



**Political Science Department  
Major in Politics, Philosophy and Economics- PPE**

**Public Law Chair**

**The Relationship between  
the Court of Auditors and Parliament  
in the Italian and British legal systems**

**Prof. Nicola Lupo**

SUPERVISOR

**Francesco Lionetto**

STUDENT- ST. ID 088402

**A.A. 2020/2021**

## **TABLE OF CONTENTS**

### **1. Introduction**

#### **1.1. Italian Court of Auditors: a brief history**

##### **1.1.1. Origin and evolution**

##### **1.1.2. The Court of Auditors under the Fascist regime**

##### **1.1.3. The 1947 Republican Constitution and the new relation to Parliament**

#### **1.2. National Audit Office: a brief history**

##### **1.2.1. The creation of the National Audit Office**

##### **1.2.2. The evolution since 1983**

##### **1.2.3. The role of the Comptroller & Auditor General**

### **2. Court of Auditors and Parliament in Italy**

#### **2.1. Art. 100 of the Italian Constitution**

##### **2.1.1. The role of art. 100 Const. in defining the audit function of the body**

##### **2.1.2. The separation from the judicial function**

#### **2.2. Audit and Reference function**

##### **2.2.1. The annual relation of audit over Entities**

##### **2.2.2. The annual relations addressed to Parliament**

##### **2.2.3. The quarterly relations on the financial covering of laws**

#### **2.3. Other functions of the Court of Auditors**

##### **2.3.1. The qualification with clearance**

##### **2.3.2. Parliament's possibility to address questions**

##### **2.3.3. The accounts equalization judgment**

### **3. The National Audit Office and Parliament in UK**

#### **3.1. The relationship with the Select Committees**

##### **3.1.1. The Public Account Committee and the Public Account Commission: the main interlocutors**

##### **3.1.2. The unique relationship between Parliament, the Comptroller & Auditor General and the National Audit Office**

##### **3.1.3. The reference and importance for Select Committees**

#### **3.2. Performance Audit**

##### **3.2.1. The audit over spending**

##### **3.2.2. The "Value for money" evaluation**

#### **3.3. The importance of National Audit Office functions**

**3.3.1. The significant money saving**

**3.3.2. The rise of concern over transversal matters**

**4. A comparison between the two systems**

**4.1. The independence of the office**

**4.1.1. The Italian Court of Auditors as an independent body with its own independent head**

**4.1.2. The National Audit Office as a body that “helps” the Comptroller & Auditor General and the Public Accounts Committee in their tasks**

**4.2. The efficacy of the intervention**

**4.2.1. Effectiveness of preliminary and ex-post audits**

**4.2.2. The mandatory nature of the action triggered by the body**

**4.3. Concluding Remarks**

## **1. Introduction**

### **1.1. The Italian Court of Auditors<sup>1</sup>: a brief history**

The Italian Court of Auditors is the auxiliary body tasked with auditing public expenses and the management of State money.

The duty of this body is one of the most important in terms of the oversight of the executive because it addresses the resources and their use, which is the basis of any action that can be carried out.

Audit over State money is as old as the State itself. Whether Parliament, a commission or an external body, throughout the entire course of history there has always been some form of oversight of public spending. This oversight is important because it holds the government and the administrative apparatus to account for their actions. As the expenses are mostly raised through taxes, and taxes are paid by the people, a form of supervision is necessary in order to ensure the right use of such scarce resources.

The Italian Court of Auditors of today originates from the 1947 Republican constitutions which created one single auxiliary body composed of two sections. On the one hand, the jurisdictional section which is charged with the task of ruling over the wrongful use of public resources and unlawful conduct carried out at the expense of the State. And on the other hand, the second section which is charged with the task of audit. Its main function being to support Parliament.

The Italian Court of Auditors has a very long history which goes hand in hand with the development of the country. It was created as a national court as soon as the unified State was born and it followed all the “eras” under the monarchy, passing through a fascist period and then changing to become the republican institution we know today.

#### **1.1.1. Origin and evolution**

Even before it was united, the Italian peninsula had institutions to control public spending. Each reign or city had its own mechanism of oversight to ensure that the money collected through taxes was being used in a way that was consistent with the prerogatives of the State. It should be pointed out that these audit institutions were not born in “Italy” but had in fact been present for a very long time in all the corners of the world. Any State organization which levied taxes had more or less advanced

---

<sup>1</sup> The term “Court of Auditors” refers to the Italian audit body Corte dei Conti. Because of the existence of different audit bodies in different countries different translations of the Italian term exist. The two main translations of the name “Corte dei Conti” are Court of Auditors or Court of Accounts which are also the most used names in the English-speaking countries. For the purpose of this thesis it has been preferred to translate the Italian term in an English version in order to facilitate the reading of the dissertation. The translation “Court of Auditors” is provided both by the English version of the Corte dei Conti’s website and by the English version of the Italian Constitution present on the Senate’s website. It has been preferred to choose an institutional translation rather than a more literal one.

forms of audit over public spending. The oldest audit institution in the peninsula dates back to 1017 and was created by the Church State to manage and oversee the finances of the Pope.<sup>2</sup>

The Court of Auditors of unified Italy was born before the actual unification from the “Camera dei Conti” of Piedmont which was firstly abolished in 1859 and subsequently immediately recreated with a new name, the Court of Auditors, and given a part of the functions of the old institution. Indeed, the Court of Auditors was tasked with the job of auditing accounting issues while the State Council became the appeal court for administrative affairs. When Italy was unified the previously regional bodies were transformed and amalgamated, through the Law n. 800 of August 14<sup>th</sup>, 1862, into a National court. One point worth mentioning is that the Court of Auditors was born in Piedmont which was home to the only court that, instead of being abolished, was transformed from a regional to a national court. All the other regions of Italy had preexisting institutions with very different systems of audit which were immediately abolished so as to provide for one single framework for the newly created State.

The Court of Auditors is a milestone in Italian history as it was “the first national court with full jurisdiction over the territory of unified Italy and entitled with the task of watchdog of expenditure laws and auditor subject only to the law”<sup>3</sup>. Two fundamental observations need to be made on this statement. First, in relation to the national dimension of the court and second, in terms of the independence of the body. The Court of Auditors was the first national tribunal and has followed all the major changes of the newly born Italian State, both historically and geographically. It relocated its headquarters when the State’s capital changed and it was at the heart of the management of the State (even if it was neglected by scholars and by the legislative apparatus). At the same time the national dimension demonstrates the need for a centralized control to guarantee a conscious management of resources. In an Italian State which was still very much regional this Court was born to be unique and nationally responsible. Secondly, but perhaps more importantly, the subjection of the Court only to the law puts into words one of the fundamental characteristics of the body, still present to this day: its independence. The Court of Auditors had to be an independent body which had an auxiliary function for the State but that could not be controlled either by Parliament or by Government. This independence guarantees its accountability and gives it more space to maneuver so that no other institution can restrain its action or influence its reports.

---

<sup>2</sup> Indelicato, Alessia. “La Corte dei Conti: La prima Magistratura dell’Italia unita”, *Il Diritto Amministrativo: Rivista Giuridica*, February 21<sup>st</sup> 2020. Pag. 1

<sup>3</sup> “*La Corte dei Conti fu la prima magistratura ad avere giurisdizione su tutto il territorio dell’Italia unita e le fu attribuito il compito di vigilare custode delle leggi di spesa e di giudice dei conti soggetto solo alla legge*” Translated from Indelicato, Alessia “La Corte dei Conti: La prima Magistratura dell’Italia unita”. cit. Pag.4

The Law n. 800 of August 14<sup>th</sup>,1862 also established the tasks and duty of the Court of Auditors dividing them between audit functions and jurisdictional responsibilities.<sup>4</sup> The audit functions were provided by Art. 13 of Law n. 800 of August 14<sup>th</sup>, 1862 that stipulated the preventive scrutiny carried out by the body and Art. 28 of Law n.800 of August 14<sup>th</sup>,1862 which stipulated the ex-post audit functions. The jurisdictional functions were regulated by Art. 33 of Law n.800 of August 14<sup>th</sup>,1862. One last function was provided by the Law n.800 of August 14<sup>th</sup>,1862 relating to the competence for pensions. This function has been lost over time. Indeed, if we compare the 1862 functions of the Court to those of the present day Court we can see very few differences in the general setting of the competences except for those relating to pensions.

Even if the Court of Auditors has been central in the evolution of the Italian State apparatus the body has been neglected from a normative point of view for a very long time. The first decades of the body's life saw it change exclusively through internal regulations rather than through law.<sup>5</sup>

It is important to note that the history of the Court of Auditors is strongly connected with the history of Italy<sup>6</sup> and can be divided into three main phases: the period from the creation of the body to the rise of Fascism, the Fascist era and, finally, the Republican period that is still going on today. The main difference between these periods is found in the independence enjoyed by the body and in its relationship with Parliament and the Executive.<sup>7</sup> During the first 60 years of its history the body remained independent from the executive and had a privileged relationship with Parliament, being the instrument of control over Government. The Fascist era completely disrupted the status quo, undermining the role of the Court of Auditors which was nearly completely stripped of its importance.

### **1.1.2. The Court of Auditors under the Fascist regime**

The Court of Auditors was an organ of great importance during the Fascist period. Before the start of the dictatorship, it was given stronger power in matters of audit. Then, as Fascism “evolved”, the Court changed its functions and its position in the State apparatus, becoming fundamental for the Government itself.

Before the rise of Mussolini, the Court enjoyed a privileged relationship with Parliament as the organism tasked with overseeing Government and the administrative machine. This changed as Mussolini's power and control over the State increased. The Court became the “highest observatory from which the Head of Government could understand how legislation was applied by the single

---

<sup>4</sup> Tenore, Vito. “La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli”. Giuffrè Editore, 2018. Pag. 5-6

<sup>5</sup> Indelicato, Alessia. “La Corte dei Conti: La prima Magistratura dell’Italia unita”. cit. Pag.5

<sup>6</sup> Tenore, Vito. “La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli”. cit. Pag. 9

<sup>7</sup> Ibidem

administrative acts”.<sup>8</sup> It was not the *longa manus* of Parliament, but it became the instrument by which Government could keep a check of the Administration.

The central piece of legislation which marked this shift was the R.D. February 5<sup>th</sup> 1930 n. 21. This decree not only posed the Head of Government as the central figure to which the President of the Court of Auditors answered but also as the figure which substituted the Minister of Finances in its tasks relating to the Court. This latter change greatly increased the relevance of the Court as it created a direct line between the Court and the Dictator (and not simply one of his ministers).

On the one hand, this decree increased the efficacy of the Court as its function of audit became much “stronger”. However, at the same time, all the democratic attributes of the Court disappeared. The body which had control over Government in a spirit of transparency and responsibility to Parliament became, instead, yet another controlling body of the State.

In the spirit of this new relation, the Annual report also changed its addressee, the Court of Auditors answered to the Head of Government which then, if the document complied with the objectives of Mussolini, shared it with the High Council of Fascism.

One important change in the functions of the Court of Auditors was the dismissal of the function of *ex-ante* compliance audit. The choice was justified in a spirit of efficiency and freedom of action of government, but it should be remembered that the main addressee of this Audit was Parliament and, during a period in which the body was no longer central for the State, it was perfectly rational to remove all possible barriers which could impede the action of Government.

The Court of Auditors also survived the transition period between the fall of Fascism and the new Republic. The Court was moved north (more specifically to Cremona) after Mussolini created the Salò Republic but, at the same time, it was also moved to Salerno (where temporary audit chambers were set up to provide for the ordinary administration of the freed territories). For a short period, then, two Courts of Auditors existed and managed the two “States” present in Italy.

One interesting aspect about this period of history relates to the reconstruction of the Italian state which was strongly influenced by the US government. The United States recognized straight away the importance of the body and strongly encouraged its reconstruction.

The Fascist era of the Court of Auditors came to an end on September 14<sup>th</sup>, 1944 when Prof. Ingrosso was appointed President and the body returned to its normal functioning.<sup>9</sup>

---

<sup>8</sup> Translation from “Celebrazione del primo centenario della Corte dei Conti nell’Italia Unita” 1963 Lelio Greco. Pag. 31

<sup>9</sup> Tenore, Vito. “La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli”. cit. Pag. 12

### 1.1.3. The 1947 Republican Constitution and the new relation with Parliament

The choice of the Italian people to become a Republic and the creation of a new constitution implied a revision of the role of the Court of Auditors, of its functions, tasks and position in the Italian legal system.

The new constitution was based on the desire to provide guarantees to avoid a new dictatorship which meant that Parliament became central once again and many organs of the state became responsible for control over the Government.

The Court of Auditors was one of them. It returned to its origins as a body which had to oversee and answer to Parliament (and not Government). Parliament became, once again, the main interlocutor of the body and its annual relations became, with the passing of time, an extremely important instrument in the hands of Parliament.

The new Constitution reaffirmed and guaranteed the independence of the body, putting it outside the schemes of the administrative apparatus, providing for an independent budget and removing any need for approval from any member of Government (as had been the case during Fascism). The body remained, despite its independence, an auxiliary body. This means that it had a duty to help Parliament<sup>10</sup> and it must be said that the Court evolved to fulfil its task in a manner that became increasingly more precise and deeper in its analysis. This is the case, for example, with the annual relation to Parliament which was a simple summary of the acts qualified with clearance (*Registrazione con riserva*)<sup>11</sup> in the first years after the signing of the Constitutions. Later, from the early Seventies, the relations began to become much deeper in their analysis, providing insights, comments and evaluations which allowed MPs to grasp fully the quality of the management of public finances.

The Constituent assembly recognized without exceptions the need of the State for a Court which could audit public spending. Einaudi himself, in his own words, reaffirms the need to return to the “caution and efficacy of the past”.

If the Court of Auditors’ existence was never questioned, the power of preventive scrutiny (which was suppressed during Fascism) faced a different fate. The prevailing position was that of Mortati who affirmed the need for preventive scrutiny not only to avoid provisions against the law but also to ensure a uniform interpretation when different criteria could be applied.<sup>12</sup>

---

<sup>10</sup> *“The Court of Auditors was fully included in the institutional circuit of the Parliamentary-Democratic regime. In particular, the audit functions were placed in direct relation of reference toward Parliament...”* Translated from Tenore, Vito. “La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli”. cit. Pag 13

<sup>11</sup> The translation “qualified with clearance” is provided by the English corner of the Corte dei Conti’s website. A more literal translation is provided by a National Audit Office’s document which summarizes all the audit institutions of Europe. Such document which was redacted in 2004 translates the “registrazione con riserva” with the English sentence “visa with reservation”.

<sup>12</sup> Tenore, Vito. “La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli”. cit. Pag 12



The Court of Auditors is mentioned in two different articles of two different sections of the Constitution. Art. 100, which is part of the Third Title and more specifically of the section regarding the “Auxiliary Bodies”, defines the role of the Court in its Audit functions. Art. 103, on the other hand, is part of the Fourth Title of the Constitution, dedicated to the Magistrature. This latter Article defines the judicial functions of the body.

The choice of the Constituent assembly to separate the two functions into two articles clarifies the double nature of the body which is both an instrument to guarantee the good functioning of the State and a tribunal for those matters related to public accounting.

The role of the Court of Auditors increased in its functions and importance with the passing of time. There have been several milestones, since the 1947 Constitution, strongly interconnected with Italian history.

The first turning point was, as mentioned above, the choice of some magistrates to deepen the analysis of the annual relation to Parliament which became a document which was not only deep in its analysis but also critical in the information it provided.

The Court of Auditors also began to get involved in the audit over specific bodies or administrative sectors. From the Seventies some pieces of legislation required a report by the Court but the real change was brought about by Art. 13 of the Legislative Decree n.786 of December 22<sup>nd</sup>, 1981.

This decree gave the Court the power to audit large local bodies. This was a fundamental step not only because the scope of the Court was increased but principally because it implied a shift from a dimension which was solely national to an audit that was also territorial in scope. The final step of this audit came in a report to Parliament; the Court became the *longa manus* of the democratic body over the local sphere.

From the Nineties the functions of the Court of Auditors changed dramatically. Tangentopoli pointed out that there were major flaws in the way in which the Court worked and in its efficacy.<sup>13</sup> Clearly, for a body that had to oversee the accounting of the State and punish those who steal its money, a scandal of those dimensions greatly damaged its credibility.

A period of reform began and both the audit functions and the judicial responsibilities were reformed. In terms of its judicial functions, the Court changed its preference for compensatory sanctions and extended its use of punitive sanctions.

However, this thesis is more interested in the changes which the Court underwent in relation to its audit function. First, the preventive scrutiny was reduced to shift the interest of the Court toward performance audit which was generalized over all the administrative bodies.

---

<sup>13</sup> Ivi. Pag. 16-17

Second, the increasing role of the European Union required the institution, provided by an internal regulation approved in 1997, to include an audit section for international and community affairs as the Court was responsible for all types of audit. This time the results were to be passed on to Parliament to inform it of the management of the community funds.

Lastly, but perhaps most importantly, the Court's involvement in the audit over State bodies was steadily expanded from 2003. Law n.131 of June 5<sup>th</sup>, 2003 required the Court of Auditors to check the budget of State bodies to ensure that it was balanced and that it respected all the restrictions imposed by the European Union.

The reform of the fifth Title of the Constitution required the Court of Auditors to become the comptroller of all the decentralized bodies which had seen an increase in their independence. They had more autonomy which meant more audits by the Court, which became an overseeing body.

In conclusion, it is worth noting how the Court of Auditors, while always being a fundamental part of the State, has seen a drastic change of pace over the last thirty years. For a long time, it was neglected by legislation and later lost its autonomy during Fascism. However, since 1947 it has become central in the life of any state body and administration. Its audits have permeated every sector and its judicial efficacy has increased in its entirety.

