

CONSIDERATIONS ON INSUFFICIENT LEGAL REGULATION OF SPECIAL ALLOCATIONS MADE BY THE CENTRAL EXECUTIVE AUTHORITY

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Abstract: Our approach aims to reveal critically aspects derived from the regulation method of distribution of Budgetary reserve fund and emergency fund - both of the government - seen by us as special allocations made by the central executive authorities, which require extra regulation because they aim at funding emergency or unforeseen expenses and urgent actions to eliminate the effects of natural disasters occurring during the budget year. Lately, these expenses having high share in the state budget, review of legislative provisions on the matter is imposed. Incidentally, in this respect there are presented conclusions by various experts/ institutions, found in some papers / reports we have consulted, together with specific legislation and literature to develop this paper.

Keywords: budget reserve fund, intervention fund, Government, officers of budgetary expenses, unforeseen or emergency expenses, the Court of Accounts, Tax Council

1. SOME CONSIDERATIONS OF ECONOMIC AND LEGAL PERSPECTIVE ON GOVERNMENT ALLOCATIONS OF SPECIAL TYPE

The issue of public financial resources in terms of training and allocation / use in general, is one that deserves full attention, being treated as such by researchers in the field of budgetary law (Aniței, 2011; Drosu-Şaguna & Tofan, 2010; Bostan, 2007, 2008). The situation is all the more topical, since economies have not fully rebounded after the last global financial crisis (Oprea & Petrișor, 2011; Stoica *et al.*, 2012; Maha & Mariciuc, 2009).

Referring to our theme, we show that in Romania, there was established a mechanism to use public funds designed to cover expenditure for emergency/ contingency of the principal officers of the central/ local budget, occurred during the fiscal year, us, addressing things here as being located in an area of allocations of special type of reasons that will be revealed in this paper.

Obviously, in this respect there is a certain legal framework, given by the Public Finance Act (Law no. 500, 2002), which refers to the creation, allocation and use of funds available to the Government - the reserve and the intervention fund.

The first fund (the reserve) increases/ supplies during a budgetary year (*cf.* art. 54 of the Public Finance Act) with the budgetary credits canceled at the request of the main officers, following the postponement/ abolition of the budgeted tasks by the annual law of state budget and corrections along the way. It is meant to represent a real backup, used only in case of the major difficulties and only as a last resort, after having exhausted other avenues of financing of an object or an action; "the characteristic of urgency

accompanies allocating these amounts from the moment of discovering the necessity state regarding expenses incurred during the budgetary exercise until the payment for which they were requested" (CCR/ Decision no. 558, 2012). The amounts granted from funds mentioned above have a free and general character. They are granted without implying an obligation to be reimbursed, with no control on the final objective allocation provided in the law, not being stipulated a targeted, specific, destination, but only the phrase "current and capital expenditure". Therefore, funds being depersonalized often appear imperfections/ interpretation and bias in their allocation. An evolution of the number of Government decisions on allocations from the reserve fund, in 2007-2013, is shown using a chart below (Fig. 1).



Fig. 1. Number of government decisions on allocations from the reserve fund
Source: *Fiscal Council Report on 2013*

Regarding Fund intervention, we show that it can be increased by the Government during the year with amounts from the budget reserve fund, depending on the needs regarding ensuring the necessities of annihilation of effects of natural disasters. What can be seen from the study of the regulatory framework is that the Law does not specify explicitly categories of expenditure that may be incurred in the reserve fund and there are no limitations on the amount of aid, which provides space for discretionary and non-transparent allocations.

In addition, repeatedly, the government has resorted to derogations from the Public Finance Law through which is determined the use of the reserve fund which does not manifest the character of emergency/ contingency expenditure (CF/ Fiscal Council, 2013), because, for example although reducing the stock of arrears or payment writs of execution represent valid targets, they should be included in the draft budget, possibly in rectification, to corresponding items of expenditure, not affecting the reserve fund.

All this made in time to be expressed some critical views (SAR/ Academic Society of Romania, 2013) related to transparency, fairness, efficiency etc.

2. THE LEVEL OF GOVERNMENT ALLOCATIONS OF SPECIAL TYPE

In international practice (Lienert, 2010; CF/ Fiscal Council, 2013), state budgets include a reserve fund typically limited to 1-3% of total public expenditure, its level being established by Parliament, to which there are regularly transmitted reports on use of the Fund, size and destination of the expenditure incurred.

In Romania, in 2013, there were allocated from the budget reserve fund approx. 950 mil. Lei (0.4% of the total expenses) as follows: approximately 800 mil. Lei to central administration and 150 mil. Lei to the local administration (Fig. 2).

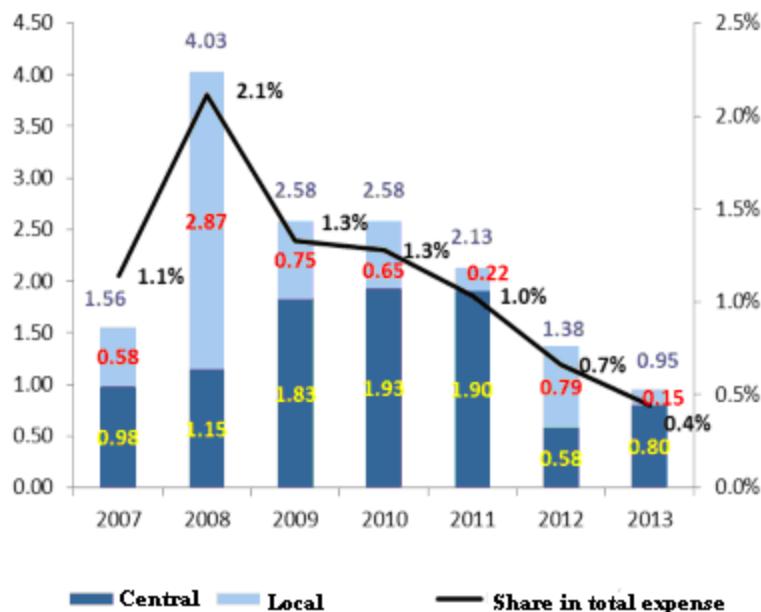


Fig. 2. Total allocation from the reserve fund available to the Government (bn. Lei)

