed to churches and institutions maintained and operated by them; or the use by national security services of special operating budgets can only be performed against compliance criteria.

From the aspect of independence, one of the most important powers is related to the requirement of publicly disclosing reports. In respect of report findings, consideration must be given to the audited institution's opinion on audit findings; furthermore, data security provisions must be complied with, while at the same time the SAO's free decision on the contents of reports and its ability to fulfil statutory obligations related to the public availability of these reports must also be ensured. The new Act also stipulates that the SAO's reports cannot be contested before a court or other authorities. The SAI reports must meet both the criteria of utilisation and the expectations related to the strengthening of public confidence in the professionalism of the SAO. From the aspect of the wide-ranging

utilisation of reports, it is therefore critical to ensure that the SAO's findings convey a clear and unambiguous message to all target groups (Domokos et al., 2016b)

In summary: The criteria of audit independence is supported by the entire regulatory system providing the necessary mandate for the SAO to be in possession of the ability – considered a yardstick by *Alventosa* (2010) – to investigate topics selected at its own discretion, which is a real hallmark of independence.

THE STATE AUDIT OFFICE'S AUGMENTED AUDIT POWERS

The new SAO Act contains detailed powers as important from the aspect of the utilisation of the SAO's work as are the safeguards of independence. The obligation to cooperate and prepare an action plan, along with the system of administrative warnings and property protection provisions represent rights and competences and – from the aspect of audited entities – obligations that result in increased SAO responsibility.

Obligation of cooperation

Pursuant to the provisions set out in the Lima Declaration, access to audit information shall be ensured in a timely manner. The former SAO Act defined sufficient time as a "fast track" obligation while it did not impose sanctions for failure by the audited entities to fulfil this obligation. Concerning the provision of audit information, the SAO relies on cooperation from the audited entity and, other than the obligation to tolerate audits and be available, the latter's active behaviour makes effective audits possible. Due to the former SAO Act's deficiencies, there were cases where SAO was unable to conduct scheduled audits and so the

legislator deemed it reasonable to strengthen the respective provisions with sanctions.

The adoption of the new SAO Act and the amendments to the Criminal Code placed the obligation to cooperate on new foundations. The new SAO Act orders to fast-track the provision of data or documents but allows maximum 5 business days for it to be completed. Subject to the Criminal Code, as from 1 January 2012 failure by the audited organisation to cooperate gives rise to the criminal liability of the head or employee of the audited organisation. These two pillars of the obligation to cooperate (namely, the stipulation of a deadline and the sanctioning of non-compliance) provide strong audit powers to the SAO, based on which the audited organisation can be prevented from obstructing or thwarting audits by withholding documents. In addition to the new SAO Act allowing the SAO's President to initiate disciplinary procedures or take other actions, the effectiveness of auditing activity and the utilisation of audit findings are greatly facilitated by tighter regulations pertaining to the obligation to cooperate.

In 2014, the SAO contacted the Public Prosecutor's Office on grounds of violation of the obligation to cooperate on one occasion and in 2015 it took the same measure on 10 occasions. Such measures provided by Article 33 (3) (a) of the SAO Act became necessary since the representatives of audited entities made written declarations on their inability to make available relevant documents or data requested for auditing purposes.

The obligation to prepare action plans and the role of ex-post audits

The organisation's contribution to good governance culminates in the measures taken by the audited entities. As result of such measures, the audited entity can be urged to

fulfil its duties more regularly, effectively and expediently. By the adoption of the new SAO Act, regulatory uncertainties have radically diminished in respect of action plan preparing obligations. The obligations and the related responsibility were made absolutely clear. The recipient of findings, usually the head of the audited entity, is required to work out an action plan item in response to each actionable finding and submit the action plan thus assembled to the SAO within 30 days of receipt of the report. Domokos (2014) pointed out that this was an important step forward as prior to the SAO Act's entry into effect, the consequences of barely more than half the recommendations were captured in some specific measure, i.e. a great number of findings went unutilised in everyday practice. According to the reports filed by the State Audit Office between 2006 and 2009, statistical data on the proportion of unfulfilled recommendations reflected a deteriorating situation year to year. From 2006 onward, the non-fulfilment rate increased from 11% by 5 percentage points every year. This clearly demonstrated that audit work seemed to be increasingly unsuccessful under the legal framework in force at the time.

