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# Non-profit building associations: supervision deficiencies - and: Risk-capital participations in Burgenland

26.07.2019 - The Austrian Court of Audit (ACA) published two reports



Today the ACA submitted the following reports:

- Supervision of Non-profit Building Associations
- Risk-capital Participations of the Province of Burgenland as Exemplified by the BRB Fund

As revealed by the ACA, the supervision of non-profit building associations needs to be optimized.

The ACA audited the provinces of Salzburg and Tyrol as well as the City of Vienna and the Federal Ministry for Digital and Economic Affairs. While the ministry is responsible for legislation, it is the task of the provinces to execute the Non-Profit Housing Act. Consequently, they are also responsible for the supervision of all non-profit building associations. The audited period spanned the years from 2012 through 2017.

Non-profit building associations are exempt from corporate income tax. This indirect subsidy with public funds is based on their tasks oriented towards social welfare. In 2016 the non-profit building associations in the provinces of Salzburg, Tyrol and the City of Vienna received overall EUR 100 million of such indirect funding. This was complemented by provincial funds from housing subsidies and public real estates at favourable conditions.

## Limited staff resources for supervision

The provinces of Salzburg, Tyrol and the City of Vienna tasked only a small number of staff members with supervising non-profit building associations. In 2016, for example, only 0.4 to 1.5 full-time staff members had been tasked with supervision in Salzburg, Tyrol and the City of Vienna. On average, one full-time employee of the City of Vienna was responsible for 35 non-profit building associations with a balance sheet total of EUR 10.944 billion. This resulted in a long duration of the proceedings that dealt with applications pursuant to the Non-Profit Housing Act.

## The compliance reports of the building associations had shortcomings

Furthermore, the ACA points critically to the fact that the compliance reports of the building associations lacked informative value and therefore failed to contribute to enhancing transparency. In the reports, the auditors detected the following cases of non-compliance:

- The son and the partner of the managing director of a non-profit building association bought an apartment from the latter in the city of Salzburg. The price was indicated in the report; further information on the price adequacy – e.g. the size of the apartment – were lacking, as were indications on their housing needs.
- At a non-profit building association headquartered in the province of Tyrol, the chairman of a supervisory board and the son of a board member provided legal advice to the non-profit building association.
- Close relatives of board members rented apartments of a non-profit building association in Vienna. The daughter of a managing director as well as a board member and his wife bought apartments. Neither the addresses and the locations of the apartments nor their size and fittings or the confirmation of the housing need were indicated in the compliance reports.

## The City of Vienna failed to exercise its right of supervision sufficiently

The ACA criticizes that the City of Vienna failed to sufficiently exercise its right of

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the province of Tyrol: the supervisory authority, for example, took note of a special report of the audit association on the allocation of an apartment to the wife of a managing director – who was, at the same time, also deputy provincial governor – although the report lacked objective justifications. The question of whether the apartment was allocated based on objective criteria therefore remained unanswered.

## No uniform procedure as regards the sale of shares of non-profit building associations

The ACA also looked into the changes of ownership of the then WBV-GÖD (construction association of the Public Services Union) since 2003. It criticizes that the supervisory authority of the City of Vienna applied different interpretations of the term “member of the building industry” – who is permitted to have a dominant influence on non-profit building associations – in the case of sales of shares of the WBV-GÖD in 2003 and 2017. An objective justification could not be given to the ACA.


Furthermore, there was no uniform interpretation of whether the indirect purchase of shares in non-profit construction projects of provinces was to be approved or whether approval was only necessary for direct purchases. In this context, the ACA identified a conflict with the constitutionally enshrined principle of equality. The Federal Ministry was of the opinion that the province would have to give its approval in both cases in order to prevent an undesired shareholder from gaining influence. The Austrian union of non-profit building associations – union of auditors also shared this opinion, which furthermore corresponded to the approach of the provinces of Burgenland, Lower Austria and Upper Austria.

The City of Vienna held another opinion. From its point of view, only the direct purchase of shares was to be approved. Consequently, also the multiple changes of ownership of the then WBV-GÖD were carried out without approval of the City of Vienna. As some of the indirect owners exercised their ownership rights only via a trustee, the actual owner was not known.

