

Jacques TENIER,
Conseiller maître
Cour des comptes française
EUROSAI
Prague, November 2008

THE COUR DES COMPTES' AUDIT OF NGOS FUNDED BY STATE BUDGET OR DONATIONS AND WORKING IN SOCIAL FIELDS

1. Evaluation of the role of NGOs

1.1. The main figures

France gets about one million NGOs, the fourth of which are working in social fields (sanitary and social issues, education and training). They are very diverse, from the small NGO gathering a few people for a private purpose without any public funding to the big NGO in charge of a public purpose with a budget of several hundred million euros.

About 60 000 NGOs are created every year, particularly in social fields: their public funding has been fostered by new powers and budgets transferred to local authorities.

Their overall budget reaches 30 billion euros, 60% of which coming from public funds (State, local authorities, Social security).

NGOs employ and pay more than one million people and 20 000 NGOs hire 80% of the regular staff. Another one million people (equivalent full-time) work for NGOs on a benevolent basis. More than half of social workers are employed by NGOs which are one of the first employers.

France however lacks accurate and up-to-date statistics about NGOs. If they have to make theirs statutes registered in the “prefecture” of “the département” of their main location, a lot of them forget to declare their dissolution once they are no more in action¹.

It remains difficult to get a directory of State-funded NGOs and even more difficult a directory of NGOs funded by local authorities. The State itself has to improve the knowledge of NGOs funded by its local representatives.

1.2. The main events

NGOs are ruled by a basic law, dating back to 1st, July, 1901, according to which they must obey a principle of specificity and make no profit.

In an important decision, 16th, July, 1971, the Constitutional Council regarded freedom of association as one of the fundamental principles of the Republic. Law has often underlined the role of NGOs, for instance, as far as health, assistance to handicapped people, insertion of migrants and fight against exclusion are concerned.

¹ 1 600 000 NGOS are registered but only one million are supposed to work effectively.

During the 20th century, NGOs were founded to provide assistance and cover social issues not assumed by the State.

When the Providence State decided to take these issues in charge, it never fully replaced NGOs but rather decided to fund them. This is what happened in the eighties when the government decided to launch a public policy in order to improve the living conditions in big cities.

In 1998, the Prime Minister declared NGOs “partners of the State.” The current situation is characterized by different kinds of partnerships between NGOs and public authorities at the different levels: national, regional and local.

2. The relationship between the State and NGOs working in social fields²

2.1. Typology of the relationship

The average amount of subsidy is about 100 000 euros with a great dispersion, from a few hundred euros up to 600 M€ (NGO for professional training of adults – AFPA).

The main social issues taken in charge by NGOs are the following ones: housing and urban issues, integration of unfavoured people and of migrants, assistance to employment, training and social work.

NGOs are supposed to be innovative and to get the qualities, public management is supposed to lack, i.e. simplicity and reactivity.

NGOs are more or less independent from the State. Some may be regarded as being part of a “public service”. As a rule, independent from the State, NGOs often “go between” public funders and citizens. There is a big difference between the strong NGO with private people in the lead and a diversity of fundings, and the NGO created by the State in order to launch an action under private and not public law and sometimes to go round the rules of public accountancy.

One can try to base a typology of the relationship between the State and the NGOs upon different criteria:

- role of the public authority in the creation and in the management,
- amount and regularity of public fundings,
- level of action of the NGO in public policies.

According to these criteria, the different types of NGOs are:

- The ordinary NGO with an occasional support from the State because of the social significance of the action lead. This “private” NGO may be powerful enough to bear on the State in the definition of the public policy. This is what happened in such fields as prevention of cancer and research funding or prevention of AIDS and assistance to sick people.
- The NGO acting as an intermediary between the citizen and the State, for instance, NGOs helping people to get allowances for housing improvement and taking in charge audit missions for the State. This is also the case of the “local missions for employment” in charge of vocational information and guidance of youth. In some cases, NGOs even substitute themselves to the State in its relationship with citizens: till

² Health, employment and social work.

now, NGOs have got the leadership in welcoming refugees and asylum seekers. The emergency welcome in France of Kosovar refugees in 1999 was made feasible by the action of NGOs.

- The NGO working as a public service with a private statute: the historical motivation of such a formula is often the will to make work together the State, the Trade Unions and the Employers. The so-called “Social democracy” depends on the ability of NGOs to entrust social partners with a common responsibility.
- The NGO may be fictitious when it is founded by the State just to go round the rules of public accountancy.

