

OXFORD CONSTITUTIONAL LAW

# Max Planck Encyclopedia of Comparative Constitutional Law



## **Auditing**

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**Content type:** Encyclopedia entries

**Product:** Max Planck Encyclopedia of Comparative  
Constitutional Law [MPECCoL]

**Article last updated:** September 2023

### **Subject(s):**

Amendment or revision — Constituent assemblies — Separation of powers — Judicial review —  
Constitutional courts/supreme courts

General Editors: Rainer Grote, Frauke Lachenmann, Rüdiger Wolfrum

Managing Editor: Martina Mantovani

## A. Introduction

**1** Public servants, officials, and executive agencies have the authority to take a wide variety of actions, and in general, they hold considerable power. They are also subject to a duty to maintain transparency and to report to the public regarding their activity.

**2** The government authorities are charged with the management of the economy of the country and with the maintenance of public order and security, in the name and on behalf of the public. They are, therefore, required to respect the law, comply with it, and maintain it, and to adhere to the principles of good administration and respect for the → *rule of law*. Supreme Audit Institutions ('SAIs') play a key role in maintaining system-wide supervision of the government, and they promote government based on law, which obeys the principles of the legal system. The principles of → *good governance* (transparency and political accountability; fairness and equity; efficiency and effectiveness; respect for the rule of law; and a high standard of ethical behaviour) form the basis of proper government, and compliance with these principles is subject to the review of the SAIs.

**3** Most countries—and, in particular, the vast majority of democratic countries—have established SAIs based on either a constitutional or a statutory foundation. These institutions are important gate-keepers, whose task is to supervise and control the conduct of public servants and government authorities. One of the most important functions of SAIs is to make certain that entities of the executive authority operate professionally and with integrity, and that public servants do not take advantage of their status and authority. The audit institutions assist the legislatures in supervising the executive branch by conducting ongoing and accurate reports of the governmental accounting systems.

**4** The practical auditing carried out by independent audit institutions, which act outside of the executive branch of government, is an important component of the preservation of checks and balances. The role of these institutions is to ensure the proper activity of the executive power and the enforcement of the law and the provisions of → *administrative law*. Auditing carried out by audit institutions makes an essential contribution to the → *separation of powers*, its formulation, and its preservation (Brenninkmeijer 344, Serowanec (2022)).

## B. The Historical Development of the State Audit

### 1. Ancient Times

**5** External auditing of government activity appeared long before the development of modern governmental structures. In ancient times, audits were conducted in many different cultures and widely separated geographic regions, such as Egypt, Babylonia, and Greece. In China, public officials were required to report to the public about their actions in the year 1,100 BCE, some 3,000 years ago (Chinese National Audit Office 131). Audits of government entities existed in the Roman Empire as well. In the year 200 BCE, account officials (*quaestors*) operated throughout the empire. Their role was to audit the books of account of local governors in the countries subject to Roman rule. At the end of their field examinations, the officials returned to Rome and reported their findings. This method of operation, which included 'hearing' (*audire*) and reporting, was the source for the English word 'audit', which refers, among others, to the auditing of books of account (Stone 286).

## 2. Medieval Period

**6** New techniques of external audits developed between the years 500 to 1599. In England, William the Conqueror (1027–1087) established a system for auditing the kingdom's inventory to make tax collection and control over tax money more efficient (→ *taxes*). Henry I (1100–1135) established the Royal Treasury and appointed officials called auditors who were in charge of auditing accounts to prevent corruption and embezzlement. The English monarchs who followed him continued to conduct audits of the kingdom's finances (Lee and Azham 4). In France, the financial aspects of public administration were audited by the King's Council (*Conseil du Roi*, in Latin, *Curia Regis*). A new judicial institution, the *Chambre de Comptes*, or Chamber of Accounts, was established in 1320. This was an independent entity with legal power to adjudicate and decide matters relating to the management of the king's accounts and his financial policies. That same year, in Belgium, the Duke of Burgundy, Count of Flanders, established an SAI, the 'Chamber of Accounts', to supervise the ducal accounts (Tara and Gherai 710–71).