## Audit rights for the ACA as regards non-profit building associations

The ACA may audit non-profit building associations only in the case of certain intersections, such as public ownership or the influence by a local authority. At the time of the audit, the ACA had the right to audit eight of overall 76 non-profit building associations headquartered in Salzburg, Tyrol and Vienna.

As revealed by the audit findings, it would be beneficial if the ACA had the right to audit all non-profit building associations in the spirit of parliamentary control.

-  **Supervision of Non-profit Building Associations** PDF Datei: 2,284.5 KB  
From February to July 2018 the Austrian Court of Audit (ACA) carried out an audit of the supervision of non-profit building associations. The audit aimed at assessing the performance of tasks of the entities charged with supervision and the resources deployed therefor. The audit concerned the Federal Ministry for Digital and Economic Affairs, the provinces of Salzburg and Tyrol and the City of Vienna. The audited period spanned the years from 2012 through 2017.

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## Risk-capital participations of the province of Burgenland

The ACA also published the report on the risk-capital participations of the province of Burgenland as exemplified by the BRB Burgenländische Risikokapital Beteiligungen AG (Burgenland risk-capital participations company, abbr. BRB Fund). The latter received public funds of the province of Burgenland and from the European Regional Development Fund (ERDF). Due to the fact that the province entered into risk-capital participations that did not comply with ERDF regulations, a claim for repayment was made amounting to EUR 1.54 million. At the time of the audit in 2018, the question of who had to bear the costs had not been clarified yet. The ACA auditors criticized, among others, also aspects regarding the remuneration schemes for management, such as substantial payments of performance-based special bonuses for the board members of the management company.

## Central recommendations

- (1)** [The province of Burgenland and the Wirtschaft Burgenland GmbH should clarify who is responsible for bearing the costs arising from the](#)

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comply with the regulations of the agreement on the assigning of obligations of December 2011 and the corresponding agreement between the Federation and the provinces. In this context, the ACA pointed to the fact that the BRB Fund was a measure that was subject to the EU law on state aid.

**(2)** The Wirtschaft Burgenland GmbH and the BRB Fund should adjust the provisions laid out in the different statutory and contractual regulations that are relevant for the business operations of the BRB Fund in order to eliminate ambiguities in the interpretation of such provisions. In doing so, the provisions of the province of Burgenland as the majority owner, which are specified in the investment principles, should be taken into account.

**(3)** The BRM Burgenländische Risikokapital Management AG should introduce a comprehensive and standardized risk management system based on the existing risk analysis in order to timely identify, assess, manage and monitor the significant risks – such as the market risk, credit risk, liquidity risk, operational risk and reputational risk –, of which the portfolio companies were or could be subject to.

**(4)** With regard to the results of the ERDF project examination and the subsequent development of the BRB Fund portfolio, the Wirtschaft Burgenland GmbH and the BRM Burgenländische Risikokapital Management AG should assess the evaluation of the target agreements concluded with the management board of the BRM and, if need be, consider a recovery of payments that were either too high or irregular.

 **Risk-capital Participations of the Province of Burgenland as Exemplified by the BRB Fund** PDF Datei: 3,349.1 KB

From January to June 2018, the Austrian Court of Audit (ACA) carried out an audit of the risk-capital participations of the province of Burgenland as exemplified by the BRB Burgenländische Risikokapital Beteiligungen AG (Burgenland risk-capital participations company, abbr. BRB Fund). The latter received public funds of the province of Burgenland and from the European Regional Development Fund (ERDF). The audit focused on the funding, the tasks and objectives of the BRB Fund, the process of entering into and terminating participations, the participation and risk management as well as the agreements on bonuses made with the management. The audited period essentially spanned the years from 2013 through 2017.

Risk-capital financing and risk-capital participations are especially interesting for small and medium-sized enterprises that cannot derive their funding from the capital or credit market. The EU supported risk-capital financing, among others, in the framework of the ERDF and granted such funding via shared management: the European Commission tasked the Member States with its realization. Consequently, the Member States were responsible for the setting up of an administrative and control system. Furthermore, they were tasked with monitoring compliance and, if needed, with making corrections. The BRB Fund was created in 2010, namely in the framework of the "Operational Programme Phasing Out Burgenland 2007–2013 ERDF".

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