Since the new SAO Act took effect, the State Audit Office has had an explicit obligation to scrutinise action plans substantively and, if they are found deficient or unacceptable for other reasons, to return the same with a new deadline for filling gaps. In case of default, the Act provides for sanctions against the head of the entity responsible for drawing up an action plan. In the event that an action plan is found unacceptable, the SAO's President is entitled to initiate criminal or disciplinary proceedings as well as sanctions entailing the withdrawal of financial resources (by way of initiating with the relevant authority suspension of disbursement from the relevant subsystem of the central budget of benefits or grants due to the audited entity or of access

to a share of 1% of the personal income tax). The competent authority (addressed organisation) is required to take measures in the matter, without exercising discretionary powers.

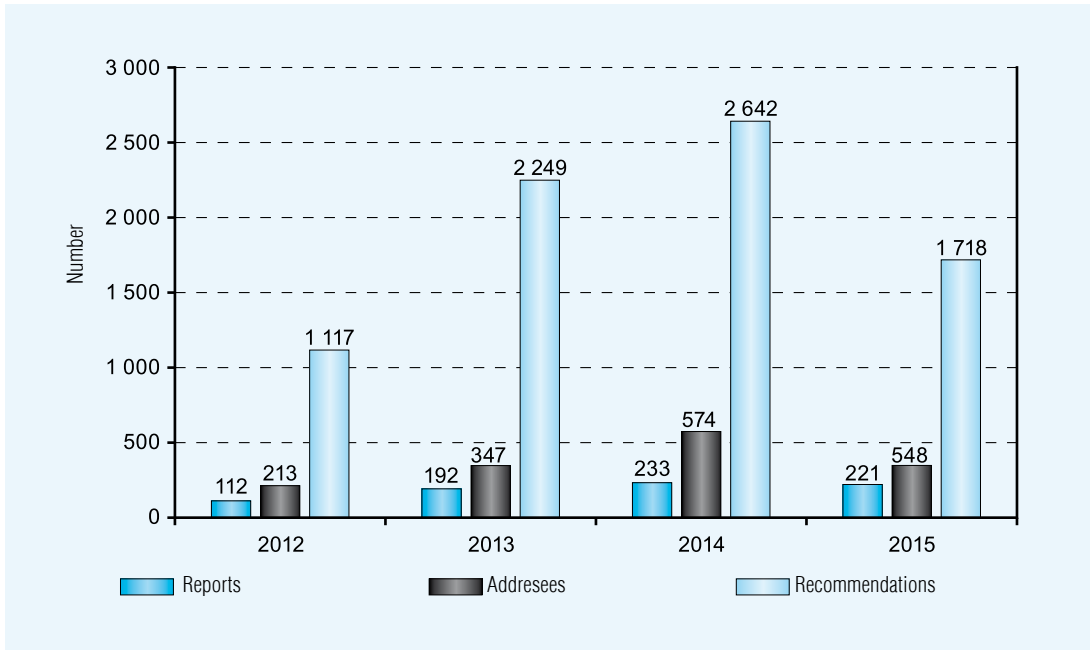
Legislative amendments have also pointed out the importance of a paradigm shift at the level of audited entities: action plan preparation is now a required minimum which is not measured as such but, if necessary, enforced by criminal sanctions with the involvement of the authorised public bodies. The preparation and approval of action plans, the publicity of our recommendations and regular audits all contribute to the effective implementation of our recommendations. If the sanctions are not effective, not possible to be imposed or if the severity of the case justifies so, the president of the State Audit Office may refer the report to one of the parliamentary committees, and may initiate an interview with the head of the audited entity.

In reports issued in the period 2012–2015, a significant number of recommendations entailing action plan preparation obligations were addressed to hundreds of recipients (*see Figure 1*).

One of the specific features of a SAI operating as an agency is that the supreme economic and financial audit institution formulates audit findings and recommendations and/or can initiate other proceedings as necessary but is not entitled to issue a resolution with binding effect on the audited entity. Therefore, the SAO does not request specific measures but makes recommendations as to the manner of rectifying deficiencies. It is in consideration of such recommendations that the audited entity is required to prepare and submit its action plan to the SAO. The SAO evaluates the received action plans and, if necessary, requests corrections or additions. However, the actual implementation of the required measures will not be enforced by the SAO but by voters, supervisory bodies, employers, internal audit units, the Government, the National Assem-

Figure 1

**NUMBER OF REPORTS, RECOMMENDATIONS AND RELATED ADDRESSEES
IN THE PERIOD 2012–2015**



Source: State Audit Office of Hungary

bly and, not least, social expectations arising from the SAO’s widely publicised audits. The key to ultimate sanctions imposed on non-complying entities obliged by relevant action plans is in their hands (initiating procedures for the establishment of labour law and disciplinary liability, removal from post).