## 3. Modern Period

**7** The first signs of modern state auditing appeared in the 18th and 19th centuries, together with the collapse of totalitarian regimes and the slow growth of democracies. Modern state auditing is closely tied to the growth of democracy and the increased recognition of the need for government institutions and of those who head them to be held accountable to the public. The roles played by the SAIs, in their various forms, changed gradually over the years. They were given new functions, and the purpose of state audits was changed accordingly. These audit institutions developed against the background of societal, economic, and governmental changes that took place in various countries and in light of global changes that affected the design of these institutions, including processes of democratization that began in the Western world in the 18th and 19th centuries. Additionally, audit institutions in various countries have had reciprocal effects on each other; the contacts they have maintained have enabled them to learn from each other and develop their auditing abilities.

## 4. Development of the Modern State Audit

**8** The development of modern auditing can be divided into two periods: before World War II and from the end of the war to this day. During the first period, SAIs dealt mainly with the examination of the financial regularity of state institutions, mostly whether funds had been expended in accordance with the objectives designated for them and whether there were deviations from expense approved. After World War II, representatives of several audit institutions met in Switzerland and decided to establish a forum of institutions engaged in government audits. In 1953, the forum held its first conference, in Havana, Cuba, with the participation of representatives from 34 countries. Participants at the conference established INTOSAI, the International Organization of Supreme Audit Institutions (INTOSAI: 50 Years (1953–2003) 14). Since its establishment, INTOSAI has been engaged in the creation and implementation of the INTOSAI Framework of Professional Pronouncements (IFPP) for government auditing. Its mission, among others, is to improve public sector auditing worldwide and raise the skill level, status, and impact of government audit institutions. The IFPP makes three types of professional pronouncements: Principles, Standards, and Guidance. INTOSAI Principles (INTOSAI-P) consist of founding and core principles. The founding principles have historical significance and specify the role and functions that SAIs should aspire to fulfill. The Standards of Supreme Audit Institutions (ISSAI) apply internationally to all public sector auditing. INTOSAI developed the Guidance (GUID) to support the SAIs in the practical implementation of ISSAIs. The international professional pronouncements promulgated by the organization do not have binding status, and the audit institutions of member states of the organization are not obligated to act in

accordance with them. INTOSAI has 195 full members, five associate members, and two affiliate members.

**9** In the latter period, the scope of state auditing was expanded from merely verifying financial regularity to the auditing of expenses and the examination of aspects of the economy, its efficiency, and its effectiveness. Elmer B Staats, who headed the US General Accounting Office between 1966 and 1981, coined the phrase ‘the three Es’ (economy, efficiency, and effectiveness) to describe these new areas of audit. Modern auditing is not limited to financial auditing and the issuing of accounting reports—it now examines the performance quality of government agencies and the legality of government activities. These areas of activity are reflected in an audit standard published by INTOSAI in 2004 (ISSAI 300: Fundamental Principles of Performance Auditing).

## **5. Government Audits in the Modern Age**

**10** In the not-so-distant past, state audits covered traditional areas such as document verification and financial auditing. In the modern era, state audit institutions have expanded to additional areas. They now conduct performance audits and audits of returns on investments (value for money audits) and more carefully examine the economy, efficiency, effectiveness, and ethics of government work. The expansion of the scope of auditing is manifest not only in the topics being examined but also in the identity of the institutions being audited. In the past, state audits focused on the central government and the central administrative institutions; now they extend to other branches of government and public entities.

## **C. Constitutional Models**

**11** Some 191 countries have enshrined the establishment and existence of a SAI in their constitution, and have established a connection between the SAI and the legislative body or general assembly of the country. Naturally, the audit institutions in the various countries differ from each other in their structure, powers, and areas of responsibility, which were shaped and developed over the years in accordance with local characteristics. The differences derive from constitutional arrangements relating to the audit institution and the relevant political and societal influences within each country. The three main constitutional models according to which the state audit institutions operate are the Napoleonic, Westminster, and Council models.