2.2. Subsidy or donation accountancy

Both the funder and the funded are responsible for the use of the public funds.

According to laws dating back to 1945, 1991 and 1993, NGOS must keep specific accounting records of the public subsidy or of the donation they get. Beyond a certain amount of subsidy, they must have their accounts audited. On 1st January 2009, NGOs getting donations will have also to make their accounts audited.

The responsibility of the State has also been strengthened: a 2000 law states that for subsidies over a certain amount, a contract must be signed between the public authority and the NGO, specifying the aim and use of the subsidy.

In reality, the control performed lacks of efficiency: the NGOs are not yet always funded for a specific purpose on an accurate basis, some of them remain funded from one year to another without a systematic review of the actions performed; the civil servants are not numerous or trained enough to examine carefully the data delivered by the NGOs and the different ministries do not exchange enough their expertise.

2.3. A better organization of the partnership

Even in France, State has not the monopoly of public welfare and is more and more acting on a conventional basis with different kinds of partners.

Since 2000, the relationship between the State and the NGOs has been more systematically organized on a conventional basis. Since 2006, it is supposed to sign pluriannual conventions with NGOs in order to secure their funding.

Indeed, the State is not always a good partner: funds may be delivered late in the year and are sometimes cut without notice. Proposals have been made to increase NGOs’ financial security beyond pluriannual conventions: to shorten the time necessary for the administration to fund NGOs; to adopt models of convention; to develop the role of the State as a financial counsellor and not only as a funder or as a controller.

One of the main issues at stake today is related to the enforcement of public procurement rules to the relations between public authorities and NGOs. Even if they are non-profit making, NGOs often intervene in economic fields. In that case, the State cannot deliver missions to NGOs without any competition.

3. Audit of NGOs by the Cour des comptes

3.1. Two main legal bases

There are two main legal bases for an audit of NGOs by the Cour des comptes.

Article L 111-7 of the Code of Financial Juridictions provides the Cour with a legal basis to audit NGOs receiving state subsidies; it “may audit, according to Government specified rules, organizations funded by the State, by another organization under audit or by the European Community.”

According to the rules adopted to enforce the law, “the audit is performed on the accounts and the management as a whole. However, when the subsidy (...) is devoted to a special purpose and does not exceed 50 pc of the global budget, audit is limited to the specific account exposing subsidy use. If there is not such a specific account, audit is performed on the accounts and the management as a whole.”

In 2000, the Cour has been allowed to audit NGOs funded by taxes. Audit is performed on the accounts as a whole but if the public subsidy is less than 50 pc of the NGO’s overall budget, audit is limited to the specific subsidy records.

Article L 111-8 of the Code provides the Cour with a legal basis to audit NGOs calling for citizen’s funding (donations); it “may audit, according to Government specified rules, the use of the funds collected from citizens through national donation calls ... in order to check the conformity of the expenditure with the aim announced by the call.”

The rule of July 30th, 1993, precises the categories which have to be registered in the accounts of the donation: as receipts (donations, legacy, financial products, other receipts, carrying forward of receipts not used during past exercices) and as expenditure (operational expenditure called “social missions”, donation call direct costs, overheads, receipts still to be affected). Some annexes are compulsory, such as the number of benevolent people acting for the NGO or information about capital assets.

This competence concerning this kind of NGOs was given to the Cour in 1991 and thus allowed it to discover a financial scandal regarding a NGO collecting private funds for cancer research.

Audit may be extended to any organization getting part of the donation. This “droit de suite” is very important in order to prevent any escape from control.

The Cour des comptes is not the only public authority in charge of the audit. Administrative services and inspections are also entitled to audit NGOs working in social fields, particularly the General Inspection of Finances and the General Inspection of Social Affairs.

3.2. Audit conclusions and proposals of improvement

When faced with irregularities, the Cour des comptes may:

- expose in a public report an illegal or unfaithful use of the funds,
- sanction the people responsible by ordering a refund or referring the matter to a tribunal,
- help the NGO by providing it with advice in order to improve its management or to put its accountancy in order.

The audit today is all the more complicated as NGOs often get subsidies from different public authorities. The Cour has to adapt its audit to this new context and has often to connect one audit with another.

The number of NGOs also makes they are in fact seldom audited. Coordination between the Cour des comptes and the General inspections could be strengthened.

More and more groups of NGOs are organized at different levels, local and international, but the accounts are seldom consolidated.

As far as international groups of NGOs are concerned, the national SAI which are entitled to audit NGOs, might coordinate their work schedules in order to get a global view and not only a national one.

*