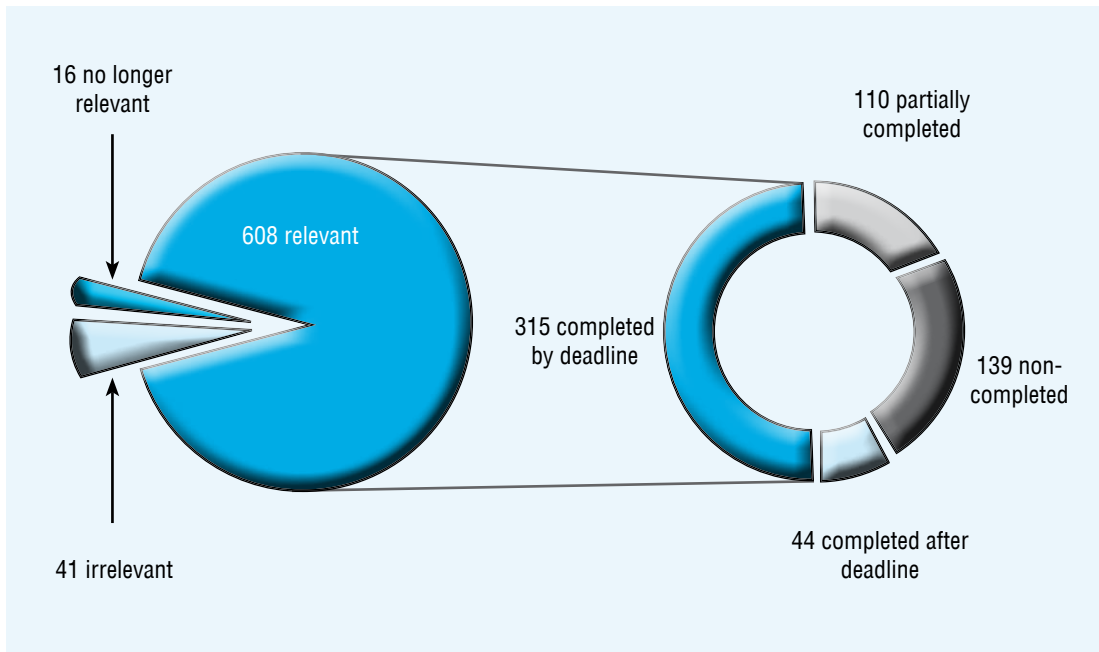
In accordance with the SAO’s strategy, in order for SAO’s work to be utilised to the maximum degree the SAO has made the system of ex-post audits more targeted. As part of ex-post audits, the SAO evaluates the completion of tasks included in action plans, whose result is indicative of the risks affecting the regular operation of the audited entity. Since the introduction of the new SAO Act, 2014 saw for the first time the SAO’s conclusion of ex-post audits based on a dedicated programme, under which the action plan preparing obligation imposed by the new SAO Act was already in

effect in respect of audits. *Figure 2* shows the outcomes of measures in the wake of ex-post audits conducted at 62 local governments.

Over half the measures in action plans drawn up in response to 608 relevant recommendations were fully implemented by the stipulated deadline and the SAO found 77% of such measures acceptable at least to some extent. It is noteworthy that by now, based on up-to-date records kept at the SAO, traceability has become fully ensured. Failure to implement the measures poses a risk to accountable manager conduct and the regularity of operation; therefore, in order to address and mitigate these risks, further measures need to be taken. If the SAO’s follow-up audit finds that the audited entity failed to fully execute the tasks undertaken in the action plan prepared to address the findings calling for measures, the SAO may take further steps.

Figure 2

IMPLEMENTATION OF TASKS PROVIDED FOR IN THE ACTION PLANS ON THE BASIS OF DATA FROM EX-POST AUDITS CONDUCTED IN 2014



Source: State Audit Office of Hungary

Ex-post audits were also conducted from 2015. In 2015, within the scope of ex-post audits, the SAO evaluated the implementation of action plans in the case of 23 local governments audited against the same criteria and also conducted ex-post audits related to audits on two other topics. In the first half of 2016, 28 ex-post audits were concluded and in addition to audits at 15 local governments and 5 state-owned water companies, public transport companies and other organisations came under scrutiny for their implemented action plans.

Warning letters

The new SAO Act provides further opportunities for the President in the event that the SAO uncovers regulatory breaches or non-designated use of assets in its audits. Unless

the law provides the application of more severe consequences, the President is entitled to address a warning letter to the head of the audited entity who must consider its contents within 15 days, take appropriate measures and then inform the SAO’s President of the same. This authorisation makes it possible for the SAO to supervise the management of public funds throughout the whole audit procedure, not simply imposing measures on the audited entity at the end of a highly formal audit procedure.

