

Cour des comptes



Chambres régionales
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EURORAI SEMINAR

THE AUDIT OF THE LOCAL STATE- OWNED ENTERPRISES IN FRANCE

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THE STATUS OF THE LOCAL STATE-
OWNED ENTREPRISES (SOES)
IN FRANCE



PARTICULARITIES OF LEGAL FRAMEWORK

The local SOEs are tools for local authorities to execute the public policy related to their competences

- The SOEs are companies of common law (droit commun) with the board of directors or supervisory board subjected to the provisions of the commercial code (CC)
 - Subject to specific features under the general code of local authorities (CGCT) which concern:
 - The social mission (in the area of competences of local authorities)
 - The terms of the creation of society and the evolution of the statutes (prior agreement of the deliberative assemblies of local authorities shareholders)
 - The governance (ownership, status of the elected directors supervised by specific provisions)
 - The acquisition of a equity stake (prior agreement of the local authorities represented in the board of directors or supervisory board)
 - The controls
- **Less important role in the local SOEs in the general meetings of shareholders**



THE THREE PRINCIPAL CATEGORIES OF SOES

The evolution of the legal framework for fair competition led the legislature to diversify the categories of local SOEs– there are three categories:

- Les sociétés d'économie mixte locales (SEML), created by the Act in 1983. A SEML has two types of shareholders: the local authority as well as other public or private shareholders. The SEML represent 74% of the total of local SOEs
- Les sociétés publiques locales (SPL), created by the Act in 2010, their capital is totally public and composed of local authorities. The SPL represent 25% of the total of local public enterprises
- Les sociétés d'économie mixte à opération unique (SemOp), created by the Act in 2014. A SemOp, created for a limited period, is composed of two types of shareholders: local authorities and other shareholders. The SemOp represent 1% of the total of local public enterprises
- (Reference : Fédération nationale des entreprises publiques locales, September 2017)



THE MAIN DIFFERENCES BETWEEN THE THREE CATEGORIES OF LOCAL SOES

The three main categories of local SOEs are different purposes and natures

- A SEML is necessarily majority owned by the local authorities (between 50% and 85% of the capital). After systematic competition, a SEML is entrusted with contacts. It may act for other sponsors which are not the local authorities shareholders
- A SPL is intended to intervene on the purpose of its local authorities shareholders (two at least) as part of integrated services (« in house »), without a prior competition
- A SemOp is a company dedicated to an operation, jointly owned by the local authority (between 34 and 85% of the capital) and by at least one economic operator (between 15% and 66% of the capital). The choice of the operator and the contract with the SemOp have to be opened to the competition by the public notice. At the end of this contract, the SemOp is automatically dissolved



SPECIFIC SITUATION OF THE LOCAL SOES TO THEIR LOCAL AUTHORITIES SHAREHOLDERS

The commitments and financial risks associated with the local SOEs are currently insufficiently transcribed in the accounts of local authorities

- In the regulation:
 - ✓ The accounts of the local SOEs are not consolidated with those of their local authorities shareholders, in accordance with a general principle adopted by the legislator who did not want to impose the consolidation of the budgets of local authorities with their public or private satellites
 - ✓ The off-balance-sheet engagements of the local authorities shareholders towards the SOEs do not have to be exhaustively identified and in the annexes of their accounts (Ex. public equilibrium shareholdings in spatial planning operations)



THE FRENCH LOCAL STATE-OWNED ENTREPRISES (SOES) IN FIGURES



THE ECONOMIC WEIGHT OF THE FRENCH LOCAL SOES IN 2017

- 1 254 unlisted companies that holds 301 subsidiaries et 429 participations
- 4,3 Md€ of social capital
- 13,2 Md€ of revenues
- 63 662 employees
- Dynamic sector: more than 50 local SOEs created each year from 2013

(Reference : Fédération nationale des entreprises publiques locales, Septembre 2017, except for the participations, Septembre 2016)



