

Cour des comptes



# OVERSIGHT OF PUBLIC GENEROSITY TO PROMOTE GREATER TRANSPARENCY

Report on the activities of the Court of  
Accounts pursuant to Articles L. 111-9 and  
111-10 of the French Financial Jurisdictions  
Code

March 2024

## Summary

The audit carried out by the Court of Accounts is mainly based on the fact that donors to the organisations concerned benefit from a tax benefit, whether obtained in the context of an appeal to public generosity (a scenario envisaged as early as 1991) or not (extension of jurisdiction in 2003). The existence of this benefit implies a waiver of tax collection on the part of the State, which can only be justified by the actual performance of actions in the public interest.

By checking that these actions are carried out in accordance with the calls for donations and the objectives of the organisations that implement them, the Court ensures the legitimacy of this benefit. It also enables donors, where appropriate, to make their donations in complete confidence, thereby helping to ensure that the causes in question can benefit from public generosity.

A review of the audits carried out since they were introduced by the law of 7 August 1991 shows that the Court of Accounts has fully engaged with and fulfilled the responsibilities defined by the legislator, which has been gradually extended, regardless of the legal status of the organisations, the reasons for appealing for donations, or the amounts of funds collected. These audits have mainly focused on the organisations making appeals to public generosity, even though the Court has occasionally taken an interest, as permitted by law, in the case of entities in which donations give entitlement to tax benefits without there being an appeal to public generosity. In all cases, the audit of an organisation is based on the financial statements of the organisations audited, and in particular on the use-of-resources account (CER), and does not lead to any interference in the management of the organisation or its governance, nor does it subject the organisation to the performance-based criteria expected of public administrations audited elsewhere. In practice, however, it does involve examining the actual actions undertaken by the organisation and the way it operates.

The different audits carried out also show that the Court of Accounts takes into account the diverse range of causes behind public appeals for donations, as defined by law. The audits carried out focused in particular on appeals for donations to support medical research, international solidarity, child protection, the defence of rights, environmental protection, the fight against poverty, support for the disabled, help for the elderly and animal welfare.

The role of the Court is to ensure that charities are more transparent with their donors and that donations are used in accordance with their wishes. Introduced in 2009, the possibility of a declaration of non-compliance by the Court, which allows the minister responsible for the budget to suspend the tax benefit, has only been used five times, mainly due to excessive fundraising costs and incomplete or biased information for donors. On the other hand, the Court makes recommendations almost systematically at the time of its audits, to enable organisations to make progress, and in a significant number of cases its opinion on compliance is accompanied by reservations.

## Observations revealing a range of good and bad practices

In the course of its audits, the Court has examined the conditions for respecting the wishes of donors and the way in which they are properly informed, as well as the governance of the entities audited. This threefold approach is the basis for the Court's audit of the proper use of funds. With regard to the first aspect, it examines compliance with procedures for appealing for donations, the actual use of the funds, the methods used to select projects, the cost of fundraising, operating costs and the policy for allocating funds to reserves. With regard to the latter, it analyses not only the use-of-resources account, but also the other means of communicating with donors, with particular attention paid to calculating the social mission ratio. Finally, with regard to the governance of the audited entities, it examines risk management, which includes the robustness and proper application of internal procedures for decision-making, handling of funds and internal control. Its successive observations and recommendations on these various subjects, throughout the reports it has published, constitute a body of good and bad practices on which organisations involved in philanthropic activities can draw to ensure that donor confidence is maintained over the long term.

In this regard, a compilation of the findings made over a period of more than thirty years in no way constitutes a judgement on the current landscape and practices of the organisations receiving donations. Reference to all the critical comments made over this period by the various entities audited does not imply that the Court is making a negative assessment of the management of the philanthropic sector. The small number of declarations of non-compliance since the introduction of this mechanism in 2010 illustrates, on the whole and with the exception of a few problematic situations, the high level of respect for donors' intentions and the information provided to them, as well as the progress that has gradually been made by the philanthropic sector, since the 1991 law, in the professionalisation of organisations and practices. However, the frequency of recommendations shows that, through detailed analysis, targeted improvements can often be made; the aim of the Court's audits is therefore to enable organisations to make further progress in these two areas.

## Consistency between the legal vehicles for philanthropy and the Court's audit powers to be restored, and the sanction mechanism to be reviewed

The variety of legal vehicles available (associations and foundations recognised or not as being in the public interest, sheltered foundations, endowment funds, etc.) has contributed to the growth of philanthropy in France, but has been accompanied by certain practices that call into question the overall consistency of the legal landscape. Endowment funds, sheltered foundations and the coexistence of several entities (associations, foundations, endowment funds) within the same entity with no regard for their own governance raise questions that deserve the attention of the legislator, without a blanket suspicion being applied to certain legal vehicles as a matter of principle. Certain issues also call for the Court's attention (policy on financial reserves, financing of social and medical-social establishments, compliance with legislation on personal data), as do certain fundraising methods. With regard to the latter, changes to the legislation would be necessary to ensure the Court's jurisdiction over certain "cagnotte" collection schemes (pools of money raised through contributions from multiple individuals), which in practice appeal to public generosity without being subject to the usual obligations in this area.

Targeted amendments to improve the consistency of the Court's framework for action seem desirable. The most sensitive issue remains the effectiveness of the sanction mechanism. Clearly, the current system, which is used too little, is not adequate. However, the avenues for change identified also raise questions and need to be explored in greater depth. The purpose of this first summary report is not, at this stage, to formulate recommendations on these points,

but to open up avenues of reflection that will be explored in greater depth and clarified in subsequent editions of this biennial report.