The State Audit Office calls the attention of the senior officers of the audited entity to the risks detected during the audit that may jeopardise the transparent and accountable management of public funds. Taking into account the obligation of the head of the audited entity to take measures within 15 days in such cases, the SAO considers warning letters

a highly effective tool to support good governance. In 2015, the SAO’s President sent out altogether 77 warning letters on the issued SAO reports to the heads of audited entities and in 2014 it used the same tool on a similar number of occasions.

Indications made to authorities in the service of public good

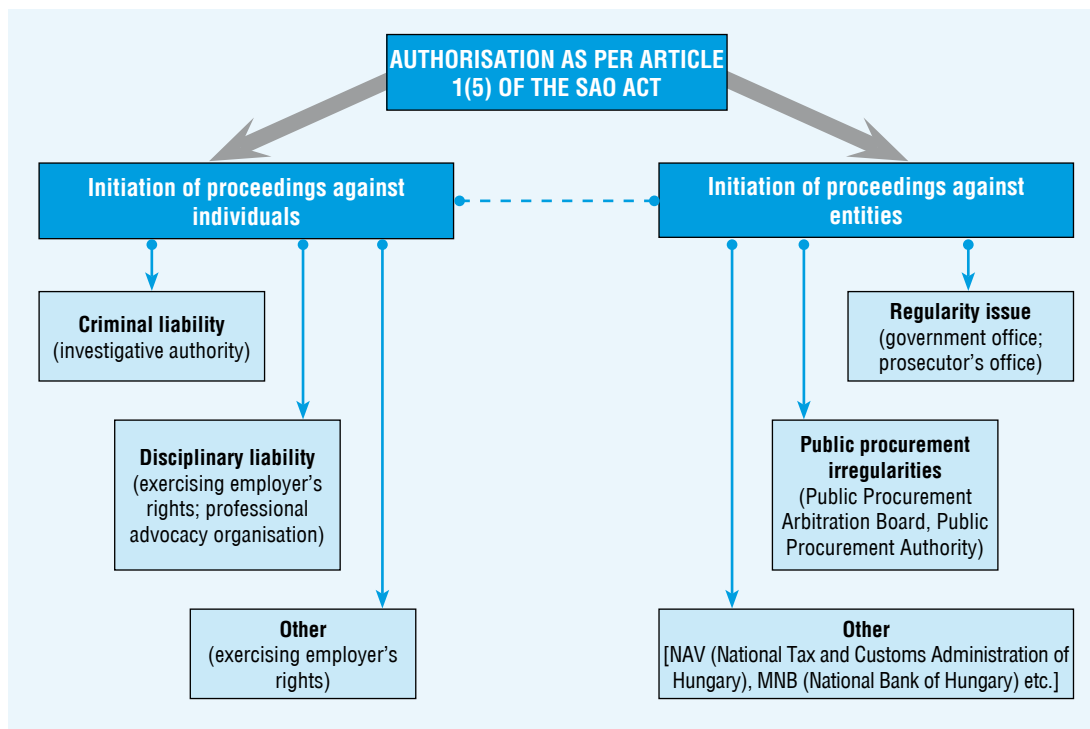
Article 1 (5) of the SAO Act grants a general power to the SAO to initiate proceedings with the relevant authorities or professional advocacy organisations against the audited entities and their responsible persons. In the event that irregularities are uncovered, proceedings to establish personal responsibility and against the organisation can also be

initiated if justified. The system of initiating administrative procedures is illustrated in *Figure 3*.

The State Audit Office is not an authority, and as such it does not have direct sanctioning powers with respect to the irregularities detected. The limited powers of agency-type SAIs not having administrative authorisations are offset and, in general, the effectiveness of audits is enhanced if the audited entity provides information obtained during audits to those authorities (investigative authority, Budapest and County Government Offices, Public Procurement Authority, National Tax and Customs Administration) which can take action to restore regular operations or enforce liability by taking direct measures or imposing sanctions. This kind of bridging role helps eliminate behaviours that rely on the absence

Figure 3

THE SYSTEM OF INITIATING ADMINISTRATIVE PROCEDURES



Source: State Audit Office of Hungary

of consequences; increases integrity; fosters transparency, accountability and respect for the rule of law.

The previous SAO Act, concerning the legal status of the State Audit Office, granted general authorisation for the initiation of administrative proceedings. It was in the event of suspected criminal activities and by virtue of the provisions of the Public Procurement Act that the SAO was entitled to contact the relevant authority (Domokos at al., 2016c).

