The National Audit Office and the Scope of Performance Audit

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Summary:

The subject of the study is the scope of performance audit (PA) as conducted by the National Audit Office. This type of audit covers only the non-political professional management (administration) in the public sector. That is why the main problem is to distinguish this type of management from political management. The Administration Act, which governs the status and functions of the executive branch bodies and their administrations, has key importance for the clear delineation of the two areas of management.

The study applies the terminology and methodology (paradigm) of the administrative law.

Performance audit, as a rule, pertains to the management of resources (monetary, material, human) in the public sector, a management which is aimed at achieving predefined objectives (of an organization, function, programme, project, etc.) through obtaining maximum results in terms of quality and quantity using available resources.

The study outlines three types of managerial (administrative) functions carried out in the public sector.

Firstly, this is the function of the main, external management which materializes in the administrative authority (powers) of the state bodies. This function can be of a political nature or it can be mere professional management, a function of applying ("implementative") administrative authority (powers) depending on the status of the body concerned.

Secondly, there are two internal functions performed in any organization of the public sector: the function of supplementary, internal, specialized management and the function of financial management and control.

The analysis carried out outlines the scope of performance audit as follows. The performance audit is applicable to the non-political professional management and deals with the main specific administrative functions as well as with the entire internal management.

With regard to the main administrative functions, it is applicable only to the function of applying ("implementative") administrative authority, which includes:

1. The management carried out by non-political administrative bodies of the executive branch; according to the Administration Act, such bodies are the State Commissions subordinated to the government or to individual ministers, as well as the executive directors of executive agencies subordinated to individual ministers;

2. The supervisory powers of independent bodies performing regulatory and supervisory administrative functions.

Concerning the internal management, performance audit is applicable in any organization to:

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1. The supplementary specialized administrative function (authority); and

2. The financial management and control function.

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1. Performance audit (PA) is a true challenge for modern supreme audit institutions (SAIs). This type of audit involves a substantial professional and analytical potential because its "tool kit" is non-standard (as compared to the financial and compliance audits typically conducted by SAIs). Furthermore, it requires a creative, rather than mundane, thinking and actions on the part of auditors and their managers.

The issue of *the scope of PA concerns its substance* and has not been studied in Bulgarian specialized literature, including the juridical one. In a sense, the article seeks to fill this gap.

1.1. The new National Audit Office Act from 2010 provides clear mandate and powers for the bodies of the Bulgarian National Audit Office (BNAO) to carry out this type of audit (Article 2 with reference to Article 5, para 1, it. 3). It also contains legal definitions of "performance audit", "effectiveness", "efficiency" and "economy" (§ 1, it. 4, a), b) and c) of the Additional Provision). According to the legal definition, "performance audit" refers to an examination of activities involved in the planning, implementation and control at all management levels at the audited entity with regard to their efficiency, effectiveness and economy. Effectiveness is the extent to which the audited entity achieves its objectives when comparing actual with anticipated results of its activities. Efficiency is the attainment by the audited entity of maximum results in performing its activity with the available resources; and economy is the acquisition, at a minimum cost, of the resources necessary for performance of the activity of the audited entity while observing the requirements for resource quality.[1]

The legal definitions are based on the conceptual principles for PA set out in the International Standards of Supreme Audit Institutions (ISSAIs). According to 1.0.40 of the standards, PA is concerned with the audit of economy, efficiency and effectiveness and embraces:

a. an audit of the economy of administrative activities in accordance with the sound administrative principles and practices, and management policies

b. an audit of the efficiency of utilisation of human, financial and other resources, including examination of the information systems, performance measures and monitoring arrangements, and procedures followed by audited entities for remedying identified deficiencies, and

c. an audit of the effectiveness of performance in relation to the achievement of the audited entity objectives, and an audit of the actual impact of activities compared with the intended impact.

[1] The repealed BNAO Act of 2001 also contained such texts. See Art. 4 with reference to Art. 36, para 1, it.2 and § 1, it. 2 of the Additional Provision.

This type of audit deals with the analysis of public expenditure in the light of the general principles of good governance and *surpasses the conventional framework of the audits of legality and regularity* (1.0.43).

The conceptual principles of the auditing standards are further developed and specified in another INTOSAI document - the Performance Audit Guidelines, which says that "economy" is keeping costs low, "efficiency" is making the most of the available resources and "effectiveness" is achieving the stipulated aims or objectives.[2]

1.2. Based on the principles accepted by the international professional organisation and the empowerment granted by the national legislation, the national supreme audit institutions adopt manuals and guidelines for the execution of PA. Cases in point are the PA manuals of some SAIs with well developed practice in the area of this type of audit such as the manuals of the Netherlands Court of Audit (available on its website: www.rekenkamer.nl), the UK National Audit Office (www.nao.org.uk), the Office of the Auditor General of Canada (www.oag-bgv.gc.ca), the National Audit Office of Finland (www. vtv.fi).

In 2007, the European Court of Auditors adopted and released its own Performance Audit Manual (see www.eca.eu.int). It defines PA as an audit of sound financial management, and namely of the economy, efficiency and effectiveness with which the Commission and/or other audited entities have used Community funds in carrying out their responsibilities (p. 8).

The examination and evaluation of the effectiveness and efficiency of the audited entities should be conducted within the conceptual framework of the performance audit process: resources used (input) – activity of the organisation (production process, throughput) – intermediate results in the form of products and services (outputs) – final results (wider socio-economic and political effect, outcomes, impact).[3]

1.3 PA is closely related and stems from the concept of the so-called *"New Public Management" (NPM)*. This concept is described in 1992 in the bestseller of the American authors Osborne and Gaebler titled *Reinventing Government*: *How the Entrepreneurial Spirit is Transforming the Public Sector*. The ideas of NPM lead to considerable transformation in public sector management in the Anglo-Saxon countries and especially in New Zealand. The said authors have identified ten principles of NPM formulated as recommendations:

1. Promote a competition between the service providers;

2. Empower the citizens by pushing control out of the bureaucracy into the community;

3. Measure the performance, focusing not on the inputs but on the outcomes;

4. Be driven by goals, not by rules and regulations;

5. Redefine the clients as customers and offer them choices - between the schools, between the training programmes, between the housing options;

6. Prevent the problems before they emerge, rather than offering services afterwards;

7. Earn money rather than simply spend it;

8. Decentralise the authority and embrace participatory management;

[2] The standards and the Performance Audit Guidelines are available on the INTOSAI website (www.intosai.org). The guidelines have been translated and released by the Bulgarian National Audit Office.

