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**“Practical experiences in the fight against fraud
and corruption in EURORAI member countries”**

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Caveat: with a view to respecting the right to oblivion, I have opted for anonymisation which means that this talk will not be too specific with regard to the political, geographical and social context which had a significant influence on the unfolding of events.

It goes without saying that fraud and corruption are much wider notions than those resulting from a strict reading of articles 432-11 and 433-1 of the French penal code. It is a phenomenon that covers all breaches of integrity by private or public persons from the moment that they are made to the detriment of public funds.

Introduction

- The Chambers “examine the management” of local authorities.
- The law of 21 December 2001 attempted to give a more precise definition of the examination of management, with the following wording: “The examination of management focuses on the regularity of the acts of management, on the resource-saving measures implemented and on an evaluation of the results achieved in relation to the objectives set by the deliberative assembly or the deliberative body. The appropriateness of these objectives may not be the subject of observations.”
- Failure to adhere to the requirement for integrity groups together various offences in the penal code and falls within the competence of the audits carried out by the regional audit chambers relating to the regularity of the acts of management



- Looking for breaches of integrity is not the sole objective of the financial jurisdictions, but by carrying out their task to examine management and within the scope of the jurisdictional function of analysing the accounts they help to uncover and then expose such breaches.
- Whereas referral to the public prosecutor's office is the result in the majority of cases of a deliberative process as far as the regional audit chambers are concerned, the public prosecutor for financial matters has the power to refer as a matter of course facts which could constitute a criminal offence and of which he becomes aware at the time of the audits in particular.
- But the experience which will be mentioned here comes from an investigation carried out as a reporting judge.



- This affair is the perfect illustration of the excesses linked to the concentration of political and administrative powers in the hands of a local representative, who is nevertheless legitimised by being elected, but associated with an unscrupulous high-ranking civil servant who has exceptional technical expertise put to use for the purposes of corruption.
- It took place in the 1990s in a town of 30,000 inhabitants, municipality "X", characterised by an economic and social past which for several decades had been part of a industrial and commercial maritime tradition, an industry in which the difficulties in the late 1980s had had a significant impact on jobs and local finances.



- The financial and social crisis which affected this municipality called for exceptional measures to encourage the development of alternative economic activities on the crisis-affected industrial site and two initiatives were introduced:
 - The first, based on the decree of 15 October 1986 relating to the benefits granted to companies set up in certain zones, enabled the creation of an enterprise zone in the employment area.
 - The second, on the initiative of the European Union, consisted in a programme of subsidies, known as the "RENAVAL programme", the objective of which was also to promote the development of new job-creating economic activities in areas centred around shipyards.



■ It was within this regulatory framework that a programme would be developed, the object of which was the establishment of industrial and commercial companies with the aim of increasing employment, with the preferred instrument for the policy being a semi-public local company, the SPC "Y", which would be one of the preferred vehicles for the corruption because of the very significant infrastructure and construction work assigned to it.

■ The phenomenon of corruption was furthered by public spending which was unusually large for a municipality of this size. For the three financial years affected by the corruption phenomenon, investments represented some €60 million each year from the local budget alone.

■ No more than €20 million would be invested in the five years following the uncovering of these facts.



- Having set out the context, in the first part (I) I will quickly look at the powers available to a regional audit chamber magistrate when exercising the task of performing a management review, then in the second part I will present the case of municipality "X".
- In this second part (II) the different phases of a management review are explained relating firstly to the analysis of the financial situation (1), leading onto an acknowledgement of a very large number of dysfunctions (2) and finishing with a systematic examination of the acts which were contrary to integrity (3).