## **1.2. National Audit Office: a brief history**

The National Audit Office (“NAO”) is the highest audit institution in the United Kingdom. Although it has a very long history, its present characteristics are relatively young as it was only created in 1983.<sup>14</sup>

The present National Audit Office has maintained most of the historical functions of the Comptroller and Audit General (“C&AG”)<sup>15</sup> office which was the audit body before it was transformed in the National Audit Office.

The National Audit Office is an independent body, which answers to Parliament and has a duty to check the expenses of the State and refer to the House of Common (and more specifically to the Public Accounts Committee (“PAC”)) in order to guarantee the accountability of the administrative apparatus to the democratic body.<sup>16</sup>

---

<sup>14</sup> As a matter of clarity, it is necessary to distinguish between the functions carried out by the NAO and the body itself. The functions of the body are much older and were attributed to an office of support for the Comptroller and Audit General which only in 1983 was transformed into and renamed as the NAO. The NAO is a more organized form of the previous offices but it maintains the fundamental role of assistant to the Comptroller and Audit General

<sup>15</sup> For the purpose of this thesis the Comptroller and Auditor General will be identified by the term “Comptroller”

<sup>16</sup> “About Us”. National Audit Office. <https://www.nao.org.uk/about-us/>

The National Audit Office (also in its previous forms) has fulfilled a very complicated task as its authority has never been easily accepted, its power has always been under discussion and its role has faced many changes because of the historical conditions of the time.

### **1.2.1. The creation of the Office**

The National Audit Office's origin dates far back in history. It can be traced back to the middle ages, but the modern form of the office is much more recent.

Its modern origin can be traced back to the 1866 Audit Act which put the Comptroller and Auditor General at the head of the Audit and Exchequer Offices.<sup>17</sup>

This step was fundamental in the evolution of audit in the United Kingdom for two reasons. First, the Comptroller answered to the House of Common and, in this way, the Audit and Exchequer Offices accounted to Parliament for their analysis setting forth the audit of the House over the expenses of the State. The second reason relates to the relationship between the audit function and the Ministry of the Treasury which were strongly interconnected. The Ministry of the Treasury was at the head of the audit process, with the power to approve any topic covered in the audit process.

The 1866 Audit Act was seen as necessary due to the framework in which audit was conducted at the time. There was no single authority which proceeded with a solid and coherent analysis. The Treasury and the Audit board competed over audit but, at the same time, most of the legislation was never audited at all.

The 1866 Audit Act was not a strong piece of legislation, the rationale behind the broad articles of the Act was that of giving the Office the chance to enter into the state system and to create conduct and customs with the passing of time<sup>18</sup> (following, in this sense, the common law system). One main concern about the existence of the new body related to its independence which was necessary to guarantee a high level of accountability in its work and a truthful analysis of the administrative apparatus. To protect the body, the 1866 Audit Act provided for various formal guarantees such as the formal independence of the Comptroller, the independence of the budget and the need for an order from both Houses and the Queen's consent to remove the Comptroller. These guarantees needed to be integrated by good practices as the new body was to face great resistance both in relation to its establishment, its independence and in the recognition of its role and authority.

---

<sup>17</sup> Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". Oxford: Oxford University Press, 2016. Pag. 107

<sup>18</sup> Ivi. Pag. 109

The battle for the recognition of the authority of the office has been very long and hard.<sup>19</sup> Its main adversary has been the military apparatus which, for a long time, refused to share its accounting reports with the office. This refusal was symptomatic of a characteristic of the British state apparatus in which each department, administration and ministry strongly cared about its independence and was not willing to be subjected to the examination of an “external” authority.

As said, one fundamental element was the connection between the Exchequer & Audit Department (“E&AD”) and the House of Commons which was established by art. 27 of 1866 Audit Act. This Article stated that “[e]very appropriation account shall be examined by the Comptroller and Auditor General on behalf of the House of Commons”<sup>20</sup>. This provision created a strong link between the body and Parliament as it legitimized the newly created department’s authority and ensured that all its work was conducted in the interests of Parliament.

It should be highlighted that this did not mean that the E&AD directly answered to the House of Commons. Because of a formality, all the reports had to be presented to Parliament by the Ministry of Treasury and not by the department itself. The Ministry of Treasury, in this way, was a simple harbinger as it could only refer the reports on to Parliament but could not modify, delay or comment on the documents in any way.<sup>21</sup>

The development of the E&AD saw an increase in its role and a defining of its tasks which reflected the needs of the United Kingdom. First, it should be noted that, with the passing of time a new type of test was developed: the “value for money” test. This type of test not only considered the balance in the accounts of the body examined but also analyzed the efficiency of the choices made and any possible waste of resources.

The “value for money” test was to become the most important task of the E&AD and, consequently, of the National Audit Office. Despite the great importance it would have gained in the future this type of test never reached its true potential due to protests from the departments. On the other hand, there was great support from Parliament and the press who saw the test as a good accountability practice. As with most of the Audit bodies around Europe, the E&AG was challenged by three main historical moments: the beginning of the 20<sup>th</sup> Century with the rising of the welfare state and the two World Wars which provoked a huge increase in expenditure and in the necessary ex-post audits.

The rise of the welfare state challenged the E&AG due to the increase in the importance of its role in relation to controlling new matters such as pensions and insurance. This moment proved to be

---

<sup>19</sup> *“Although compliance with audit requirements gradually improved, towards the end of his term in office Sir William Dunbar was still fighting battles with departments, with varying success, for better access to accounts and supporting information.”* Ivi. Pag. 116

<sup>20</sup> Art. 27 1866 Audit Act

<sup>21</sup> Dewar, David, and Warwick Funnell. “A History of British National Audit: The Pursuit of Accountability”. cit. Pag. 121-122

fundamental for the body's evolution as it reinforced its importance for the PAC which at that time became an important adversary of the Ministry of the Treasury and of the Ministry of Pensions.<sup>22</sup>

The E&AD functioned very differently in the two World Wars. During the First World War, it proved to be an inadequate institution because of its difficulty in providing helpful information to Parliament. In contrast, during the Second World War, it behaved in the opposite way by reaching a new level of depth and efficiency which showed the real importance of the UK supreme audit institution.

This different behavior was mainly due to a different legal setting which was created by a new audit act approved in 1921. This Act gave much more freedom to the Comptroller making it more suitable for Parliament's needs.

The aftermath of the Second World War paved the way for the transformation of the E&AD into the National Audit Office of today. This transformation came as a consequence of the development of state administration and was not actively sought. Rather it was a consequence of the huge challenges faced by the audit department which, around the Eighties, became inadequate in terms of its structure for managing the huge quantity of duties it had.

The post war period was a moment of rebuilding both in the physical and economic sense. There was a huge number of injured soldiers who needed assistance and the National Health Service ("NHS") was created. There was a need for pensions and so the public pensions program was expanded. Industry needed to be subsidized and the country needed to be physically reconstructed. This led to the creation of a huge spending program. All of this had to be audited and, of course, the E&AD was responsible for it.

The thirty years following the Second World War were a very pivotal moment from the point of view of State change. After the War the State became central in people's lives as it provided all the necessary guarantees to its citizens. It expanded its scope into all sectors and evolved in terms of its administrative machine. All this changed with Thatcher's government which reversed the system. She made the State the least invasive possible, decentralizing everything to the private sector and placing the Comptroller at the heart of the oversight of this very complex system.

The new challenges exposed the E&AD's inadequateness, with its lack of personnel and lack of building space to house all its resources. The need to adapt to the new situation led to the introduction of the 1983 Audit Act which transformed the E&AD into the National Audit Office.

---

<sup>22</sup> This is not an incorrect reference to the Department for Work and Pensions. The Ministry of Pensions was created in 1916 to handle the huge number of soldiers injured during the war and has had many names depending on the changes in the functions carried out. The Ministry of Pensions was renamed "Department for Work and Pensions" in 2001.

### 1.2.2. Evolution since 1983

The 1983 National Audit Act was a revolutionary piece of legislation for the audit process and authority in the UK.

The 1983 National Audit Act established the National Audit Office which replaced the E&AD, becoming the new supreme audit institution. It should be pointed out that the 1983 National Audit Act was not a break from the past but rather it introduced a new generation of the previous body, more suitable for the new challenges imposed by the evolution of the state.

In this sense the previous pieces of legislation remained in force and were integrated by the 1983 law which expanded the scope of the Comptroller and provided for a new structure for its office.

The 1983 National Audit Act changed both the organizational side and the role of the office. It provided for a National Audit Office building where all the personnel could work in the same place, and it changed the dynamics of the internal organization of the office and the accountability mechanisms.<sup>23</sup>

Starting with the formal changes, the 1983 National Audit Act recognized the Comptroller as an Officer of the House of Commons<sup>24</sup> which formally recognized the connection between the Head of the Audit body and Parliament. Interestingly, this connection had always been present in practice and this formal act merely confirmed what was already the case.

The 1983 National Audit Act changed the internal organization of the office in the sense that its personnel were no longer part of the civil service and so the office (in particular the Comptroller) had much more flexibility in terms of recruiting, salaries and pensions (even if there still had to be some kind of proportionality between the level of the employee and their salary). Moreover, this Act completely excluded the Treasury from the choices related to the organization of the office, such as the budget and its staff.

The role of the Treasury in the choice of the quantity of resources granted to the NAO was taken by a new Parliamentary Committee called the Public Account Commission. In this respect it should be clarified that, even if their names are similar, the Public Account Committee (which is the addressee of the NAO reports) and the Public Account Commission (which is the one that chooses the budget of the NAO) are not linked. The only commonality between the two committees is the presence of the Chairman of the PAC in the Public Accounts Commission who advised on the reasons why funds are requested.

---

<sup>23</sup> Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". cit.Pag. 233

<sup>24</sup> "It was finally and formally confirmed that the Comptroller was an Officer of the House of Commons, which had previously, but wrongly, been assumed to be the position." lvi. Pag. 234

The 1983 National Audit Act also excluded the Treasury from the Audit process to strengthen the independence of the Comptroller, which always remained one of Parliament's highest priorities in terms of audit processes.

There were major changes also in the scope and in the way in which the NAO carried out its tasks. First, the scope of the body was extended to give it broader rights of audit over private bodies funded by public money.<sup>25</sup> Second, the "value for money" reports became more important. They became a central task because they enabled the NAO to report to Parliament throughout the year rather than in a single annual relation. Finally, there was a renewed interest in the criterion of efficiency of the use of resources.

As a consequence of the 1983 National Audit Act two major changes were made to the NAO. First, its personnel were specialized. This was necessary in order to carry out the different audits required of the body effectively. Second, there was growing interest in the accountability of the office which was enhanced through the publications of annual reports on the performance and money saved thanks to the NAO.

The 1983 National Audit Act was not the last big change in the body's legislation and organization. It continued to evolve in its relationship with departments, in its role of audit, in its internal management and in its independence.

The 2011 National Audit Act was another important turning point for the NAO. It introduced major changes in the composition of the body and in its head. First of all, the NAO was recognized as a body corporate<sup>26</sup> which meant that it became a legal entity in itself with its own board of directors which managed it in its entirety. The Comptroller was not included in this board which was headed by a Chairman who shared the same powers as the Comptroller in terms of appointments and dismissal. However, the Chairman could not undermine the independent choice of the Comptroller over the matters to be audited.

The same procedure is followed for their appointment (chosen by the House of Commons on proposal of the Government and appointed by the Queen) and in their dismissal which requires an address by both Houses of Parliament.<sup>27</sup>

The whole process of legislative adaptation was seen as necessary because of the disparity of practices between the NAO and all other administrations. It was recognized, of course, that there was a need for special treatment by virtue of its peculiar role and the need for independence. But at the same time

---

<sup>25</sup> Ivi. Pag 243

<sup>26</sup> "The NAO became a body corporate with nine members: a non-executive Chairman and four non-executive members, the Comptroller, and three NAO employee members." Ivi. Pag 256

<sup>27</sup> Ibidem

more control was requested due to the low number of scandals which had involved the NAO and its expenses.

As previously explained, any kind of legislative discussion was closely concerned with the independence of the body which was never overlooked, not even after the scandals involving the office. Once again, any measure was carefully analyzed to guarantee the independence of the Comptroller and of the Office so as not to undermine its work.

For this reason, even if a board was created, very clear boundaries were set between the two positions and the “professional functions” were strongly defended.

It must be said that all these reforms ultimately reduced the freedom of action of the Comptroller both because of the existence of the board which, in one way or another, became the co-head of the office and also because of new requirements of cost-effectiveness set for the Comptroller.

One last important change in the structure of the NAO and in its relationship with the Comptroller was set by the 2011 National Audit Act which set forth the position of the Comptroller as Chief Executive of the body but not as an employee. This meant that his position as Officer of the House of Commons was preserved while he was given a new role equal to that of the Chairman.

### **1.2.3. The role of the Comptroller & Auditor General**

The Comptroller and Auditor General has never only been the head of the E&AD (or later the NAO). He has had his own history and journey which, of course, has gone hand in hand with, but sometimes also anticipated, the development of the Office of which he was head.

The creation of the role dates back to 1780 when a group of Commissioners was appointed to keep check over Public Accounts and strengthen the role of Parliament in respect of the Executive.

Since then, the role evolved towards a single position which was established by the 1866 Audit Act. At first, the Comptroller was neither a member or an officer of the House, but instead was an independent figure who was appointed by the King and performed Audit powers on behalf of the House of Commons.

I highlight this point because it was only with the 1983 National Audit Act that the Comptroller became an officer of the House of Commons and so, for more than 100 years, he was mistakenly given a role that was not backed by any piece of legislation. Of course, he was a *de facto* officer which was necessary in order to give the Comptroller the necessary authority and prestige to carry out his tasks.

Art. 3 of 1866 Audit Act addressed the appointment, dismissal and necessary requirement to become Comptroller. He was appointed by the King and could only be removed by His Majesty following an



address from both Houses. The Comptroller could not be a member of Parliament and could not have any other role or duty in State administration which means that his role was seen as a full-time job.

No limits to the terms of office were posed on the role but historically there have only been two Comptroller who remained in office for more than 10 years and both were during a World War.

The different personalities of the different Comptrollers have been fundamental in the development of the role as his powers have been increased thanks to the personal initiatives of each Comptroller who began to increase the depth and breadth of the audits carried out by the body.

One thing which has remained constant is the Comptroller's independence which has always been a fundamental topic of discussion inside Parliament. The upholding of such a position has never been easy because of the continuous attempts to undermine it, from the Treasury to most of the bodies audited throughout history.

The 1983 National Audit Act changed many characteristics of the Comptroller's role. For example, he was formally recognized as an officer of the House of Commons and was appointed by the House itself following a proposal by the Prime Minister. These dismissal rules did not change as the audit was already in the hands of Parliament.

The Comptroller was granted more powers than before, enjoying the right to audit in matters related to private companies with public contracts as well. Furthermore, because of the removal of the Treasury's control over budget, he was granted greater powers in the management of his own office. The role of the Comptroller and his reputation were spotless for a very long time and there was great trust in his institution. This changed in 2007 when a magazine published the ludicrous expenses of the Comptroller which were seen as inconsistent with his role as guardian of the accounts.

This scandal was not just a moment of embarrassment for the NAO but it triggered a group of major reforms which had the Comptroller as their main target.

As a consequence, the 2011 National Audit Act was approved by Parliament which provided for a board which controlled the NAO together with the Comptroller. This did not undermine his independent choice over the audit matters but certainly reduced the freedom of the head of the supreme audit institution.<sup>28</sup>

After this reform the Comptroller became the Chief Executive of the NAO and not the sole head of it. Since then he has been obliged to share his power with the Chairman of the board who participates mostly in the budgetary programming of the office.

A fixed term was set for the Comptroller who can now only serve for a maximum period of 10 years.

---

<sup>28</sup> *"These new provisions revised, and in some respects reduced, the independence and previous powers of the Comptroller whilst retaining the Comptroller's complete discretion on professional and operational decisions."* Ibidem

One thing that has never changed is that throughout history the Comptroller has never been an employee of the E&AD or of the NAO, thus maintaining his independent position from any body except Parliament.

## **2. Court of Auditors and Parliament in Italy**

### **2.1. Article 100 of the Italian Constitution**

Article 100 of the Italian Constitution provides for two auxiliary bodies: the Council of State and the Court of Auditors.

The second and third subsections of Art. 100 of the Italian Constitution relate to the Court of Auditors and define its functions and to whom it is responsible and affirms its independence from Government. Before entering into specific details of the functions provided, it is important to highlight the general nature of the Article. The Constituent assembly decided to leave the task of specifying the ways in which such functions are to be implemented to regular legislation and to internal regulations. This allowed the Court of Auditors to change, with the passing of time, and to adapt to the new challenges and needs of the State, its functions, and the way in which they were fulfilled, which had changed significantly since 1947.

Under Art. 100, the Court of Auditors has three main functions: a preventive scrutiny function and two audit functions (ex-post audit and audit of the financial management of the entities).

The preventive scrutiny function is carried out before the actual passing of legislation and requires the Court of Auditors to check the compliance of acts or actions with the law. This ensures that all the acts sifted by the Court are in the State's interests and within the limits of the law. The importance of this function is demonstrated in the fact that the Court has the power to raise a question of constitutional legitimacy before the Constitutional Court.<sup>29</sup> The list of acts covered by the preventive scrutiny function has been repeatedly changed through ordinary legislation and has steadily increased. It should be noted that this function of scrutiny does not prohibit the enactment of legislation as the competent minister is able to present the act to the Council of Ministers. The Council can then modify it or enact it regardless of the Court's lack of support. In the second case the act will be qualified with clearance and communicated to Parliament.<sup>30</sup>

The ex-post audit function is, instead, necessary to evaluate the regularity of the administration while evaluating at the same time the cost, times and ways in which the acts are applied. The result of these

---

<sup>29</sup> This possibility was provided by Art. 1 of Constitutional law n.1 of February 9<sup>th</sup>, 1948 and by art. 23 of law 87 of March 11<sup>th</sup>, 1953 and then confirmed by Ruling n.226/1976 which placed the Court of Auditors at the same level of a judge in the administration of its preventive scrutiny function.