[3] See chart reflecting this framework in the Manual of the Netherlands Court of Audit, p. 12

9. Prefer market mechanisms to bureaucratic ones;

10. Catalyse all sectors – public, private and voluntary - into solving the community problems.[4]

1.4. Evidently effectiveness, efficiency and economy as individual functional characteristics of the activities of public sector organisations can be subject to separate types of audit. This is determined by the purpose and scope of the respective audit, and namely where the focus is to be placed. Thus, one can conclude that it is possible to conduct audits regardless of the effectiveness, respectively of the efficiency and of the economy. If such a conclusion is generalised and taken as a rule, it would be incorrect, since there is a logical interrelation between effectiveness, efficiency and the economy which inevitably influences the scope of each PA if it is to be conducted at a professional level. Furthermore, it would not be logical to study the issue of effectiveness, i.e. the achievement of certain results, without looking at the cost and the expenses (financial, human and material resources) necessary for the achievement of these results. So, the issue of effectiveness is inevitably and intricately connected with that of efficiency. The same is valid for the relation of the economy to effectiveness and efficiency. This relation is expressed in the cost of providing the resources necessary for the achievement of specific objectives. Consequently, getting a relatively full picture of a specific activity of the audited entity *is impossible without paying due account to the logical interrelation between the 3 E's*[5].

1.5. The analysis of the relationship between the 3 E's exposes yet another issue. In the "objectives – resources – cost of resources (inputs)" relationship, *the key importance lies with the resources (inputs)*. They are acquired and accumulated (in the course of the annual receipt of budgetary funds, through purchasing the necessary buildings, materials and equipment, through recruiting and employing a qualified staff, through its training and qualification into "a human capital", etc.). The point is that for any set period of time when they are made available to the respective public sector organisation for the purpose of meeting its objectives, the resources are *relatively scarce, i.e. they are always limited in quantity and quality*. It is their quantity and quality that is of the utmost importance for the successful achievement of the results. In the final analysis it is *the resources that determine the achievement of the targeted results and not vice versa.* In other words, the objectives do not "yield" resources although they require certain amount of resources in order to be achieved.

1.6. This conclusion is also valid in the light of the process of the public funds distribution. In a particular budgetary year, a respective organisation may receive more

[4] See for more details Rod Hague and Martin Harrop, *Comparative Government and Politics. An Introduction,* Palgrave Macmillan, New York, 2007, p. 366-367. The following conceptual principles are identified as elements of the NPM:
1. Managers given more discretion but held responsible for results;
2. Performance assessed against explicit targets;
3. Resources allocated according to results;
4. Departments unbundled into more independent operating units;
5. More work contracted out to the private sector;
6. More flexibility allowed in recruiting and retaining staff;
7. Costs cut in an effort to achieve more with less (p. 368).

[5] The 3 E's: effectiveness, efficiency and economy

or less resources for the fulfilment of its functions, i.e. for the achievement of the set objectives. The objectives (having their relative weight and significance) undoubtedly influence the amount of the allocated resources within this limited distributive framework. This creates the impression that the objectives are the determining factor with regard to the level of resources. However, this is so *only in the sense that they require certain quantity and quality of resources in order to be achieved.* Nevertheless the above mentioned is true only as far as the stage of adopting the annual budget is concerned. Furthermore, from the perspective of the budget implementation, when the resources provided have to be used, the decisive effect of these resources on the fulfilment of the objectives of the respective organisation becomes evident. In the long run, in the wider economic and social context, the relative "superiority" of resources over objectives is determined by 1) the inevitable scarcity to the resources, *which restrain the achievable objectives*, and 2) the greater significance of *the stage of implementing the budget* than that of the stage of its adoption.

Yet another characteristic of the resources needs to be pointed out, namely that regardless of their form (monetary, tangible or "personalized", i.e. the staff with the respective professional qualification) their main source are *the taxpayers funds* generated and distributed through the respective budgetary or extra-budgetary accounts[6].

1.7. Inevitably several questions arise with regard to the correspondence of the aimed objectives and the available resources. The questions are: Are the available resources sufficient for achieving the objectives set? Are the objectives too ambitious to achieve, i.e. is there a quantitative and qualitative shortage of resources hindering the attainment of results? And above all: *what are the maximum results that can be achieved with the available resources*? Is it possible to achieve the objectives at a lesser cost, i.e. can the organisation be more productive and respectively save on costs[7]. These questions are inevitable for every performance audit. And their *raison d'être* is namely the problem of the *cost-effective use of available resources.* In this sense, the question of achieving the objectives cannot be put abstractly. For *the public at large, as taxpayers*, what matters is not simply whether the objectives have been achieved. The more important question is *the cost of achieving them.* That is why, in my view, the *efficiency has the utmost importance* among the 3 E's. Therefore, ***in order to add value, any PA should come up with a conclusion as to the „resources – outcomes" relation***.

This logic finds its confirmation in the manuals of audit institutions with advanced practices in PA.

For example, the manual of the NAO of Finland states that: "Performance audit

[6] The new BNAO Act of 2010 uses not only the term "public funds" but also "public assets" as a wider term including property as non-monetary assets (See para. 1 it. 9 of the Supplementary Provision).

[7] The Performance Audit Manual of the Netherlands Court of Audit states that the efficiency audit should provide an answer to the question whether the same results could have been achieved with fewer resources and whether the same resources could have produced more results.

focuses on the state's financial management. This is defined as activities in which the authorities use resources to achieve certain outcomes"(p.11). It goes on to say that: "Performance audit does not focus on activities that do not have a significant linkage to state finances. A significant linkage to state finances means that *substantial resources* (emphasis added) are used for that purpose or the activity has an essential impact on the state's revenues, expenses or assets. An audit may examine the functioning of legislation if the matter in question has a direct or indirect impact on state finances. Activities prescribed in legislation and related objectives that do not have a linkage to state finances are not examined in an audit even if legislation and its implementation may be socially important and result in substantial costs for financial units outside the budget."

The same logic is to be found in the PA manual of the European Court of Auditors in the definition quoted above, where the focus is not on the management as such, but on the good *financial* management, i.e. the effectiveness, efficiency and economy of the management of *community funds.*

1.8. To conclude, PA relates to the management (including receipt and use) of resources (monetary, material and human) in the public sector, the **management directed at attaining the objectives of the organisation (respectively programme, function, project) through achieving maximum results in terms of quantity and quality with the available resources.**[8]

2. This article analyses the nature of PA from what may seem as a more unusual perspective at first glance: *the terminology and methodological" toolkit" (paradigm) of the administrative law.* I have in mind terms such as "managerial (administrative) function", "system of administrative powers (competence)", "discretionary power (operational autonomy)", "administrative act". These terms are interrelated and accordingly comprise, reflect and theoretically synthesise the significant aspects of relations of the authority which arise and develop in the process of *state governance*. The important place of this paradigm in the examination of this type of audit is directly determined by *its subject – management relation within the public sector*. Without an analysis of the administrative legislation, which will be discussed later on in this article, it is impossible to provide an answer to the problem by the scope of performance audit. In my opinion it is the methodology of administrative law that would allow for examining a number of questions in this area of study and putting forward convincing theoretical and practical solutions.[9]

[8] The Administration Act of 1998 contains a very precise normative text in support of the thesis put forward here with regard to the basic characteristic of PA. According to Art. 2, para 6, the administration shall plan and perform its activities in a manner leading to *achievement of significant results for society with the possibly most economic use of resources.*

[9] It must be explicitly stated that the analysis and conclusions are based on the institutional and functional principles of organisation of the public sector, which undoubtedly is system-based. In other words, the public sector is being looked at here in terms of the principle of separation of managerial duties, as *a system of separate specialised but complementing each other in their activities institutions*, which concentrate in themselves public functions and the public money needed for their implementation. The management of inter-institutional programmes and projects, including the specifics of EU funds management, fall outside the scope of this study.

