

Article 51 Financial Audit

(1) The State Audit Office is tasked with auditing the financial operations of the Lower Austrian state administration as to their correctness, economy, efficiency and effectiveness on an ongoing basis. It is a body of the state parliament and accountable only to the latter. The State Audit Office consists of a director and the necessary staff. It is based in St. Pölten.

(2) The State Audit Office is responsible for auditing the state administration on an ongoing basis in respect of the following matters:

a) the financial operations of the state;

b) the financial operations of foundations, institutions and funds which are administered by state bodies;

c) the financial operations of companies in which the state alone, or together with other legal entities subject to the State Audit Office's audit mandate, holds a stake of at least 50% of the share or equity capital; moreover, the financial operations of companies in which the state holds a stake of less than 50% within the meaning of the aforementioned clause and which the state, alone or together with other legal entities subject to the audit mandate by the State Audit Office, actually controls by financial or other economic or organisational means (*decision of the Lower Austrian state parliament of 19 November 2009; State Law Gazette LGBl 001-17 of 27 January 2010*);

d) the financial operations of companies and institutions which administer state funds on a fiduciary basis or where the state has issued a default guarantee;

e) the financial operations of public-law entities with the exception of local authorities, inasmuch as state grants are used;

f) the audit of the use financial subsidies and grants given by the state as to their earmarked purpose.

(3) Within the framework of its mandate pursuant to paragraph 2, the State Audit Office may receive audit requests from

a) the state parliament,

b) the Public Accounts Committee which, pursuant to the state parliament's standing orders, is called upon to deliberate on the State Audit Office reports on a preliminary basis;

c) one third of the members of the state parliament.

(3a) Within the framework of municipal oversight, the State Audit Office is also responsible for submitting opinions on the financial operations of local authorities and municipal associations by request of the state government. When submitting such opinions, the State Audit Office is independent and not bound by any instructions (*decision of the Lower Austrian state parliament of 19 April 2012; State Law Gazette LGBl 001-18 of 25 June 2012*).

(3b) The draft financial statements are to be submitted to the State Audit Office for comment, within the meaning of an audit pursuant to para (2). The State Audit Office may submit a comment within four weeks as to whether the financial statements are in conformity with the estimates and with the instructions and authorisations given and the

requirements imposed by the state parliament upon formal adoption of the estimates, or with other decisions adopted by the state parliament which impact the estimates. This comment must be incorporated in the financial statements in consultation with the State Audit Office. Those points on which agreement cannot be reached are to be disclosed in the financial statements together with a comment by the state government. Article 55 (2) shall apply mutatis mutandis to the comment. Article 55 (1) and (3) and Article 56 do not apply (*decision by the Lower Austrian state parliament of 19 April 2012; State Law Gazette LGBl 001-18 of 25 June 2012*).

(4) If differences of opinion arise between the State Audit Office and a legal entity on the interpretation of statutory provisions which govern the competence of the State Audit Office, the Constitutional Court shall decide by application of the state government or the State Audit Office.

(5) The State Audit Office is headed by a director who is elected by the state parliament. The director represents the State Audit Office externally. He or she is the supreme authority regarding all personnel and service-law matters for State Audit Office staff.

(6) On the proposal of the director, the state government shall make available to the State Audit Office the required number of qualified staff to allow it to deliver its tasks in an adequate manner. Moreover, the state government shall provide for the State Audit Office's premises and other equipment commensurate with the number of employees, and make available the required funding.

(7) The director of the State Audit Office shall inform the president of the state parliament annually of the anticipated staffing and material needs for the following year. These shall be deliberated in the Public Accounts Committee and forwarded to the state government for inclusion in the budget estimates for the following year.

(8) The director of the State Audit Office may delegate matters related to service or remuneration law to the Executive Office of the state government, which shall carry out these tasks on the latter's behalf and following the latter's instructions, if such is in the interest of efficiency, expediency and simplicity.

Article 52

Appointment and dismissal of the director of the State Audit Office

(1) The director of the State Audit Office is elected by the state government by a quorum of at least one half of its members and a two-third majority of the votes cast. The appointment shall be preceded by a call for applications and a hearing in the state parliament's Public Accounts Committee.

(2) Only such candidates may be appointed as director of the State Audit Office who

a) have legal qualifications as well as all other knowledge and skills required;

b) are not a member of a general representative body – with the exception of that of a local authority;

c) are neither a member of the Federal Government, a state secretary, nor a member of a state government;

d) do not exercise a management function in a company or any other institution which is subject to the State Audit Office' audit mandate.