<sup>30</sup> Tenore, Vito. "La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli". Cit. Pag. 1447

audits are then communicated to each administration which, in the case of the Court's negative appraisal, has to then eliminate the factors causing the inefficiency.<sup>31</sup>

The last function given by Art 100 is the role of auditing the entities. This requires the Court of Auditors to sift through all those bodies that receive public funds to ensure that they respect the criteria of efficiency and efficacy in the management of resources and that they comply with the law. This kind of audit is carried out while the entities manage their own resources and the results are referred both to Parliament and to the entities themselves with the aim of improving the performances and solving possible issues.

All the audits performed are reported to Parliament. This part of the second subsection of Art. 100 is fundamental to understanding the position of the Court of Auditors in relation to the other constitutional bodies. The final part of the second subsection creates a direct connection between the Court and Parliament which is the body for which the audits are performed.<sup>32</sup>

The third subsection of Art. 100 grants the Court of Auditors independence from Government. This is ensured by the fact that the Court of Auditors is outside the administrative apparatus, it has an independent budget and organization, it has its own ways of recruiting its personnel and it has organs of self-administration. The independence of the body was deemed necessary for the Court to be able to contribute effectively.

It is interesting to note, when considering the third subsection of Art.100, the position of the article related to the Court of Auditors in the Constitutional setting. This article is part of the Title dedicated to Government and under the section of auxiliary bodies. The fact that it was not put under the public administration section demonstrates the fact that the Court is outside the administrative circuit.<sup>33</sup> However, more interesting still, is the position of the article under the Government title. Given the independence from Government, scholars have interpreted the position of this article under the third Title as recognition of the Court's classification as an auxiliary body of the State and not of Government. The word Government in the third Title, then, assumes a double meaning as it represents Government as a body but also as a synonym of State.<sup>34</sup>

---

<sup>31</sup> <https://www.corteconti.it/Home/Attivita/Controllo>

<sup>32</sup> It is true that all the bodies sifted receive a relation from the Court of Auditors, but Parliament is the preferred interlocutor, and it is the final step in each audit procedure; this is because the Court of Auditors has the task of auditing Government and the administrative apparatus and, in a system of check and balances, Parliament is the counterpart of Government

<sup>33</sup> Constitutional Court judgement n.1 of 1967

<sup>34</sup> Indelicato, Alessia. "La Corte dei Conti: La prima Magistratura dell'Italia unita". cit. Pag. 10

### **2.1.1. The role of Art. 100 of the Italian Constitution in defining the audit functions of the body**

Article 100 is very clear about the importance of the audit reports to Parliament.

The audit function (as opposed to the ex-ante scrutiny function) is the central part of the second subsection and it is the central point of connection with Parliament, which is the preferred interlocutor of the Court of Auditors.<sup>35</sup>

The preventive scrutiny function was, historically, central for the Court<sup>36</sup>. However, since the beginning of the 90s and with the innovations brought in by the European Union, this task has become less important, replaced instead by the ex-post audit and audit functions. The need to speed-up the decision processes and to make the bureaucracy more streamlined has strongly limited the possibilities of preventive scrutiny to a specific timeframe in order to avoid an unnecessary waste of time.<sup>37</sup>

At the same time the European Union imposed new criteria for the functioning of the State. It prioritized efficiency and efficacy, a balanced budget and strong institutional controls over the allocation of resources.

The Court of Auditors became the body entitled with this task. There was nothing new in the requests made by the European Union as the Constituent assembly already provided for the audit function. However, the increase of the Union's importance has subsequently made these two powers even more important.

On the one hand, the Court of Auditors has the task of auditing the State budget, which involves all the administrative apparatus in a broad sense. The initial task of the Court was to provide Parliament with a report that highlighted the acts qualified with clearance but, as already mentioned in the first chapter, since the 70s the Court has unilaterally chosen to deepen its analyses providing insights, comments and criticism on the budget and on the efficiency of its use.

On the other hand, the audit of the financial management of the entities has the double function of informing Parliament through periodic audits but at the same time giving a very helpful instrument to each entity to improve the quality of their work. The audit of the financial management is concomitant with the execution of the task by the entity and is directly provided to the administration

---

<sup>35</sup> *"Fin dal momento in cui è stata istituita, si è dunque affermata la funzione della Corte come supporto tecnico del Parlamento. Questa originaria impostazione ha condotto parte della dottrina ad analizzare il ruolo della Corte dei conti sulla base della posizione di ausiliarità che le assegna la Costituzione, e sempre in termini di ausilio al Parlamento per il controllo politico sul Governo."* De Falco, Vincenzo. "Riflessioni sulla funzione referente della Corte dei Conti nel processo legislativo di spesa". *Foro Amm.*, fasc.9, 2001.

<sup>36</sup> "The preventive scrutiny function constitutes the most traditional competence of the Court of Auditors". Translated from Tenore, Vito. "La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli". cit. Pag 1443

<sup>37</sup> *Ivi*. Pag. 1445-1446

of such body with the Court's opinion and obligations. The entities which do not perform well are required to improve their position and performance.

Some thought should be given to the addressee of the audit function because the importance of recognizing explicitly the necessity of annual reports to Parliament should not be underestimated. The Court of Auditors refers the results of its audits to the bodies directly interested but such a duty is not provided by the Constitution. This demonstrates the importance of the Court's connection with the democratic body.

Historically relevant, even if rejected after long discussions, is the proposal by some of the constituent members to allow the President of the Court of Auditors to intervene in Parliament if so requested by the Chambers. This is unique in the Constitutional setting because no other body has ever had such permission. The desire to prevent referrals from outsiders inside Parliament prevailed but the idea of removing such a ban just for the Court of Auditors provides an important illustration of the importance of their relationship.<sup>38</sup>

### **2.1.2. Separation from the judicial function**

The Court of Auditors is a two-part body. On the one side, its functions with regards to preventive scrutiny and audit, which are constitutionally defined by Art. 100. On the other, its judicial functions which are governed by Art. 103.

This dual function is a very unique characteristic of the Court of Auditors which has been present since its creation, but which has also posed many problems from an administrative point of view.

Art. 103 is very general in its governance of the competence of the Court of Auditors. It gives an exclusive mandate on the judgment of the public accounts but leaves open the possibility to broaden the scope of this competence through the use of regular legislation.

The choice made by the Constituent Assembly to divide the two functions of the Court of Auditors into two articles (under two different Titles) of the Constitution is not a coincidence. The Court of Auditors conduces these two functions in separate ways and, in doing so, has created a "physical division" in sections. The personnel who carry out the audit function are different from those of the judicial section.

The separation of the two functions allows the Court to work "collaboratively" with the administrative apparatus in the development of its auxiliary functions.<sup>39</sup> If there had been no separation, the audits over public spending, and the processes of scrutiny and audit would have been transformed into a preliminary part of a judicial process itself.

---

<sup>38</sup> Tucciarelli, Claudio. "Parlamento e Corte dei Conti: storia di un controllo mai nato". Bollettino di informazioni costituzionali e parlamentari, 1994, n.3. Pag. 145-146

<sup>39</sup> Tenore, Vito. "La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli". cit. Pag 1430-1431

Despite the separation in the Constitution and in the practice of the Court, the overlap between the two functions should not be underestimated. As Sciascia affirms in *La Corte dei Conti*<sup>40</sup> there is a teleological unity between the two functions both on a subjective and functional level. This unity allows for greater efficiency and efficacy. A good example of this unity is the justifying opinion of the audit chamber in the absence of gross negligence which simplifies the job of the judicial section. Two interesting points with regard to the judicial section should be highlighted. First, the evolution of the judicial functions and second, the problem caused by the dual nature of the Court of Auditors. While in the last few decades the audit functions have undergone great changes which have occurred hand in hand with the evolution of the Italian State, seeing the Court adapt to the new challenges posed by the reform of the fifth Title and by the European Union. The same is not the case for the judicial functions which have, for a long time, been neglected and “have not been the object of the qualitative and quantitative increment of the audit functions, having witnessed only marginal, sporadic and fragmented intervention...”<sup>41</sup>

This marginalization demonstrates, on the one hand, the great importance given to the audit functions while, at the same time, negligence on the part of the legislator and the Court in adapting to the changing environment in the judicial context. This failure to adapt risks undermining the efficacy of the Court because of the constant change (and consequently also the illicit actions) that the public administration is witnessing.

The dual nature of the Court of Auditors certainly brings great benefits but there has been a large quantity of literature which poses problems and tries to understand the limits of the two functions. There has always been concern about the fine line between the audit and the judicial functions. The need to clearly legislate and define the limits internal to the Court comes from the peculiar position in which the body finds itself. On the one hand, it operates in a collaborative spirit with the administrations which provide data and knowledge to the audit chambers while, at the same time, it is also the body which might sanction those same administrations. A large number of scholars and the Constitutional Court itself highlight the problem of access to data, gathered thanks to the collaborative spirit required of the administrative apparatus by the jurisdictional sections.<sup>42</sup>

In conclusion the audit and judicial functions are two sides of the same coin, both fundamental for the body and the State but at the same time separate in their development and importance. The supportive nature of the two sections gives the Court of Auditors important instruments to fulfil its

---

<sup>40</sup> Sciascia, Michael. “La Corte dei Conti: organizzazione, funzioni e procedimenti”. Giapeto Editore, 2020. Pag. 35

<sup>41</sup> “giurisdizione non è stata oggetto dell’incremento quali-quantitativo del controllo, avendo subito solo marginali, episodici e, sovente, asistemati interventi” Translation from Aldo Carosi’s discourses for the celebration of the 150 years of the Court of Auditors

<sup>42</sup> Santoro, Pelino. “La Deriva giustizialista del controllo. La Corte dei conti giudica se stessa”. Amministrazione e Contabilità dello Stato e degli Enti Pubblici, December 2019. Pag 11

tasks both from the point of view of its relationship with Parliament and in terms of the efficacy of its judgment on public finance matters.

## **2.2. Audit Function and Reference Function**

The Court of Auditors is a highly specialized body and its capacities can be a very useful instrument for Parliament. Thanks to the Court of Auditors' expertise, Parliament benefits from precise and reliable information which could help in its democratic control over Government.

It should be said that Parliament has never relied to a great extent on the Court of Auditors and, for a long time, all the help that the Court could provide has been wasted because of the inactivity of Parliamentary members.<sup>43</sup>

The Court has constantly increased the quality of its work to adhere to timeframes and to provide helpful information to Parliament.

The Audit function can be divided into 3 types of audit: the ex-post audit on State administration, the audit over the Entities and the audit over the financial covering of laws.

The process of audit is very complex and can be divided into two broad stages: the audit process and the audit sent to Parliament. The first part of the process aims to analyze, understand and explore the expenses and the allocation of resources of the body scrutinized, culminating in the drafting of comments and suggestions. The second part of the process, which is the report to Parliament, does not immediately follow the conclusions of the drafting of the report but is carried out on a regular basis and sums up all the reports to create a general overview picture.

### **2.2.1. The annual relations addressed to Parliament**

The Court of Auditors' main duty and time-consuming job in the ex-post audit task.<sup>44</sup>

The report to Parliament is the last and most important element of this function as it involves reporting to the sovereign institution the result of all the evaluations carried out throughout the administration process.

The importance of these reports should not be underestimated because they give MPs a precise and competent view of a vast variety of matters which could never be examined by a single MP or by a Parliamentary commission. These analyses were, and sometimes are, so technical that it was difficult

---

<sup>43</sup> "It has never been registered high attention of the political debate as a consequence of the observations proposed by the Court of Auditors in the office of registration of the acts qualified with clearance or in occasion of specific reports" Translated from Tenore, Vito. "La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli". cit. Pag 1443

<sup>44</sup> The ex-post audit functions have gained importance at the expenses of the preventive audit function. This is a consequence of the need to increase the speed of the administrative apparatus but also of the adaptation of the Italian audit process to the international standards which favored ex-post audits rather than preventive one. This evolution is discussed by Cristina Fasone in her paper: Fasone, Cristina. "Corte dei Conti v. Ufficio Parlamentare di Bilancio?". 2013. Pag 184-185

for MPs to understand them and for a long time this strongly impacted the efficacy of the Court's reports.

The function of audit covers a wide range of bodies composed of different levels of State management. Starting from the top, the Court of Auditors examines the State administration bodies on a national level evaluating their resource management and their compliance with the established objectives. It also evaluates regional and local bodies reporting on their management but mostly on the use of resources which have to respect all the criteria and prescriptions imposed by the State and by the European Union. Between the regional and local bodies there are the so called "autonomous bodies" which are also audited by the Court of Auditors. By virtue of the discrepancies in the administration in each Region, the Court of Auditors has created regional audit chambers which deliver all the examinations related to their territories to the central section located in Rome which then audits all the material for Parliament.

The Court of Auditors has to report the results of its audits to Parliament on a regular basis. The law requires the Court to report at least on an annual basis and the matter is regulated by article 6 of Law 20 of the 14<sup>th</sup> of January 1994.

The role of Parliament is not only passive, as it also has the power to direct the examinations carried out by the Court of Auditors communicating the priorities chosen by the Parliamentary committees in the programming phase. Art. 3 of Law 20 of the 14<sup>th</sup> of January 1994 requires the Court to establish an annual program and the criteria of its analysis by following the suggestions of Parliament.

This power is very strong, giving each Committee the chance to expose its priorities gives MPs the chance to tackle the issues that they feel are most urgent. Due to the vast quantity of material that the Court needs to check every year, the allocation of resources over topics which are important for Committees is fundamental for a productive relationship between the two bodies.

The Court of Auditors reports its evaluations to both chambers passing through two different channels. On the one hand, specific annual audit reports such as the those relating to the autonomous local bodies are reported directly to the competent parliamentary committee. On the other hand, the most important audit report, the Annual Report to Parliament (*Relazione sul Rendiconto Generale dello Stato*),<sup>4546</sup> is submitted to the Presidents of both Chambers to be discussed in a plenary session in Parliament.

The Annual Report to Parliament is the Court of Auditors' most important remit in terms of its audit function. The task is foreseen in the Constitution itself and, historically, has been recognized as

---

<sup>45</sup> National Audit Office. "State Audit in the European Union". NAO Information Center, December 2005. Pag 149

<sup>46</sup> The translation of the "*Relazione sul Rendiconto Generale dello Stato*" given by the Nation Audit Office is "Annual Report to Parliament". Such translation has also been adopted by the Italian Court of Auditors itself and will be used throughout this thesis.



predominant compared to all the other audit tasks (such as preventive scrutiny). In this Report, which is drafted by the Court's United Chambers, all the data and analysis collected are summed up to create a document divided into two main parts. The first part is a general overview of the State accounts and management while the second explores each ministry's accounts in more depth to examine whether or not the objectives set out have been fulfilled and if there have been any cases of bad management. A few characteristics of the annual reports to Parliament should be highlighted. First, the annual report is public<sup>47</sup> which means that anyone can consult it. This is in contrast to all other documentation produced during the audit process which is internal and not disclosable outside the Court of Auditors and the individual institution audited.

The second important element is the timing of each report. As said before the audit reports have to be submitted at least annually but the Court of Auditors is encouraged to refer to Parliament more often if the matter is urgent or serious. The only exception is the Annual Report to Parliament which is a very complex document which is barely capable of being produced in the limited timeframe and, historically, has been submitted once a year by the end of June as a summary of the Court's work that year.

In summary, the connection between Parliament and the Court of Auditors in relation to the function of audit is a two way relationship with Parliament enjoying the possibility of addressing the Court's work while the Audit body conduces its auxiliary role to provide the democratic institution with the necessary elements to effectively carryout an overview of the State administration and guarantee compliance with the general objectives of the country.

### **2.2.2. The annual report of audit over Entities**

The breadth of the Court's audits does not stop with the administrative apparatus but instead reaches a large number of bodies which are defined by the Italian State as entities ("enti"). These entities are subsidized by the state or the Italian State has a stake in them.<sup>48</sup>

Oversight of these bodies by the Court of Auditors was deemed necessary because of the importance of these bodies in the management of the Italian State and because of the large quantity of money used to subsidize them.

This function is governed by Art. 100 of the Italian Constitution and, in particular, by Law 259 of the 21st of March 1958. The article which regulates the reports of the Court of Auditors sent to Parliament is Art. 7 which dictates both the addressee of the acts and the deadlines for submission.

---

<sup>47</sup> Sciascia, Michael. "La Corte dei Conti: organizzazione, funzioni e procedimenti". cit. Pag. 104

<sup>48</sup> The characteristics of such Entities are listed in Art. 2 of Law 259 of 1958

Art. 7 imposes a six-month time limit which was seen as a reasonable amount of time for the Court of Auditors to sift through the accounts of the particular entity and produce a report. At the same time, such a time frame allowed Parliament to receive up-to-date information so that it could act promptly, if necessary, to solve issues which may have arisen.

The audit reports are addressed to the President of the Chamber of Deputies and the President of Senate who then, in turn, submit them for evaluation by the competent committee. In the Chamber of Deputies, Art 149 only requires submission to the competent committee which will examine the question (Subsection 1 Art. 149) and, if necessary, will ask the Court of Auditors for further information (Subsection 2 Art.149). The procedure in the Senate, on the other hand, is more complicated as Art. 131 assigns the reports both to the competent commission and to the 5<sup>th</sup> permanent commission. Following the analysis of the reports, the competent commission will submit its conclusions to the 5<sup>th</sup> permanent commission which will produce a general summary report of the commission's work for the whole assembly by the end of September.