THE FIELDS OF ACTIVITIES OF THE LOCAL SOES IN 2017

The SOEs presents in seven major areas of activity:

- Tourism, culture and recreation (24%), including the management of equipment (17% of the total)
- Territory development (24%)
- Environment and networks (16%), including energy (8% of the total)
- Habitation and real-estate (15%), with 11% of the social housing
- Economic development (11%)
- Mobility (6%)
- Services to individuals (4%)

61% of the local SOEs conduct several activities, which:

- 29% by vertical integration (activities beyond the core business)
- 17% by horizontal integration (activities related to the core business)
- 15% by vertical and horizontal integration

Subsidiaries of the local SOEs are identified mostly in territory development (37%) and habitation, and real-estate (33%)

(Reference : Fédération nationale des entreprises publiques locales, Septembre 2017)



THE CONTROL OF THE LOCAL
STATE-OWNED ENTREPRISES (SOES)
IN FRANCE



THE MECHANISMS OF CONTROL IN COMMON LAW (DROIT COMMUN)

- ✓ **The local SOEs are subjected to the mechanism of control in common law founded in the commercial code**

They therefore have an obligation to certify their accounts by an auditor

- ✓ **The local SOEs are subjected to the mechanism of control in common law relative to their sector of activities**

Ex. Agence nationale de contrôle du logement social (ANCOLS) in the field of social housing



THE SPECIFIC CONTROLS BY THEIR LOCAL AUTHORITIES SHAREHOLDERS

In addition to the rights given to shareholders of a company and the obligations of production of the documents provided for in the commercial code, the local authorities have specific prerogatives of monitoring:

- ✓ Prior authorization of the deliberative assemblies of local authorities shareholders or members of the board of directors or of the supervisory board for a certain numbers of acts: Amendment of the corporate purpose, composition of capital, structure of the bodies, acquisition of participations and remuneration and benefits of local elected officials representing their local authorities
- ✓ Annual report of the local elected representative of a local authority
- ✓ Specific annual report for the execution of development agreements
- ✓ Special report on the exercise of the prerogative of public power (puissance publique)
- ✓ Possibility to ask the CRTC for a control of their SOEs



THE SPECIFIC CONTROLS BY THE STATE

- ✓ **Right to information of the prefect:** mandatory transfer of the deliberations of the board of directors or of the supervisory board, accompanied with the reports prepared for adoption, as well as the ordinary and extraordinary decisions of the general assemblies and related documents
- ✓ **Control of legality by the prefect the decisions of local SOEs** exercising a prerogative of power public and acts taken under a mandate;
- ✓ **Control of prefect**, in cooperation with the CRTC, **acts of the local SOEs which cause a financial impact or a financial risk for local authorities shareholders**
- ✓ **Power of the prefect to request control of a local SOEs to the CRTC or a State-Inspection bodies**



THE LARGE COMPETENCES OF THE FINANCIAL JURISDICTIONS

Les chambres régionales et territoriales des comptes (CRTC) are competent for :

- ✓ To give a non-binding opinion by the request of the prefect on an act of a local SOEs which cause a financial impact or a financial risk to local authorities shareholders
- ✓ To control the accounts (financial audit) and the management (performance audit) of the local SOEs and their subsidiaries directly and indirectly in certain conditions : half of the capitals or of the votes of decision in legislative bodies

La Cour de discipline budgétaire et financière (CDBF) is competent for :

- ✓ To give a sanction on the financial public order offences committed by any representative, director, or agent of a local SOEs or subsidiary except for the local elected representatives in their duties as a member of the board of directors or of the supervisory Board



THE NATURE AND SCOPE OF THE
CONTROLS OF THE LOCAL SOES BY
FINANCIAL JURISDICTIONS IN
FRANCE



CONTROL THE LOCAL SOES BY THE CRTC

- **The control of the local SOEs or its subsidiary concerns the financial audit and the audit of performance**
 - The financial audit is to check the regularity of receipts and expenses described in accounts and regular employment of credits, funds and securities
 - The audit of performance check on the regularity of the acts of management, on the economy of the implementation and the assessment of the results achieved comparing with the targets set by the Board of directors or supervisory. The opportunity of these objectives cannot be subject to this control
- **The rules of procedures are broadly similar to those applicable for the local authorities**
 - Specificity: the auditors are released from their professional secrecy and their working documents are communicable to the CRCT