Source: Fiscal Council calculations based on data from Government Decisions on allocation of funds from the reserve fund (2014)

Regarding the utilization of the intervention fund, referring only to the level of 2013, amounted to 32.7 mil. Lei.

Compared to 2012, allocations from the Reserve Fund decreased by approx. 425 mil. Lei (30.95%) in the context of reduction in transfers to local authorities with 645 mil. Lei and to increase by 219 million. Lei of amounts diverted to the central government.

3. THE CRITICISMS AND RECOMMENDATIONS OF PROFESSIONAL BODIES IN RELATION TO THE ESTABLISHMENT, ALLOCATION AND USE OF FUNDS AVAILABLE TO THE GOVERNMENT

3.1. Results of audits by the Court of Accounts of Romania

In the literature notions of urgent or unforeseen expenditures are defined as follows: the urgent are those costs that require a solution for which is not permitted deferral; unexpected are those expenses whose appearance cannot be estimated.

Following special checks carried out by the Court of Accounts of Romania (RCC/ Court of Accounts Romania, 2009) came off the idea that these concepts are too vaguely defined in the current legislation. On the other hand, there is no clear definition of the "administrator" of these funds.

But none of these could prevent the Ministry of Finance to develop a set of criteria for defining the urgency or unforeseen character of expenditure to be financed from these funds, with opinion to draft decisions by the Government including in terms of need and opportunity of allocation of amounts in this regard.

In the document above mentioned, the Court of Accounts held that at the Executive level there is not done any analysis on the need/ opportunity of allocating funds from budget shown, although they are distributed by the will of the government and at its level should be clear records regarding the amounts distributed and all beneficiaries of amounts.

Then the Ministry carrying large sums to this chapter (Ministry of Development), there were no clear and formalized criteria of classification of expenditure to be financed, in terms of cataloging them as urgent/ unforeseen expenses, resulting in an arbitrary distribution/ use. In fact, only the initiators of draft decisions of government employment is concerned that expenditure to be funded, which we consider abnormal situation in the current context.

It was noted the lack of a guide of the principles and procedures to be followed in the allocation of sums mentioned nature, making it difficult to ensure accuracy and consistency of information provided by the ministry.

Nor was created a computerized database containing information on those amounts in real time and it has not been realized the monitoring of these amounts, and there are no reports on the matter and no other statements made to the MFP.

In a more recent report (RCC/ Court of Accounts Romania, 2014), the same institution indicated above shows that by Law no. 5/2013 for the budget reserve fund to the Government, there were approved 200 mil. Lei to finance urgent/ unforeseen expenses. But these have increased more than fivefold stripping being canceled some proposed budgetary credits by officers. The amounts in this fund have been used to increase the budgets of certain principal central/ local officers, based on 38 government decisions, having held similar practices to the preceding period.

Among these, the distribution of funds to officers that canceled them for actions that were not in fact urgent/ unforeseen corrections of errors made by officers in budgetary planning, financing for religious field, works of investment in objectives in conditions of failure to state reason for priority related to such other objectives.

Thus, the reserve fund has not actually been used for the purpose for which it was created, allocations being made without transparent criteria, the fund accounting actually a way to supplement budgets of officers without legislative approval, functioning almost as a parallel budget and without parliamentarian control.

Instead, it was found that the emergency fund available to the Government included in the state budget for 2013 has been formed and used according to the legislation of public funds specific to this fund.

3.2. Recommendations found in the reports of the Fiscal Council

Taking into account best practices internationally in the field, the Fiscal Council recommends the explicit identification of expenses that may be incurred in the reserve fund and more transparency, including through regular reporting to Parliament of complete data about this fund.

Thus, it requires detailing allocations stating the conditions/ criteria for allocation and breakdown per loan. Also it is recommended capping the amounts that can be distributed and used from the reserve fund as a percentage of total expenditure (CF recommends a level of approx. 1%).

Noteworthy is that with regard to the Government's intervention fund, the procedures are appropriately reflected in the text of the law, the Fiscal Council not seeing deviations from established principles and rules in the area analyzed.

4. CONCLUSIONS

Given that last period was not very favorable in terms of economy, budgetary funds, including those to which we refer in this paper, should be managed/ administered with far more concern/ responsibility.

The conclusion from the above is that in recent years, so even after the global financial crisis, in Romania there was a low degree of transparency in the management and administration of public funds from the budget reserve fund and emergency fund.

Therefore, experts (economists/ lawyers) involved in the machine of Executive, have the task of sound analyzing the need and opportunity of allocations with the title mention, and the achieving/ initiation of draft rules to improve future matters described, avoiding the limit to only providing data regarding the availability of these funds at a time.

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