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CHAPTER 8: CONTROLS AND AUDIT

This chapter contains:

- Establishing control mechanisms
- Legal supervision
- Financial audits
- Controlling the claims processing
- Reporting obligations

INTRODUCTION: CONTROLS AND AUDITS — NECESSARY PARTS OF EACH PROGRAM

Controlling and auditing are necessary processes within any reparations program in order to ensure that funds are spent in accordance with the agreed purposes and eventually reach those entitled to compensation. Moreover, controls and audits are tools to prevent arbitrariness, abuse or fraud of the allocation of funds, including by those who are directly involved in the process. Controls aim at ensuring that in fact only the entitled beneficiaries and nobody else will receive the actual payments. This way, controls and audits can contribute to making a program more transparent and credible particularly for victim parties, and ultimately increase its legitimacy and overall acceptance.

In addition to typical procedures of claims processing such as internal supervision, claims verification, and appeals processes, the compensation program also featured so-called “control teams.” This was due to the unique collaboration between the EVZ Foundation and its partner organizations whereby the EVZ Foundation was expected to monitor the work of the partner organizations. Control teams were employees of the EVZ Foundation who inspected the review, verification, and appeals processes of the partner organizations on a random basis. In so doing, the EVZ Foundation performed regular process and result checks. With this it was also guaranteed that the seven partner organizations were developing comparable standards when reviewing claims.

This chapter describes in detail the legal supervision, financial auditing, and process and result controls of the compensation program. It critically evaluates the contribution of controls to the successful implementation of the program.

ESTABLISHING CONTROL MECHANISMS

Generally speaking, control mechanisms are tools to examine data or operations of processes and/or whole institutions. Controls can counteract negligence and restrain dishonest conduct. Announcing the mere possibility of controls may lead employees to work more carefully and perhaps more fair, and may even stimulate good performance. At the same time, an exaggerated use of controls may lead to undesired effects: inappropriately strict decision-making, anxiety to make any decisions at all, or exuberant bureaucracy. A good balance is the key.

When establishing control mechanisms for reparations programs, three principal questions need to be addressed: What shall be controlled, with what objective? Which bodies should perform these controls and which methods should be used? Who decides what to do with the results?

Regarding the first question, the EVZ Foundation drew three conclusions:

- Legal supervision of administrative actions — Objective: maintaining the legal framework within which the program operates;
- Financial auditing of administrative actions — Objective: funds are appropriately, economically, and efficiently spent;
- Process and result controls and reporting obligations — Objective: the objectives of the program are fulfilled.

Controls and audits were already discussed in the process of establishing the EVZ Foundation. The agreement between the governments of the US and Germany (Annex 3) provided “that the Foundation will be audited by the [German] Federal Court of Audit and that all partner organizations will also be audited.”¹ Hence, in the beginning there was only a rough understanding of what needs to be audited and which supervisory bodies should be responsible.

Nonetheless, following this rather general wording, the subsequent control mechanisms were established, including the involvement of already existing institutions:

Legal supervision:

- The German Ministry of Finance (BMF) audits the EVZ Foundation

Financial audits:

- The German Federal Court of Audit audits the EVZ Foundation
- The German Federal Office for Central Services and Unresolved Property Issues (BADV) audits the EVZ Foundation
- Public accountants audit partner organizations

Controlling the claims processing:

- Control teams of the EVZ Foundation audit the partner organizations

Reporting obligations:

- The German Government reports to the German Parliament about the work of the EVZ Foundation.

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1 See Annex 3: US-German Agreement, Annex A (3).

Furthermore, the EVZ Foundation's Board of Trustees also held a supervisory role besides its strategic function in controlling. The Board discussed reports issued by the Board of Directors, the current status of procedures, adopted budgets and approved financial reports.

