

Abstract

Court of Audit's recommendations in the field of damage compensation files are not sufficiently followed up by Government Department of Public Works

A report on damage compensations handled by Public Works was forwarded by the Court to the Flemish Parliament in 2003. It now verified how the government department followed up the Court's previous recommendations. It generally noticed that the reform process called "Beter Bestuurlijk Beleid" (Better administrative management) complicated the actions initiated to carry out the recommendations. A few measures were taken to implement the Court's recommendations and proved undoubtedly positive, such as having adequate lawyers on hand to improve the provision of legal services or holding an inventory of debt obligations. Most recommendations, however, were hardly implemented. Careless contract preparation still resulted in large compensation damages to be paid and there was still a long backlog of unsettled damage claims.

Follow up audit

In 2003, the Court issued a report to the Flemish Parliament on damage compensation to be paid by the Flemish Infrastructure Fund. In 2007, it issued a follow up audit examining what measures had been taken in response to the recommendations contained in the initial audit report. Actions initiated by the former Administration of Water infrastructure and Naval Affairs to implement the recommendations had limited implementation as a result of the reorganization of the Mobility and Public Works policy domain.

Positive efforts

Following the Court's reports most audited entities strived to take stock of their obligations resulting from disputed actions and damage claims so that they now have a fairly good picture of pending and settled disputes and claims for compensation. Meanwhile, the divisions involved have also taken measures for an assessment and, if necessary, the replacement of their lawyers. This also led to an improvement in the legal services provided.

Sore points

Most Court's recommendations, however, remained unused. Several significant negative points still prevailed so much so that careless contract preparation resulted in large damage compensations to be paid. This was exemplified by the failure to get the required building permits or expropriations or the poor framing of the specification clauses or else the limited scope of soil surveys. Also, there was still an unnecessary backlog of damage claims and judicial rulings unsettled or unpaid. For many damage files a long time still elapsed between the filing of the damage claim and the final settlement, between the certainty of the debt and the final payment or between the settlement and the payment. Each time interests on arrears were due. In almost half the files dealt with by the legal Service Division and over 70 % of the files handled by the Public Contracts Divi-

sion, more than 90 days elapsed between the final judgment and the payment.

GECOLIN recommendations

The recommendations of the department's own public contract disputes resolution committee also received a poor response. When settlements were reached, the total undisputed amount due was rarely immediately paid by the divisions concerned. Communication and cooperation with the external divisions remained inadequate. The follow up of judicial proceedings also still left room for concern: many proceedings dragged on for more than eight years and the interests on arrears sometimes exceeded the principal amount. Recently though, the Public Contracts Division has taken steps to activate the costly backlog of proceedings. Also, the calculation of interests on arrears has improved even if it was found that for many settlements the contracting authority applied too high an interest rate.

Manual

Five years after the Public Contracts Division's damage compensation manual had been developed it still had to be approved. In addition, it contains inaccurate provisions regarding the applicable interest rate.

Insufficient recourse to mediation or arbitration

The GECOVER mediation committee was set up to settle disputes efficiently. Files dealt with by this committee led to much quicker final settlements, thereby reducing interests on arrears. The Public Contracts Division and the agencies are satisfied with the way the GECOVER committee works. Yet this committee was rarely called upon. Meanwhile, the Public Contracts Division analysed the pros and cons of arbitration as an alternative to litigation. It should be noted, however, that the modalities for its generalized implementation still needed to be laid down.

Additional findings

In the course of its follow up audit the Court of Audit also made additional findings. For instance, it noticed that several settlements did not contain any real concessions from the contractor. Such findings led the Court to formulate new recommendations.

The Flemish ministers' response

The Flemish ministers for Administrative Affairs, Public Works and Mobility agreed to the Court's conclusions and recommendations.