The annual reports on the audit of entities have very unique characteristics. They are not open to judgment and are not autonomous. The reason for this relates to the fact that the purpose of the reports is to provide information to Parliament. The reports are not open for judgment because they are only designed to be an instrument of reference to the Chambers, who then in turn have the duty to evaluate the information therein. They are autonomous because they produce no direct or immediate effects by themselves. They are merely part of a broader process which is ultimately the responsibility of Parliament.<sup>49</sup>

One important element of such reports is the depth of their analysis which goes beyond a formal level to the merits and inefficiencies of the body, often criticizing the choices made and making suggestions on how to correct how tasks are performed and accounts are managed.

To conclude, it should be said that Parliament has never considered the Court of Auditors' reports in much depth, with only a modest number of reports being considered closely.

### **2.2.3. The quarterly reports on the financial coverings of laws**

The Court of Auditors ex-post reports give Parliament a useful tool with which to evaluate the quality of the State's work. However, they have one major flaw; they are always submitted late and only allow for a remedial solution.

One instrument that the Court and Parliament have to tackle this problem are the quarterly reports on the financial coverings of laws which examine the laws which have an economic impact. These

---

<sup>49</sup> Tenore, Vito. "La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli". cit. Pag 1488

reports allow an evaluation of the effects of such laws on the State budget so that Parliament can take prompt action to correct any issues.

The quarterly reports on the financial covering of law were instituted by Subsection 6 of Art. 7 of Law n.362 of the 23<sup>rd</sup> of August 1988. This law required the Court of Auditors to submit to Parliament the financial covering of the laws of the previous quarter and on the techniques adopted. Such law was updated in 2009 by Subsection 9 of Art.17 of Law 196 of 2009. The words of the law are mostly identical to the previous one save for the addition that the coherence between the legislative decree and the financial covering granted by the delegation law must be verified.

The importance of the quarterly reports has increased as a consequence of the amendment of Art.81. The Court became the body tasked with scrutinizing constitutional compliance with regulations related to State expenses. Such a task was given to the Court of Auditors by virtue of the accounting competence of the body to evaluate the matters.<sup>50</sup> Such evaluation becomes particularly important when considering the relevance of a balanced budget in European Union law and in the light of the State's growing public debt following the 2008 crisis.

The Court of Auditors is not entitled to question the political merits of the laws which require spending. It is only entitled to carry out an accounting review that should not undermine the law but rather provide a commentary which is strictly related to the budget allocation.<sup>51</sup>

The quarterly reports of the Court of Auditors are an important instrument for the health of the State. However, they face a major problem both in their construction and in the interest they generate in Parliament. From the point of view of the construction of the document, the laws which impose an expense on the State are not yet quantifiable and require the Court to analyze possible future developments of the expenses required by such law.

On the other hand, Parliament has never been very receptive to such reports, leaving most of them undiscussed either in the Houses or in the Commission. Such behavior has disincentivized the Court of Auditors from producing highly analytic material and has made quarterly reports very repetitive and unimaginative.<sup>52</sup>

---

<sup>50</sup> Fares, Guerino. "L'obbligo di copertura finanziaria delle leggi che costano: alla luce del contributo offerto dalla Corte Costituzionale". Fascicolo 1, 2020. Consulta online. Pag 57-58 <https://www.giurcost.org/studi/fares3.pdf>

<sup>51</sup> Such disposition has been confirmed by a sentence of the Constitutional Court (Sentence 384 of 1991) which set off the prohibition to question the political decisions of the promulgating body.

<sup>52</sup> Salvemini, Giancarlo. "Art.81, Quarto Comma, della Costituzione: una norma importante di difficile applicazione". Società italiana di Economia Pubblica, 2003. Pag 14-15

### **2.3. Other functions of the Court of Auditors**

The Court of Auditors' role as auxiliary body does not stop with the function of audit. It contributes in many other ways to the oversight of the State.

The Court provides a preliminary judgment on new pieces of legislation, communicating its findings and reasons to Parliament.

The Court can also be directly questioned by members of Parliament and can be asked to produce additional reports over matters that are interesting for MPs.

Finally, the Court of Auditors produces, once a year, a judgment which is submitted to the Chambers regarding the accounts' equalization and the state of the State's accounts.

All these functions can be seen as secondary compared to the audit functions but they are nonetheless fundamental to increasing the dialogue between the two institutions in order to maximize the quality of their relationship.

#### **2.3.1. Qualification with Clearance (Registrazione con Riserva)**

The Court of Auditors conduces preventative scrutiny of new pieces of legislation to guarantee the compliance of such documents with the prescription of balance budget and with already existing laws and constitutional principles.

This function has become less important over time as the legislator has preferred ex-post audits and quicker procedures in the drafting and approval of legislation. This is reflected in the very limited time that the Court has to evaluate the drafts and the automatic consensus if the Court does not provide a different opinion.

There are three possible results of the preventive scrutiny process: a qualification by the Court which equates to an approval, a refusal whereby the court explains the reasons why the piece of legislation should not be published and, finally, a refusal accompanied by a constitutional question.

If the Court believes that the piece of legislation is compliant both with the norms and with the budget requirements, it will give its approval to the act with one important consequence. The administration cannot be sued for gross negligence in relation to the act as the Court was also partly responsible for it.<sup>5354</sup>

The situation is very different if the Court finds flaws in the act. If it is a constitutional matter, the Court is allowed to submit the question to the Constitutional Court.<sup>55</sup> If this situation arises the act's passing will be put on hold until the Constitutional Court has returned a verdict on the matter.

---

<sup>53</sup> Tenore, Vito. "La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli". cit. Pag. 1448

<sup>54</sup> Art. 1 subsection 1 of Law 20 of 1994

<sup>55</sup> Constitutional Court judgment n. 226 of 1976

The Court could also find that the document is compliant with the Constitutional norms but still has flaws which prevent it from being approved. In this case the Court has one very powerful instrument which is the Qualification with Clearance. If the procedure of scrutiny is not followed by an approval by the Court, the administration might still want to perfect the act despite the Court's judgment. If so, the Court will qualify the act with Clearance obliging the Council of Ministers to approve it and take full responsibility for its actions. At the same time, Parliament is informed about the matter.

The rationale behind the Court being unable to stop an act from being approved is to prevent an imbalance of powers on the side the Court and to give Government the possibility to make a political choice, for which it will be responsible to Parliament, when signing an act. The political importance of such act and the fact it cannot be judged create a special relationship between Government and Parliament, with Parliament becoming the only body able to challenge the act itself.

Two points are worth mentioning on the relationship between Parliament and the Court of Auditors. First, acts of Parliament cannot be judged by the Court which means that laws cannot be scrutinized by the body in a preventive way but only in an ex-post way. Second, Parliament is not obliged to evaluate the act qualified with clearance.

The qualification with clearance is not only an audit function. It involves a dialogue between two parties; first, the Court of Auditors liaises with Government in a process which has all the characteristics of audit and then, after the qualification with reserve, the Court begins to liaise with Parliament and the entire dialogue can be easily defined as reference or advisory functions.

### **2.3.2. Parliament's ability to address questions**

Parliament's instruments of dialogue with the Court of Auditors are not limited to the programming session of audit but involve the chance to question the audit body on a wide range of arguments.

Parliament's power to question the Court of Auditors is a very effective tool for tackling all those areas which are not well analyzed in the annual reports. Usually, Parliament's main questions relate to specific entities or, even, to entire sectors. The questions posed to the Court of Auditors may differ in their scope and specificity. The Court may be asked to provide simple data and statistics or to produce analytical and complex documents with evaluations on cross sectorial topics. The procedure for such cross-examination is governed by the Parliament guidelines which are identical for both Chambers. In the Chamber of Deputies, the matter is governed by Art. 148 while in the Senate it is governed by Art. 133. Both articles allow any commission to raise questions by giving notice to the respective President who will invite the Court to produce the necessary documents.

There are few differences between the two articles as it is possible even in the Chamber of Deputies for Parliamentary groups to question the Court of Auditors. A second important difference is the

member of the commission who has the power to pose the questions. In the Chamber of Deputies, only the President can send such a request to the President of the Chamber while in the Senate the provision is more general, referring to the commission as a whole and not of a specific member. It should be noted that it is only possible for Commission or Parliamentary Groups to raise questions and not individual MPs. This is an important difference between the Italian and English systems. In the latter, any MP is allowed and in fact encouraged to ask questions. This difference greatly reduces the quantity of requests presented to the Court of Auditors but also limits the individual scope for MPs who need to find support from their commission to deepen their knowledge or to question the merits of the administrative apparatus.

This function of support to Parliament should not be mistakenly separated from the general context of audits of the Court of Auditors as, in fact, it follows the same rationale and procedure.<sup>56</sup> The major difference with the audit function is the promptness of this procedure. In contrast to the reports submitted by the Court of Auditors to Parliament which are produced on a regular basis, there is no time bar for questioning the Court and Parliament can evaluate the matters at stake outside the regular periods of audit.

Furthermore, the chance to put questions to the Court gives Parliament important self-evaluation power. The Court of Auditors cannot question the legislative activity of Parliament directly but, if it is requested to do so by a specific commission, it can provide evaluations on the effects of such laws making, in an indirect way, Parliament both the requestor, object, and referee of audit.<sup>57</sup>

One point worth mentioning are the restrictions imposed on the questions that can be asked by Parliament as not all matters are within the body's jurisdiction and the questioning by Parliament should not be a stratagem to increase the sphere of competence. The Court can only answer within the limits of its jurisdiction imposed by the law or, in very specific instances, on matters that fall outside of such power. The most important jurisdiction of the Court is its financial coverage of laws on which it cannot be questioned outside the quarterly reports. This is because such timing is seen as appropriate even for a prompt response by the democratic body.<sup>58</sup>

### **2.3.3. The Account Equalization Judgment**

The very complex management of State resources meant the Court of Auditors had to begin not only evaluating the expenses of the administrative machine but also carrying out a comparison between revenues and expenses to ensure a balance between the two.

---

<sup>56</sup> Sciascia, Michael. "La Corte dei Conti: organizzazione, funzioni e procedimenti". cit. Pag.166

<sup>57</sup> Tucciarelli, Claudio. "Parlamento e Corte dei Conti: storia di un controllo mai nato".cit. Pag 156

<sup>58</sup> Ivi. Pag 157

This equalization role is very complex and unique because of its procedural characteristics and its importance.

The Account Equalization judgment is part of the audit functions, as it analyses the balance of the State accounts. However, its approval procedure is judicial in nature. There has been great debate about the position of such judgment in the functional context of the Court of Auditors because of its hybrid characteristics which entail it to be part of the audit functions in its finalities but part of the judicial functions in terms of its procedural characteristics.

For the purpose of this thesis, we will follow the official view of the Court of Auditors which places it under the ex-post audit functions of the body.<sup>59</sup>

The entire procedure can be divided into three main steps: analysis to gather data and comparison, a judicial process involving an adversarial procedure and finally the communication of the results to Parliament for approval.

The adversarial procedure has the fundamental function of creating legal certainty in respect of truthfulness of the document. This process sees the United sections of the Court of Auditors on one side and the Minister of the Treasury on the other.<sup>60</sup>

Articles 23 and 24 of Law 468 of the 5<sup>th</sup> of August 1978 regulate the general procedure and timing of the equalization of the State accounts requiring each ministry to present the financial report by the end of the financial year to the General Accounting office which will evaluate them. By the 31<sup>st</sup> of May, the Minister of the Treasury sends all the necessary documents to the Court of Auditors to proceed with the Accounts Equalization Judgment which, once completed, is sent back to the Minister of the Treasury to then be presented to Parliament.

The Court of Auditors is not in direct contact with Parliament because the Minister of the Treasury acts as a mediator. But the Court is in indirect contact with Parliament since the Court is fully in control of the process and of the results as it is under a duty to re-evaluate the document if it is not approved by Parliament.

The Accounts Equalization Judgment has become even more important by virtue of the constitutional reforms of 2012 which were required by the European Union to tackle the problem of the growing Italian public debt. This evolution has affected both the national and regional aspects of the Account Equalization Judgment and the Court has been requested not only to evaluate mathematically the accounts of the State or Regions but also to discern the different matters and situations which fall in or outside Art.81 of the Italian Constitution.

---

<sup>59</sup> The Court of Auditors official website discusses the competences of the body dividing them between the audit functions and the judicial functions. The Account Equalization Judgment is mentioned in the audit page implicitly recognizing the affinity with such functions. <https://www.corteconti.it/Home/Attivita/Controllo>

<sup>60</sup> Tenore, Vito. "La nuova Corte dei Conti: Responsabilità, Pensioni, Controlli". cit. Pag. 1495

In conclusion, the importance of such judgment is three-fold. First, the necessity to overview the budget of the state which is needed to ensure the health of State accounts both in the interest of the State itself and due to European Union regulations put in place to avoid excessive deficit. Secondly, the opportunity for both Government and the Court to present their view of the revenues and expenses of their accounts. Finally, the three-way relationship that is created between the Court, Government and Parliament which together evaluate (even if at different steps of the process) the quality of the State's accounts.

### **3. The National Audit Office and Parliament in the UK**

The National Audit Office is a fundamental part of the management of the British State. The NAO has a close working relationship with the Public Account Committee (“PAC”), the Parliamentary committee tasked with the function of ex-post financial audit. The NAO supports the Committee with its accounting expertise through which it analyzes the administrative organs of the State and produces reports on their financial status. The PAC uses such reports to hold the departments to account before Parliament and ensure the health of the State finances. The NAO mainly supports the House of Commons (by providing assistance to the PAC) as the House of Lords has not been given an external audit authority to produce the material necessary for its hearings. This highlights the prevailing position of the House of Commons in the audit of Government.

The British Parliamentary system does not foresee a strong ex-ante scrutiny of legislation. This is because Government holds most of the powers in relation to this. This does not mean that Parliament has lost its sovereignty or has been excluded from the legislative sphere. Rather it has given more freedom to Government and has preferred ex-post audit rather than ex-ante scrutiny.<sup>61</sup> In this way, the PAC becomes one of the most, if not *the* most, important Parliamentary committee by virtue of its role as the main Governmental watchdog. The PAC has been defined as the most effective committee and much of this is due to the important machinery of the NAO which is a crucial source of support.<sup>62</sup>

The NAO fulfils two main types of audit.<sup>63</sup> The oldest type of audit is the financial audit of State bodies which is an accounting analysis of the revenues and expenses of each administration and department with the aim of checking compliance with the budget allocation. The second type of audit is the performance audit which uses Value for Money evaluations and focuses not only on a financial evaluation, but also on a deeper analysis of the policies enacted. Such a critical evaluation seeks to provide the PAC with a reasoned opinion on the use of resources and on the methods of policy

---

<sup>61</sup> Leyland, Peter. “The Constitution of the United Kingdom: A contextual analysis”. Bloomsbury, 2016. Pag 151

<sup>62</sup> Staddon, Anthony. “The Public Accounts Committee of the House of Commons”. WestminsterResearch, 2015. Pag. 1

<sup>63</sup> “Our work”. National Audit Office. <https://www.nao.org.uk/about-us/our-work/>



implementation. The task of performance audit is very complicated but greatly respected thanks to the quality of its reports. A third function of the NAO is that of providing knowledge and support to Members of Parliament. However, it does this by using the methods of financial or performance audit meaning this third function can therefore be classified under the first two categories.

The functions of the NAO are of great importance to the British country and the body takes great pride in its results. It enables costs savings, increases efficiency and annually communicates the effects of its work.

To properly understand the matter three points will be evaluated. First, the relationship between the NAO and the Parliamentary structure will be explored. Second, the audits carried out by the NAO will be evaluated and, finally, due to the importance given to the body, its impact on State management will be discussed.

### **3.1. The relationship with the Select Committees**

The link between the NAO and Parliament is not straightforward. It involves four different actors: the PAC, the Public Accounts Commission, the Comptroller and the NAO. On the Parliamentary side is the PAC which, as already mentioned, receives the NAO reports and is the key interlocutor of the body. The Public Accounts Commission is appointed to audit the budget and the planning of the body. The Comptroller is a middle figure as he is the head of the NAO while being, at the same time, an officer of the House. He is responsible for all of the NAO's audits and is the figure tasked with speaking directly with Parliament. Finally, the NAO, which is the final part of the equation, carries out the audits and can be defined as a support structure for the Comptroller and for the PAC.

The sharing and division of responsibilities allows for a very effective process which enables Parliament to get the most out of the NAO's work. The Select Committee system in which each committee can evaluate the NAO reports of its department or policy sector while, at the same time, the PAC evaluates all of them allows Parliament to pay the necessary attention to each report so that it can make the right changes and adjustments to policies. To enhance the control over Government, Parliament has found numerous solutions such as annual debates on PAC reports and ad hoc sessions where there are evident cases of maladministration. The fulcrum of ex-post audit remains the committees and mostly the PAC.

The parliamentary system of audit can be well explained by addressing, first of all, the main interlocutors of the NAO; the PAC and the Public Accounts Commission. Secondly, the general relationship between Parliament, the Comptroller and the NAO must be explored. Finally, to complete the picture, it is important to highlight the role of select committees in the audit process and how the NAO provides helpful information for such task.

### **3.1.1. The Public Accounts Committee and the Public Account Commission: the main interlocutors**

The PAC and the Public Accounts Commission are the main interlocutors of the NAO. The two committees interact with the organ from two different sides. The Public Accounts Commission is concerned with the programming and budgetary matters while the PAC receives the NAO's work. The Public Accounts Commission was created with the aim of providing and controlling the use of the NAO's resources which, because of the NAO's very unique independence, was deemed to require an ad hoc Parliamentary commission. On the other side, the PAC is as old as the audit process itself in Britain<sup>64</sup> and its position in relation to the NAO has remained mostly unchanged through the evolution of the organ and the changes in the audit process.