3. PA relates to the activities of the organisations in the public sector, but not all activities.

3.1. It is evident that law-making and parliamentary control as statutory functions of the National Assembly fall outside this scope. Outside the scope of performance audit are the powers of the President as entrusted under the Constitution. Similarly, this applies to the adjudicatory function performed by the law courts in the country and to law enforcement by the prosecution and investigation authorities. In summary, the specific functions of the parliament, the judiciary and the presidential institution, respectively the acts where these functions find expression *are not a subject to performance audit*. And this is completely logical and justified, as it stems from the principles enshrined in the Constitution. This mainly concerns the principle of separation of powers but also as a whole the status of these high-standing state institutions.

Thus parliament and the President draw their legitimacy directly from the people as the sovereign. The judicial authorities in turn enjoy independence enshrined in the constitution with respect to the other branches of power. The National Audit Office itself draws its legitimacy and powers (mandate) from the will of parliament. In this sense it would be absurd if the BNAO evaluated the effectiveness and efficiency of the National Assembly's legislative activity, for instance, or of the presidential functions, as this would mean that the BNAO acted as some specific fourth power which directly participated in the political process and even prevailed over the other two branches in breach of the constitutional and statutory powers and mandate granted to it.[10]

3.2. Unquestionably, the performance audits conducted by the BNAO as a rule cover activities (function or functions) which by nature are *managerial, administrative.* This is clearly stipulated in the BNAO Act and the said acts of INTOSAI and the European Court of Auditors where the applicability of PA is related to terms such as: "all management levels", "administrative activity", "financial management".

Some basic questions exist with regard to the correct and precise definition of the scope of the performance audit: whether the whole of the managerial (administrative) activity carried out in the public sector is subject to this type of audit. Or only part of it? Then what part?

The answers to these questions require an analysis of the nature of administrative activities in this sector.

4. The aforementioned questions can be answered only if the fundamental principle accepted and firmly set in the professional rules and practice of the modern supreme audit institutions is observed, namely that *the setting of policy objectives falls outside the scope of PA*.

4.1. This principle condition suggests that the purpose of policy objectives set in legislation or in government programmes may not be questioned or debated by SAIs. The underlying reason is that SAIs are independent institutions and do not participate

[10] Logically this would mean that the BNAO would turn into a some sort of a "superparliament", into a "superpresident", respectively into a "supercourt". The absurdity of such a thesis defies further comment!

in the political debate or process. If SAIs "undertake" to evaluate the policy objectives formulated by the legislative or the executive, they *run the risk of being exposed to political pressure and influence.* The policy objectives are only taken as a starting point in PA. What is being examined is whether they are achieved and how. This means that what is being evaluated is the adequacy of *the "toolkit" (means[11] and resources) for implementing and respectively achieving the objectives of particular policies.*

The thesis is convincingly formulated in the PA manual of SAI Canada. "Government policies often begin as a party platform, white paper or political speech without any official standing or legislative base (national policy goals). They achieve more formal status when they are enshrined in legislation and/or receive government funding (program policy goals). Once they reach this stage, auditors can examine how they are being implemented, and whether the policy goals are being achieved. It is generally understood that audits *more usually examine the implementation* (emphasis added) rather then the development of policy, and that audits do not question the merits of the government's programs and policies. The merits are for parliament to review and debate. If audit findings throw a government policy or legislation into doubt, caution is necessary as the auditor may become involved in a partisan political debate" (1.6.3).

There are similar arguments in the VFM Handbook of the UK National Audit Office, where it says: "It is therefore important to distinguish between the purpose of a particular policy objective (which we may not question), and the economy, efficiency and effectiveness with which the policy objective is being implemented (which we may examine).(1.20)[12]

4.2. This principle is evidently based on the idea of the clear distinction between the area of political management, on the one hand, and non-political professional management, on the other, in the public sector. Hence follows the scoping of PA. The audit has to exclude the political management and *limit itself to the professional management where the political objective setting is taken for granted.* Professional management is an activity in aid of and in implementation of the political management (objectives setting). In this sense it *is only an implementing management*. This is where *the real scope of PA lies*.

The problem is which part of the activity of public sector organisations with administrative functions is subject to PA needs to be examined and solved in view of the above fundamental criterion.

4.3. The solution of this problem inevitably comes down to the issue of *whether the said areas of political and professional non-*

[11] The term "means" is used here as a concept "coupled" with the category "objective". In this line of thought, the term 'means" does not refer to money, but embraces *everything outside the resources*, the whole toolkit used for achievement of the set objectives. The tools used for achieving the objectives can be, for example, decisions, approvals, compulsory administrative measures, administrative sanctions, transactions and contracts concluded and implemented under government policies (typical examples are the contracts and transactions carried out by the central banks as state institutions), etc.

[12] These principles in general give a good starting point but remain problematic in practice since they do not differentiate between policy and the actions for its implementation. The issue may find a solution after a careful analysis of the national legislation and the practice of its implementation.

political management in the public sector are clearly defined in normative, functional and organisational terms. It is evident that the lack of a clear distinction constitutes a serious impediment to PA. Such a lack, i.e. the unclear borderline between the political and the professional management, inevitably leads to an understandable and justified over-cautiousness on the part of SAIs because of the obvious risk of being involved in conclusions and judgements which will be qualified as professionally biased and politicised.[13] From such a perspective, *the presence of such a clear borderline can be considered as a basic condition for a successful PA practice.* Besides, the difficulty of determining where the political management (the setting of objectives) ends and the actions for its implementation begin must be considered.

Does such a borderline exist in the public sector in Bulgaria? Is it defined by legislation?

5. The answer to these questions requires, above all, that an important distinction is made.

5.1. The managerial (administrative) activity is as a rule carried out by the institutions of the executive branch (central and local government - the Council of Ministers, ministries, agencies, executive agencies, municipalities, etc.). In this sense, it is namely these institutions that have to be the main addressees of PA.

If we take, for instance, a particular government institution, we will find that principally *two types of managerial functions* can be distinguished in its activity.

Firstly, there *is the core function (respectively functions)[14] which this institution is empowered to perform.* The core function (functions) is an expression of its 'mission" and justifies the existence and functioning of the institution as part of public authority. *The core function finds juridical expression in the competence (a system of powers) of the institution's bodies and as a rule is directed 'outwards', to a wide number of addressees – natural persons and legal entities.* The core function (competence) finds expression in *subdelegated administrative actions*, issued and implemented by empowered bodies of the institution (ministers, presidents of agencies, commissions, executive directors, etc.).