### **1. The Napoleonic Model**

**12** The Napoleonic model, originating in France, is followed in Latin European countries, such as Portugal (Constitution of the Portuguese Republic: 2 April 1976 (as Amended to 2005), Art. 214 (Port)) and Italy (Constitution of the Republic of Italy: 27 December 1947 (as Amended to 2012), Art. 100 (It)), in several Central American and South American countries (Constitution of El Salvador: 15 December 1983 (as Amended to 2014), Art. 195 (El Sal); Constitution of Uruguay: 1 January 1967 (as Amended to 2004), Art. 208 (Uru)), and in Africa (Constitution of the Kingdom of Morocco: 17 June 2011, Art. 147 (Morocco); Constitution of the Republic of Guinea: 2010, Art. 116 (Guinea)). According to this model, the audit institution is structured as a court of accounts/audit and has judicial powers to carry out the audit of accounts, budgets, and expenses of the governmental institutions. The audit is conducted by judges who have judicial independence (→ *independence of the judiciary*). The audit institutions that operate according to this model examine the compliance of government agencies with the laws, regulations, and rules of administrative law, and are authorized to reach judicial decisions in these areas (Dye and Stapenhurst 5–6). In general, because they are judicial institutions, they have the authority to impose

obligations on public officials and government bodies, compel compliance, and issue judicial orders.

## **2. The Westminster Model**

**13** The Westminster model is the most common among European countries (Instrument of Government (SFS nr 1974:152): 1974 (as Amended to 2012), c 13, Art.8; Constitution of the Republic of Croatia: 22 December 1990 (as Amended to 2013), Art. 53A (Croat); Constitution of the Republic of Estonia: 28 June 1992 (as Amended to 13 August 2015), Art. 134 (Est)), and it is also used in Africa (Constitution of the Federal Democratic Republic of Ethiopia: 8 December 1994, Art. 101 (Eth); Constitution of Kenya: 27 August 2010, Art. 229 (Kenya) and Asia (Constitution of the Kingdom of Thailand: 6 April 2017, s 241 (Thai); Constitution of the Republic of Singapore: 9 August 1965 (as Amended to 2016), Art. 148F (Sing); Basic Law: The State Comptroller: 15 February 1988, Art. 1 (Isr)). In countries that use this model, the audit institution is headed by the State Comptroller or an auditor-general ('AG') who has the authority to carry out the audits and is responsible for this function. The State Comptroller operates as an independent entity. Its reports have the force of a recommendation and lack judicial authority. The audit is conducted by professional employees in the State Comptroller's office, and its reports are presented to the parliament or general assembly, generally at dates prescribed by law. They include a report on the financial operations and the activities of government entities (Kayrak 62).

## **3. The Council System Model**

**14** This model, also known as the collegial model, is common in Asia (Constitution of Japan: 3 November 1946, Art. 90 (Japan); Constitution of the Republic of Korea: 12 July 1948 (as Amended to 29 October 1987), Sec. 97 (S Kor); Constitution of the Republic of Indonesia: 1 January 1945 (as Amended to 2002), Art. 23E (Indon); Constitution of the Republic of the Philippines: 2 February 1987, Art. IX s 1 (Phil)). The audit institutions that operate in accordance with this model are similar to those that operate according to the Westminster model. The powers to audit are granted to a council, commission, or board of audit headed by a president or chairperson who serves a supreme auditor, similar to the AG.

## **4. Differences Between the Models**

**15** The three models presented above reflect differences in the structure and function of SAIs, such as the authority of the institution, its working methods, the nature of the institutions' reporting, and even the competence of the employees who perform the audit. In general, audit institutions that belong to the Westminster or the Council model have the authority to advise but no judicial powers or the authority to compel the auditees to act in a certain way. In some cases, these institutions are required to transfer issues that are not within their competence to qualified authorities. Prominent examples are cases in which the review produces suspicion of criminal behavior. In some of the countries that follow the Napoleonic model, the law gives the SAI the authority to handle criminal acts (National Audit Office 147). When criminal acts are revealed during audits by institutions following the other two models, they are placed in the care of the head of the general prosecution. But reciprocal effects between the models are also apparent. With the development of the audit institutions, some of the arrangements used in each of the models have been adopted by the others.

## D. Independence and Self-Sufficiency Models

**16** All the models for the structure of an audit institution and all the various operation formats give rise to questions about the preservation of the independence and status of the audit institution within the government structure. These are inevitable questions as the audit institution is necessarily a part of the state, yet plays an important role in supervising the functioning of the executive branch and its departments. This is also at the bottom of the close connection between the audit institution and the legislative branch, one of whose main functions is the supervision of the executive branch.