Starting with the Public Accounts Commission, in order to discuss the relationship with the NAO properly, it is necessary to understand the context in which such a commission was created. The Public Accounts Commission was born in 1983 following the National Audit Act which gave the House of Commons power over the body's budget.<sup>65</sup> Such power was, originally, in the hands of the Treasury and was the main, and only, real instrument of control which Government had over the NAO. Empowering a Parliamentary commission with the approval of the budget of the NAO allowed for the removal of a restraint and increased the body's independence. After the creation of the Public Accounts Commission, the NAO became entirely external from the administrative machine to the extent that its staff were no longer considered part of the civil service.<sup>66</sup>

The composition of the commission envisaged the presence of the Chair of the PAC to provide a point of contact between the two committees to advise and share the results of NAO policies. Such presence was deemed as even more important in the planning of the NAO activities because it allowed the PAC to communicate to the Public Accounts Commission its necessities and priorities. One point of fundamental importance in relation to the Public Accounts Commission is the fact that it is impossible for the commission to undermine the free choice of the Comptroller on the topics to be audited. Such power was strictly reserved for the head of the NAO and the increase in the independence of such power was one of the reasons behind the creation of the commission.

A further development, which considerably increased the importance of the Public Accounts Commission was the creation of a Management Board for the NAO. Such review of the NAO's governance was decided by the Public Accounts Commission following the 2004 expenses scandal

---

<sup>64</sup> This aims to highlight the very close timing of the creation of the PAC and of the ancestor of the NAO. The E&AD was created in 1866 by the 1866 Audit Act.

<sup>65</sup> Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". cit. Pag. 235

<sup>66</sup> Ibidem.

involving the NAO. The review of the structure and governance of the NAO was completed in 2011 with the 2011 National Audit Act. Subsequently, the Commission was empowered to choose 4 of the 9 members of the NAO board and, even more importantly, the Comptroller had to submit a strategy and resource plan that had to be approved by the Commission. One last major change was the duty to produce semestral reports on the expenses of the NAO which were addressed to the Commission. The Public Accounts Commission has become more important over time, becoming a fundamental component of the National Audit Office governance.

The PAC's powers are regulated by Art. 148 of the Parliamentary Standing Order. This article provides for the creation of *"a select committee to be called the Committee of Public Accounts for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure"*. It should be noted that the PAC is considered to be one of the select committees which means that, just like all the other select committees, the PAC performs a "specific scrutiny role".

The PAC has a dual role in relation to the NAO. The PAC has both an active and a passive role as it is involved in the programming of the NAO activity but it is also the committee tasked with evaluating the reports submitted and, if necessary, instigating further investigations or hearings. The PAC operates in a very specific field of action. It works on financial audits but not policy evaluation.<sup>67</sup> The PAC is explicitly prohibited, together with the NAO, from criticizing the political choices behind the policies it scrutinizes. Such prohibition originates from the need to separate the creation of policies from their implementation. The Departmental Select Committees are tasked with the former while the PAC is responsible for the latter.

The dual role of the PAC is relevant to the "cycle of accountability"<sup>68</sup>. The process begins with an agreement on the planning of the activities followed by an investigation carried out by the NAO. The results of such investigations are reported, once again, to the PAC which discusses them and hears the competent departments and produces one final report which is sent to the Treasury who either accepts or refuses the recommendations of the Parliamentary committee. Clearly the work of the NAO and the PAC goes hand in hand because each one of the two would be very inefficient without the other. The PAC would lack the specific competences and resources to carry out investigations while the NAO would not be able to produce any result without a specifically designated committee.

---

<sup>67</sup> "Our Role- Public Accounts Committee", Committees, UK Parliament, <https://committees.parliament.uk/committee/127/public-accounts-committee/role/>

<sup>68</sup> Bianchi, Martino. "Il National Audit Office e il Public Account Committee: Ancora lezioni da Westminster?". Rivista Italiana Politiche Pubbliche, fascicolo 1, Aprile 2012. Pag 92

### **3.1.2. The unique relationship between Parliament, the Comptroller & Auditor General and the National Audit Office**

The three-way relationship between Parliament, the Comptroller and the NAO revolves around the central figure of the Comptroller who is both the head of the NAO and an officer of Parliament. This figure fulfills many fundamental tasks which create a deep connection between all the actors involved. The Comptroller is so important for the British Parliament that his position has been carefully defined to ensure the protection of its independence and to bestow on it a high degree of freedom. Such independence was constantly increased and protected, at least until 2011 when the governance reform of the NAO created a parallel power in the organ that was able to undermine the Comptroller's authority.<sup>69</sup>

The relationship between the three organs is both a top-down and a bottom-up relationship. Starting from the top (Parliament), both the Comptroller and the NAO originate their power from the democratic body which rules over the British legal system. Like a snowball effect, the Comptroller obtains its power by virtue of his role as officer of the House of Commons entitled with the task of audit while the NAO gets its powers from the Comptroller to whom it is a structure of support appointed to carry out the audits in the name of the Comptroller. The sovereign power of Parliament<sup>70</sup> grants the PAC, the Comptroller and the NAO virtually unlimited rights of access to the documents necessary to pursue their audit functions. This top-down view also gives rise to the power of the House of Commons to choose the figure of the Comptroller who is formally appointed by the Queen but proposed by a motion of the Prime Minister following an agreement with the Chair of the PAC. The candidate has to be approved by the House. Furthermore, as already mentioned in the previous paragraph, the Public Accounts Commission was specifically designed to oversee the budget of the NAO and participate in the financial planning of the body.

The Comptroller is the Chief Executive of the NAO but he is not an employee of the Office. He directs the body and is the only figure with the power to select which Audits are to be carried out. The Comptroller, together with the Board (since the 2011 reform), has the power to recruit the NAO's staff. Despite the fact that the Comptroller is not an employee of the NAO, he has full control of the Body.

If the top-down relationship is based on the attribution and democratic justification of the powers granted, the bottom-up relationship is based on the supportive nature of the organs.<sup>71</sup> The NAO has

---

<sup>69</sup> "In the interests of corporate governance, the 2011 Act deliberately removed or reduced some of the Comptroller's long-standing powers of exclusive authority and freedom of action. Changes in some respects have reduced the independence of the Comptroller." Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". cit. Pag. 257

<sup>70</sup> Leyland, Peter. "The Constitution of the United Kingdom: A contextual analysis". cit. Pag. 47

<sup>71</sup> "About Us". National Audit Office. <https://www.nao.org.uk/about-us/>

the duty of providing expertise to the Comptroller who has to inform the PAC of the results of the audits to protect the quality of State finances and ensure they are held accountable to the British citizens.

Due to the quantity of data which has to be analyzed, the external audit of the British Accounts would be impossible without a vast and well-trained examination machine. Such role is fulfilled by the NAO whose expertise are fundamental for the Comptroller. The importance of such machinery can be understood, also, by virtue of the fact that throughout history only two Comptrollers have been accounting experts. This highlights the heavy reliance and trust which the head of the NAO places on its personnel. The C&GA's lack of specific competence has never undermined the quality of the audits produced.

Central to the whole process of audit, is the role of the Comptroller who is the connecting dot between Parliament and the NAO. As already stated, the Comptroller is the only figure with the right to begin investigations. He programs the VFM studies and has complete discretion<sup>72</sup> on which audits to carry out, with the exception of the financial audits of the departments and the annual report to be delivered to the PAC which are mandatory. The Comptroller is the figure tasked with approving the reports produced and with deciding when and whether to share them with the PAC.

The unique relationship between the three figures creates a complex but very efficient system of audit over Government which puts Parliament at the center of the accountability process while, at the same time, supplying a specialized system of support. The lack of strong ex-ante scrutiny increases the interest in such relationship which in order to guarantee the quality of the State accounts must be very effective.

### **3.1.3. The reference and importance for Select Committees**

An often underestimated role of the NAO is that of supporting Select Committees. Such term, for the purpose of thesis, will refer to all the committees of the House of Commons entitled with the task of ex-post audit of the implementation of the Governmental policies but will exclude the PAC because of its peculiar characteristics. The PAC is a very unique Select Committee by virtue of its cross departmental character and because of the presence of the NAO which is an office of support for it. Select committees are usually concerned with very specific topics that are usually attributed on the basis of Governmental departments. In fact, Select Committees normally mirror departments. The PAC is the only committee which engages in audits over all departments because it is responsible for public expenditure (Art. 148 Standing orders).

---

<sup>72</sup> Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". cit. Pag. 233

The NAO performs a very important and underestimated role for Select Committees. It can provide helpful material for the evaluation of policies in the same way as it does so for the PAC. Certainly the most important type of report provided are the VMF studies which can be very effective in addressing the select committees' investigations and opinion formation. The VMF, being a hybrid instrument, provides both accounting information and policy implementation comments.

Historically the NAO and the Select Committees have never interacted, at least not until 1978 when it became apparent that it was important to grant the departmental committees access to the technical expertise of the office as well, because they were not able to rely on such a well-developed machinery to carry out their studies. This brought with it two major changes. It increased the NAO's budget in order to avoid undermining the activities performed for the PAC while, at the same time, it underlined once again the lack of power to criticize policy objectives.<sup>73</sup>

A further development in the relationship between the Audit institution and the select committees was the Sherman Report which provided a set of recommendations which were, then, enacted through the Companies Act 2006. Such report suggested that the NAO began delivering annual reports to each select committee about "significant financial issues"<sup>74</sup> of the department it was competent in. This increase in the duties of the NAO was followed by an increase in its budget to avoid negative repercussions for the NAO-PAC relationship. Such periodic reports increase the strength of the Committees' audits.

Two points are worth mentioning. First, it should be pointed out that the Select Committees have never been very responsive to or active in their relationship with the NAO.<sup>75</sup> The reports produced by the body have often been ignored and not had any effects. Such inefficiency is most likely due to the poor effectiveness in the ex-post evaluation of policies carried out by such committees. Despite being the *quasi* only instrument of Parliament to control the Governmental policies enacted (ex-ante scrutiny is nearly non-existent), such tasks have always been overshadowed by the trust given to Government.

Second, it is important to highlight the problems which arose from such relationship. One major problem arose with cross department studies which create a problem in assigning responsibility to the Select Committee. The Committee system found it difficult to adapt to such reports because of the rigid divisions present between the Select Committees and the protests of the departments which were not willing to be blamed for the mistakes of others.

---

<sup>73</sup> Midgley, Henry. "The National Audit Office and the Select Committee System 1979-2019". Parliamentary Affairs, Volume 72, Issue 4, October 2019. Part 4: "Creating a Formal Relationship"

<sup>74</sup> Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability".cit. Pag. 244

<sup>75</sup> Midgley, Henry. "The National Audit Office and the Select Committee System 1979-2019". cit. Part 8: "Overlap or Cooperation"

### **3.2. Performance Audit**

The function of the National Audit Office is that of analyzing the accounts and the performances of the State's administration bodies and of private entities which perform public roles.

The National Audit Office has two main instruments which it uses to perform such task; audit over spending and the Value for Money ("VFM") evaluation.

There is an important difference between the two instruments both in terms of the extent of the evaluation and the rationale behind it. The first instrument is the oldest, but it has become less important as the Value For Money evaluation has become the most useful tool for the NAO thanks to its impressive high-quality analysis.

From a formal point of view the audit over spending is an accounting report which summarizes the expenses and the revenues of a specific body. On the other hand, the VFM evaluation considers the merits of the choices made by the body or sector analyzed on the basis of the criteria of efficiency and efficacy to provide a full report which allows Parliament to truly understand how advanced the audited body is.

We must not forget that the duty of the NAO is to check the implementation of policies and not to pass judgment on the policies themselves. This presupposes a very finely balanced task. It is sometimes challenging to draw the line between the two. The audit over spending function is more clear cut whereas the VFM requires the NAO to proceed very carefully as the audits carried out are the same in nature.<sup>76</sup>

The reports drafted by the NAO have to be presented to the departments and agreed by them before being presentation to the PAC. Such involvement of the scrutinized body greatly increases the efficacy of the reports because the suggestions produced by the PAC as a consequence of such scrutiny are mostly accepted by Government, allowing a process of improvement in the quality of the public administration.<sup>77</sup>

#### **3.2.1. The audit over spending**

The National Audit Office begins its activity after the legislation is passed and has the task of ex-post audit and evaluation of the spending of departments and state financed bodies.

Such audit of the accounts of the State is a necessary process in ensuring that all sectors involved in the management of the Country are accountable to Parliament.

---

<sup>76</sup> Horne, Alexander; Drewry, Gavin. "Parliament and the Law". Bloomsbury Publishing, 2018. Pag. 340

<sup>77</sup> Staddon, Anthony. "The Public Accounts Committee of the House of Commons." *Making Governments Accountable: The Role of Public Accounts Committees and National Audit Offices* (2015). Pag. 103

The audit over spending is a tool used by the NAO to oversee the finances of State bodies. It involves in-depth analysis of the cash flows with the final aim of presenting reports to Parliament which then proceeds with the necessary measures.

As previously stated, the main addressee of the NAO's audits is the PAC which receives all reports produced. To ensure full use is made of the instrument, the Departmental Committees responsible for the body examined are usually informed of the results of the investigation as well.

There are at least three types of audit over spending, all of which have different outcomes and timings. The first and most consistent work of the NAO is the certification of the accounts which is carried out on the bodies which use state resources. The scope of such certification has been widened with each wave of reform. Originally it only concerned State departments, but now the NAO also audits private entities which manage public goods and entities which receive State subsidies such as charities. This expansion in its scope was deemed necessary at the end of the 70's with the new approach to the management of the State which devolved input to private bodies and non-departmental agencies where possible.<sup>78</sup> It should be highlighted that the power of scrutiny is not unlimited. The audit over private companies can be carried out only if there is a contribution of the State which accounts for the main revenue of the body. The second fundamental financial report of the NAO is the department's account report which is an annual analysis of the use of resources of each Department. Such report gives an overview of the work carried out by each Department so that the competent Select Committee can discuss its contents and be informed on the apparatus it oversees. Such reports are often ignored by the Committees which do not find the ex-post audit of the resources they attributed particularly useful. They find the NAO's papers highly complex and technical.<sup>79</sup>

The audit over spending is also carried out through investigations and MPs' questions. Investigations are always topic specific and do not extend to wider analysis so as to guarantee a fast response by the NAO. Such topic specificity together with the lack of a conclusion is the major difference between the investigation and Value for Money evaluations.<sup>80</sup> Responsiveness and ease of interpretation are necessary characteristics to enhance the usefulness of investigations.

The NAO has a strong interest in its accountability, and it has adapted its internal dynamics to fulfill the task of audit over spending in the most precise and complete way. The body has great expertise in matters of accounts and its staff are highly specialized in different types of audit in order to be well

---

<sup>78</sup> "The government, however, was prepared to accept statutory provisions giving the Comptroller wider rights of access to other bodies mainly supported by public funds." Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". Oxford: Oxford University Press, 2016. Pag. 233

<sup>79</sup> Horne, Alexander; Drewry, Gavin. "Parliament and the Law". cit. Pag. 341-342

<sup>80</sup> Summerfield, Lee. "Nao Investigates". National Audit Office, July 7, 2017. <https://www.nao.org.uk/naoblog/nao-investigates/>



prepared to manage the information received.<sup>81</sup> Such characteristics are both very useful and problematic. On the one hand, they allow high quality reports which have all the necessary information for MP's. While at the same time they are at times overcomplicated which prejudices the discussion and interest of Parliament and of the Committees (with the exception of the PAC which always discusses each report).

### **3.2.2. The “Value for Money” Evaluation**

The most interesting activity of the NAO is the VFM evaluation. Such activity was not originally provided for by law but was an independent decision of the Comptroller who came up against great resistance from the Governmental department. At the same time, such audit was very slow in its evaluation of the matters covered. Nowadays this is the most efficient ex-post evaluation tool available to Parliament and, in particular, to the PAC. Usually the NAO produces around 60 VFM studies per year, most of which are discussed in the PAC's sessions. Some even trigger further inquiries by the committee.

The 1983 National Audit Act greatly improved the importance of the VFM studies as it provided for the reporting of the result to Parliament in any moment of the year and not just annually. Such change highlighted the importance of this instrument and increased the NAO's confidence which began to produce higher quality material. Finally, the possibility of multiple reports addressed one important problem with the VFM evaluations which was the long length of time passing from the beginning of the investigation to the conclusion of the report.<sup>82</sup>

The VFM studies evaluate the work of departments from the perspective of three criteria: economy, efficiency and effectiveness. A fourth criterium, the equity evaluation of the policies, was added later with the aim of creating a more sustainable system in general. Such criteria are the fundamental guidelines of all the policies implemented by the administrative apparatus.

The VFM studies are very different from the fiscal evaluation studies because they are much deeper in their analysis. Not only do they allow for a discussion of the revenues and expenses of the body under investigation but also allow for the choices made in the administrative process to be addressed. This does not give the NAO the power to criticize the political choice of the policies but the NAO does have the power to compare the opportunities in the hands of the administration and the costs involved through the lens of the three Es as a means of verifying the compliance of the two. The drafting of VFM studies is very time consuming and the production of reports can take over a year to be completed from the start of the investigation. This is due to the complex task of evidence gathering

---

<sup>81</sup> Dewar, David, and Warwick Funnell. “A History of British National Audit: The Pursuit of Accountability”. cit. Pag. 238-239

<sup>82</sup> Ivi. Pag 237-238

and elaboration, the need to evaluate the data and summarize it and the difficult task of providing a conclusion which becomes the guiding light for the further work of the PAC.

The VFM reports have a very wide spectrum of evaluation which does not only cover budgetary data in a quantitative way but also involves quantitative and qualitative judgement of the application of the policies. This imposes deep considerations on the positive and negative consequences of the policy implementation which require the NAO to carefully balance financial as well as non-financial factors.<sup>83</sup> The qualitative judgment makes the VFM reports more relevant as it provides Parliament with data which MP's would not be able to gather and which can be very helpful for the PAC's final judgments.