LEGAL SUPERVISION

Given the organizational structure of the EVZ Foundation as a public law foundation, legal supervision constituted one of the control mechanisms supervising the program. The principal task of legal supervision is to monitor that the formal criteria of the program are fulfilled and to ensure the achievement of the program's objectives. The aim of the legal supervision of the compensation program was thus to monitor that the EVZ Foundation abided by all applicable laws and regulations. This task was assigned to the BMF. The Foundation Law stipulated that the EVZ Foundation would submit its yearly budget to the BMF for approval after the Board of Trustees had passed it.²

Over the course of this program, legal supervision particularly dealt with issues that were not clearly defined from the beginning. The experience of the EVZ Foundation illustrates that the clearer regulations are defined the better they can be implemented during the program. At the same time, it is beneficial to leave some leeway for making further decisions which may be needed but which also were unforeseeable at the outset of the program. A certain level of flexibility contributes to making the program a more complete undertaking. Our experiences have also shown, however, that regulations that are only put in place when the program is already running may in fact complicate it (such as the issue of eligibility criteria, as described in Chapter 2).

From time to time, the EVZ Foundation turned to the BMF to clarify questions regarding the legal interpretation of the Foundation Law. One example concerned the regulation that "prisoner of war status does not constitute entitlement to compensation,"³ which meant that prisoners of war who were used as forced laborers were not eligible for compensation payments. However, it was not always clear who should be categorized as a prisoner of war, and the issue was decided upon in a rather inconsistent way for different claimant groups. The Italian Military Internees (so-called IMIs) were denied the status of war prisoners by the Germans during the Second World War and thus performed forced labor as civilians. Yet, the BMF decided against their eligibility in the compensation program. This was perceived as unfair from the IMI's point of view, especially as other groups received an exemption in this regard (e.g. former Polish prisoners of war who were also forced to work under a civilian status as well as prisoners of war who were incarcerated in concentration camps). This example demonstrates not only how

2 See Annex 1: Foundation Law, Section 8 (1) and (2); see also Annex 4: Statutes of the EVZ Foundation, Section 10.

3 See Annex 1, Foundation Law, Section 11 (3).

sensitive eligibility criteria were in the German compensation program, but that such decisions must be taken with great caution, especially when a program is already running — in this case, many of the IMIs had received unclear outreach messages regarding their eligibility status.

FINANCIAL AUDITS

The objective of financial auditing is to ensure that the available funds are spent appropriately, economically, and efficiently. The German Federal Court of Audit and the BADV inspected the EVZ Foundation's use of funds, while public accountants audited the partner organizations.

The Federal Court of Audit only audits every five years, and it conducted an audit of the EVZ Foundation in the year 2005. In its findings, it gave recommendations to improve the EVZ Foundation's administrative actions.

The BADV was tasked with auditing the EVZ Foundation's budgetary and economic administration on a yearly basis. It reviewed the annual financial statements, which were compiled by an external accounting company, and randomly checked expenses. The BADV then submitted its audit report with results and recommendations to the Board of Directors. BADV audits prompted the EVZ Foundation to arrange its expenses clearly and document them in a well-founded and comprehensible way. Chief principles were to allocate funds only for the intended purposes outlined in the law as well as use funds in the most economical and efficient way. The BADV regularly audits public institutions, so the standards applied to the EVZ Foundation were comparable to those applied to other institutions.

To audit administrative costs of the partner organizations the EVZ Foundation commissioned public accountants. The EVZ Foundation's seven partner organizations were responsible for the processing of claims. In order to cover the expenses for staff and material, the EVZ Foundation had agreed to a ratio of between 3.5–15 percent for administrative costs with all partner organizations separately. This large variation can be explained by the fact that two partner organizations had to process claims coming in from all over the world and in a number of languages. Also, typically, salaries are significantly higher in international organizations compared to organizations based in Central and Eastern Europe.

Administrative costs had to be covered by the overall funds allocated to each partner organization, which were not to be exceeded. Partner organizations were obliged to provide transparent bookkeeping and accounting records so that accountants could inspect whether funds were spent appropriately, economically, and efficiently. In addition to this, partner organizations were also controlled by the respective national auditing authorities (and in the case of IOM and JCC, external auditors).

The EVZ Foundation commissioned a public accounting firm, the employees of which were required to have local expertise of the respective countries, to perform yearly audits. Reports of these audits were sent to the EVZ Foundation, which could then require necessary changes from the respective partner organizations. This included, for example, unjustifiably high salaries for managing staff or the excessive use of company cars. These controls served to prevent the improper use of administrative resources and reminded staff to spend available funds responsibly. At the same time, it was crucial that auditors were operating independently and were not receptive to corruption, i.e. that they received reasonable financial compensation and were unimpressible in the face of threats or enticements.