(3) In the exercise of his or her duties, the director of the State Audit Office, being a body of the state parliament, is accountable exclusively to the latter. In terms of legal accountability, the director of the State Audit Office is equal to the members of the state government. During his or her term of office, the director of the State Audit Office shall be barred from engaging in any gainful professional activities.

(4) Prior to taking office, the director of the State Audit Office shall take an oath before the president of the state parliament stating that he or she will be strictly unbiased and diligently deliver the tasks related to his or her office.

(5) The director of the State Audit Office is appointed for a term of six years. He or she may be reappointed for one further six-year term.

(6) Other than by expiry of the term of office, the function of director of the State Audit Office shall end by

a) a renunciation expressed vis-à-vis the president of the state parliament to further exercise the office;

b) the assumption of a function pursuant to para 2, points (b) to (d);

c) removal by decision of the state parliament for which a quorum of at least one half of the members and a two-third majority of the votes cast is required, or

d) a ruling by the Constitutional Court pursuant to Article 142 Federal Constitutional Act on removal from office.

Article 53

Representation of the director of the State Audit Office

(1) If the director of the State Audit Office is foreseeably prevented from exercising office, he or she shall be represented by a deputy appointed by him or her from among the State Audit Office employees. The president of the state parliament shall be notified thereof.

(2) If the director of the State Audit Office and his or her appointed deputy are prevented from exercising office by an unforeseeable event, the director of the State Audit Office shall be represented by the highest-ranking staff member at the State Audit Office for as long as he or she is so prevented.

Article 54

Audit powers

(1) The State Audit Office interacts directly with all departments, companies or other institutions subject to its audit.

(2) All departments as well as the directing bodies of the companies subject to being audited by the State Audit Office shall provide the State Audit Office with any and all information required and meet every request which the State Audit Office may have in the performance of its duties in any given case. Specifically, the State Audit Office shall have the right to

- a)** inspect on site, through its officers, all accounts, vouchers and other documents (e.g. files, correspondence, contracts) related to the financial operations and to request their being transmitted, and access computerised data;
 - b)** request the submission of estimates and financial statements, profit and loss statements, balance sheets etc.
 - c)** conduct investigations on site (e.g. cash audits);
 - d)** hear persons who are not employed by the audited entity as informants.
- (3)** The State Audit Office may rely on qualified experts in performing its audit activities. These experts shall be sworn in by the director of the State Audit Office, if they are not already sworn for the submission of expert opinions of the required kind. These experts shall not disclose official, trade and business secrets which they become aware of in the course of their work.
- (4)** The audit shall extend to the mathematical correctness, compliance with applicable laws, as well as to the economy, efficiency and effectiveness of the financial operations. The precise form and details of how an audit is to be conducted shall be determined by the director of the State Audit Office on a case-by-case basis.
- (5)** When conducting its audits, the State Audit Office shall not interfere with the administration or management of any departments, companies or other institutions subject to its audit. The audits shall be conducted without unduly impairing the work or operations of the department, company or other institution and without official or trade secrets being disclosed.
- (6)** The audits conducted by the State Audit Office shall, to the extent possible, be coordinated with the audits carried out by the national Court of Audit. The activities of other audit institutions should also be taken into account as far as possible.

Article 55

Comments on preliminary audit findings

- (1)** The State Audit Office shall communicate the preliminary findings of an audit to the state government and, as appropriate, to the bodies of the audited company or other institutions which are authorised to represent vis-à-vis third parties the company or institution the financial operations of which were the subject of the audit, together with a request to comment thereon in writing within a period of ten weeks.
- (2)** The preliminary findings of an audit shall be treated confidentially.
- (3)** The State Audit Office shall consider comments which have been received in good time in the compilation of its audit report.

Article 56 Reporting

(1) The State Audit Office shall draft written reports on its audit findings. Inasmuch as an audit report touches upon business, trade or official secrets, these shall be dealt with in a confidential additional report.

(2) In the course of an audit, the State Audit Office may also

a) submit proposals for the redressing shortcomings; and

b) identify potentials for reducing or avoiding expenditure or for increasing or generating additional receipts.

(3) The State Audit Office shall keep the parliamentary Public Accounts Committee informed of its audit activities. It shall, in particular, immediately report to the Public Accounts Committee any special observations. Moreover, the State Audit Office shall transmit its reports to the state government and to the audited company or other institution.

(4) The parliamentary Public Accounts Committee may conduct visits and on-site inspections in order to establish its own findings.

(5) The state parliament shall deal with the reports transmitted to its Public Accounts Committee at least twice a year. Confidential additional reports are exempted from this requirement.