**17** The most basic principle of SAI functioning is that of independence and self-sufficiency. The justification for this principle lies in the necessity for the SAI to be free from any possibility of external involvement, either direct or indirect, for it to carry out its function properly. This principle is enshrined in section 5 of the Lima Declaration on Guidelines on Auditing Precepts, adopted at the INTOSAI Congress of 1977. The independence of the audit institution is generally enshrined in the constitution or a statute, and it includes financial-budgetary, administrative, and professional independence. The financial-budgetary independence is reflected in the securing of financing needed for the audit institution to function effectively. Administrative independence is expressed in its ability to hire and fire its own employees and determine their terms of employment and compensation. Professional independence is manifested in the SAI's being empowered to determine the issues that it will audit, the scope of the audits, the times at which the audits will be carried out, and the date for the publication of its findings (Goalsarran 30-1). Yet, audit findings are published based on directives and limitations that take into consideration issues such as national security and foreign relations, among others. It is also necessary to ensure the independence of the individuals who head the SAI by determining in advance the length of their tenure, the terms of their compensation, and their status (Geist and Mizrahi 16). Given the great importance of the independence of the audit institutions, in 2007, INTOSAI adopted the Mexico Declaration on the Independence of SAIs, which established the eight basic pillars of SAI independence.

**18** A unique example of an audit institution that reflects the principle of independence and self-sufficiency is the South African AG. The office of the AG is the only constitutional institution in South Africa that enjoys true financial and administrative independence (Woolman and Schutte 24B-6). The law that established the powers of the AG satisfies the two tests set by the → *Constitutional Court of South Africa* for the determination of the independence of constitutional institutions (*New National Party of South Africa v Government of The Republic of South Africa* (1999) (S Afr)): the tests of financial independence and administrative independence. According to the financial independence test, the institution must be budgeted in a manner that allows it to carry out its function, and this budget must be determined by the parliament and not by the government. According to the administrative independence test, the government must not intervene in the mode of operation of the institution or the appointment of its employees (Public Audit Act (Act No. 25/2004): Administration of Auditor-General, Chap. 4 (S Afr)). The State Comptroller in Israel is another example of an institution that enjoys a high level of independence (Basic Law: State Comptroller, Art. 6 (Isr)), financial-budgetary (Basic Law: State Comptroller, Art. 10 (Isr)), administrative (State Comptroller Law, 5718-1958 (Consolidated Version), s 22 (Isr)), and professional, including, among others, the power to examine 'any such other matter as he may deem necessary' (State Comptroller Law, 5718-1958 (Consolidated Version), s 10 (Isr)).

**19** The status of the audit institution within the government structure depends, to a great degree, on the characteristics of the country and the history of its governmental tradition. The relationship between the audit institution and the parliament of a country is generally based on one of three models: the audit institution is part of the legislative branch; it is part of the executive branch and its work is directed by parliament; or it is not tied to either the executive or the legislative branch but operates in a completely independent manner and functions as a fourth branch of government—a supervisory or audit branch (OECD 14).

**20** The US SAI, the Government Accountability Office, which is headed by the Comptroller General, is considered an independent authority, not dependent on the executive branch. Its independence is reflected in the fact that its budget is set in the proposal submitted by the President and cannot be changed during the budget year. Yet, this institution is customarily viewed as being part of the legislative branch. It is often referred to as the ‘long arm of Congress’, and as noted by the → *Supreme Court of the United States*: ‘The Comptroller General’s current statutory responsibilities on behalf of Congress are fully consistent with the historic conception of the Comptroller General’s office ... Congress has defined the Comptroller General as being a part of the Legislative Branch’ (*Bowsher v Synar* (1986) (US)). The Government Accountability Office initiates audits based on a mandate given to it by legislation or by a congressional resolution reached pursuant to a written request received from the Senate or House of Representatives leadership, or to requests from individual members of Congress. In practice, most of the audits are carried out in response to a request from Congress, and only a minority at the initiative of the office itself (Abikoff 1540; US Government Accountability Office 3).