Suspected criminal offences

Auditors, as officials, are bound by a reporting obligation. In the event that suspected criminal offences are detected during an audit procedure, the SAO will be required to inform the competent investigative authority in order – in addition to ensuring the regular operation of the audited entity – to serve the overall public interest in combating crime and preventing the person in charge or others committing criminal activities (general prevention). All this contributes to creating integrity in public life, eliminating corruption and establishing integrity-based public administrative functioning (Domokos at al., 2016c).

In 2013, 2014 and 2015, the SAO informed the competent investigative authority on 23, 50 and 55 occasions, respectively. Following such notification, it is the responsibility of the competent investigative authorities to establish the full facts of the case. Investigations were typically ordered on grounds of suspected mismanagement of funds; violation of accounting principles; and committing budgetary fraud. Based on notifications sent out by the SAO, investigations were underway in 74 cases in early 2016.

Initiation of proceedings for regularity audits at Government Offices

In the course of auditing local governments, the SAO often detects operational deficiencies

and unlawful decisions, procedures and policies which the Budapest and County Government Offices are best equipped to rectify. In a regulatory compliance audit, the court is contacted to enforce lawful operations, if necessary. To this end – and using authorisation granted by the SAO Act – the SAO notifies the relevant Government Office exercising legal supervision over the audited local government.

In 2014 and 2015, the SAO notified the County or Budapest Government Offices in 29 and 50 cases, respectively, in relation to irregular local government operation, decision-making or legislation. Our experience and feedback from Government Offices suggest that the SAO's notifications represent valuable information for Government Offices which they heed in planning and conducting their own audits. Results achieved through notifying Government Offices, the general authorisation enshrined in the SAO Act to alert authorities lend special weight to the SAO's "word".

Opening of public procurement remedy proceedings

Availing itself of its power laid down in the Public Procurement Act, in the past 3 years the SAO took a growing number of legal remedy initiatives related to public procurement. In 2013, 2014 and 2015 it contacted the Public Procurement Authority on 8, 21 and 36 occasions, respectively. The increase was also observed in the percentage of audits: in 2013 4.1% of audits, in 2014 8.9% of audits and in 2015 16.7% of audits entailed legal remedy proceedings initiated by the SAO. In these legal remedy proceedings, the majority of cases involved regulatory breaches and, in many instances, the imposition of fines. Initiating legal remedy proceedings is not the primary goal of audits; rather, it is a possible outcome, an easy-to-measure utilisation indicator of the

auditing activity instrumental in ensuring the lawful implementation of public procurement procedures and transparency in spending public funds (Gál at al., 2016).

Other notifications

By virtue of the general empowerment related to administrative notifications under the SAO Act, the number of organisations to be alerted by the SAO in the event of uncovering irregularities has grown. We notify the Hungarian Chamber of Auditors and the National Tax and Customs Administration in relation to several audits during the year but from time to time, there are cases where the National Media and Infocommunications Authority, the Hungarian Financial Supervisory Authority and its legal successor, the National Bank of Hungary, the Klebersberg Institution Maintenance Centre, the Hungarian Energy Office or the Court of Registration had to be alerted.

Property protection measures

The Act provides for measures substantially impacting the financial management and resources of the audited entity in cases where the audit reveals non-designated or wasteful use, or damage caused by actual or threatened serious breach by the audited entity of rules pertaining to the management of funds. In such cases, prevention or mitigation of damage is served by the request by SAO's President of property protection measures addressed to the competent authority, such measures including:

- freezing of budget appropriation, with the exception of salaries,
- suspension of disbursement of grants from a particular subsystem of public finances,
- suspension of having a share from 1% of personal income tax offerings,

- in the event of suspected criminal offences, forfeiture of assets owned or managed by the audited organisation and belonging to public finance assets (Domokos at al., 2016c).

The former SAO Act only contained a freeze on material and financial resources among the measures laid down in the current SAO Act and allowed suspending the use of funds in respect of investments financed from the central budget. The range of property protection measures in accordance with the new SAO Act is, on the one hand, much broader and, on the other, contains the contacted authority's obligation to take the necessary measures and report in writing the same to the SAO's President within 15 days. According to the previous regulations, the freezing of funds was executed by the Minister of Public Finances or the head of the audited entity based on the request submitted by the president of the State Audit Office. Consequently, the current SAO Act has brought along forward-looking changes in respect of property protection measures, serving the effectiveness and feasibility of measures (Domokos at al., 2016c).

