

EXPENDITURES OPERATING: AN EU MODEL ON NATIONAL SCALE

Ioana Maria COSTEA

Alexandru Ioan Cuza University of Iasi, Romania, Faculty of Law
Iasi, Romania
ioana.costea@uaic.ro

Abstract: *Our study assures an overview of the legal framework for operating public expenditure at national level through the European model. The legality of public expenditures depends on the budgetary framework, and on the procedural steps to commit and execute a budgetary credit. The mechanism of expenditure operating is the core of the administrative system, involving management, finances, and public procurement procedures, as well as accounting and auditing.*

Keywords: *public expenditure, commitment, validation, authorisation, payment*

1. INTRODUCTION

The CVAP (commitment, validation, authorisation, payment) procedure is the core of public operating expenditure. The procedure has a budgetary background and specific legal steps. Monetary and patrimonial aspects are rigorously contained in legal framework. The expenditure, as a vital dimension of any patrimony gains in public institutions a significant degree of formalism, with prior and post supervision due to the public source of the finances.

European legal framework is assured by Regulation (UE, Euroatom) 966/2012 on the financial rules applicable to the general budget of the Union, and Commission Delegated Regulation (EU) no 1268/2012 on the rules of application of Regulation (EU, Euroatom) no 966/2012 of the European Parliament, and of the Council on the financial rules applicable to the general budget of the Union. National legal framework is given by Law no 500/2002 regarding public finances, and Law no 273/2006 regarding local public finances, with secondary regulations such as Ministry of Public Finance Order no 1792/2002.

These three legal sources create a model for expenditure operating, with common procedural steps. The influence of the European regulation is seen in budgetary legal framework, but also in secondary legislation as procurement legislation, public function legislation. All these legal patterns and limitations tend to ensure a unique model of legality and economy as budgetary aspects are of public interest.

Any expenditure has a legal basis given by budgetary provision and opening of the budgetary credit (Şaguna, 2012, p. 99). The premise of every expenditure is the budgetary credit, “*an authorisation to expend (a legal notion), not to be mistaken for available funds (a material notion)*” (Saidj, Albert, 2006, p. 68). Therefore, the two

dimensions are independent and correlate differently to the calendar of incomes (Bene, 2011, p. 21) and the calendar of expenditures.

Law no.500/2002 defines budgetary credit as the maximum limit up to which payments can be authorised and made in the budget year for legal commitments from that budgetary year and/or previous budgetary years. Therefore, the expenditures' dimension of the budget is an aggregate of budgetary credits: a sum dedicated to an annual or multiannual contractual commitment (work contract, sale contract, employment contract) or unilateral actions (scholarships, allowances, co-financing in EU grants). According to article 84, Regulation (EU, Euroatom) no 966/2012, commitments are individual (both beneficiary and amount are known), global (one element, the beneficiary or the amount is unknown) or provisional (intended for European Agricultural Guarantee Fund or administrative expenditures). Budgetary credits are a limited permission given to a specific executive institution. These credits are implemented by the appointed authorising officers for a specific objective, for a maximum amount, and for a certain period of time (Şaguna, 2013, p.100).

Operating expenditures consists in putting the budgetary credits into effect. The procedure is governed by a series of strict rules. The principle of special destination states that the purpose of the approved budgetary credit must be respected and cannot be changed except as provided by law. According to the principle of annuality, the approved budget shall be authorised for the budget year. Budget appropriations approved for a main credit cannot be transferred and used to finance another main credit. Budgetary credits approved in a chapter cannot be used to finance another chapter (Fanu-Moca, 2013, p. 30).

The main activity of the authorising officers is to operate expenditures, according to quarterly planning and management decisions.

2. THE PRELIMINARY PROCEDURE

Expenditures evolve from a written dimension to a material one. The expenditure depends on the opening of the budgetary credit namely the individualisation of the sum to be spent by the authorising officer for/on a certain destination, followed by money transfer. Public money is collected continuously mainly from taxation and deposited in specific accounts for every budget. Depending on expenditure's time schedule correlated to the collected revenue, the accounts of each public institution will be funded (Fanu-Moca, 2013, p. 18). Public Finance Ministry allocates budgetary credits and authorises transfers for main authorising officers; at their turn, the main authorising officers following the administrative hierarchic structure distribute sums at the disposal of secondary and tertiary authorising officers.

Amounts approved for the budget can be used only after credits opening and allocation of funds to public institutions' accounts. Main authorising officer submits to the Public Finance Ministry a written demand to open credits. Approval is granted within budgetary limits settled in the forecasted destinations according to budgetary classification. The latter is featured in correlation with the degree of usage of previously available funds, the collection of revenues, and with budgetary possibilities for financing

the budget deficit. After opening the budgetary credit, authorising officers receive amounts of money indicated in the budget, which they are authorized to spend. However, to ensure budgetary balance, the Government may set limits on monthly expenditure, enabling correlation with the rate of revenue collection (Şaguna, 2013, p. 100).

3. THE CVAP PROCEDURE

The main procedure assures the effective expenditure of the sums individualised in the previous stage. Effective expenditure introduces a value needed in order to insure a public service. The actual expenditure is contained in a legal act, with patrimonial effects, through which a public institution is debtor for a sum, and eventually creditor for an obligation (to receive a good, a service, work, a certain non-patrimonial behaviour).