One important difference between the financial reports and the VFM studies is the possibility of cross-departmental evaluation. The VFM are not institution based but topic based which means that it is very common to need to address a particular matter from more than one point of view. In the public administration more than one department often collaborates for one single result. Cross-department studies are a powerful instrument for the PAC because they allow a very broad analysis which would not be possible if it was carried out on each department separately. A problem of responsibility arises when cross-departmental evaluations are carried out because negative results might be a consequence of systemic negligence or of the negligence of one single department. Because of this risk of being blamed for faults of other bodies, departments do not accept such evaluations lightly.

To conclude, it is important to note the changing nature of the VFM studies which are constantly facing new challenges<sup>84</sup> and, in contrast to financial reports, need to adapt their methods and their evaluations to effectively center the target. An example already cited is the addition of a fourth "E" (equity) which clearly altered the focus of the studies. As Ling affirms, change has always been present but nowadays the evolution of the public sector into a more complex machine, the external pressures on the auditing institutions and the new ways of interaction between the public sector and the people, are together forcing the NAO to adapt, mostly in terms of its performance audit function.<sup>85</sup>

---

<sup>83</sup> Talbot, Colin & Wiggan, Jay. "The public value of the National Audit Office". *International Journal of Public Sector Management*, 23, 2010. Pag. 56

<sup>84</sup> Tom, Ling. "New Wine in Old Bottles? When Audit, Accountability, and Evaluation Meet". *Dilemmas for Evaluation and for Audit Comparative Policy Evaluation*, Vol. 14, 2017

<sup>85</sup> *Ibidem*

### **3.3. The importance of NAO functions**

The National Audit functions are fundamental for a wide range of reasons.

Starting from a purely financial perspective, the NAO's audits allow significant costs saving which accounts for more than a billion pounds a year. When compared to the cost of running the office, this is a very high return.

The work of the NAO increases the accountability of the administrative bodies which, being reviewed by an external auditor are incentivized to comply with Government and Parliament's directions. Furthermore, the accountability mechanisms encourage each administration to improve the quality of their work.

The NAO is not only conscious of money. Its task is extremely complicated and in depth, making it a helpful instrument. It focuses on time management and on the equity of the allocation of resources. In the words of the NAO, its work has 5 impacts: it directly benefits the users of the services audited, it increases the Government's ability to deliver policies, it increases accountability and transparency, it highlights the corrections which Government needs to foster and finally it improves the quality of the decision-making processes.<sup>86</sup>

#### **3.3.1. Significant money saving**

The NAO is very conscious of saving money. Its work helps to cut costs. The increase in efficiency and the reduction of costs are its preeminent objectives. This has always been the case and activity planning specific goals are set every year. Usually the NAO does not set specific amounts. Rather it prefers to evaluate the saving on a "per pound" basis. This involves comparing the expenses of the body with the amount of money saved thanks to its work. The higher the ratio, the better the results. The performance of the body has greatly improved over time and it has always overperformed on its work. This has saved the State a lot of money over the years.

For example, in only ten years the NAO has increased its saving objectives by 10% from £9 in 2010 to £10 per pound in 2020. Such saving might seem insignificant, but the impressive performance of the body has effectively allowed for an increase in saving of £11 in 2010 to a saving of £16 in 2020. There peaked in 2014-2015 with £18 saved. In absolute terms the NAO saved £890 million in 2010 compared to £1.1 billion saved in 2020. This increase in saving has been achieved despite the NAO's budget remaining virtually unchanged. In fact, the final expenses have been reduced by £1 million.

The NAO's concern about the quality of its work and its effect is evidenced by the commissioning of external evaluation to assess the quality of the reports and to produce an external quantification of the real benefits produced. The NAO requested that, at different times, both evaluations be performed

---

<sup>86</sup> NAO. "Annual Report and Accounts". Report by the Comptroller and Auditor General, 2019-2020. Pag. 36

to assess the impact of single programs and, also, the overall impact of the organ. The NAO participated in an accountability program which each year evaluated the impact of around 35 of its reports to highlight the strengths and weaknesses of the analysis carried out.<sup>87</sup>

It is hard to measure the impact of the NAO because it is impossible to calculate the effects of audit on the good practices of the administrative apparatus. The NAO promotes the quality of Government's action by advising the administrations on good practices to improve the quality of their work.<sup>88</sup> Furthermore, the precise evaluations by the body and the great efficacy of the PAC increase the quality of the administration's work because it fears being held accountable.

### **3.3.2. The growing concern over transversal matters**

Most of the NAO's audits were nearly always carried out on a specific administrative body. However, from the 80's the office began to investigate topic-oriented matters. This new type of investigation, which is mostly performed through VFM, has come up against resistance within the administrative apparatus. When auditing a specific topic, the problem of transversality arises because it is very rare for departments to work by themselves.

Cross-departmental analysis is very useful for the PAC because it goes much deeper than an analysis of a single department. This is because the cross-departmental analyses evaluate policies generally and comment on the overall quality of their implementation. This enables a report to be put together of the overall impact of such policies and gives the PAC a very useful instrument of audit over Government as a whole and not just over single departments. Such innovation has not been accepted lightly by Departments which have found such examinations unjust and very problematic by virtue of the underlying characteristics of the studies which gave rise to two fundamental problems. Such studies are very complex to discern because the analysis of the intertwining work of two departments makes it hard to separate the work of one from the other (or more). As a result, there is great difficulty in understanding who is responsible for the error committed. The finding of fault is necessary because departments who have not committed the wrong should not remedy the errors of the department at fault. The second problem with such cross departmental studies relates to the hearing in Parliament because it is often not clear who should be held accountable in front of the democratic body and who should defend the choices and merits of the policy. Such problem arises because of the fundamental principle of individual ministerial responsibility which states that each minister is personally

---

<sup>87</sup> Gibbons, Steve; McNally, Sandra; Overman, Henry. "Review of Government Evaluations: a report for the NAO". LSE Enterprise, 2013. Pag. 1

<sup>88</sup> Morin, Danielle. "We Are Much More Than Watchdogs: The Dual Identity of Auditors at the UK National Audit Office." *Journal of accounting & organizational change*. (n.d.). Pag. 576

responsible for the work of its department. In front of a mixed policy no minister is willing to take complete responsibility for it leaving the NAO and, mainly, the PAC with the duty of assessing who to blame.

To conclude, the imbalance between the pros and cons of such studies should be highlighted. There are more pros than cons thanks to the innovative character of the cross-departmental audits which allows the NAO to produce a 360-degree policy evaluation rather than looking at each department's work individually.

#### **4. A comparison between the two systems**

A comparison between the Italian Court of Auditors and the British National Audit Office helps to give a better understanding of the two bodies themselves, as well as more generally, the audit process in the two respective countries. Such comparison highlights the commonalities and differences between the two bodies which are the result of a long list of factors that intertwine to create their peculiar characteristics.

The two bodies can be analyzed from various perspectives, with each perspective highlighting different elements which demonstrate the distinct evolution, procedure and relative importance of the respective bodies.

It is useful to separate the study into a three parts. First, a discussion of the differences in the evolution and formal characteristics. Second, a reflection on the functions and technical competences and, finally, a study of who the bodies address their work to and their external relations.

The differences between the two bodies are not only found in the everyday practices and the legal attributions granted to them. They are much more deeply rooted in the fundamental differences of the different legal systems.

It is well known that Italy and the United Kingdom do not share the same legal background. Italy's legal system is based on civil law while the UK is the father of common law. Such background has strongly influenced the birth and the evolution of the bodies which have internalized the fundamental elements of their systems. Starting with the National Audit Office, it has evolved through the means of everyday practice, as is typical of the common law system.<sup>89</sup> The body was legally created in 1983 but its practices and competences are much older and more well established. Despite the existence of a formal framework of action and protection for the body, the preference has always been that of leaving the power to amend practices to adapt to the State's needs to the Comptroller and the NAO. Such changes have never been unilaterally imposed by the Office but have always been driven by a

---

<sup>89</sup> See 1.2.1

dialogue principally with Parliament as well as with Government and the administrative apparatus. One clear example of such evolution are the VFM studies. This is one of the most effective Parliamentary audit tools and has been an established day-to-day practice since the end of the 19<sup>th</sup> century.<sup>90</sup>

On the other hand, the Court of Auditors has a strong legislative framework which supports its existence and work. The body is formally recognized by the Constitution and it evolves through ordinary or even special legislation (for example, the Legge rinforzata n.243 of 2012). Its powers are clearly enshrined and its relationship with Parliament is managed through internal regulation of both the Court of Auditors and the Chambers of Parliament.

It is not possible to expand existing powers or establish new ones through customary practices. This makes the Court of Auditors a much more static body compared to the NAO. This static nature is reflected in the procedures of the Court of Auditors which differ significantly from those of the NAO. The Court of Auditors is a body with a very long history and established practices which are steeped in formality. The NAO, on the other hand, is more of an advisory body which prefers substance over form and leaves most of the formalities to the figure of the Comptroller.

The formal nature of the Court of Auditors can be seen in many of its characteristics such as the procedural aspects, the rigid divisions in the Court as well as in the style of its reports. The clearest example of such formality is the Accounts Equalization Judgment. Without its formal procedure the Account Equalization Judgment would be devoid of much of its significance, as the form of the process is a fundamental part of its substance.<sup>91</sup> On the other hand, the NAO is much more content oriented. The reports submitted to Parliament do not have a prescribed form but rather have changed through time. The reports look more like informative papers rather than official documents. One example is the lack of signatures at the end of the documents.

An important difference between the Court of Auditors and the National Audit Office is the absence of judicial powers in the latter. The Court of Auditors is not only an auxiliary body, but it is also judicial. This is unique in the auditing context. The amphibious character of the Court of Auditors<sup>92</sup> gives it more power and relevance compared to that of the NAO. The importance of the Court of Auditors is further consolidated by its Constitutional role as the sole judge over matters related to public finance.<sup>93</sup> The audits of the Court of Auditors have potentially much farther reaching consequences compared to those of the National Audit Office because of the Court's independent

---

<sup>90</sup> Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". cit. Pag. 127

<sup>91</sup> See 2.3.3

<sup>92</sup> Longhi, Luca. "Brevi note sull'indipendenza della Corte dei conti ai sensi dell'art. 100, ult. co. Cost.". Amministrazione in cammino, May 7<sup>th</sup> 2019. Pag.4

<sup>93</sup> Imperiali, Stefano. "La giurisdizione della Corte dei Conti nelle materie di contabilità pubblica". Amministrazione e Contabilità dello Stato e degli enti pubblici, 2016. Pag. 5

initiative. The NAO's only means of having an impact is through its dialogue with Parliament. Whereas the Court of Auditors can proceed, through the judicial divisions, to carry out further investigations if it suspects a breach of law.

The NAO is, then, well defined as a technical body with advisory functions for the Comptroller and ultimately for Parliament. Such technical expertise comes to light in the high-quality material produced by the NAO and mostly in the VFM studies which require a wide range of competences to carefully balance all the elements.

The technical expertise of the NAO personnel is not mirrored in the Court of Auditors. A common critique of the Italian body is that it is an accounting body principally composed of judicial figures. This does not undermine the competence of the Court of Auditors or the quality of its reports but rather questions the prior qualification of its personnel.

There are important differences to note in the external relations of the two bodies. The bodies differ both in who their work is addressed to and in the way in which the external environment can require their expertise.

The National Audit Office can only address its work to the PAC and to the Select Committees. The PAC has a privileged role compared to the other committees as it is the committee responsible for the financial ex-post audits. The reports can only be presented to Parliament through the figure of the Comptroller or one of his representatives and, by virtue of this necessity, the NAO is an auxiliary body, first and foremost of the Comptroller and, secondly, of Parliament.<sup>94</sup>

The Court of Auditors refers to Parliament as a whole but only through the Presidents of the Chamber.<sup>95</sup> It has not been given the power to speak directly in parliamentary sessions. In contrast to the NAO, the Italian supreme audit institution can address its reports to both Houses.

One fundamental difference relates to the press and document releases. The NAO cannot publicly release any document or comment and its only addressee is Parliament. This implies that it is only Parliament who can take action following the work of the NAO. In contrast, the Court of Auditors is under no such obligation and has the autonomy to choose how it publicizes its work.

A final point worth mentioning is the differences between the tools available to Parliament and who can question the audit body. Inquiries to the Court of Auditors can only be made by the Presidents of

---

<sup>94</sup> A necessary clarification needs to be made. The Comptroller is an officer of the House of Commons and so the NAO is for all intents and purposes an auxiliary body of Parliament. The statement in this sentence sought to highlight the importance of the three actors and the connecting line between them which begins with Parliament, passes through the figure of the Comptroller and ends with the NAO.

<sup>95</sup> See 2.2.2

the Chambers following the procedures established by the internal regulations of each Chamber. Neither an individual MP nor any citizen can put forward questions to the Court of Auditors.<sup>96</sup>

The NAO can be questioned by any MP who can request further information on topics of their concern. At the same time, citizens can communicate cases of money wasting or maladministration which might lead to an investigation by the body and a report to the PAC if there are irregularities. Despite all these elements such differences should not be given too much weight as both bodies participate in international Audit groups and share many principles that are common to most countries in the world. They are both part of the INTOSAI (International Organization of Supreme Audit Institutions) group and until 2020 both countries were part of the European Union and had to follow European guidelines and practices in their financial oversight of the State. Such international connections created a framework which helped to standardize audit practices which resulted in the creation of an International Audit Standard with the best practices of the different Audit bodies that helped to improve the quality of their audits.

There are many important similarities between the two bodies. First, both principally answer to Parliament. Such relationship, even if it is exploited in different ways, characterizes the Audit Body as a system of support. Furthermore, both bodies rely on Parliament for the production of concrete effects following the audit process.

Connected with the previous point is the similarity in the audit process which follows the same main steps. The audit starts from the need to produce a periodic report (usually this is the case with financial audits) or because of interest in a particular question or analysis. Both bodies can begin the process of their own volition or following a question from Parliament. The auditing part of the process depends on the topic, administration and method used but there is a general similarity in the techniques and criteria used. The fundamental importance of gathering information is aided, in the case of both bodies, by a nearly unlimited access to administration documents. When the report is ready, both share it with Parliament and wait for a follow-up which is the sole responsibility of the Democratic body.

Finally, an important similarity is the bodies' independence from government which is reflected in the fact that both bodies sit outside the administrative apparatus. The NAO is not even part of the civil service and follows its own processes of selection and employment.<sup>97</sup>

For the purpose of this thesis, given that the scope of its main inquiry is the relationship between the audit bodies and Parliament, two main aspects need to be investigated further as they are the reason

---

<sup>96</sup> The only instrument in the hands of citizens and MP as individuals to report issues to the Court of Auditors is through a denunciation which begins an investigation that is carried out by the judicial sections. In terms of the auxiliary functions of the body, there is no such possibility.

<sup>97</sup> Dewar, David, and Warwick Funnell. "A History of British National Audit: The Pursuit of Accountability". cit. Pag. 235



behind an important difference between the two bodies. First, the independence of the two offices will be analyzed mainly focusing on the independence from Parliament and the role of the head of the body. In the subsequent section, the efficacy of the intervention of the body and the duties of Parliament related to the reports submitted by the Audit institutions will be discussed.

#### **4.1. The independence of the Office**

Both bodies and both legal systems share the idea that the independence of the two offices is fundamentally important for them to carry out their functions of audit which, in order to maintain their efficacy and guarantee the objectiveness of their evaluations, should not be put under any pressure from the outside world.

The two countries have adopted two very different solutions to ensure such independence but both have addressed the same areas; the budgetary attribution, the protection of the position of the head of the body and the formal protection of the initiative of action.

##### **4.1.1. The Italian Court of Auditors as an independent body with its own independent head**

The Court of Auditor's unique position as a body with both judicial and audit functions led to concerns about its independence. The Constituent assembly saw such a characteristic as a fundamental requirement, especially in light of the past experience of the Fascist regime which undermined the Parliamentary control by using the Court of Auditors. The independence of the body was constitutionally provided for both by Art. 100 and Art. 108 which protect it through the means of ordinary legislation. The importance of the independence of the body becomes even more apparent by virtue of the Court's judicial functions which would be strongly undermined if its magistrates were influenced in any way. To ensure that the body functions as it should, both formal and procedural guarantees are required.

To ensure the protection of the body as an institution the Italian legislator envisaged the protection of an independent budget to avoid constraints which could have put pressure on the Court of Auditors. The rationale was that of avoiding any tie between the Court of Auditors and Government, mostly because of the controlling role of the Court towards the Executive. Art. 4 of Law 19 of the 14<sup>th</sup> of January 1994 protects such financial autonomy.

The Italian legislator was oriented towards the protection of the independence of the institute through the use of instruments which allowed the President of the Court of Auditors and each Magistrate to be independent. Such instruments are an impartial selection carried out through competitive

examinations, the presence of a Council of Presidency and through the internal choice of the candidate for the body's President.

In terms of the President of the Court of Auditors, it is interesting to compare his position with that of the Head of the NAO. The Head of the NAO is an officer of the House and is not an employee of the office. The President of the Court of Auditors, on the other hand, is required to be a magistrate of the Court and when he is appointed he becomes a *primus inter pares*<sup>98</sup> because he gains administrative functions but cannot influence the other magistrates' work. This different relationship between the Head of the body and Parliament demonstrates, first of all, a greater attachment between the English audit institution and Parliament while, at the same time, it arguably highlights the independence of the Court of Auditors. Despite its greater independence from Parliament the body's position is undermined in a number of ways.