THE SAO'S NEW ROLES AND RESPONSIBILITIES

The new SAO Act authorises the State Audit Office to perform new tasks. The right to provide advice, conduct analyses and studies and issue opinions in addition to performing audits has widened the scope of social responsibility and added to the SAO's weight among public agencies. In addition to tasks designated in the Act, its further roles involving targeted project-like temporary assignments are defined by parliamentary resolutions. In the new roles fulfilled by the SAO based on its new assignments, the SAO facilitates the attainment of strategic objectives; the

transparency and effectiveness of spending public funds; and the support of the more effective operation of institutions and systems delivering public services. To rephrase a classic simile used in auditing: the SAO is not only a “watchdog” but it has also assumed the tasks of a “shepherd dog” in its new role (Domokos et al., 2016b). Ensuring maximum utilisation of the SAO’s work has called for redefining its contact with the public at large.

Making analyses and studies

Regardless of audits, the SAO is entitled to make/publish studies on any subject. Preparing analyses is an obligation in respect of tasks to be performed for the Fiscal Council, but is an option in relation to other subjects. The SAO avails itself of this opportunity in areas where the extensive utilisation of its acquired experience and knowledge is best served by analyses and studies, given the brevity and strict formal requirements of audits, the nature of the addressee and the consequences affecting the addressee. Analyses offer an opportunity to raise new questions, have a new approach to subjects and dispel misconceptions and thus help shape thinking about public finances.

In the period 2013–2015, altogether 39 analyses (studies) were published on the SAO’s website; based on their declared goals, they can be grouped as follows:

- Fiscal Council analyses,
- evaluations and analyses based on multi-site audits completed under programmes with identical criteria,
- analyses linked to particular audits,
- individual analyses,
- analyses to support planning.

Given their weight, I will discuss analyses for the Fiscal Council as a statutory obligation in the next chapter. Between 2013 and 2015,

7 Fiscal Council analyses were published on the SAO’s website while before 2013, 3 Fiscal Council analyses were prepared.

Multi-site audit programmes based on the same criteria and audits performed within these programmes (known as thematic audits) also produced experience which was published by the SAO in summary studies and in which it revealed systemic problems. In the studies, lessons and conclusions are drawn on the basis of the audit of several institutions and thus a broader context can be provided to examine a particular phenomenon or problem. Thus, e.g. an SAO study on the financial management of higher education institutions revealed sector-level management problems, while a study prepared on the audit of local minority self-governments drew as a main lesson that the regularity of ethnic minority self-governments’ financial management is primarily conditional on local governments entering into cooperation agreements with them and ensuring their operating conditions. Since 2013, the SAO has published 4 summary studies.

Analyses related to other individual audits are similar to thematic group analyses, but responding to the raised subject does not require a series of audits of several organisations of the same type. They are designed to facilitate the broadest possible utilisation of a given audit and evaluate the subject in a broader context. Since 2013, 4 such analyses have been prepared.

Individual analyses process themes that are relevant from a socio-economic aspect; 22 such studies were released before the end of 2015. Such analyses have dealt with e.g. factors influencing the development of public debt and the budgetary risks of the monetary policy. Individual analyses and studies have been completed on topics in relation to which the SAO’s activities have been authorised by parliamentary resolutions as a kind of social responsibility.

▶ The National Assembly supported the SAO's anti-corruption role by recognising an integrity-based culture project introduced by the SAO. The Integrity Survey fits in with a range of studies through which the SAO makes a preventive contribution to improving the system of public finances. The "Hungarian model" facilitates the establishment of an anti-corruption toolkit, whereby heads of public institutions make a commitment to these values by putting prevention first and set up an internal operating environment in which their organisation and employees can be protected from the threats of corruption. In 2015, 2557 organisations participated in a survey based on voluntary data disclosure, which shows that in addition to auditing institutions and authorities, a segment of leaders using public funds with a commitment to fighting corruption has also emerged. In the period 2013–2015, 18 analyses addressed the subject of integrity and on their basis, it was concluded that the risk of corruption diminished while anti-corruption controls were strengthened among institutions participating in the survey.

▶ The National Assembly supported the SAO's activity in developing financial literacy. In its role in developing financial literacy, it issued – for the first time in 2013 and for the second time in 2016 – a research report. This latter report was designed to map out and evaluate initiatives aimed at developing domestic financial literacy and financial consciousness as well as the typical features and deficiencies of domestic training systems and programmes.

Analyses to inform planning are for internal use and support audit planning and preparation but can be made public on occasion. In the period 2013–2015, two such analyses were released – one on government measures serving the acquisition and utilisation of competitive knowledge, and the other on determining the SAO audit criteria and focus

areas of measures stimulating investments. As the title of these studies also suggest, they are designed to analyse issues and risks related to some future SAO task.