**21** Despite its independence, the Australian National Audit Office is deemed to be part of the legislative branch, being an independent office of the Parliament (Auditor-General Act: 1997 (as Amended on 1 July 2016), s 8(1) (Austl)). The AG has the power to set the targets of the audit and it is independent in exercising its authority but must consider the order of priorities established by Parliament (Auditor-General Act: 1997, s 10 (Austl)).

**22** The German audit institution, the *Bundesrechnungshof*, is guaranteed judicial independence in the Basic Law for the Federal Republic of Germany. It is an independent federal authority, subject only to the law. It submits its annual reports to Parliament and the Federal Government. Other government entities may not order the *Bundesrechnungshof* to carry out audits (Basic Law for the Federal Republic of Germany: 23 May 1949 (as Amended to 13 July 2017), Art. 114 (Ger); *Bundesrechnungshof* Act: 11 July 1985, Art. 1 (Ger)).

**23** The National Audit Office of the People’s Republic of China, which is directly subordinate to the State Council (Constitution Law of the People’s Republic of China: 4 December 1982 (as Amended to 11 March 2018), Art. 91 (China)), is an example of an audit institution that is part of the executive branch. This is a fairly unusual model, not common in Western democracies (Posner and Shahan 495).

**24** Each of these arrangements concerning the independence of the SAIs described above reflects a balance between the level of its independence and its duties to parliament. The professional independence that allows the state comptroller to choose the areas the office will be auditing is a basic condition for the proper functioning of the comptroller’s office. In most cases, this independence is preserved even when parliament has the power to propose targets for audit, to instruct that certain audits be performed, or to establish an order of priorities for state audit work.

## **E. The Constitutional Role of Supreme Audit Institutions**

**25** As noted, the key roles of the SAIs are to supervise the activities of government institutions, promote accountability, and publish the findings of their audits. The audit institutions must therefore examine and assess the conduct of the audited institutions by referring to certain norms. In practice, the state audit is the product of an independent assessment of administrative activity, modes of performance, and operational results. This assessment is carried out by comparing the administrative activity of the audited body with the norm, the standard, or the model that is used as criteria in the audit. The various criteria can be found in the constitution or the statute that regulates the activity of the audit institution. The key norms that guide auditing bodies in general are legality, regularity, ethics, or integrity, and in performance audit, economy, efficiency, and effectiveness (Lima Declaration on Guidelines on Auditing Precepts, s 4; Pintea and Achim 235-42).

### **1. Audit of the Legality of Activity**

**26** This type of audit examines whether the activities of government entities or officials were within the framework of their authority, and whether the entities or officials acted in full compliance with the requirements of the law. Audit reports of this type refer to deviations that are found to be deficiencies and can include recommendations of steps to be taken to correct the deficiency. If the deviation from the statutory provisions is severe, reaching the level of a criminal offence, many countries have a mechanism for the SAI to turn the matter over to the authorized parties (Law No. 94 of 8 September 1992 (re-issued) on the Organization and Operation of the Romanian Court of Accounts, Art. 33(4) (Rom); Audit Rules of the Bundesrechnungshof (1997), Art. 27(3) (Ger); Board of Audit Act (1947), Arts 31-3 (Japan); Act LXVI of 2011 on the State Audit Office of Hungary, Art. 30 (Hung)) (Dye and Stapenhurst 14).

### **2. Regularity Audit**

**27** This type of audit examines the expenses and actions of the audited body to determine whether financial actions were properly recorded. In some cases, it also includes approval of the periodic reports of income and expenses, examination of the state budget, and examination of how the internal guidelines and directives that regulate the various processes that the audited body performs are implemented. An example is the examination of whether the authorized parties approved the examined activity.

### **3. Audit of Economy, Efficiency, and Effectiveness (Performance Audit)**

**28** This type of audit examines actions and their outcomes. It is based on the interrelated norms of economy and effectiveness, which are two sides of the same coin. An economy audit, which is one aspect of a performance audit, examines the outcome from the input side: the audit determines whether the same result or outcome could have been achieved using fewer resources. The efficiency audit, which is the other aspect of a performance audit, examines the result from the output side: whether, using the same resources, a better output could have been achieved. The effectiveness audit examines the activity of the target from an overall perspective. It checks whether the objectives of the relevant plan, contractual relationship, or project were accomplished and whether the desired output was achieved considering the resources that were used. In other words, the effectiveness audit

assesses the value received for the money invested and whether the results were satisfactory.