- **I .THE MEANS AT THE MAGISTRATE'S DISPOSAL FOR CARRYING OUT AN INVESTIGATION WITHIN THE SCOPE OF THE MANAGEMENT REVIEW TASK ARE NOT SUITED TO THE FIGHT AGAINST FRAUD**
- **A battle with corruption which is not fought on equal terms!**
- **Procedures and means of investigation which are in principle only designed for audits of honest management.**
- **Unlike in a preliminary investigation, a financial magistrate's investigative powers are exercised, as soon as the audit is opened, in a procedure involving both parties (contradictory procedure).**
- **The confidentiality of the procedures and the secrecy of the investigation hinder the search for the truth.**

- The law grants regional audit chambers the widest powers of investigation but only in relation to those entities subject to their audit both off-site and on-site.
- The magistrate has no coercive mechanisms with regard to private persons likely to be implicated. The offence of obstructing an audit provided for by the code of financial jurisdictions does not actually apply to them.
- In addition, he has no real investigative powers with regard to natural or legal persons; he may not take statements from any person, summon witnesses to appear using law enforcement officers, issue warrants, hear the parties, carry out searches and seizures.
- Confronted with acts that are contrary to integrity the regional audit chamber magistrate is quickly rendered powerless particularly when supporting documents that are submitted to him for analysis have the appearance of being genuine.



- On the other hand, the financial magistrate enjoys a very far-reaching right of communication regarding all documents relating to territorial collectivities and other bodies subject to his audit.
- In this respect magistrates have the same powers as tax officers but exercising this right is sometimes difficult and largely depends on relations developed locally with the institutions concerned.
- This right is exercised within a very strict framework and questions have been asked with regard to the consultation of fiscal dossiers of natural persons in charge of public financial management.
- The power to hear which allows all representatives, administrators, civil servants, members of inspection or audit services to be heard is in reality only an extension of the investigation carried out by the collegiate body.

- On the other hand, the code of financial jurisdictions sets out a contradictory procedure which generally proves to be of little use when faced with a phenomenon of organised corruption.
- The observations are first of all actually of a provisional nature, then definitive. This long, transparent procedure sometimes obstructs what is revealed from the outset in the initial findings report of facts likely to be classed as criminal by the judicial authorities.
- Before its final report is drawn up, the regional audit chamber must schedule an interview between the reporting magistrate and the official entitled to authorise payments at the local authority concerned. Where activities or behaviour are likely to be considered a criminal offence, only the factual circumstances are mentioned to the official or to the representative of the entity being audited.



- The definitive report is passed on to the executive of the territorial collectivity or public corporation or the private entity being audited,
- The addressee of the final report has a period of one month in which to make a written response. As soon as they have been sent within the specified time limit, these responses are attached to the report.
- The final report is passed on by the executive to its deliberative assembly at its next meeting. It is the subject of an agenda item at the deliberative assembly.
- It can then be made available and becomes public.

- **II. THE CASE OF THE MUNICIPALITY OF "X", ITS TWO SEMI-PUBLIC COMPANIES "Y" and "Z" AND THE SUBSIDIARY, THE PUBLIC LIMITED COMPANY "A".**
- **An impact on the public funds which, according to the information set forth by the public prosecutor at the opening of the criminal proceedings, represented some €20 million of false invoices or real invoices relating to false services.**
- **A fraudulent debiting which was practically equivalent to a year's housing tax revenue, a tax borne by the households of the municipality.**
- **The actual destination of these sums diverted thus to the detriment of the "tax-paying premises/users/consumers" of public services was never discovered, since the "code of silence" was respected!**

- A scheduling of the work of the regional audit chamber which aimed to check the financial health of the municipality which it was said had deteriorated.
- The municipality was in effect experiencing a financial situation which was seemingly difficult because of the very large investments – for studies and work – made necessary by the closure of the main industrial activity.
- The interwoven nature of the financial links with the semi-public company “Y” entrusted with developing the abandoned industrial site and revitalising the enterprise zones set up in the municipality, the long, complex process of national and Community aid and the lax monitoring of this aid made it difficult to have an accurate idea of the consolidated financial situation.