A separate level of utilisation is represented by studies and articles released as academic publications on the SAO itself. Thus, for example, 2016 saw the launch of a series of studies entitled "Building Blocks of Good Governance – The Supreme Audit Institution, the State Audit Office of Hungary in Focus", within which 11 studies were/are released on the SAO website in both Hungarian and English.

Analyses supporting the work of the Fiscal Council

The Fiscal Council, established under the Stability Act in 2011, issues opinions on the budget appropriation bill and the execution of the debt reduction intended therein. Currently, the National Assembly can only pass budget appropriation bills believed by the Fiscal Council to reduce the public debt ratio relative to the GDP. Furthermore, the Fiscal Council is tasked to issue opinions every six months on the status of the execution of the Budget Act and the anticipated trend of public debt. The SAO's President supports the Fiscal Council's work specified in the Stability Act by way of analyses and making such analyses available to the Fiscal Council.

Separately from the SAO's comments on budget appropriation bill but in parallel to such audit, the SAO prepares analyses for the Fiscal Council. In its analyses, the SAO expresses its opinion on the budget appropriation bill; the procedures related to working out a public debt indicator; the calculations underpinning the proposed amount of public debt and their justification; and the enforcement of the public debt rule laid down

in the Fundamental Law before the National Assembly's closing vote on the budget appropriation bill, i.e. whether the conditions necessary for the passage of the bill have been met (Domokos et al., 2016d). Given the high-priority role of the Fiscal Council's opinion in passing the budget appropriation bill, the role of the SAO's analyses informing the Fiscal Council's opinion has appreciated.

To support the work of the Fiscal Council, the SAO prepares analyses on budgetary processes in the year preceding the current year and also in the current year. (Fiscal Council analysis). The analyses are designed to present, on the basis of the first six months' budgetary and macroeconomic data in the current year, which major appropriations in the budget are expected to be overperformed or underperformed by the end of the year and, based on that, to point out risks involved in attaining the current year's budget deficit objectives and fulfilling the public debt rule.

The Stability Act segregates the opinion of the SAO's President represented in his capacity as such from his decision made and opinion expressed as a member of the Fiscal Council.

Consultancy

Consultancy is a function that can closely be linked to audits and for which the SAO has authorisation at an organisational level; therefore, it is not performed at the level of auditors participating in particular audits. The promotion of the improved management of public finances is a significant focus area in the consulting activities performed by the SAO. To this end, on particular important public finance subjects, the SAO seeks to disseminate "good practices" and provide guidance to ensure that its work supports the renewal and operation of the public finances system even more effectively. The SAO's

experts and leaders share their experience at conferences, professional presentations and forums. In the past 5 years, the SAO held "good practices" seminars on 12 occasions, ensuring an opportunity for potential audited organisations to have an understanding of the requirements of regulated operation.

The international seminars organised by the SAO in 2014 and 2015 were designed, in addition to sharing domestic and international best practices, to disseminate an integrity-based public administration culture and support the development of transparent public functioning.

Consultancy also involves a system of self-tests developed in a unique way by the SAO that have been available to local governments, ethnic minority self-governments and church organisations since 2014 and to the institutions of the central subsystem since May 2015. Self-tests can be found on the SAO's website, their completion being on a voluntary basis without SAO involvement. Their purpose is to enable respondents to formulate a view of the regularity of their own operation and the state of their own control mechanisms. Ever since they were published, self-tests have been downloaded in a growing number by those concerned, which evidences effective utilisation.

Consultation tasks

Referred to as a consultative task, seeking the SAO's preliminary opinion on legislative drafts affecting the SAO's legal status and competence is actually a regulatory safeguard of SAO independence. It is the obligation and responsibility of the public administrative body submitting the particular regulatory draft to solicit such opinion. In addition, pursuant to the SAO Act, in the course of administrative consultation, bills on internal controls and public finance accounting must

be sent to the SAO, allowing a deadline for comments.

The government also needs the SAO's experience in areas other than those specified in the Act whenever it requests the SAO to give its opinion. Thanks to SAO opinions, the SAO's audit experience shared in the administrative consultation phase concerning systemic problems, if any, can already be utilised in the legislative drafting phase. The SAO's participation in legislative drafting working groups is utilised similarly. For instance, in 2015 the institution delegated a member to the working group on drafting the overall amendment to the Act on Public Finances. The SAO is a member of the Internal Controls Working Group operating under the Ministry for National Economy and of the National Accounting Committee. The Government's reliance on the SAO's opinion in its work is an indication of the SAO's norm-setting role and the importance of the knowledge it accumulates through its wide-ranging audit experience (Mészáros et al., 2016).