CONTROL THE LOCAL SOES BY THE CRTC

- **The control is sanctioned by a public report including recommendations for management and non-compelling reminders to the law**
- Specificity :
 - the final report of the CRTC is accompanied by a response from the corporate officer of the local SOEs but also by a response of the legal representative of each local authority shareholder
 - This final report and its responses has to be examined by the board of directors or supervisory of the local SOE and by each of the deliberative assemblies of the local authority shareholder
- **Secrets protected by the law, especially the secret of the business, cannot be publicized,**



CONTROL THE LOCAL SOES BY THE CRTC

- A programming of control is planned by the initiative of each CRTC
- Around 20 local SOEs are directly or indirectly, on the occasion of the review legal and financial of the local authority shareholder, controlled by the CRTC
- Themes of controls traditionally focus on the analysis of the existing risks for the local authority shareholders, the management and also the probity issues (remuneration of elected officials and managers)
- The controls can be transferred to the penal judge or/and to the financial-special judge (CDBF)



EXAMPLES OF OBSERVATIONS OF THE CRTC

SEM Amiens Aménagement (CRC Hauts de France - 2018) : Local and financially weak planning SOE which was responsible for loss-making operations for its public shareholders and whose turnover has been gradually transferred to a SPL

SAEM des Volcans (CRC Auvergne-Rhône-Alpes - 2018) : local SOE exploiting the Vulcania amusement park, which the economy of the public service delegation contract (public service obligations) signed with its main shareholder, is regularly amended based on the results of the enterprise;

SEM Avignon Tourisme (CRC Provence-Alpes-Côte-d'Azur - 2018) : local SOE of management of tourism facilities, including the Palace of the popes, the operation is close of a local municipal service ;

SAEML Promodev (CRC, Occitanie - 2017) : local SOE, providing commercialization of tourist residences with the compromised financial situation, entrusted its activity to private operators

SPL Aquabowling des Falaises (CRC Normandie - 2017) : EPL, whose contract of delegation of public service with its public shareholder, does not specify clearly the responsibilities ; revenue of local SOE constituted 38% of subsidies for public service obligations;



EXAMPLES OF OBSERVATIONS OF THE CRTC

SEMARDEL (CRC Île-de-France - 2017) : local SOEs in charge of public service of collection and treatment of domestic garbage in organizing unjustified multiple subsidiaries (10 companies on 3 levels) allowing to pay local officials without permission of authorities which they depend on ; which cost the public service of the incineration of waste 8.5% higher than regional averages;

SPL 976 (CRC Mayotte - 2016) : local SOEs in charge of economic development having spent – from 2013 to 2016 -- 1.6 M€, including 71% of personnel expenses, while the enterprise had no recipe of activities ;

SEM VAVI (CTC Polynésie - 2016) : local SOEs created to benefit from national tax exemption arrangements having not fulfilled its mission of managing the public service of water. It is in deficit and without a recipe since its creation in 2006;

SEMECO (CRC Île-de-France - 2016) : local SOEs with multi activities, which the revenues provided from its participation, not justified under the management of the public service of the district heating of its public shareholder majority to finance loss-making activities which the enterprise is entrusted by its public shareholder while the price charged to users is 16% higher than the national average ;



LAST JUDGEMENTS OF THE CDBF

Judgment of 22 February 2018 « *Société d'investissements de la filière pêche de l'archipel (SIFPA) de Saint-Pierre-et-Miquelon* »

Various offences concerning to financial operations related to the implementation of a fishery products plant, which led to the conviction of the president and CEO of the local SOE, but also the prefect for failure to control ;

