

THE RELATIONSHIP BETWEEN THE STATE AND ITS OPERATORS

Communication to the National Assembly's Committee for the
Evaluation and Monitoring of Public Policies

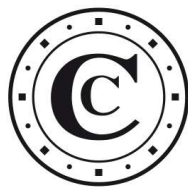
Abstract

The State has long entrusted organisations outside its administration with the performance of public service tasks. This extension of the public action by specialised bodies has developed in many sectors because of the expected benefits of greater autonomy and management flexibility in the implementation of public policies.

In view of the increasing financial stakes associated with this form of public action, the French Budget Act (LOLF) of August the 1st 2001 asked for the beneficiaries of subsidies for public service charges to be better taken into account in the projects and annual performance reports and thus to extend the principles of sound financial management to these public actors. In order to improve the information provided to the Parliament, an information annex to the Budget Bill relating to operators ("yellow books") has been introduced.

Indeed, public funding for the 484 State operators in 2019 represents a very significant budgetary challenge. It represents €53.8bn, to which are associated jobs (subject to the caps of the LOLF Budget Act) for a total of 379,710 full-time equivalent posts (FTEs).

At the request of the National Assembly's Committee for the Evaluation and Oversight of Public Policies, the Court has conducted an investigation into the relationship between the State and its operators, almost fifteen years after the concept was introduced in the LOLF. It examined the scope of operators and its relationship with other concepts applicable to privatisation. It analysed the public financial support to operators and their framework in a synthetic approach, before examining the State's management and control of these organisations.



A scope to be clarified and stabilised

The text of the LOLF does not explicitly define who are the State's operators, mentioned only by the expression "organisations receiving a subsidy for public service charges". The general annex to the Budget Bill relating to State operators sets out three criteria (activity, financing and control) for characterising an operator. These criteria should in principle be examined before a decision is taken to include an organisation in the scope of operators.

During its audits, the Court observed that the implementation of these criteria was sometimes uncertain. The boundary between organisations that are classified as state operators and those that are not is not always clear, as organisations with similar missions can fall on either side. Moreover, the inclusion of an organisation in the operators' scope may vary over time, and some organisations may be removed from the scope as a result of discretionary decisions. Stabilization and a more homogeneous implementation of the criteria for attaching organizations to the category of operators would be necessary to strengthen their coherence.

State operators sometimes play a very important role in the implementation of certain public policies, whereas they may be much fewer in number and smaller in size for others. In 2020, the areas with the largest number of operators are research and higher education, culture and ecology. Moreover, their size varies greatly: in terms of financial resources, operators in the field of culture are generally small, whereas those in the field of employment are much larger, in particular Pôle emploi.

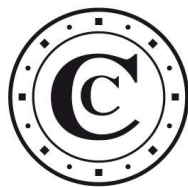
In the absence of a criterion relating to legal status in the qualification of State operator, operators fall under eight different legal statuses. However, public administrative establishments (EPAs) account for slightly more than half, and public scientific, cultural and professional establishments (EPSCPs) account for almost a third. Some organisations have a *sui generis* status.

Successive governments have repeatedly expressed their desire to limit the number of operators, in particular through several circulars from the Prime Minister, some of which target a wider scope than the operators have.. In fact, the number of State operators decreased by 25% over the 2010-2020 period, largely as a result of mergers. This movement should be pursued as it improves the efficiency of the implementation of public policies and allows for the pooling of skills and resources.

Beyond rationalisation of the scope, the question of the relevance of using the operator formula remains for each organisation. The Court did not undertake this analysis in this investigation as it would have required a case-by-case analysis. Nevertheless, as it indicated in its recent report on the financial governance of public administrations¹, the Court believes that the government should regularly question the justification for using this method of public service management, which is accompanied by financing methods that derogate from budgetary principles (particularly as regards the earmarking of taxes).

Finally, the category of state operators, sometimes confused with the category of "State agencies", coexists with other fields of public bodies. These include the various central government bodies (ODAC), which are recorded in national accounts and which account for 80% of operators, or the much broader category of bodies subject to public accounting (GBCP Decree). This overlapping of different scopes can cause confusion and create "vanishing points" of the regulation.

¹ Court of Auditors, *La gouvernance financière des administrations publiques*, Thematic public report, November 2020.



An imperfect framework of resources

In 2019, the €53.8bn in State aid to operators breaks down into subsidies for public service charges (€29.2bn, i.e. 54.2% of the total), transfers² (€16.3bn, 30.4%), equity allocations (€0.8bn, 1.4%) and earmarked taxes (€7.5bn, 14.0%). While the average annual change in State aid to operators over the 2015-2019 period (+2.0%) is close to the evolution of general budget expenditures (+1.8%), it shows a more uneven annual profile, with strong increases in 2016 and 2019 but a decrease in 2018. The assistance to certain operators may indeed change significantly from one year to the other. Subsidies for public service charges and transfers have increased over the period, while earmarked taxes have decreased, due to the abolition of some of them.