- **1. A financial situation that could only be comprehended by the regional audit chamber, who alone was able to audit the municipality and associated private entities simultaneously.**

- **The public accountant did not have access to the accounts of the three public limited companies (and yet many receivables appearing in the assets on the municipality's balance sheet related to the SPCs' debts, which were assumed to be recoverable.)**

- **An audit carried out in the public accountant's office of the mandates from the first six months of the current financial year revealed that all the payments had been used to meet debt obligations overdue from the previous year, an extremely serious situation which had not been reflected by the administrative account.**



- The second fact established concerned the implementation of a policy for privatising public services on an unprecedented scale to the benefit of a single industrial group, in the form of concessions, contracts to undertake public works, long-term procurement contracts (in this way water, sewerage, public transport, public lighting, collection and disposal of urban waste and associated services, the contract for managing air conditioning systems in municipal buildings, etc. were privatised).
- This arrangement was used to refill the municipality's coffers through the collection of user charges once the contracts were signed.

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 - Examination of the accounts of the two semi-public companies and the legal situation of the subsidiary “A” which was in the process of being registered showed the existence of financial connections with the municipality, in the form of advances or subsidies which concealed a system of cross-debts and receivables with a very negative overall balance.

- The warning procedure introduced at one point by the certified internal auditor of the development and construction SPC was brought to an end by the assurances given by the mayor of the municipality, the majority shareholder, who acted as a guarantor for the satellite company of the municipality.
- In conclusion, we can state that a deteriorating public finances situation is often the sign not only of bad management but also an excellent opportunity to conceal dishonest behaviour.

- 2. An examination of management which firstly looks at the organisation and procedures.

- An initial appraisal highlights major dysfunctions within the administrative organisation of the municipality and companies characterised by:
 - A concentration of power in the hands of a single man, discretionary power put at the disposal of civil servants is one of the causes of the corruption;

 - An organisational chart on which the leaders of the municipality are also the managers of the semi-public company;

- The principal of advertising and competitive tendering resulting from the law of 3 January 1991 was totally ignored for numerous deals involving very large sums.
- A complete absence of financial and accounting procedures within the companies and of internal control was noted.
- Three high-ranking civil servants who found themselves in illegal situations personally through holding multiple jobs were organising the management of the municipality, SPCs and the public limited companies.
- Corruption that was at the same time abusive, fraudulent, secretive and tolerated by the whole of the community .



- 3. The systematic investigation into fraud and breaches of integrity required a specific approach: the fiscal tool proved very effective.
- Consultation of the mayor's tax record, in particular the data on parties making payments, revealed that he had professional dealings with the group of companies that had obtained almost all of the concessions, contracts to undertake public works, long-term procurement contracts in the municipality.
- Examination of the records of other elected representatives revealed that companies were providing fictitious jobs.



- It was under these conditions that after deliberation by a small group on these facts, which were likely to be classed as an illegal conflict of interest in accordance with article 432-12 of the penal code, the government commissioner, today known as the public prosecutor for financial matters, was going to lay the information before the public prosecutor of the Republic at the Regional Court at the instance of the regional audit chamber.

- An examination of the management relating to the development and construction deals which from then on focused solely on investigating acts that were contrary to integrity.

- A grid for analysing corruption which was developed taking account of the following principles:
 - Fraud to the benefit of the company is that which best conceals cases of corruption. It relates to everything that enables invoicing to be increased (feeding the corrupting flow).
 - Fraud for the purpose of corruption must have depended on the creation of false documents hence the need to examine all the contracts, special documents and payments.
 - Payment of the corruption must have to go through sub-contractors so that the group and its subsidiaries cannot be implicated directly.

- The search for companies who had “atypical” activities with the municipality and the SPC over several years was a good guide for pinpointing fraud in a competitive economy.
- The grid included:
 - The names and business names of the companies that came up the most frequently in the supplier file;
 - The geographic locations of the companies operating in the municipality;
 - The skills of the companies and the specialities of the suppliers compared with the invoice descriptions and therefore with the nature of the services;
 - Advertising and competition infringements such as overspending of contracts;
 - Studies that did not lead to anything being implemented.