The President of the Court is appointed by the President of the Republic, following a proposal by the President of the Council based on the recommendation of the Council of Presidency of the Court of Auditors. The customary rule left the choice of the president to the Council of Presidency but recently the President of the Council has asked for 5 names to choose from, undermining the independence of the institute.<sup>99</sup>

A further threat to the institute's independence is the composition of the Council of Presidency which gives the majority to non-elected or externally elected members. This undermines the self-governance of the body. Such concept was shared by the Constitutional Court which, despite refusing the admissibility of the question of unconstitutionality has recognized the need for clarification and further methods of internal protection of the independence of magistrates.

To conclude it can be said that despite the great interest in the neutrality<sup>100</sup> and self-government of the body its position is undermined by many elements which risk constraining the magistrates' freedom to act and, in terms of audit, risk complicating the accountability of the institute.<sup>101</sup>

#### **4.1.2. The National Audit Office as a body that “helps” the Comptroller and Auditors General and the Public Accounts Committee in their tasks**

The position of the NAO is very unique. Historically its independence has been very important due to the interest in its expertise. However, from a practical point of view, the English office arguably enjoys much less independence compared to its Italian counterpart.

---

<sup>98</sup> Pepe, Gabriele. “Il Presidente degli Organi Collegiali di autogoverno delle Magistrature: ruolo e funzioni”. Amministrazione e Contabilità dello Stato e degli enti pubblici, 2015. Pag. 39

<sup>99</sup> Graziana, Urbano. “Riflessioni sull'indipendenza del Magistrato contabile”. Federalismi.it, November 13<sup>th</sup> of 2019. Pag.19

<sup>100</sup> Longhi, Luca. “Brevi note sull'indipendenza della Corte dei conti ai sensi dell'art. 100, ult. co. Cost.”. cit. Pag. 6

<sup>101</sup> Ibidem

As mentioned, the NAO has at its head the Comptroller who is responsible for carrying out the audit functions. The Comptroller is also an officer of the House of Commons, so they have a dual role.<sup>102</sup>

This cannot be reconciled with a full independence of the figure and of the body which he heads.

To fully understand the rationale behind the position of the Comptroller one fundamental characteristic of the English legal system should be recalled. The United Kingdom Parliament is sovereign. This means that, in contrast to the situation in Italy, the predominance of Parliament over all other State bodies allows the Comptroller to be part of the institution.

Moreover, it shall be said that, despite being part of Parliament, the Comptroller enjoys full control over the choice of the audits to carry out. Such freedom has constantly been highlighted throughout history and also expanded through the use of legislation and the creation of practices.

The NAO depends on Parliament for a wide variety of matters such as the approval of its budget. Part of its board is chosen by the Public Accounts Commission. The NAO's only interlocutor is the House of Commons and its only means of action is through the Comptroller who is an officer of the House. The independence of the NAO can be interpreted from the point of view of its relationship with Government which, following the 1983 National Audit Act, has virtually no power of control or influence over the body. On the other hand, the elements mentioned above, demonstrate a two-fold dependence on Parliament.<sup>103</sup>

The NAO is defined, as stated already, as an independent body. However, in many ways, it depends on Parliament both in terms of its own management and the result of its work. The NAO is therefore arguably functionally dependent on Parliament.<sup>104</sup>

In terms of management, as already mentioned, the Public Accounts Commission has to approve the Office's budget and a board of control has been created to check the expenses of both the NAO and the Comptroller. This was considered as necessary in order to limit the extensive freedom of the Comptroller who was becoming involved in bad practices and in an unjustified waste of resources. Moreover, the NAO and the Public Accounts Commission have to agree on the programming of the annual plan which gives the Parliamentary Commission the power to select the audits on which to concentrate.

On the other hand, the PAC is the main and nearly sole interlocutor of the NAO and this strongly limits the influence that the body can have on the overall context of the management of the State. Ultimately the PAC decides whether to discuss or deepen the analysis executed by the audit institution.

---

<sup>102</sup> See 1.2.3

<sup>103</sup> See 3.1.1

<sup>104</sup> Bianchi, Martino. "Il National Audit Office e il Public Account Committee: Ancora lezioni da Westminster?". cit. Pag 97

Despite all these elements the dependence of the NAO on Parliament should not be overestimated. The Comptroller enjoys a high degree of freedom which is evident in the complex process necessary to remove him from office. The NAO personnel are outside the Governmental realm as they are not part of the civil service but are recruited by the Comptroller.

The NAO finds its main remit in helping the PAC. This task is much smaller in scope compared to that of the Court of Auditors. The three-fold relationship between the NAO, the Comptroller and the PAC demonstrates the strong interdependence between the three. The PAC's power would be very limited without the support of the Comptroller and the expertise provided by the NAO. Likewise, both the Comptroller and the NAO's remit relate to the PAC and they would not exist without such committee.

#### **4.2. The efficacy of the intervention**

The importance of both the Court of Auditors and of the NAO is a result of the increase in efficacy and accountability of the public administration. In the case of the NAO (the situation is different for the Court of Auditors which retains a fundamental role as a judicial body) the lack of improvements in the quality of the management of the State or in the use of resources would strongly undermine the whole purpose of the office's existence.

The complexity of the two bodies and the connection they share with Parliament make the evaluation of their performance very complex. In fact, the quality of the work of the two Audit institutions should not be confused with the results of the internal Parliament processes which are, ultimately, what produce the most far-reaching effects.

In order to compare properly the bodies two points are worth discussing. First, the efficacy of the audits themselves which involves examining the effects they produce in Parliament or on the public administration. Second, the different legal obligations imposed on Parliament. The first point discusses what happens in practice in the relationship between the bodies while the second highlights how the differences between the Italian and British legal guarantees the efficacy of the offices.

##### **4.2.1. Effectiveness of preliminary and ex-post audits**

There is an important difference between the methods and instruments used to carry out audits in Italy and UK.

First, the most important difference is the lack of an instrument of ex-ante scrutiny of the expenses in the hands of the NAO. The British body, in contrast to its Italian counterpart, can only begin its evaluations after the laws have been passed and the resources have begun to be used. Such a difference should not be underestimated.

The Court of Auditors supports Parliament in the audits over the laws which are to be enacted and gives justified opinions to the democratic institution in the case of irregularities (qualification with clearance). This gives Parliament an important instrument which allows it to rely on the audits of the Court without having to request them or carry them out personally.<sup>105</sup> This gives Parliament a highly pervasive instrument of control.

On the other hand, the NAO has no such instrument because, in contrast to the Italian Parliamentary system, the committees working before the approval of the law are different from those which audit the results of such actions. Even more importantly, the preventive scrutiny by an external body has never been considered as necessary in the British legal system and such an idea seems to be confirmed by the reduction in the importance of preventive scrutiny in most countries. Furthermore, in Italy the preventive scrutiny function has lost part of its importance in favor of an increased interest in the ex-post or concomitant analysis.

In terms of the ex-post audit, the similarities are much more important than the differences. Both Audit institutions carry out financial audits and performance audits.

Both institutions share the core principles of their audits. The importance of the independence of the institution from which it gets its accountability. For both institutions, Parliament is their preferred interlocutor and the ultimate addressee of their work.

In the carrying out of their audit, and most importantly in the performance audits, they share the three E's principle which means that they check, in addition to compliance with the law, that the administration has fulfilled its task economically and in an efficient manner and that the actions have been effective.

A common point in the process of audit is the timing of the reports submitted to Parliament. Legally both States have imposed a duty on the Audit bodies to produce reports at least once a year on the financial status of the public administration. Such requirement of annual submission was considered necessary to guarantee a continuity in the work and to avoid external pressures delaying the reports and undermining the audits of the two bodies.

Despite such minimum requirement the two audit systems differ greatly in the frequency of submission of the reports to Parliament and in the attitude of the legislator in the creation of the framework for such submissions.

The NAO is encouraged to deliver its report to Parliament in the most time efficient manner possible which means that there are no specific windows of submission and, as soon as the report is ready, the office tends to submit it.

---

<sup>105</sup> See 2.3.1

In contrast, the Italian legislator has concentrated on the regularity of reports which are protected by law. A clear example of this is the quarterly relations on the financial covering of law or the annual reports on the audit of the entities. Beyond such regular submissions the Court has never had a propositional attitude which can be justified both by the superficial interest that Parliament demonstrates towards the Court's reports and also by the existence of the ex-ante scrutiny which ensures an initial compulsory scrutiny of the acts.

One last important difference relates to the ease of access to the body's expertise. On the one hand, the NAO has extended to all MPs (even if the PAC is the preferred interlocutor) the possibility to ask it questions and raise concerns with it, while also allowing citizens to communicate cases of maladministration. The Court of Auditors' expertise is, in contrast, much harder to access as it is necessary to have a majority from the commission to agree the question to submit which then has to be communicated by the President of the House or Senate to the Court itself.<sup>106</sup>

All these differences demonstrate, once again, the different approaches of the two systems. The more formalistic approach of the Italian system on the one hand, compared to the more functionally oriented approach of the British state on the other.

#### **4.2.2. The mandatory nature of the action triggered by the body**

The effects of the Audit bodies can be seen in the Parliamentary debate that springs from their reports or in the concrete actions taken by Parliament.

In order to be incisive, the work of the Court of Auditors and of the NAO has to be followed by enough interest by Parliament to trigger further investigations, discussions or follow-up studies. If this were not the case, because of the dependence on Parliament, the audits carried out would not produce any results.

For this reason, in order to avoid Parliament's indifference regarding the audit reports, the democratic body is obliged by law to discuss or approve some of the reports. This ensures a minimum threshold of interest in the studies.

The Italian legal system is much more protective from this point of view and places a duty on Parliament or some of its commissions to discuss many of the audits which are considered as vital for the State. The two Houses of Parliament have different duties and procedures related to the matter, but both tend to impose such discussions to the commissions competent on the subject rather than to the whole House. Examples of reports which have to be evaluated are the qualification with reserve act, and the annual relations both of the State accounts and of the Entities.

---

<sup>106</sup> See 2.3.2

The British system has given Parliament much more flexibility from this point of view and it is not considered necessary to place strict legislative impositions on the committees to evaluate the NAO's work. This is certainly related to the very close relationship between the PAC and the NAO which was created to assist the Committee. Moreover, in contrast to the Italian system, the PAC has the sole task of ex-post audit of the account and this naturally implies the need to evaluate the NAO's report to carry out such a task. In Italy such a specific commission does not exist, and each parliamentary commission evaluates both the single body or topic in a complete manner paying less attention to the sole ex-post audits.

The MP's of the two countries have demonstrated a very different attitude towards the work of their audit institutions. The British politicians have always been very careful and active in their evaluations of the work of their Government with a huge quantity of hearings and a great degree of precision in their analysis, to the extent that hearings in front of the PAC are feared by Governmental departments. The Italian counterparts, on the other hand, have always been very lazy in their evaluations to the point that the Court of Auditors has lost interest in innovating the majority of its reports and has tended to create very repetitive documents over the years.

### **4.3. Concluding Remarks**

To conclude, it is interesting to remark how important both institutions are for their respective systems. Despite the differences in their approach and performance, they both foster the improvement of the overall quality of the administrative apparatus. The role of such institutions is more important nowadays than ever before because of the challenges that both the United Kingdom and Italy will face in the coming years.

The United Kingdom, in the wake of Brexit, is facing a complete reassessment of its administrative system which will require significant effort on the part of the NAO to properly evaluate the consequences of such changes on the administration. The lack of European funds and the implementation of new regulations as a result of the separation from European law will certainly put the PAC in the spotlight because of its central role in performing audits over departments.

Italy, on the other hand, is facing an unprecedented challenge due to the contribution of 209 billion Euros in the recovery program "Next Generation EU". The Court of Auditors will be central to the success of the Italian Government. The Court of Auditors will be engaged in all phases of the project from the budgetary programming of the activities (because of its role in the ex-ante scrutiny), to the finding of responsibility in relation to good and bad practices of the management of the budget. Despite such all-around engagement the Court will probably, following the recent trends, rely more on the concurring and ex-post audits. Such preference relates to the interest of the Court of Auditors

in a non-exemption of responsibility of the administration which would be triggered by the ex-ante scrutiny and, for the concurring audit, in the necessity of tackling cases of maladministration in a nearly contemporary way in order to adopt corrective measures which avoid the hindering of the funds received by the European Union.<sup>107</sup> The work of the Court will require a constant dialogue with Parliament to ensure full accountability in relation to the measures. The Court of Auditors, in its own words, is “facing such challenges with the pride of its own tradition, coupled with the vigorous and consolidated sensibility in fulfilling expectations which are dynamically posed by the challenges of the times”<sup>108</sup>.

Furthermore, both bodies will be required to evolve to properly confront the everchanging environment of the public administration. Both efficiency and an innovative spirit will be required of the two audit institutions. Parliament, mainly in Italy, will need to increase its responsiveness to ensure a speed-up of the audit process and to enhance the accountability mechanisms of Government. An improvement in the Parliamentary work on the audit material would, as the NAO performance demonstrates, drastically reduce money wastage.

At the heart of the objective of the Court of Auditors and of the NAO should be the enhancement of good practices. Both organs should not only punish wrongful conduct but, also, entertain a constant dialogue with Parliament, and in particular the administrations, to improve the quality of the management of public money. Arguably the NAO has gone much further than the Court of Auditors in such respect but, it must be noted that the existence of an international organization of audit institutions such as INTOSAI and EUROSAI is helping the conversation at an interstate level through the sharing of innovative projects by each institution.

---

<sup>107</sup> Zaccarelli, Federica; Stancarelli, Renata. “La Corte dei Conti ai tempi del *“Recovery Plan”*: quale ruolo tra responsabilità amministrativo-contabile, semplificazioni ed investimenti”. Amministrazione in Camminio, May 21<sup>st</sup> of 2021. Pag. 7

<sup>108</sup> “La Corte si presenta a questo incontro con l’orgoglio della propria tradizione, unito alla vigorosa e consolidata sensibilità ad intercettare le aspettative dinamicamente poste dalla sfida dei tempi.” translated from Corte dei Conti. “Recovery fund e ruolo della Corte dei Conti”. Quaderni della Rivista della Corte dei Conti, quaderno n.1/2021. Pag. 3



## BIBLIOGRAPHY

- Allegretti, Umberto. “Controllo Finanziario e Corte dei Conti: dall’unificazione nazionale alle attuali prospettive”. Associazione Italiana dei Costituzionalisti, 1/2013.
- Bianchi, Martino. “Il National Audit Office e il Public Accounts Committee: ancora lezioni da Westminster?”. Rivista Italiana Politiche Pubbliche, Aprile 2012
- Carosi, Aldo. “La Corte dei Conti nell’ordinamento Italiano”.
- Code of practice dealing with the relationship between the National Audit Office and the Comptroller and Auditor General
- Corte dei Conti. “Recovery Fund e ruolo della Corte dei Conti”. Rivista della Corte dei Conti, quaderno 1/2021, 2021
- De Falco, Vincenzo. “Riflessioni Sulla Funzione Referente Della Corte Dei Conti Nel Procedimento Legislativo Di Spesa”. Foro Amministrativo fascicolo 9, 2001
- Dewar, David, and Warwick Funnell. “A History of British National Audit: The Pursuit of Accountability”. Oxford: Oxford University Press, 2016. Oxford Scholarship Online, 2017. doi: 10.1093/acprof:oso/9780198790310.003.0007.
- Di Griglio, Elena. “Parliamentary oversight of the executives: tools and procedures in Europe”. Hart Publishing, 2020.
- Dunleavy, Patrick. “The National Audit Office, the Public Accounts Committee and the risk landscape in UK Public Policy”, 2009
- Gaboardi, Franco. “Nuovi equilibri di “finanza decentrata” nella riforma della Costituzione”. Ildirittoamministrativo.it
- Garrett, John. “Developing State Audit in Britain”. Public Administration, 1986
- Giampaolino, Luigi. “Il giudizio di parifica dei rendiconti regionali”. Giustamm n.3, 2016.
- Gibbons, Steven; McNally, Sandra; Overman, Henry. “Review of Government Evaluations: A report for the NAO”. LSE Enterprise
- Giosi, Alessandro; Testarmata, Silvia; Brunelli, Sandro. “The Accountability Cycle in Public Agencies: Lessons from Italian Experiences.” 2010
- Hoque, Zahirul.” Making Governments Accountable: The Role of Public Accounts Committees and National Audit Offices”. Routledge, 2015
- Imperiali, Stefano. “La giurisdizione della Corte dei Conti nelle materie di contabilità pubblica”. Amministrazione e Contabilità dello Stato e degli enti pubblici, 2016.