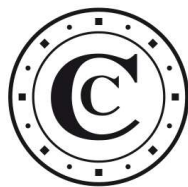
The State's financial assistance to operators is not subject to a specific framework by means of a specific development rule. They are mainly based on oversight mechanisms specific to the State budget as a whole (expenditure norms) or at the level of budget programmes, such as the employment caps approved in the Finance Act. Some parafiscal taxes are subject to an individual cap approved in the Finance Act. Successive public finance programming laws have set objectives for extending or even generalising the cap, lowering the caps or re-budgeting part of the taxes. However, the number of capped taxes allocated to operators has remained fairly stable since 2012 and only decreased at the end of the period. Their amount increased in 2016 with the capping of taxes allocated to AFITF and the water agencies, before remaining relatively stable since then.

Operators' jobs numbers have evolved moderately between 2015 and 2019, with an overall increase of 3,306 FTEs, or +0.8%. On a like-for-like basis, jobs decreased by 0.8%, with a decrease in jobs under the cap (-1.3%) and an increase in jobs over the cap (+3.1%) financed by operators from their own resources. Over this period, the increase in jobs over the cap offset one third of the decrease in jobs under the cap.

For operators, the employment caps set out in the Budget Acts are significantly higher than actual employment, by about 20,000 FTE. However, this gap is unevenly distributed: half of it concerns higher education and research operators, who at the same time have many jobs over the cap. The management of the operators' jobs would benefit from being strengthened by a reduction in the job caps in order to bring them closer to the actual staffing level. The planned employment patterns (incoming-outgoing balances), on the other hand, are fairly well respected and have resulted in job reductions among operators from 2018 onwards (somewhat less than expected in 2019). These efforts have been concentrated on operators attached to a small number of ministries, notably the ministries of labour, ecological transition and solidarity, economy, and public action and accounts.

The operators' wage bill increased by 2% over the 2015-2019 period, mainly due to the entry of AFPA into the operators' scope in 2018. However, this increase in the wage bill was less rapid than that of the State (+7.7%). However, the annual variations in the operators' wage bill are difficult to explain, due to a lack of like-for-like data and information on the factors of evolution (GVT, new measures, etc.).

² Intervention expenditures paid out by operators to their beneficiaries



The operators include entities whose financial weight varies greatly: while 40% of operators or categories of operators account for 3% of the total volume of revenue collected, 6% of them account for 64% of total revenue. An analysis of the operators' accounting results shows that they have generally generated surpluses between 2016 and 2019. Staff costs, which constitute the main expenditure of the operators, increased moderately (+2.5%) in contrast to non-staff operating costs, which increased strongly (+33%). Operators' investments accelerated over the period (€7.5bn in 2019, i.e. +60%), driven by a few major operators, in particular Société du Grand Paris, which accounted for 29% of the investments in 2019.

As various central government bodies (ODAC), 80% of the operators are subject to a borrowing ban for a period exceeding 12 months. However, taken as a whole, the debt of operators has increased significantly since 2015, mainly due to Société du Grand Paris, whose debt is an integral part of its business model. The increase in debt is also explained by public-private partnerships and borrowing from the European Investment Bank, both of which are permitted despite the ban on borrowing. Finally, this increase is explained by the growing indebtedness of some operators that do not fall into the category of central government bodies. The ONF, which is not subject to the borrowing ban, will have nearly €300m in debt at the end of 2019, without any sustainable recovery measures having been taken for the time being for its structural deficit.

For operators that are not included in the scope of the ODACs, a better framework for debt should be provided in the objective and performance contracts and in the financial strategy documents. Failing that, a ban on borrowing for a period of more than twelve months should be envisaged, as for the vast majority of operators.

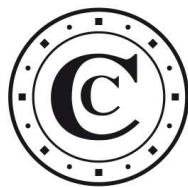
A great deal of information on the resources allocated to operators and their financial situation is published in several documents annexed to the Budget Acts (PAP, RAP, “yellow books” annex). However, they could be supplemented by summary presentations to better illustrate the evolution of the resources allocated in the past financial years. The information published in the annexes to the finance bills should therefore be enhanced by monitoring all of the State's contributions to operators and analysing changes in those contributions on a current and constant basis. In the part of the information annex of the Budget Bill (“Yellow” operators) that tracks data by operator, the *a posteriori* presentation of jobs under and over the cap would be useful in forecasting and execution.

Strategic management of operators to be strengthened

When it entrusts the implementation of a public service mission to an external body, the State must have the capacity to ensure that the mission is carried out in accordance with the priorities it sets.