The EVZ Foundation's financial department received the audit reports and inspected whether the expenses of the partner organizations stayed within the agreed yearly budgets and whether correct exchange rates were used. The department was responsible for transferring quarterly installments of administrative funds according to administrative requirements and the partner organization's actual account balance to prevent partner organizations from unnecessarily accumulating money. The EVZ Foundation also paid attention that at the outset of the program the partner organizations only purchased the most needed supplies and equipment, and that all purchases could later be depreciated (according to its decline in value during the course of its useful economic life). Also, with a decrease of the intensity of claims processing, partner organizations were asked to reduce staff.

Finally, a special case was a management audit of the IOM. At the outset of the program in 2001, the EVZ Foundation approached the German Federal Office of Administration to request this audit for the IOM. The inquiry was prompted by the unusually high budget for administrative costs while the number of claims to be processed by IOM was still uncertain. Moreover, it became apparent early on that IOM would have to reject a much higher percentage of claims than the other partner organizations. After a review of the respective management and the claims processes, the Federal Office of Administration concluded that both IOM's organizational and procedural approaches as well as its budgeting were appropriate for its situation and that it could be expected to perform the task assigned to it in an efficient way. The Federal Office of Administration recommended that the EVZ Foundation should provide IOM as quickly as possible with further guidance concerning the eligibility of those claims where this guidance was not yet available.

All audits were based on a double control principle, including those of the BADV, which were later subject to supervision by the Federal Court of Audit. From the start, it was necessary to have established a balanced system of implementation and audit in order to accurately respond to occurring challenges (for instance, unfavorable exchange rates or inflation rates in the case of international compensation payments).

CONTROLLING THE CLAIMS PROCESSING

One of the unique features of the compensation program was that the EVZ Foundation had assigned the processing, reviewing, and deciding on the claims to its partner organizations. In order to monitor their work and homogenize the procedure across the different partner organizations, the EVZ Foundation established a system of control teams. They regularly visited partner organizations and performed random process and result checks.

The main goal of the control teams was thus to contribute to making compensation available directly and immediately to eligible claimants. They helped ensure that eligible claimants would receive compensation payments for the correct category, and vice versa, that claimants who were not eligible would not receive compensation.

Control teams

The establishment of the control teams was already foreseen in the partnership agreements between the EVZ Foundation and its partner organizations. The agreements specified that the EVZ Foundation would check eligible claimants on lists from the partner organizations within four weeks after their receipt. As part of this process, partner organizations allowed the EVZ Foundation the inspection of their files and documents. If the EVZ Foundation found irregularities, it would put the respective payments on hold. Also, to avoid the risk of funds being misused or lost in risky investment activities, the EVZ Foundation chose not to make blanket transfers of earmarked funds. Instead, it provided the funds for claims only after they were approved (in the so-called “tranches” that could be submitted every two months) following the random checks by the control teams.

There were three control teams of EVZ Foundation: one was responsible for Poland and Ukraine (the countries with the majority of survivors of forced labor), a second one for Belarus and Russia, and a third for the Czech partner organization, the IOM, and the JCC. Later on, another audit team was added, assigned to deal with “other personal injury” claims (see Chapter 9). This team monitored all seven partner organizations with respect to these cases, since this program line had an overall ceiling in place (instead of a separate allocation for each partner organization, as was the case for the forced labor compensation).⁴

Each control team consisted of one manager and two to three staff members who brought with them different forms of expertise, namely language skills, knowledge of the historical background, and intercultural competences. Some of the control team members had already worked as volunteers and could apply their experiences to the program. While control team

4 The third program line that dealt with property loss claims had an altogether different system of controls, also described in Chapter 9.

members adapted their work to the concerns of claimants of the respective partner organizations — taking into account historical differences, specific program regulations, such as different opening clauses — they also interacted with the members of the other control teams so that the same benchmarks were applied for all partner organizations. This was done by consulting not only within but also between the control teams and also with EVZ Foundation’s lawyers on the results of their inspections.

How were these controls prepared? Every two months, partner organizations could submit a tranche of eligible claimants to the EVZ Foundation. This electronic list contained as many claims as the respective partner organization had managed to process and decide on during this period. The data transfer was encrypted. At the EVZ Foundation office, electronic data processing provided a random but nonetheless targeted sample of claims (normally 1 percent of the list) that was compiled by means of certain parameters.⁵ An encrypted list with cases that needed clarification as well as the random sample was then sent back to the partner organization, which was required to provide all related documents for auditing within the next couple of days.