- Examination of the grid gave the following results:
 - The sub-contractor approach revealed that some work had not been carried out by these companies. Study of the sub-contracting contracts showed that the fraud also involved description of the work and its actual nature.
 - A mapping of the companies operating in the municipal area identified a limited liability company for public works which was based in a municipality a very long way away where the technical services director had been in his post for several years.
 - Invoices which were not very detailed were set aside and an on-site visit revealed the absence of work which had nevertheless been paid for.
 - The advertising and competition infringements such as overspending of contracts were always linked to the fraud.

- The time taken for the criminal proceedings does not matter: whereas the financial judge remains bound by a reasonable time limit...
- The criminal investigation was to last almost ten years and the preliminary investigation that had been started was to lead to almost twenty or so accused persons being referred to the criminal court.
- Hundreds of false invoices were submitted for assessment by the judges of the Regional Court in Marseille sitting as a criminal court. The proceedings were to end with two successive judgements, the first on 13 January 2003 and the second on 27 April 2005; at the end of these verdicts the accused persons were convicted of forgery, fraud, concealment of misuse of corporate funds, complicity in the misappropriation of corporate funds, etc.

- The two ringleaders, the mayor and the technical services director received the most serious punishments.
- The mayor was found guilty of:
 - -illegal conflict of interest, which is punishable under the provisions of articles 432-12 and 432-17 of the penal code;
 - - favouritism, which is punishable under the provisions of articles 432-14 and 432-17 of the penal code;
 - - misappropriation of corporate funds;
 - - complicity in forgery and fraud;
- and sentenced to 3 years' imprisonment, 18 months of which were suspended, a tortious fine of €100,000 and deprived of his rights to vote and stand at elections for five years. He was to pay damages to the claimant, i.e. the municipality, of a little over €400,000.



- The technical services director was found guilty of complicity in the misuse of corporate funds, concealment of misappropriation of corporate funds and sentenced to a term of imprisonment of 3 years, 30 months of which were suspended.
- Most of the contractors were sentenced to suspended terms of imprisonment and heavy fines.
- There were no appeals against the judgements.



- **What lessons can be drawn from this practical case?**

- **This unprecedented social and financial crisis certainly created a favourable breeding ground for corruption to take root hand in hand with a search for economic, legal solutions which inevitably went beyond budgetary and accounting orthodoxy.**

- **While competitive tendering remains an essential lever in the fight against corruption, the mayor considered that, in the name of economic efficiency, it was appropriate to resort to rapid, opportunistic but irregular technical solutions.**

- The prevention of corruption is a task that is not within the control of the “local taxpaying citizen – consumer” who cannot easily move to another, better managed municipality, and cannot refrain from using public services even if local fees escalate to pay for corruption.
- In a democratic system within a decentralised unitary state, the deliberative assembly should have been in a position to ensure the regularity of local management but this was, however, not the case.
- The elected representatives of the party in power were passive, information was kept from the opposition and there were often gaps in the legality control which were sometimes reprehensible.
- The administration, or rather some of the leaders, encouraged corruption.



- In a democratic system within a decentralised unitary state, the deliberative assembly should have been in a position to ensure the regularity of local management but this was however not the case, with the elected representatives of the party in power being passive, information kept from the opposition and the legality control remained unaware of fraudulent practices.
- The administration, or rather a handful of leaders, encouraged corruption thanks to its command of public management instruments and approaches.

- The financial jurisdiction with its legal and human resources was responsible for uncovering a “mafia-like” system which had reached a level never before encountered in a municipality of this size. By exposing this system to the judge, it contributed to re-establishing public moral standards which are an essential precondition for the social contract to function well in a democratic society.
- In spite of difficult circumstances the president of the regional audit chamber gave the audit team unfailing support, which was evidence of total independence with regard to political power and strengthened the jurisdiction’s authority in the PACA region for many years.



- In spite of difficult circumstances the president of the regional audit chamber gave the audit team unfailing support, which was evidence of total independence with regard to political power and thus strengthened the jurisdiction's authority in the PACA region for many years. The magistrates making up the collegiate body helped during the successive deliberations.
- Cooperation with the judicial authority was total whether it was with the public prosecutor's office at the beginning and the financial police then with the investigating judge.