Judgment of 13 October 2015 « *Société d'aménagement du Val-de-Marne et de développement des villes et du département du Val-de-Marne (SADEV 94)* »

Condemnation of the president and CEO of the local SOE to non-respect of the prerogatives of the board of directors for dismissal of an officer;



QUESTIONS ABOUT THE FUTURE OF
THE LOCAL SOE AND THE TERMS OF
THEIR CONTROLS



CONTEXT

- ❑ **In the public sphere:** public expenditure review initiated by the Government leading it annually to program audits sectoral or thematic
- ❑ **In the financial jurisdictions :** willingness to better place the work of the CRTC in the public debate
- **Two recent publications (2017) based on the work of the CRTC:**
 - ✓ **Spending review** - the risk management by local SOEs, joint report of the economic and financial control and the Inspector General of administration (IGA), November 2017
 - ✓ **the insufficiency of the legal and accounting framework applicable to local SOEs**, referred to June 15, 2017, the First President of the Court of Audit to the Prime Minister, prepared by the Regional Chamber of Audit Île-de-France (1^{er} interim measure in common to CRTC since 2011)



FINDINGS AND RECOMMENDATIONS SHARED BY THE COURT OF AUDIT AND THE REPORT CGEF/IGA

- ❑ **The local SOEs are inadequately monitored, controlled and little valued, lack of tools (risk mapping) and shared statistical data**
 - *« The current mechanisms of control, transparency and assessment of their contribution to territorial public action no longer seem appropriate. They can no longer ensure the creation, sustainability and the development of local public companies to reach their targets of effectiveness and efficiency. They no longer guarantee that they preserve the interests of taxpayers and users of local public services » (Conclusion of the Court)*
 - *“ Local public enterprises are a blind spot of the local public management for the State ” (Conclusion of the CGEC/IGA report)*
- ❑ **Request from the Court and the inspections for a more effective follow-up and evaluation system of the local SOEs**



EVOLUTION OF THE COMPETENCES OF FINANCIAL JURISDICTIONS REQUESTED BY THE COURT OF AUDIT (LA COUR DES COMPTES)

- ❑ **Strengthen the obligations of auditors (commissaire aux comptes) for the CRTC. Examples:**
 - Must transmit to the CRTC irregularities relating to the specific provisions applicable to the local SOEs (provisions of the CGCT) in the same way as the relation between the auditor and the Attorney general (Procureur de la République)
 - Must inform the CRTC of the financial difficulties of a local SOE as well of the existing obligation of the auditor with respect to the commercial court
- ❑ **An auditor should be subjected to trial in the CBDF** (in the same way as the accounting public agent)



INTERNAL CHALLENGES FOR FINANCIAL JURISDICTIONS

The lessons learned from the summary of June 2017

- Necessity to harmonize the approaches, the control points as well as the recommendations and points of law referred to the local SOE and their public shareholders (local authorities)
- Necessity to set up a multi-years program of cross-sectional surveys between CRTC to consolidate significant results at national level

First step :

Creation of an internal working group of financial jurisdictions in order to update the guideline on the control of the local SOEs



REFERENCES

- ❑ **Contrôle général économique et financier, Inspection générale de l'administration : Revue des dépenses - La maîtrise des risques par les entreprises publiques locales**

<http://www.ladocumentationfrancaise.fr/rapports-publics/174000801/index.shtml>

- ❑ **Cour des comptes : Les insuffisances du cadre juridique et comptable applicable aux entreprises publiques locales**

<https://www.ccomptes.fr/fr/publications/les-insuffisances-du-cadre-juridique-et-comptable-des-epi>

- ❑ **Direction générale des collectivités locales : Le guide des sociétés d'économie mixte locales**

https://www.collectivites-locales.gouv.fr/files/files/Guide_des_SEML_Documentation_francaise.pdf

- ❑ **Fédération française professionnelle des entreprises publiques locales**

www.lesepl.fr



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THANK YOU FOR YOUR ATTENTION

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