What was the subject matter of the controls? In the beginning, control teams inspected only approved claims, i.e. whether claimants were really entitled to payments and whether they had been assigned to the right category of compensation. Later on, however, they also tested the accuracy of claim rejections in order to prevent the exclusion of eligible claimants from the compensation program. In addition to the control of the claims process, also the appeal process was controlled, both with respect to approved and rejected claims. With the addition of legal successor claims, the lists to be checked doubled in numbers, again comprising of approved and rejected claims and appeals. Separate lists needed to be submitted and handled for the first and second installment payments. Thus, the control process — similarly to the claims review and payment procedures — gradually became more complex.

What did the control process look like? In principle, the control teams acted as if they had to decide on the claims anew and then compared their decisions with those made by the partner organization. This control process took place after the claims were already decided upon by the partner organization, and a random sample of claims was selected for controls. Control team members worked on site in the offices of the partner organizations using their own database that contained all data of the respective claims under inspection. First, they compared personal data with those in the claim forms, and checked identification documents and signatures. This was done to ensure that compensation payments were made to claimants who were actually alive. The control teams also checked whether the waivers had been signed.⁶ Second, the

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5 There were no complete checks because it would have been too laborious and would have resulted in the EVZ Foundation usurping the procedure rather than leaving it up to the partner organizations. Random checks could perhaps not remedy every error, but could help eliminate systematic errors.

6 This refers to the waivers for legal closure, see Chapter 10.

control teams collected the most relevant data from the documents (claim form and documentary or other credible evidence) in order to make a decision on the claim and added the data to their own database as if they had to make a decision themselves. In a third step, they compared their own “decision” with that of the partner organization. The database was designed in such a way that the decision of the partner organization was only visible after the control team had entered its own “decision.”

When both decisions were consistent, there were no further matters to discuss. Whenever there were deviations, the control teams would discuss with employees of the partner organization why they decided the way they had. This way, any misunderstandings on the part of the control team could be resolved. Whenever a disagreement remained unresolved, the respective cases were documented in the audit report alongside those where an agreement had been reached. The partner organizations had the opportunity to provide within one week a response to the report. These processes fostered a close communication on the interpretation of the Foundation Law, the need for historical research, and the necessity to introduce further regulations.

When either side realized it had made an error, the respective decision was revised. This mostly referred to individual cases, but at times also concerned more systematic issues, for instance, when the partner organization’s decision-making process was generally too rigid. When more time was needed to clarify a case, the claim was taken from the list and resubmitted by the partner organization after the matter was resolved. Occasionally, and in the case of more systematic issues, a group of claims would be taken from the list and their payment put on hold until clarification was reached. Making corrections together helped the EVZ Foundation and the partner organizations develop a common understanding of the Foundation Law and the principles derived from it, which then enabled consistency in the procedures.

After receiving a partner organization’s response to the audit report, the EVZ Foundation compiled a list from its database, containing all data on beneficiaries and individual compensation amounts. The list was encrypted and sent to the partner organization while the EVZ Foundation’s finance department transferred the corresponding total amount.

With this kind of procedure, the EVZ Foundation avoided the transfer of funds without a thorough checking of the data’s validity. This had happened in some reparations programs in the 1990s, where it later appeared that considerable funds were lost (the losses amounted to double digit million Deutsche Mark). At the same time, program staff members at both the EVZ Foundation and the partner organizations attained a better understanding regarding complex historical and country-specific contexts. Over time, they built a trusting cooperation, but nonetheless had to maintain a critical independence. In that sense, it was beneficial that control team members did not make any recommendations for correcting decisions themselves, as this was the responsibility of the Board of Directors. This way, control team members acted rather as messengers and mediators between the EVZ Foundation and the partner organizations, which proved to be an intelligent model of dividing responsibility, and helped preserve independence.