Certain administrative bodies empowered by the Constitution and legal acts can issue and implement subdelegated actions of a *normative character*.[15] Typical examples are the Council of Ministers

[13] The author had the possibility to witness how wide spread this understanding is among the heads of the supreme audit institutions. During the INTOSAI Congress in Mexico in 2007, in relation to the discussed theme of the role of SAIs in the elaboration and use of development indicators (global, national, institutional), the representatives of many SAIs, especially those with judicial functions mainly from "Latin" Europe and Latin America, expressed a number of fears and objections. They pointed out that an activity in this direction could pose the risk of implicating the SAI in political debate and prejudice its independence and professional objectivity.

[14] In many cases there is not only one, but several and even a variety of functions carried out by one institution. For example, the institution (ministry, agency, commission and so on) can have a combination of functions like promotion of various sectors of the economy, providing assistance to social groups at risk (disabled persons, socially disadvantaged), regulatory function (drafting by-laws), supervisory function (control) over the compliance with legal acts and by-laws, and so on. For this problem see further in the article.

[15] See Art 2 para 1 of the Act on Normative Acts (ANA).

and the ministers as central bodies of the executive branch.[16] In summary, the bodies of the executive power issue and implement subdelegated normative acts (by-laws) and non-normative acts. Main examples of non-normative acts are the *individual administrative acts*, being statements by which rights or obligations are created or rights, freedoms and legitimate interests of particular individuals or organisations are affected, as well as the refusal to issue such declaration of will.[17] There are also the "general administrative acts" – statements, the effect of which, on the one hand, takes place **once** (on a single occasion). On the other hand, these acts affect an indefinite number of persons.[18]

Secondly, besides its core function (functions) every institution within the executive power performs *internal management as non-core ancillary function.* The ancillary function supports the fulfilment of the core function with the purpose of achieving a rational and effective internal organisation. The ancillary function also finds expression in norms, internal rules, and individual acts. The rules and individual acts, which are an expression of the ancillary internal management, are not directed "outwards" and do not affect the rights and interests of persons outside the organisation.[19]

5.2. It must be stressed that in our legislations thanks to the achievements of the Bulgarian administrative legal theory, *a clear distinction is now made between a state body, on the one hand, and its administration, on the other.*[20] The credit for this principle distinction goes to the Administration Act (AA) adopted in 1998. The state body and its administration are bearers of different legal capacity. The state body is a single-person or a college of natural persons and possesses and exercises *legal capacity as authority, as competence, as a system of powers.* In contrast, the administration, where this body functions, can only be established as a legal person.[21]

To conclude, *the concept of "institution of the executive power" encompasses the administrative bodies exercising this power through their competence and the supporting administrations with their inherent types of legal capacity.*

Apart from those, there are other institutions and bodies in the public sector performing administrative activities. These

[16] According to Art. 114 of the Constitution, the Council of Ministers adopts decrees, directives, and decisions. By decree, the Council of Ministers adopts regulations and ordinances as normative acts.

[17] For the legal definition of this act see Art. 21, para 1 of the 2006 Administrative Procedure Code (APC).

[18] For definition, see Art. 65 of APC.

[19] These acts (known in the administrative legal theory as "*in-house acts*") are mentioned in the provisions of Art. 2, para. 2, it. 3 of the APC and are excluded from the scope of the Code but only in so far as that they do not affect rights, freedoms or legitimate interests of individuals or legal entities.

[20] See the classical publication on this problem by Kostov, M., "The Competence as a Legal Capacity of a State Body", Legal Thought Magazin (*сп. „Правна мисъл*"), №3, 1979, pp. 35-47.

[21] See the provisions of the AA regarding:

1) government bodies (government bodies in general), including the state executive bodies (the Council of Ministers, the ministers, presidents of state agencies, state commissions, executive directors of executive agencies, regional governors, and so on - Chapter Four, Art. 19 -31), and

2) their administrations (for example the administration of the Council of Ministers, the ministries, state agencies, the administrations of the commissions, executive agencies, territorial administrations, and so on – Chapter Five, Art. 34-62)
The administrations are established as legal persons and support the activity of the respective bodies.

are institutions and bodies with *administrative powers* outside the central executive power, *not subordinate to the government and having the status of independent bodies* (e.g. the Bulgarian National Bank, the Commission of Financial Supervision, the Commission of Regulation of Communications). As a rule, these institutions are created and function on the basis of special laws and usually the majority of the members of their governing bodies are elected by parliament. The two main categories of managerial functions can also be discerned here – the core functions directed "outwards" on the one hand, and the ancillary internal functions, on the other.

5.3. Managerial activities, but only as ancillary function, are no doubt carried out by the institutions of the judiciary and the legislature as well through their empowered bodies (for instance the Chairperson of the Parliament, the High Judicial Council, the heads of courts at various levels, the prosecution and investigation offices). As such they are being supported by the respective administrations.

Therefore, ***managerial activity as ancillary internal function is carried out by all institutions in the public sector.***

6. Apart from the constitutional provisions the norms of the Administration Act are of key importance to the core, external management and the ancillary internal one.

6.1. The Administration Act provides a clear, precise and comprehensive regulation of the status and functions of the institutions (bodies and administrations) of the executive power. The act defines the central executive bodies and their administration as follows.

The Council of Ministers and its administration;

The Prime Minister;

The Deputy Prime Ministers;

The Ministers as bodies and the ministries as administrations;

The Presidents of state agencies as bodies and the agencies as administrations;

The State Commissions as bodies and their administrations

The Executive Directors as bodies and the executive agencies as administrations (Art. 19, para 2 and Art. 38, para 1).

The Act sets also the local executive bodies and their administrations respectively:

Regional Governors as bodies and regional administrations;

The municipality, borough and mayoralty mayors and the lieutenant mayors (Art. 19, para 3 and Art. 38, para 2).

The Administration Act must be interpreted and applied systematically together with other normative acts relating to the matter of state governance. Among the relevant acts are the Civil Servants Act (CSA), the Financial Management and Control in the Public Sector Act (FMCPSA), the Rules of Organisation (RoO) of the Council Ministers and the ministries.

6.2. Firstly, the bodies vested with managerial functions on the basis *of a clear political mandate* granted as a result of an election by the National Assembly or direct voting in accordance with the Constitution must be outlined. Such bodies are the Council of Ministers, the Prime Minister, the ministers, the mayors.

Apparently, among this set of bodies those performing political management, including the formulation of the respective policy objectives (objective-setting), should be sought.

Concerning the Council of Ministers as a central collegial executive body, in addition to Articles 105-106 of the Constitution, this is given a legal standing in Article 20, para 3 of the Administration Act. Furthermore, the activity of the Council of Ministers is regulated in the Rules of Organisation of the Council of Ministers and its administration. The analysis of both the constitutional provisions and the laws and regulations leads to the conclusion that the activity of the government as a highly placed executive body as a rule *cannot be subject to performance audit* since it relates to *the setting of objectives and to steering, co-ordination and control as well, which entirely fall within the sphere of political management.* This conclusion is supported by the fact that by analogy with the constitutional provisions, the stipulations of the Administration Act and the Rules of Organisation are both fairly general and principled. It suffices to point out Article 6 of the latter, which determines in the most general terms the government functions in the pursuit of the internal and external policy in various areas on the basis of the adopted *strategies and programmes*.