The capacity of the State to act on operators varies from one organisation to another. It depends in particular on their status and the tasks entrusted to them. The State has supervisory powers over a large number of operators, but this possibility is sometimes not provided for in the legal statutes. In all cases, the State has the power to influence the operators through its presence in the decision-making body. However, its capacity to intervene depends on the composition of the board. Although the State does not systematically have the majority, because of the representation given in many operators to members of parliament, local elected representatives or trade unions, it often has a dominant role. The functioning of the deliberative body may be deficient, especially when it is unable to deal with strategic issues due to an unbalanced composition or insufficient involvement of state representatives in that body.

In some cases, the operator occupies a major place in a public policy, which may unbalance the relationship with its parent ministry. The exercise of supervision within ministries is becoming more professional, but no model has been established so far and coordination problems may persist between



the various actors (“business line” and budget supervisory directorates, general secretariats). However, some organisations have made significant improvements. This is the case, for example, at the Ministry of Agriculture with the creation of a structure within the General Secretariat dedicated to the management of operators and which ensures coordination between the business line and financial supervisory departments. Similarly, in the many cases of multiple oversight of operators, a formalised organisation providing for a rotating “leader” oversight has been successfully put in place. These best practices would benefit from being generalised.

State control on operators is also exercised within the framework of a performance approach in line with the spirit of the LOLF, with the signing of objective and performance contracts (COP). However, only a minority of the operators has such contract in 2020(22%), even though they account for almost half of the State’s funding. The proportion of operators with a COP varies greatly between budgetary missions. The universities do not have any, in line with the autonomy granted to them by law. The vast majority of EPSCPs, which are also subject to a specific supervisory regime, do not have any either. Apart from the specific cases of universities and EPSCP, the coverage rate of other operators under objective and performance contracts for the year 2020 remains modest (42%), covering less than half of them.

In addition to objective and performance contracts, the government committed itself, within the framework of the Public Action 2022 initiative, to developing of objective and means contracts (COM), making it possible to set priority objectives and a trajectory of means associated with the quantification of productivity efforts. However, this approach has only been implemented for two institutions (Météo France and Business France).

The Court considers that the objective and means contracts should cover the operators that receive the most funding from the State. With other operators, the signing of objective and performance contracts should be generalised.

Finally, the State’s oversight of operators also involves ensuring the quality of the information reported by operators, an area in which there is room for improvement. The deployment of internal oversight is far from homogeneous within the operators and the involvement of the ministries in this area is uneven. Furthermore, the quality of information on operators used in the preparation of the State’s accounts remains uncertain: for its task of certifying the State’s accounts, the Court only has information (auditors’ reports, internal audit reports) for barely one third of operators.

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The creation of the category of State operators by the LOLF has made it possible to better organise the steering and monitoring of a large number of organisations involved in the implementation of public policies. Groupings of companies have contributed to the rationalisation of this set, which is also the subject of significant information in the annexes to the finance bills, by missions and programmes in the Budget Bill and the Settlement Bill, and in a “Yellow” relating to operators. The evolution of the State’s financial contributions to operators over the 2015-2019 period, slightly lower than that of general budget expenditures, has been controlled, and the increase in their jobs numbers has remained moderate.

Nevertheless, the Court believes that several changes are desirable. Firstly, the aim is to seek a more homogeneous application of the criteria for inclusion in the category of operators, in order to make them more consistent. In addition, the management of the operators’ jobs numbers could be strengthened by adjusting the job caps. A better control of the indebtedness of operators that do not belong to the scope of the various central government bodies should also be organised in order to prevent vanishing points. Finally, information on operators should be enhanced, in particular by a summary presentation, for the past financial years, of the amounts of State financial assistance to operators, as well as jobs forecasts and jobs in actual use.



The State can make further progress in the strategic and operational management of operators, both by professionalising the exercise of supervision by the ministries, by disseminating best practices in particular, and, especially by strengthening the performance approach. Finally, the quality of information from operators must be improved, in particular by strengthening internal oversight.

Recommendations

1. To strengthen the coherence of the category of operators, stabilise the attachment criteria and implement them in a homogeneous manner.
2. Reduce operators' jobs caps where vacancies exceed 1% of authorised jobs.
3. For operators that do not fall into the category of various central government bodies (ODAC), include a framework for their debt in their objective and performance contract and in the financial strategy documents or, failing that, prohibit them from taking out loans with a term of more than twelve months.
4. Present in the information annex of each budget bill ("Yellow" operators) an aggregate representing, for the last three financial years, all the financial resources allocated to operators, broken down by type (subsidy for public service charges, transfers, allocations, earmarked taxes), on a current and constant basis.
5. Publish in the information annex of each budget bill ("Yellow" operators), for the past financial years and for each operator, the planned and executed jobs cap as well as the planned and executed number of jobs outside the cap.
6. Develop objectives and means contracts (COM) for the organisations with the most important issues for the main areas of public action.

Strengthen the performance approach by covering all of the organisations' missions in the strategic objectives of the objective and performance contracts (COP) over a period of at least four years.