Fraud and special controls

Besides regular control procedures there were also special controls, one of which took place in summer 2001 in Ukraine. The control team of the EVZ Foundation noticed that the signatures on some claim forms for the compensation program appeared conspicuously “young” compared to those on claim forms submitted in an earlier program in the 1990s. The cases were compiled for a sample check and two members of the control team personally visited the claimants concerned. The claimants had to provide their signature again, and often it turned out that their relatives were in fact the ones who had filed the claim, but fortunately with the knowledge of the eligible claimants. Subsequently, partner organizations made sure that claimants personally signed the claims (and not their relatives).

Another special control took place in certain archives, prompted by the use of documentation from earlier claims processes by one partner organization. Here, the control team tried to retrace which evidence from the old files was used to support the approved claims in the compensation program. It turned out that some individual employees used the old documentation in a fraudulent way. They had already falsified evidence during an earlier claims process, and they now used the same falsified evidence again. This illustrates that decisions made in other programs should not be trusted blindly if it is not known in which circumstances the respective evidence was collected or how the review process was designed. Depending on the circumstances it is thus advisable that each compensation program should strive to obtain and inspect its “own” evidence.

Specifically, in this fraud case involving one partner organization, forged documents were re-used from a previous claims program, leading to a substantial loss of funds. During the earlier program, employees of a partner organization collaborated with an unauthorized third party acting as a claimant, who was then granted compensation payments on the basis of forged documents. When these respective documents and positive decisions were included as evidence for the forced labor compensation program, the fraudsters gained again. The partner organization discovered these practices only after the completion of the program and subsequently pressed criminal charges.

Which kind of fraudulent cases did the control teams uncover? At times, claimants attempted to forge evidence. Certificates attesting that claimants were detained as forced laborers were printed on copied documents of the International Tracing Service (ITS) in Bad Arolsen.⁷ Given that the ITS had changed their letterhead over time, the falsifications were easily uncovered. Other times it was noticeable that a single document was copied together using several other templates. After inquiring with the ITS and other archives such cases were also

⁷ The ITS in Bad Arolsen holds around 30 million documents about the fate of victims of Nazi persecution. The ITS index comprises information on 17.5 million people.

resolved quickly. Several fraud cases were uncovered because claimants had submitted falsified German documentation using the letter “B” instead of “ß” and “q” instead of “g” and in some individual cases claimants had forged the legal records of testimonies. The respective partner organizations handed these cases over to the prosecution.

Nonetheless, it is important to remember that the mere attempt to falsify documents did not necessarily mean that a claimant was not entitled to compensation, but rather that he or she may not have had any evidence to prove they were legitimate claimants. In most of these cases, however, claimants were not entitled to compensation payments.

Ex-post surveys

Control teams also conducted surveys after the compensation payments were made to find out whether beneficiaries actually received the money. These inspections focused on whether beneficiaries had received the complete payments and whether this had happened in a timely manner, but they also left space for beneficiaries to voice their opinions about the program. Auditors sent out questionnaires to more than 7,000 beneficiaries worldwide (which equaled about 0.4 percent of all recipients). Partner organizations were informed that inspections of this sort took place but did not know who had been contacted. After a letter campaign reminding those who had not yet answered, the response rate came to overall 90 percent.

The results of these so-called “ex-post” surveys confirmed that compensation payments were disbursed in an orderly manner. Some of the recipients could not remember if they had received any payments. In such cases or in cases of discrepancy, partner organizations were contacted to clarify the matter. After that, the respective beneficiaries were contacted again and asked whether they could confirm the information the respective partner organization had provided. For those who did not answer, confirmations of payments that were stored in the Federal Archives in Berlin were consulted. Ultimately, payments could be confirmed for all cases, something that cannot be taken for granted given the range and extent of the program. Also, there were no irregularities in terms of compensation amounts, payment periods, or the choice of currency. Still, it is important to note, the aforementioned case of false claim approvals resulting from the collaboration of the staff of a partner organization with an unauthorized third party as claimants was not exposed by means of these measures.

REPORTING OBLIGATIONS

The German Government regularly submitted to the parliament a report “On the state of affairs regarding payments and on the cooperation of the Foundation ‘Remembrance, Responsibility and Future’ with partner organizations,” that had in turn been prepared by the EVZ Foundation.⁸

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8 See Register of the German Parliament, BT-Drs 14/6465, p. 2, available at <http://dipbt.bundestag.de/doc/btd/14/064/1406465.pdf> (accessed on 13 April 2017).