The powers of the Council of Ministers as a central collegial executive body exercising general competence (Art. 20, para 1 of the AA) are powers to formulate, direct, co-ordinate and control the state policy as a whole.[22]

Apparently, the operational implementation of the policy, as a sum-total of policies, specialised in terms of sectors and functions, lies in the competence of the members of the CoMs – the government ministers, and with some other specialised administrative bodies. The provisions in the legal framework are not accidental. They are an expression of a traditional and long standing practice in modern states for a "division of managerial labour" within the executive branch, the separation of policy formulation with regard to determining the goals and the general direction, co-ordination and control on the one hand, and its operational implementation by using particular means and resources, on the other.[23] The said separation has clear budgetary and financial implications. The budget of the government as a body vested with the described powers is separate from the budgets of the ministries and the other institutions of the executive branch. It is these budgets that concentrate the resources needed for the fulfilment of the policies formulated mainly by the CoMs.

6.3. All this said, a question comes up: can it be considered that the real "domain" of PA is namely the activity of the specialized executive bodies. They operationally implement the general policy formulated by the CoMs but as a sum total of specific and specialized policies with particular objectives which are to be achieved by using the respective means and resources.

Such a conclusion is, however, is problematic. It appears that with regard to the

[22] Part of this policy is formulated and given a legal standing by the bills introduced by the Council of Ministers in the parliament.
[23] In this sense, the CoMs *is not the all-competent body* which can take over and operationally exercise the powers of other bodies of the executive power. For critical analysis of the quantitative concept of competence and respectively the theory of the "all-embracing" competence see Kostov, M., Op Cit, pp. 36-40.

specialized management carried out by the ministers, the legislation also provides ample space for political objective-setting, direction, co-ordination and control!

According to the Administration Act, the minister is a central one-person executive body exercising special competence and as head of a ministry, respectively directs, co-ordinates and controls the implementation of the state policy (Article 25).

Even a brief analysis of the Rules of Organisation of the ministries supports this conclusion. For example, the RoO of the Ministry of the Economy, Energy and Tourism confers on the ministerial powers which leave no doubt for the existence of an "extensive" political discretion. The provisions of Art. 5 para 1, containing approximately 40 items, provide him/her with the powers to direct, co-ordinate, control and implement the state policy in the area of economy, energy and tourism (see it. 1-10, it. 12-17, it. 19-23, it. 29-32).

The language of the RoO of the Ministry of Agriculture and Forests is also unequivocal. Article 6 empowers the minister to pursue national policy in various areas: development of agriculture, grain production, grain and fodder trade and stocking, irrigated agriculture, food control, organisation, co-ordination and control of the Common Agricultural Policy, food safety policy and the Common Fisheries Policy of the EU (it. 1,2,3,4,10 and so on).

Likewise, Art. 3 and Art. 4 of the RoO of the Ministry of Labour and Social Policy contain similar provisions concerning the powers of the minister to direct, co-ordinate and control in the areas of levels of income [income levels] and living standards, social security, protection against unemployment and promotion of employment, the labour market, labour migration, social investments and social protection, social inclusion, and so on.

The RoO of the remaining ministries are constituted in a similar way.

6.4. Given such an approach of the legislator, which vests powers with *general empowering stipulations*, the conclusion that can be drawn is unequivocal! Even though the ministers discharge their functions on the grounds of a government programme (Art. 6 of the RoO of the Council of Ministers and its administration), *they retain wide political discretion* to elaborate, organize, co-ordinate and control state policy in their respective areas.

Furthermore, the analysis of the effective laws and regulations gives no reasons to conclude that the legislator has made a clear distinction between the political and the non-political in the ministers core external managerial powers. On the contrary, it all points to the conclusion that, similar to the CoM, *any managerial activity of these bodies is treated as political*! It is evident that the legislator relates these bodies political mandate with qualifying their core, external "outward" managerial competence as strictly political. In other words, *the "political character" of the mandate attaches outright "political character" to those managerial powers as well.* Moreover, what this means according to the legislator is that in respect of these executive bodies, *PA is not possible.* If such an audit were however carried out, it would inevitably have been in breach

of the fundamental requirement for non-interference of SAIs in the political process.

6.5. Significant "stroke" in the differentiation between the political and professional management with respect to the executive power bodies is brought in by the provisions of Art. 27 of the Administration Act, which lays down the figure of the so-called *"political cabinet"*. The political cabinet functions in a direct subordination, and respectively supports the activity of the Prime Minister, the Deputy Prime Ministers, the ministers, the presidents of State Agencies[24] and the Regional Governors (para 1). A political cabinet shall be an organizational structure which is assigned advisory, control, and information and analytical functions, which shall assist the respective executive authority in the formulation and implementation of the government policy in the sphere of his or her powers, as well as upon presentation of the said policy to the public (para 2). In order to implement the programme [of the Council of Ministers], the political cabinet shall propose to the executive body strategic priorities, objectives and decisions related to its competence, and shall monitor their implementation (para 3).

In view of the ideology of the Administration Act, the presence of political cabinets clearly defines the management carried out by the Prime Minister, the Deputy Prime Ministers and the ministers *as a political management.*

Moreover, these cabinets provide evidence of the political character of the management carried out by the presidents of agencies and regional governors notwithstanding the fact that they *have indirect political mandate*, stemming from the mandate of the government.

6.6. All this said, the following conclusion can be drawn: *the core, external functions of the mentioned bodies of the executive branch cannot be subject to performance audit* because they are related to the formulation and the exercise of **political discretionary powers, consisting of objectives setting, steering, co-ordination and control** and owing to this the legislation qualifies them as policy.

7. The case with two other bodies within the central executive power is different.

7.1. *These are the state commissions reporting to the government or a minister and the executive directors of executive agencies reporting to a minister.*

These bodies *do not have a political cabinet.* The provisions of Art. 50-52 for state commissions and respectively Art. 54-55 for executive agencies clearly show that *here management is not treated as political activity*. The commission performs control, licensing and registration activities, the executive agency provides services to natural and legal persons as well as activities and services related to supporting the activity of the state bodies and the administration. The lack of political cabinets and the nature of the activity (control, licensing, registration, support) is a clear indication that *the main*

[24] According to Art. 41, para 1, the state agency is an administration directly reporting to the Council of Ministers established *to develop and implement a policy* (emphasis added) for which no ministry has been created. This principle provision emphasises clearly the proximity of the agency to the ministry from a political point of view, from the point of view of the empowerment of both institutions with political discretionary power in the face of the bodies which stand at the head.

managerial function of these bodies is treated by the legislator as an implementation of policy formulated by a higher administrative body! In other words, *at this tier of state governance there is no political discretionary authority (powers), but only an* ***implementing administrative authority.***[25]

7.2. All this leads to the obvious conclusion that the management carried out by the Council of Ministers, the Prime Minister, the Deputy Prime Ministers, the ministers, the presidents of state agencies and the regional governors as core, external competence must *be qualified as a political management* from the perspective of the professional rules of the BNAO and *therefore it is outside the scope of PA*.