#### **4. Moral Integrity Audit**

**29** This type of audit concerns ethics and deals primarily with the personal conduct of the public servants in situations that do not rise to the level of suspicion of the commission of criminal or disciplinary offences (EUROSAI 13). Some audit institutions are given express authority to examine the ethics and morality of public servants, and some examine these areas as part of a performance or compliance audit (Bostan, Firtescu, and Nicula 46–8).

#### **5. Additional Roles**

**30** Given their high-level constitutional status, many audit institutions have additional functions that are not directly related to state audits. These functions are assigned to them, among others, because of the place the institution occupies within the government. In Israel, for example, the State Comptroller, in its role as Commissioner for Complaints from the Public, is charged with the unique function of investigating public complaints and attempting to resolve them (Basic Law: The State Comptroller: 15 February 1988, Art. 4 (Isr); → *ombudsman*). In Canada, the law provides that the AG appoints the Commissioner of the Environment and Sustainable Development, who, in turn, is required to act on behalf of the AG to submit to Parliament an objective, independent analysis and recommendations on the efforts of the federal government to protect the environment and foster sustainable development (Auditor-General Act, RSC 1985, ss 15 and 23, c. A-17 (Can)). The Court of Audit in Slovenia may ‘make comments on working drafts of laws and other regulations’ (Court of Audit Act (1993), Art. 21 (Slovn)). A survey of additional roles held by various audit institutions is included in the document ‘State Audit in the European Union’ prepared by the UK National Audit Office in 2005 (at 15).

#### **F. Authority to Receive Full Access to Documents and Computerized Information for the Purpose of the Audit**

**31** The main work of the audit institutions is to collect data, draw conclusions, and report findings. The basic and main authority granted and guaranteed to all audit institutions, in the relevant constitution or statute, is to obtain full access to information held by the audited bodies (Basic Law: The State Comptroller: 15 February 1988, Art. 3 (Isr); Constitution of the Republic of Cyprus: 6 July 1960 (as Amended to 2013), Art. 116 (Cyprus); Constitutional Act of Denmark: 5 June 1953, Art. 47 (Den); Auditor-General Act, RSC 1985, s 13(1) c. A-17 (Can)). It is recognized that this is a basic power that all audit institutions must have (Lima Declaration on Guidelines on Auditing Precepts, s 10). Nevertheless, at times, audit institutions have difficulty obtaining information from the entities they audit. For example, a dispute that arose about the scope of the power of the Canadian AG to obtain free access to information held by government companies (federal Crown corporations) forced the Canadian AG to take legal action to receive such access. In that case, the court held that despite the broad authority of the AG to access information, that authority did not include information held by government companies or government cabinet documents (*Canada (Auditor-General) v Canada (Minister of Energy, Mines and Resources)* (1989) (Can)). In the digital age, when hard copies of notes, notebooks, and files are being replaced by data held in databases and electronic mailboxes, the main challenge facing SAIs has to do with their authority to access and receive digital and computerized information.

## G. State Audit in the Human Rights Era

**32** Following the publication in 2013 of an INTOSAI standard regarding human rights (ISSAI 12), the SAIs in many countries began to conduct audits regarding the improvement of individuals' lives and the protection of human rights in their countries (OLACEFS; GAO 2019; State Audit Office of Georgia, 2020). The audit institutions began to examine social programmes that provided social services and to involve the public in the audit processes (UN DESA). In his speech at the 2010 INTOSAI conference, the President of the South African Constitutional Court, Justice Ngcobo, noted the important role that SAIs play in promoting → *social rights*:

The work of Supreme Audit Institutions is crucial to the fulfillment of socioeconomic rights ... The people of each nation have a variety of needs, ranging from healthcare and education to communication and transport. Each state has an obligation to fulfill these needs. The ability of each nation to meet this obligation depends on how public funds are spent. Irresponsible government spending, corruption, under-spending and inaccurate budgets will undermine the achievement of these constitutional goals.

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