Between 2001 and 2008, six reports were published and can be found online.⁹ The final report gives an overview over the complete program.

SUMMARY

Taking into account the extensive oversight bodies and monitoring procedures concerning compensation for survivors of forced labor, the question arises whether they met the requirements, as outlined at the beginning of the chapter. Although the system of checks and balances was not without gaps, it contributed considerably to making the compensation program more transparent by preventing misuse, with only very few exceptions. The EVZ Foundation and the partner organizations discussed any mistakes and errors together and rectified them where possible, thereby constantly improving and adjusting the overall procedure. Despite occasional tensions between control teams and partner organizations — a fact that can easily be explained by their different roles and perspectives — it can be said that both sides have learned a lot from each other. Inspections did not prevent confidence building but in fact fostered and justified it. Ultimately, controls contributed to the legitimacy of the compensation program in the eyes of beneficiaries as well as the public. For this reason, it can be said that audits met the requirements placed on them.

CHALLENGES AND LESSONS LEARNED

- The clearer regulations, such as on eligibility criteria, are defined in the beginning of the reparations program, the better they can be implemented, and hence controlled. Several times the legal supervision had to clarify how the Foundation Law was to be interpreted, which in turn had direct repercussions on the overall procedure. Once a decision was made on the issue, it needed to be communicated via outreach to all affected people, thus making the procedure more complex for the staff.
- Financial audits can contribute to administrative actions being clear, well founded and comprehensible. Auditors can also give valuable advice on how to optimize the procedures.

9 The reports are available in German at the online register of the German Parliament: 27. November 2001: BT-Drs.14/7728, <http://dipbt.bundestag.de/doc/btd/14/077/1407728.pdf>
 19. March 2002: BT-Drs.14/8673, <http://dipbt.bundestag.de/doc/btd/14/086/1408673.pdf>
 30. December 2002: BT-Drs.15/283, <http://dipbt.bundestag.de/doc/btd/15/002/1500283.pdf>
 25. June 2004: BT-Drs.15/3440, <http://dipbt.bundestag.de/doc/btd/15/034/1503440.pdf>
 21. July 2005: BT-Drs.15/5936, <http://dipbt.bundestag.de/doc/btd/15/059/1505936.pdf>
 9. July 2008: BT-Drs.16/9963, <http://dipbt.bundestag.de/doc/btd/16/099/1609963.pdf>
 (all accessed 13 April 2017).

- Auditors can also be contracted as advisors, as was the case with the IOM and the establishing of their processes.
- During the auditing process, certified public accountants were faced with different administrative practices in various countries, some of which were country-specific, but nonetheless plausible. Other times, they encountered “peculiarities” which could not be tolerated, such as the excessive use of company cars. These issues were often solved in negotiations in which it would be determined what it means to spend funds appropriately, economically, and efficiently.
- Random audits conducted by control teams could neither expose all mistakes, nor all systematic errors or fraud attempts. Nonetheless, they contributed to developing overall consistent understanding of the Foundation Law and its regulations between EVZ Foundation and the partner organizations.
- It proved very useful for control teams to discuss their reports together, align the inspection standards and with them the resulting regulations. This kind of exchange also fostered knowledge management processes, from which all persons involved could benefit.
- It proved important to also control rejected claims and appeals to prevent the exclusion of eligible beneficiaries.
- It proved beneficial that the Board of Directors was given the responsibility of the results of the work of the control teams, and not the control teams themselves. This helped to maintain independence of the process.
- Rather than using documents and decisions from previous reparations programs, claims programs should strive to gather their ‘own’ evidence. In this case, previous frauds were repeated and were only uncovered by a comprehensive internal audit.
- Based on lessons learned from earlier compensation programs in the 1990s — where considerable sums were paid to partner organizations without checking or controlling to whom these payments were paid — it was decided that transfers of payments to partner organizations were made in tranches and calculated according to the actual amount needed for already approved claims contained in the tranche.

- Submitting the lists of approved claims (“tranches”) in regular intervals ensured reliability and continuity of the process. The tranches did not require a certain minimum or maximum number of claims, and therefore allowed partner organizations to work according to their capacity.
- Encrypted data transmission was an essential tool for preventing data abuse for criminal purposes.
- Directly contacting and inquiring with beneficiaries whether they had actually received their payments increased the legitimacy of the program.