Given the non-political character of the main managerial functions performed by the state commissions to the CoM or a minister and by the executive directors of the executive agencies within the executive power, *they are subject to PA*.[26]

8. The analysed normative provisions have principle character and prove that the legislator has made a clear distinction between the political and non-political, professional (implementing) management in the executive power not "horizontally" but "*vertically*" so to speak.

8.1. This means that there is no differentiation within the core function (competence) of a particular body into respectively political and non-political (professional, implementing) powers. There is no clear-cut borderline between objective-setting and implementation. The borderline is drawn "vertically" along the line: body entrusted with powers for political objective-setting, respectively direction, co-ordination and control, on the one hand, and subordinated bodies and officials entrusted with implementing managerial powers, on the other. The professional implementing managerial power assists the political management and unquestionably, in this sense, implements its "creations"!

8.2. A logical consequence and continuation of this approach of the legislator would be if other bodies and officials with a non-political mandate were vested only with powers for non-political professional management. Indeed, the legislation provides reason for such a conclusion in principle. According to the constitutional provisions, the civil servants have to be guided solely by the law and be politically neutral (Art.116, para. 1).

The Administration Act differentiates between *two types of administration – general and specialised* (Art. 5). While the general administration assists the relevant body of state power (including a body of the executive branch) *as head of the administration (i.e. internal power)*, the specialised administration

[25] I would like to expressly emphasise that the implementing administrative power can also have the characteristics of the discretionary powers (competence). It cannot be maintained that in this cross-section of state management the implementing administrative power is equivalent to bound competence. This discretion though is non political and in this sense is subordinated to political discretion. In other words, the traditional in the administrative legal theory couple of terms: "discretionary authority (powers) - bound competence" is fully applicable for the professional non-political management.
For these two fundamental categories in administrative law, see Lazarov, K., Bound Competence and Discretionary Powers, Sofia, 2000.
[26] The BNAO has conducted audits of a number of executive agencies, for example: the Bulgarian Drug Agency in 2007; the Executive Agency on Vine and Wine in 2007; Executive Agency "Social Activities" at the Ministry of Defence, the Bulgarian Small and Medium Enterprises Promotion Agency in 2007; Executive Agency for Sort Testing, Approbation and Seed Control in 2008; Executive Agency for Transplantation in 2010 (see the BNAO website).

assists the body of state power in the exercise of its *powers related to its competence* (it is evident that its core external function is meant here) – Art. 5, para. 1 and 2.

These texts apply to any "body of state power" and its administration[27] and cover the bodies of the executive power and their administrations as well.

From its own perspective, the Civil Servants Act lays down the provision for the so called "managerial officers". They are respectively "chief secretary", "municipal secretary", "chief director of a chief directorate", "director of a directorate" and "head of an inspectorate" (Art.5, para 1 and 2).

Unquestionably, these managerial officers, and most of all the managers in the specialised administration, *are entrusted with professional non-political management* in the public sector, in the executive power on central and local level included.

8.3. With respect to the ancillary internal function, the Administration Act contains provisions of key importance. *The head of the respective administration is the body of state – including executive – power in charge of it* (Art. 3 of the AA).

It must be expressly stated that the direction of the general and specialized administration by the body of the executive branch power *is not part of its political competence; it is a non-political quality.* This direction is an inevitable consequence and logical outcome of the existence of an ancillary internal management function (competence). Thus *any body of the executive branch heading the respective administration combines and exercises two managerial functions in parallel*: core competence, directed "outwards", which has political character in the case of the executive power bodies mentioned above and, along with it, an ancillary internal competence. In this sense, the two categories of competence are combined not only within one institution of the executive, as already explained in this study, but can be combined within the body at the head of the institution.[28]

These conclusions can be illustrated with some stipulations in the Rules of Organisation of the ministries. They contain detailed regulation of the general and specialized administration headed by the respective minister. For example, the Ministry of the Economy, Energy and Tourism has 13 specialized directorates. The directors of these directorates are the professional managers who assist the minister in the discharge of his political functions. The by-law assigns to the Economic Policy Directorate (respectively empowers its director) a wide range of activities listed in Art. 26, para 1 – 29. The analysis of the texts shows that what is meant here is a competence to assist the minister expressed mainly in *powers related to development, analysis, information, internal organisation, internal coordination and internal control.*

[27] Included here are the parliament, the bodies of the judicial branch, the independent bodies with administrative powers and the respective administrations.

[28] This is evident in the case of a one-person body – minister, mayor, regional governor. Where there are *collegial bodies at the head of the respective administrations*, the direction of the administration is *again* carried out by *one person* – the president of the collegial body (e.g. the Prime Minister for the administration of the Council of Ministers). This principle applies for bodies with administrative powers outside the executive power (e.g. the president of the Commission for the Protection of Competition) and bodies not exercising administrative powers as core function (e.g. the chairman of the National Assembly is head of the parliamentary administration).

The organisation of the remaining directorates is established in a similar way, e.g. Energy Policies, Strategies and Projects Directorate (see Art. 31) and Tourism Policy Directorate (Art. 37).

The chief secretary of the ministry is entrusted with the powers to co-ordinate and control the administrative units in compliance with the normative acts and the statutory directives of the minister (Art. 13, para 1 and 2).

The interpretation of the said regulation shows that the legislator has made a clear distinction between the core competence of the bodies in the executive branch and their ancillary competence despite the fact that both competences can be combined in one body. Both functions find expression in the two main categories of acts (statement) of the respective body of the executive power: normative and non-normative administrative acts, on the one hand, and in-house acts, on the other.

8.4. All of the above mentioned gives reason to conclude that as far as the bodies of the executive branch carrying out political management are concerned, *the scope of PA is limited to the ancillary internal managerial function (competence).* The subject of the audit is the activity of the respective units in the administration (directorates); the addressees of the audit are the professional managers who are in charge of these units (directors), respectively the chief secretary. But in the final analysis, the main addressee of the audit is also *the minister in his non-political capacity as head of the administration.* The non-political management of the administration is a competence (powers), i.e. not only a right *but also an obligation.* What the directors in the specialized administration, and in the general administration as per the RoO of the ministries, are empowered to do, *the minister, as head of the organisation, is obliged to require that they be done in an effective, efficient and economical manner.*[29]

In the long run, the administrative managers prepare the minister's final administrative and in-house acts by exercising their professional administrative authority (powers).[30] Their actions as a rule are "contained therein". In accordance with the principles of administrative law, an exception is made only when the minister explicitly delegates to them the powers to issue "external" acts.[31]

9. The normative regulatory model outlined in this study is applicable to the mayors and the specialized executive bodies across the territory of the country. The mayors also exercise political competence determined by their political mandate. This competence

[29] A case in point is the already cited provision of Art. 2 para 6 of the AA. Unquestionably, the obligation of the administration to be efficient, respectively effective, means that the head of the organisation is empowered to impose such requirements.