- Indelicato, Alessia. “La Corte dei Conti: La prima Magistratura dell’Italia unita”. *Il Diritto Amministrativo: Rivista Giuridica*, February 21<sup>st</sup> 2020
- Library Briefing. Budget Responsibility and National Audit Bill 2020-12: Budget Responsibility and National Audit Bill
- Lippolis, Vincenzo. “Il rapporto tra Corte dei Conti e Parlamento e le prospettive della valutazione delle politiche pubbliche”. *Federalismi*, June 10<sup>th</sup> 2009
- Longhi, Luca. “Brevi note sull’indipendenza della Corte dei conti ai sensi dell’art. 100, ult. co. Cost.”. *Amministrazione in cammino*, May 7<sup>th</sup> 2019
- Midgley, Henry. “The National Audit Office and the Select Committee System 1979–2019”. 23 September 2019
- Morin, Danielle; Hazgui, Mouna. “We are much more than watchdogs: The dual identity of auditors at the UK National Audit Office”. *Journal of Accounting & Organizational Change*, Vol 12 no 4, 2016. Pag. 568-589
- National Audit Act 1983 (<https://www.legislation.gov.uk/ukpga/1983/44#commentary-key-92bb8b002f2e11a968ecf41f450c4c0a>)
- National Audit Act 2011 (<https://www.legislation.gov.uk/ukpga/2011/4/contents/enacted>)
- National Audit Office. *State Audit in the European Union*. NAO Information Center, December 2005
- Pepe, Gabriele. “Il Presidente degli Organi Collegiali di autogoverno delle Magistrature: ruolo e funzioni”. *Amministrazione e Contabilità dello Stato e degli enti pubblici*, 2015.
- Roberts, Simon & Pollitt, Christopher. “Audit or Evaluation? A National Audit Office VFM Study”. *Public Administration*, 1994
- Rosa, Francesca. “Il controllo parlamentare sul governo nel Regno Unito: un contributo allo studio del parlamentarismo britannico”. Giuffrè, 2012
- Rostagno, Fortunato. “La Corte dei Conti nella Storia e nelle sue funzioni”. Fratelli Treves Editori, 1929
- Santoro, Pelino. “La Deriva giustizialista del controllo. La Corte dei conti giudica se stessa.” *Amministrazione e Contabilità dello Stato e degli Enti Pubblici*, December 2019.
- Sciascia, Michael. “La Corte dei Conti: Organizzazione, Funzioni, Procedimenti”. Giapeto Editore, 2020.
- Sharma, Nina. “Iterations and interrogations: negotiating and performing value for money reports”. *Financial Accountability & Management*, August 23<sup>rd</sup> 2007
- Staddon, A. “The Public Accounts Committee of the House of Commons”. Westminster Research, 2015

- Talbot, Colin; Wiggan, Jay. “The public value of the National Audit Office”. *International Journal of Public Sector Management*, January 2010.
- Tenore, Vito. “La Nuove Corte dei Conti: responsabilità, pensioni, controlli”. Giuffrè Editore, 2018
- Tosatti, Giovanna. “1862-2012 per i 150 anni della Corte dei Conti”. Ministero per i Beni e le Attività Culturali, 2013
- Tucciarelli, Claudio. “Parlamento e Corte dei Conti: storia di un controllo mai nato”. *Bollettino di informazioni costituzionali e parlamentari* 3, 1994.
- Urbano, Graziana. “Riflessioni sulla indipendenza del magistrato contabile”. *Federalismi.it*, November 19<sup>th</sup>, 2019
- Vignocchi, Gustavo; Greco Lelio. “Studi in occasione del primo centenario della Corte dei Conti nell’Unità d’Italia”. Giuffrè Editore, 1963
- Zaccarelli, Federica; Stancarelli, Renata. “La Corte dei Conti ai tempi del “*Recovery Plan*”: quale ruolo tra responsabilità amministrativo-contabile, semplificazioni ed investimenti”. *Amministrazione in Cammino*, May 21<sup>st</sup> of 2021.

## **ABSTRACT**

La presente tesi analizza in un’ottica comparativa la Corte dei Conti italiana ed National Audit Office del Regno Unito nella loro attività a supporto dei rispettivi Parlamenti. La ricerca può offrire un utile contributo alla comprensione del processo di controllo delle finanze pubbliche in due contesti legali opposti quali il sistema di civil law e quello di common law. Il lavoro percorre la nascita delle due Istituzioni, la loro diversa natura e il loro diverso collocamento nel sistema delle Istituzioni, le competenze all’atto della loro creazione e quelle attuali, seguendo il filo conduttore della loro funzione ausiliaria nei confronti del Parlamento. All’esito dell’analisi si può certamente affermare che la Corte dei Conti italiana ed il National Audit Office hanno in comune la peculiarità della centralità della funzione ausiliaria nei confronti del Parlamento e l’indipendenza dall’Esecutivo soprattutto nella funzione di referto, di controllo di gestione, mostrando differenze molto caratterizzanti che scaturiscono dalla loro diversa natura. Il National Audit Office risulta di fatto un’istituzione “dipendente” dal Parlamento, non collocandosi, diversamente dalla Corte dei Conti in una posizione di alterità e di terzietà rispetto al Parlamento.

Il capitolo primo inquadra dal punto di vista storico le due Istituti.

La Corte dei Conti viene istituita il 14 agosto del 1862 agli albori dello Stato unitario. La legge n.800 che la istituisce la colloca da subito in una posizione di indipendenza perché vigilasse sulle amministrazioni dello stato per evitare lo sperpero del denaro pubblico. Fin dal principio alla Corte

dei Conti vengono assegnate le funzioni di controllo preventivo e quelle del controllo successivo degli atti nonché funzioni giudiziarie riguardo la contabilità di Stato. Svolge la sua attività ponendosi in un rapporto privilegiato nei confronti del Parlamento, rapporto che rimarrà tale fino all'inizio della dittatura fascista. Il regime fascista ha provveduto a modificare il rapporto Corte dei Conti- Parlamento rendendo la stessa in diretta relazione con il Governo. Di fatto l'indipendenza dell'Istituto venne compromessa, divenendo il più alto osservatore da cui il capo del governo poteva comprendere come la legge veniva applicata nei singoli atti amministrativi.

La Costituzione del 1947 ha ristabilito lo status quo riportando l'organo di controllo al suo naturale ruolo di *longa manus* del Parlamento. L'assemblea costituente ne ha riconosciuto la rilevanza costituzionale, quale Organo indipendente e terzo.

Il National Audit Office nasce, con la sua struttura ed il suo nome, nel 1983 ma ha origini molto più antiche. Vista l'identità di funzioni e di struttura dei rapporti, si può definire, come data di nascita storica, il 1866 quando il 1866 Audit Act ha previsto un dipartimento di supporto per il Comptroller and Auditor General. A tale figura fu affidato il comando del Exchequer and Auditor Department e tutte le funzioni di controllo sulla spesa pubblica. Il Parlamento diviene l'unico destinatario dei resoconti del Comptroller and Auditor General; questa caratteristica fa sì che il Comptroller and Auditor General era considerato, *de facto*, un funzionario dell'House of Commons. Tale posizione venne confermata dal punto di vista legale nel 1983, anno in cui l'Exchequer and Auditor Department venne trasformato nel National Audit Office. Il National Audit Office risulta un ufficio più strutturato ed indipendente, a cui vengono affidate nuove funzioni oltre che formalizzate altre precedentemente attribuite con prassi. Con le riforme del 2011 la governance dell'Istituto viene trasformata in una corporate governance creando un board responsabile della gestione dell'Istituto, precedentemente affidata alla figura unica del Comptroller and Auditor General.

Nel secondo e terzo capitolo si analizzano, rispettivamente, il rapporto tra Parlamento e Corte dei Conti e quello tra Parlamento e National Audit Office. L'analisi non è comparativa, ma vengono dedicati due distinti capitoli alle due diverse Istituzioni al fine approfondire la loro posizione nei confronti dei rispettivi organi di rappresentanza democratica, di analizzare le funzioni svolte dagli stessi e delle modalità di referto al Parlamento.

Il secondo capitolo inquadra la Corte dei Conti nella Costituzione analizzando le funzioni ad essa attribuite dagli articoli 100 e 103 della Costituzione italiana. L'articolo 100 Cost delinea le funzioni della Corte dei Conti in quanto organo ausiliario dello Stato e del Parlamento, l'articolo 103 Cost. individua la Corte dei Conti quale giudice naturale della contabilità. La Corte dei Conti esercita il controllo preventivo di legittimità sugli atti del Governo, e anche quello successivo sulla gestione del bilancio dello Stato. Recita ancora lo stesso articolo la Corte dei Conti "Riferisce direttamente alle

Camere sul risultato del riscontro eseguito” quindi in stretta collegamento con il Parlamento, designato dalla stessa Costituzione, quale destinatario di tutti i controlli effettuati. L’ultimo comma dell’art 100 Cost statuisce l’indipendenza dell’Istituto dal Governo. Questa indipendenza in stretta correlazione con l’ausiliarietà nei confronti del Parlamento racchiude in uno gli elementi fondanti dell’Istituto, nelle sue funzioni del controllo. La separazione delle funzioni di controllo e quelle di giudice naturale della contabilità è sancita dalla stessa Costituzione. Tale scelta rispetta l’intento di delimitare i confini delle due funzioni con lo scopo di esplicitare la doppia natura dell’organo, che genera un duplice rapporto con gli altri organi dello Stato: da un lato una funzione di supporto, dall’altro una funzione giudicante.

Molteplici sono i controlli svolti dall’Istituto che coinvolgono in maniera costante il Parlamento stesso, quale destinatario delle risultanze. Di notevole importanza risulta il Controllo ex-post dei conti delle amministrazioni e degli enti che ricevono contributi statali. Tale funzione viene espletata mediante la produzione di referti inviati al Parlamento in maniera cadenzata (solitamente essi vengono prodotti annualmente) ed aventi la funzione di fornire i risultati delle analisi svolte unitamente alle valutazioni economiche riguardanti l’utilizzo dei fondi attribuiti ad ogni singola amministrazione od ente. Nel quadro appena delineato non va trascurato il contributo attivo del Parlamento, che non si pone solo come destinatario del lavoro della Corte dei Conti, ma ha modo di influenzare e guidare i controlli dell’Istituto suggerendo le priorità delle singole commissioni che verranno, successivamente, tenute in considerazione nelle fasi di programmazione del controllo. Un particolare tipo di controllo è quello che produce le Relazioni trimestrali sulla copertura finanziaria di spesa che rispondono alla necessità di fornire aggiornamenti tempestivi sullo stato delle finanze, così da provvedere ad eventuali aggiustamenti prima del termine del procedimento di spesa. Esula dai controlli prima descritti, quelli effettuati su impulso delle commissioni parlamentari che hanno facoltà di richiedere chiarimenti alla Corte dei Conti su temi ritenuti di particolare interesse per le stesse; tale facoltà trova un limite nelle competenze della Corte dei Conti assegnatele dalla legge. È importante notare la notevole difficoltà di tale procedimento, dal momento che i regolamenti parlamentari sembrano disincentivare tali richieste imponendo che esse siano approvate dalla maggioranza della commissione e che siano comunicate alla Corte dei Conti per mezzo dei Presidenti delle Camere.

Due funzioni risultano di notevole interesse per il Parlamento: la registrazione con riserva, che è parte del controllo preventivo, ed il giudizio di parifica del bilancio, che si configura come un procedimento di controllo avente forma di processo giudiziario. La registrazione è l’ultimo atto del controllo preventivo e viene emanata nel caso in cui vengano riscontrate irregolarità nelle coperture finanziarie della legge stessa, nonché in caso di mancato rispetto della legge. Il giudizio di parifica del bilancio,

invece, è il risultato finale di tutti i controlli sul bilancio dello Stato e viene prodotto al Parlamento nel mese di giugno a seguito di un procedimento che ha le caratteristiche del processo in quanto caratterizzato dal contraddittorio delle parti. Si svolge dinanzi alle Sezioni Riunite della Corte dei Conti, con la presenza del Procuratore generale e del Ministero dell'Economia, quale rappresentate del Governo. Nel giudizio di parificazione vengono appunto "parificate" tutte le entrate e le uscite dello Stato di un esercizio finanziario al fine di redigere il Rendiconto del Bilancio dello Stato, che sarà sottoposto, successivamente, all'approvazione del Parlamento stesso.

Il capitolo terzo analizza il particolare rapporto tra National Audit Office ed il Parlamento britannico, per mezzo del quale si instaura una relazione peculiare in un contesto di molteplicità di attori interni ai due organi. Il National Audit Office ritrova nella Public Accounts Committee il suo interlocutore principale, considerato che quest'ultima è la commissione alla quale è affidato il ruolo di controllo successivo sulla gestione dello Stato. I risultati dei procedimenti di controllo del National Audit Office vengono indirizzati alla Public Accounts Committee, che ha la facoltà di scegliere se proseguire nell'indagine o se lasciar cadere il tema. Tale commissione è l'unico strumento nelle mani del National Audit Office per produrre risultati concreti, dal momento che l'organo di controllo dei conti può interloquire solo con il Parlamento. Vi sono, inoltre, altri due attori principali: il Comptroller and Auditor General e la Public Accounts Commission. Il Comptroller and Auditor General è a capo del National Audit Office ma non risulta incardinato in esso, in posizione di dipendenza poiché questi è, allo stesso tempo, un funzionario dell'House of Commons. Particolar è la competenza attribuitagli della libertà di azione riguardo i temi da approfondire ed i controlli da eseguire. Competenza di primaria importanza, tale da richiedere l'impiego di mezzi consistenti volti alla tutela dell'indipendenza della sua figura. La Public Account Commission, invece, è una commissione parlamentare creata nel 2011 con lo scopo di vigilare sull'operato del National Audit Office e di approvarne il budget, oltre che la programmazione di spesa. Il suddetto controllo è stato ritenuto necessario vista la completa estraneità dell'Istituto da ogni circuito amministrativo. Il National Audit Office riferisce, inoltre, dei controlli eseguiti alle commissioni parlamentari competenti; tale funzione è considerata di notevole importanza per le stesse commissioni, tanto da essere accompagnata da un notevole aumento di budget al fine di assicurare le risorse necessarie e sufficienti per mantenere l'elevata qualità dei report destinati alla Public Accounts Committee.

Il National Audit Office svolge due tipi di controllo principali: il controllo sulla spesa e gli studi Value for Money. Il controllo sulla spesa è un rendiconto contabile che viene stilato annualmente per ogni dipartimento ed ente finanziato principalmente dallo Stato. Il controllo sulla spesa è stato, per lungo tempo, il principale strumento di valutazione della salute dei conti, ma è stato sostituito per importanza dagli studi Value for Money. Tali studi hanno acquisito importanza per la profondità delle

loro analisi e poiché non valutano esclusivamente l'aspetto contabile delle policy implementate, bensì, giudicano l'implementazione in base ai criteri di economia, efficacia ed efficienza. I rapporti stilati in seguito a questi studi hanno un importante valore per la Public Accounts Committee poiché traggono conclusioni sulla qualità della gestione della policy analizzata senza, però, giudicarne i meriti politici.

Interessante segnalare il ruolo rivestito dal National Audit Office per la salute dei conti pubblici. Il National Audit Office non solo permette un ampio risparmio di denaro dovuto alle conseguenze dei rapporti inviati al Parlamento e, inoltre, promuove attivamente le pratiche di buona gestione amministrativa fornendo consigli per migliorare la qualità di tale gestione.

Il quarto ed ultimo capitolo mette a confronto i due Istituti sottolineandone le somiglianze e differenze. Numerose sono le affinità vista la comune funzione di controllo delle finanze pubbliche e la loro appartenenza ad organismi internazionali quali INTOSAI ed EUROSAI. Certamente, la somiglianza più importante risulta essere il ruolo di ausilio che entrambi gli organi hanno nei confronti del Parlamento. Del pari, una funzione comune ad entrambi gli organi, si riscontra nel controllo successivo sulla gestione delle amministrazioni, che rappresenta l'unico strumento nelle mani del National Audit Office e, al contempo, lo strumento di maggiore importanza per la Corte dei Conti. Strettamente connessa al punto precedente è la marcata somiglianza nei procedimenti di controllo, nei quali si assiste ad una partecipazione, da parte del Parlamento, alla fase di pianificazione ed alla fase conclusiva; Parlamento che, in questo processo, riveste, in primis, il ruolo di destinatario del rapporto e, secondariamente, di principale attore nella prosecuzione delle audizioni, qualora ritenuto necessario. I passaggi intermedi, che sono in mano alla Corte dei Conti o al National Audit Office, condividono la natura tecnica dell'analisi oltre che i principi generali su cui si basa la stessa. Se numerose sono le somiglianze, non di meno rilievo risultano essere le differenze. I due istituti lavorano, come già asserito, in sistemi legali molto diversi tra loro; fattore, questo, che ha notevolmente contribuito alla divergenza nell'attribuzione delle funzioni e nella collocazione dei due organi nel contesto istituzionale. Vista la diversa origine dei sistemi legali, un'importante differenza si palesa nelle possibilità di modifica dell'assetto e delle funzioni dei due Istituti: da un lato, la Corte dei Conti Organo costituzionale le cui funzioni sono dalla costituzione definite e circoscritte; dall'altro, il National Audit Office gode della possibilità di modificare le sue competenze solo attraverso nuove prassi. Collegata a ciò è la diversa formalità di esecuzione dei compiti, che, per quanto riguarda la Corte dei Conti, vanta un particolare formalismo nei documenti, non solo nella procedura, ma nello stesso modo di rappresentarli, che segue uno schema abbastanza rigido e definito a differenza di un'attenzione più l'aspetto funzionale da parte del National Audit Office. La Corte dei Conti possiede un ventaglio di attribuzioni molto più vario rispetto a quello del National Audit Office,

ragione per la quale vanta una maggiore pervasività. Essa valuta a tutto tondo (sia ex-ante che ex-post) l'aspetto finanziario delle leggi, mentre il National Audit Office può sindacare solo riguardo la loro implementazione.

Di tutte la diversità che caratterizza i due Organi è l'indipendenza che essi posseggono rispetto alle altre componenti dello Stato. L'indipendenza della Corte dei Conti è sancita dalla Costituzione, ed essa, per quanto svolga una funzione di ausilio per il Parlamento, è indipendente sia dallo stesso che dal Governo. L'indipendenza del National Audit Office va valutata da una prospettiva molto più pragmatica, in quanto ne è stata ribadita più volte l'indipendenza dal Governo, garantita, tra l'altro, da numerose disposizioni normative, ma nel rapporto con il Parlamento, l'indipendenza del National Audit Office risulta meno marcata.

All'esito dell'analisi si può certamente affermare che la Corte dei Conti italiana ed il National Audit Office hanno in comune la peculiarità della centralità della funzione ausiliaria nei confronti del Parlamento e l'indipendenza dall'Esecutivo soprattutto nella funzione di referto, di controllo di gestione, mostrando differenze molto caratterizzanti che scaturiscono dalla loro diversa natura. Il National Audit Office risulta di fatto un'istituzione "dipendente" dal Parlamento, non collocandosi, diversamente dalla Corte dei Conti in una posizione di alterità e di terzietà rispetto al Parlamento.