The highest level of the consultative role is the representation of the SAO, or rather, its experience in the State Reform Committee. It is compatible with the SAO's mission and tasks specified in the SAO Act that the SAO should share its audit-based experience and opinion with Government agencies (Domokos, 2014). At the same time, from its constitutional status and duties it also follows that its role can extend to working out opinions and recommendations and sharing the collected information while it cannot assume responsibility for governance (Mészáros et al., 2016).

Through its opinions, the SAO contributed to finalising regulatory drafts sent to it in 28 cases in 2013, 9 cases in 2014 and 25 cases in 2015. Coherent and consistent legislative work performed at the right standard not only lays the foundation for regularity and order but is also a prerequisite of auditability

and accountability. Based on experience from recent years, it can be safely said that only strict legal provisions enabling accountability and the regular and consistent verification of compliance therewith can result in the regular, more effective, more efficient and more economical use of public funds and public assets.

Roles augmented by parliamentary resolutions

By adopting resolutions on accepting reports on the SAO's annual professional activities, the National Assembly has specified further tasks related to the SAO's social responsibilities. The National Assembly has resolved to confirm the SAO's medium-term strategy and subsequently extend the timespan thereof for an indefinite period. It agreed that the SAO should audit areas posing a corruption risk and implement its project – known as the Integrity Project – designed to map corruption risks. The activity exerted within the project and in the field of integrity assessments and the results thereof were recognised by the National Assembly in a resolution last year.

In addition, the National Assembly supported the SAO's participation and role as donor in the activities of the INTOSAI Development Initiative. This was followed by endorsing the SAO's social responsibility in developing financial literacy and thereafter its consultancy activity related to management systems and its management training on ethical public finances. In conjunction with the foregoing, the SAO renewed its agreement with the University of Miskolc, which places an emphasis on developing public management. This cooperative effort is a contribution to dual training and implementing the conditions of further education, whereby a training system at university level has been created with

the purpose of research into and teaching the measurement of public sector performance.

The power of publicity

Modern instruments of publicity and the increased use of communication channels magnify the organisation's ability to make an impact, thereby supporting the regular and efficient use of public funds. All reports and approved analyses and studies are placed on the SAO's website but communication is implemented far more widely. In 2015, in order to deliver its published 221 reports to the public at large, the SAO held 14 conventional and 45 "electronic press conferences" to inform local media. Information brochures compiled for the National Assembly and presentations delivered by the organisation's leaders and auditors at professional events are also shared on the SAO's website. The SAO's principal communication goal is to become the source of news itself. In 2015, about 75% of news items originated directly from the SAO as the primary source.

The SAO operates a News Portal, a separate communication channel where auditors upload the most relevant news and results linked to the organisation's work. In 2015, 1293 news articles in total were posted on the News Portal. The SAO News Portal (www.aszhirportal.hu) allows an insight into the institution's everyday work and in doing so makes the publicly funded office's operation outstandingly transparent even by international standards. Through the transparency and traceability of its organisational processes, the SAO wishes to operate as an exemplary model organisation for public institutions.

SUMMARY

Since the new SAO Act's entry into force in 2011, the SAO has received the required authorisation to end an age of audits without consequences and has been assigned the competence to audit any organisation using public funds or public assets for the spending of such resources. Based on its mission, the SAO is instrumental in the regular, expedient and efficient spending of public funds ("Order creates value"). In addition to its auditing task, it has been successful in complementing this mission through its studies, analyses, comments and consultancy activities, as well as the extensive use of publicity, serving the accomplishment of audit objectives and thereby making an important contribution to supporting an ethical system of public finances. Measuring integrity; using self-tests; sharing best practises in seminars; and making analyses all serve as a practical "bellwether" for leaders about how to manage compliance with a changing regulatory environment and widely disseminate and strengthen the culture of regular and ethical leadership. Therefore, these powers – just as individual audits – are conducive to the norm-setting role of the SAO as the auditing institution of public spending and contribute to establishing the well managed state. In possession of safeguards of independence and strong powers and proactively undertaking roles pointing beyond its auditing activity, the SAO is enabled to interpret social responsibility in the modern sense of the word and thereby concentrate its efforts efficiently on shifting the behaviour of audited entities towards the regular and effective spending of public funds.

NOTE

- ¹ The Study was released in the periodical *De iurisprudencia et iure publico* (Issue 2015/2, Vol. IX) as an exposition on and addition to a study entitled ‘Consolidation of the constitutional status of Hungary’s State Audit Office’.

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