[30] In the recent years, the BNAO has carried out performance audits of numerous directorates as units of the specialized administration in various organizations of the public sector. See for example the audits of Management of EU Funds Directorate of 2006; Directorate "Central Contracting and Financing Unit" of 2006; National Fund Directorate of 2006 and 2010; Audit of EU Funds Directorate (all these are within the Ministry of Finance); Directorate "International Legal Child Protection and International Adoptions" at the Ministry of Justice, 2007; Directorate "Science and Education" at the Ministry of Agriculture and Food, 2007; Directorate "Agriculture and Forests" at the same ministry, 2008; Directorate "Financial and Control Activities" at the Ministry of the Interior, 2009. The audit reports are published on the BNAO website.

[31] Another important exception of this principle, which merits separate study, is the management of EU funds. Here the management structure expressly allows to the director of a directorate to be entrusted with powers of managing authority of operational programmes, by means of which the pyramidal principle of power concentration in the minister is departed from.

is not subject to PA. *But in their non-political capacity as head of the specialized executive bodies in the municipality they are undoubtedly the main addressees of PA.* Article 44 of the Local Self-government and Local Administration Act, which sets out the competence of the mayor, makes a clear differentiation between the political powers (para 1 item 1) and the non-political powers (para 1 item 2).

10. However, within the public sector there are independent bodies which are not subordinate to the government but exercise administrative competence.

10.1. Typical examples, as already stated, are the bodies of the Bulgarian National Bank (governor, deputy governors and governing council), the Financial Supervision Commission, the Council for Electronic Media, the Commission for Regulation of Communications.

Again, the main question with regard to these institutions is *whether their managerial activities can be qualified as policy or as non-political professional implementing management.*

The analysis of the legislation provides serious arguments in favour of qualifying the management of these bodies as non-political. Above all, the AA takes a clear stance by qualifying the administrative powers of the state commissions within the central executive power as non-political. Of course, the major presumption is that the subordination of the state commissions to the government, respectively a minister, means subordination to a clearly formulated objective-setting, respectively steering and control, whereas the "author" is the superior body. One can draw an analogy between those and the bodies established by the National Assembly independently of the central executive power which in their activities should act in compliance with the political objective-setting, materialised in the respective law, and accordingly controlled by the parliament. The question that can be put forward is whether this analogy is relevant in full, i.e. does the objective-setting of the National Assembly strip the functions of these bodies of all "political qualities", thus empowering them an implementing administrative authority only?

A case in point is the Financial Supervision Commission (FSC), which provides the possibility for making critical analyses and reaching important conclusions. The Commission is, under the Financial Supervision Commission Act (FSCA), guided in its activities by the aims of protecting the interests of investors, the commercial insured and social-insured persons, as well as ensuring stability, transparency and credibility of the financial markets (Article 11). The question is: can it be maintained that the regulatory and supervisory functions of the commission (Article 12 of the Act) performed in order to achieve the statutory objectives are by nature professional non-political management? The answer to this question is not simple.

10.2. First of all, it must be pointed out that the FSC has standard-setting powers to create sub-delegated acts with the rank of ordinances and instructions. And this, according to Article 12, it. 1 of FSCA is part of *the regulatory function of the commission*. According to the law, within this function falls also the issuance of guidelines on the implementation and interpretation of the laws

the commission applies (compare Article 12, it. 1 and Article 13, para 1, it.4 of the law). The main guidelines for the activity of the commission adopted and published according to Article 13, para 1., it.2 belong to this category.

In my opinion, the regulatory function covering on account of its substance normative and interpreting acts (guidelines), on the one hand, and acts of strategic importance (main guidelines), on the other, must be qualified as a continuation of the political objective-setting and for this reason be qualified as part of the political management. That is why they *must not be a subject to PA*, but should be taken for granted and as a basis for the evaluation of the rest of the core activity of the commission.

10.3. "The rest of the core activity" is undoubtedly the supervisory function of the commission which is outlined in Article 1 para 3. It materializes in the powers for issuing authorising (licences) administrative acts, respectively refusals for such, documentary checks and on-the-spot checks and imposing coercive administrative measures and administrative sanctions (items 1-3). It is evident that the acts that are being issued are *acts for implementing the policy*, part of which is formulated by the commission itself within its regulatory function.[32]

10.4. Based on this example, a main criterion can be established related to the independent bodies performing regulatory and supervisory functions. *The regulatory function*, owing to the fact that it covers normative, interpreting and other acts of general implications, must be looked at as a continuation of the political objective-setting and in this sense *as political management which is not a subject to PA.*

And vice versa, *the supervisory function*, owing to *its individualized character related to the* implementation of legal and regulatory normative and non-normative acts must be viewed as a professional management, as an implementing administrative authority and respectively *be a subject to such audit*.[33]

11. The analysis so far focused on the bodies of the executive power, respectively the bodies with administrative powers exercised as core function.

Obviously, with a view to the scope of the AA provisions referring to all bodies of the state authority, the main criterion established in this study is applicable to the internal managerial functions of the bodies outside the executive branch as well. These bodies, in so far as they have had administrations which assist their main competence and therefore have *non-political managerial capacity* as per Article 3 of AA, can also be addressees of PA in terms of the effectiveness, efficiency and economy of the activity of these administrations. This no doubt is valid also for such high-standing state bodies such as the President, the Chairman of the National Assembly, the Chief Prosecutor, the Chairpersons of the Supreme Courts, the High Judicial Council. Their high position of authority in the state cannot constitute an impediment to exami-

[32] Regulation and control (supervision) are clearly defined in the Law on limitation of administrative regulation and administrative control over economic activity. The law relates regulation to the laying down of normative requirements, and administrative control – to the issuance of individual acts (see Article 1 paragraphs 3-4). For this law see for more details Dimitrov, V., The Law on Limitation of Administrative Regulation and Administrative Control over Economic Activity – the End of Rulemaking Etatism or a Difficult Step Forward, *сп. „Търговско право*" (*Commercial Law* Magazine), 2003, № 5, pp. 52-76.

[33] The BNAO carried out an audit of the supervisory function of the Council for Electronic Media (CEM) in 2010. The audit report is published on the BNAO website.

nation and evaluation of the effectiveness, efficiency and economy in the exercise of their other capacity – head of an administration.

12. Another quite essential aspect of the analysis deals with the provisions of the Financial Management and Internal Control Act (FMICA).

12.1. This law regulates the internal management (and control as part of this management) in the whole of the public sector in a principle and comprehensive way, irrespective of the organisation where it is carried out, and from its financial perspective, i.e. in its intrinsic relationship with public finance. While the administrative legislation discussed so far deals with management not taking into account this relationship, the FMICA regulates the internal management as *financial management*. Financial management is treated as an integral process integrated into the activities of all organisations spending public funds (Article 5 para 1 in connection with Article 2). The purpose of this comprehensive regulation is to impose requirements not only for legality but for good financial management (effectiveness, efficiency, economy) of public funds as well (Article 7 para 1 it.4 in connection with para 1 it.3). Thus, the FMICA underlines the relationship of internal management of public funds (and public assets) with *the objectives* of the respective organisation in the public sector.

In this sense, the act supplements the "pure" administrative normative regulation of the AA, CSA and the RoO of the CoMs and the ministries with a financial regulation.

12.2. Furthermore, the FMICA adds to the stipulations of the AA with regard to the functions of the heads of the institutions (organisations) in the public sector with the introduction of *managerial accountability* for legal and sound financial management (effectiveness, efficiency and economy) of public funds with a view to achieve the objectives of the organisation.[34] The managerial accountability and respectively financial management and control make visible *the linkage between the goals of the political and professional management in the public sector and the resources (public funds)*, which underpin it, the "subsistence" of this management provided by the citizens as taxpayers. Sound financial management ensures a reliable basis for any good policy.

In this sense, *the heads of the organisations in the public sector are managers who not only pursue a policy, not only steer the professional administration in the respective organisation, but are responsible and respectively steer the financial management!* Their role as heads of financial management, to my mind, finds expression in organisational terms as well. Namely, while the specialized administration assists them in the fulfilment of their core external function (competence), the general administration

[34] The concept of "managerial accountability" is new to Bulgarian legislation and juridical tradition and merits a close separate study. The definition of the concept which can only be pointed out here was elaborated by the authoritative author Robert de Koning, one of the ideologists of the development and introduction of the PIFC system in the EU member states, having contributed also to phasing in this system in Bulgaria from 2006. According to the author, "managerial accountability is a concept in government policy highlighting the need for public officials to respond periodically to questions concerning their activities and to be held responsible (answerable) for exercising the authority given to them… Managerial accountability stands for making management responsible not only for making financial decisions, but also for making sure that these decisions are adequately made and implemented in the best interest of the public",(Robert de Koning, *Public Internal Financial Control*, 2007, p. 52).

(mostly structural units like Financial and Economic Activities, Management of Property, Legal Activities, Human Resources, Information Services and Technologies[35]) assist them mainly as financial managers.

12.3. A question comes up as to whether financial management is not a *separate internal function* alongside the function of ancillary internal administration. There are enough arguments to prove such a point. They are to be found in the provisions of the FMICA, which provide a detailed description of the content of financial management and control (see Chapter Three of the Elements of Financial Management and Control Act – Articles 10-15). What is more, in compliance with the said legal provisions this function is assigned for steering to the heads of the public sector organisations.[36]

The financial management function includes objective-setting as well (Article 7 para 1). It must be stressed that this is not political but *financial objective-setting*. The objectives of financial management are *in a subordinate position with regard to the political objectives* and play supporting role, serving as main reference points for the administration (specialised and general).[37]

12.4. The comparison between the ancillary internal management function, on the one hand, and financial management and control, on the other, shows a major difference between the two functions. It lies in the fact that *the ancillary function is specialized*. This specialization is an inevitable consequence of its natural relationship with the specialized core competence.[38] *The ancillary internal competence is also special because of the special character of the core competence.* It is namely the special character of the core and ancillary function that leads to specialization of part of the administration in the respective institution.

In contrast, the FMICA defines financial management as *a function with a relatively standardised and universal content*. This stems from the peculiarities of managing money and property as public assets. For this reason its content is not so directly determined by the specialized core competence.

12.5. Unquestionably, financial management and control in all organisations of the public sector, from the viewpoint of effectiveness, efficiency and economy, as management and spending of public money and other public assets falls within the scope of the auditing competence of SAIs. Such a conclusion is obvious and hardly requires much justification. *This managerial function exercised by all public sector organisations is a typical subject for performance audit.*

The BNAO carries out this type of PA as part of the so called "audit of the financial management", but it may be performed as a separate audit.

More importantly, it should be underlined that a professionally done PA requires that the two internal functions are reviewed and

[35] See Article 7 para 1 of the AA for the units in the general administration.

[36] As the function of ancillary internal administration, so *too the financial management and internal control has a single person in charge* – a one-person state body or the president of a collegial body (minister, president of an agency, executive director of executive agency, mayor, the Prime Minister, chairman of a commission and so on).

[37] The objectives of the internal functions are subordinate to the political and other objectives related to the core external functions, and in this sense can be treated as *a system of sub-objectives*. This hierarchy in objective-setting is objectively determined by the subordinate position of internal functions (ancillary administrative and that connected with financial management and control) to the core external competence of the respective state body.

[38] M. Kostov states that the competence of any state body is always special, since it is the true juridical counterpart of the principle of division and specialization of managerial labour (Kostov, M., Op Cit, p.43)

evaluated in the light of the 3 E's *in their cohesion, not separately*. In other words, as per Article 2 para 6 of the AA, which represents the true "bridge", the cohesive element between the two internal management functions, *the results achieved by the ancillary specialized management must be assessed in connection with the financially managed resources.*

The same applies for the connection between the *core administrative function, which has the nature of an implementing administrative power* (for instance, supervisory competence) and financial management. The results achieved by the implementing management must be examined and evaluated based on and in relation to the management of resources in the respective organisation.

All this said, financial management as management of resources must be treated as an inevitable component of any PA covering external implementing competence or ancillary specialized function.

13. In summary of the above analysis, the following picture of the scope of PA in the public sector may be outlined.

13.1. Performance audit is related to the non-political professional management in the public sector.

This management comprises, in the first place, a certain set of core external managerial functions of bodies with administrative powers, which can be determined as *implementing administrative authority*.

Secondly, the professional management covers *the whole of the internal management* in the public sector, including the ancillary specialized management as well as the function of financial management and control.

In the area of core external administrative functions (competence), PA is applicable only to the implementing administrative authority, which includes:

1) the management carried out by non-political administrative bodies of the executive branch, such as the state commissions to the government and a minister, as well as the executive directors of executive agencies to individual ministers, and

2) the supervisory function of independent bodies which perform *regulatory and supervisory administrative functions.*

PA is applicable to the whole area of internal management in the public sector, and in all institutions it covers:

1) the ancillary specialized administrative function (competence), and

2) the financial management and control function.[39]

13.2. The scope of public sector PA so established in the applicable positive law is not absolute or unchangeable. It certainly depends on the legislative vision in the framework of the Constitution and can change largely according to whether the borderline expands or narrows between the political and the professional management in the exercise of the core functions of the bodies of the executive branch and other bodies with administrative powers. And most of all, according to ***whether the legislator narrows or expands the scope of political discretionary authority (powers) in public sector governance (management).***

[39] The internal management performed by the managerial body of an institution and assisted by its general and specialized administration may acquire budgetary-financial expression through the so called "programme budgeting" or results-oriented budgeting. This matter requires a thorough study of its own. Here it can only be pointed out that the short history of efforts to introduce this type of budgeting (through policies and concrete programmes implemented by the administration of the respective organisation and its management) in the public sector in Bulgaria has its successes but has failures as well. The main problem and impediment for following this approach through, apparently related to the ideology of NPM, consistently and across-the-board lies in the unreformed budgetary legislation and above all in the organic budget law – the Law on the Structure of the State Budget of 1996.