Public expenditures go through four phases: commitment, validation, authorisation, payment, a pattern confirmed by article 84, par.1 Regulation (UE, Euroatom) 966/2012, article 52 Law no.500/2002, and article 54 from Law 273/2006. These procedures aim to let the public institution use public funds to obtain goods or services, and integrate them in the public service which it strives to provide.

Procedurally, expenditures operating are a highly regulated procedure, in contradistinction to the civil law, where a patrimonies-holder can spend through any legal act with minimal formalities.

3.1. Commitment of expenditures

In the commitment phase, expenditure has both a budgetary and a legal dimension. In order to avoid deficit, budgetary commitment reserves the necessary appropriation of funds destined to cover the subsequent payments and honour legal commitments. Budgetary commitments, according to the awareness of public expenditure elements (creditor, amount, due date) are categorised as individual, global and provisional. The dynamics between provisional and global expenditures is a source of information for the financial preventive control agent in order to establish the actual dimension of expenditure and provide data for future budgets.

Legal commitment is the act whereby the authorising officer enters into or establishes an obligation which results in a charge. Legal commitment generates or establishes a patrimony obligation towards an external person resulting from delivering a good, a works' performance, a service's provision or executing a legal obligation form which results from laws, Government decisions, international agreements or court orders in the limit of budgetary commitments. So, legal commitment can have contractual, legal or judiciary sources (Fanu-Moca, 2013, p.51).

Authorising officers conclude acts (legal commitments), regarding to various legal subjects or regarding various legal subjects, generating legal rapports, which contain patrimony obligations in relation to budgetary funds (budgetary commitments).

All legal commitments are bound to strict regulatory procedures: preventive financial control, previous existence of budgetary commitment, limited funds and limited contractual amendment.

Firstly, the main legal commitment is assured by administrative contracts, concluded under the Govern Emergency Ordinance no.34/2006 and categorized as: public procurement contracts, public works concession contracts and service concession contracts. Public procurement contracts are extremely important in the budgetary procedure and sustain the administrative framework; they ensure effective exchange between monetary resource and goods or services insured by public authorities. They provide infrastructure for public services: for example, building and equipping a hospital, a highway construction, equipping libraries.

The process of assigning and selecting contractual partners, along with the specific form of the contracts are governed by specific law provisions. (Niculeasa, 2011, p.74). Public procurement contract has three forms: purchase of goods (finding common regulation in the sale or supply contract), purchase of services (with species such as a work contract, tenancy or lease, mandate or other representation contract) and purchase works (construction contract). By definition, these contracts are governed by *ad validitatem* formalism, namely written form, even model contracts (FIDIC), unlike civil regulation, which is governed by the principle of where the rule is concordance and freedom of will.

Such agreements are concluded only by undergoing a tendering procedure, as established by the law provisions meant to render a public contract validly concluded. According to article 18 of G.E.O no.34/2006, procurement procedures are: a) the open procedure, or the procedure to which any interested economic operator is entitled to submit a tender; b) the restricted procedure, or the procedure in which any economic operator is entitled to submit candidacy, but only selected candidates will be entitled to submit a tender; c) competitive dialogue, or the procedure in which any economic operator is entitled to submit candidacy and whereby the contracting authority conducts a dialogue with the admitted candidates in order to identify one or more solutions capable of meeting its requirements, on the basis of which the final offer will be drawn; d) negotiation, a procedure by which the contracting authority carries consultations with selected candidates and negotiate contract terms, including price, with one or more of them; e) call for tenders, namely the simplified procedure whereby the contracting authority requests tenders from several operators (Niculeasa, 2011, p.81).

Tendering procedure in any of its forms is public, transparent and competitive. Grounds for contracting are given by documentations, made public on national (SEAP) or European (TED) platforms. Specific legal measures ensure access of economic agents to public contracting on the basis of free competition, transparency, equal treatment, confidentiality and impartiality. These regulations do not apply on civil contracts, where contractors' freedom allows preferential agreements, within theory of fraud limits.

The tendering process has an objective outcome, as public procurement contracts will be concluded with the entity submitting the best offer; both public and private interests are served, as public entities spend the minimum amount for maximum benefits and private entities have unlimited access to contracting.

Secondly, legal commitments take the form of employment contracts or administrative acts of appointment. These legal commitments ensure personnel expenditure operating, including a series of legal rapports, through which a natural person

provides a lucrative activity for a public institution. For some domains of public intervention, the legal form is a labour contract, ensuring personnel in medical care, education, social assistance. Legal rapports are governed by Law no.53/2003 regarding Labour Code, with sector regulation as Law no.95/2006 regarding the reform in medical sector or Law no.1/2014 regarding education.

For the core administration, the legal form is appointment as a civil servant in accordance with Law no.188/1999 on the statute of civil servants. These provisions are applicable to any public entity presidential administration, ministries, special services, any territorial public function. For certain services and public functions are organized by law specific legal forms: magistrates, soldiers, dignitaries.

In all these hypotheses, the budgetary mechanism is identical; natural persons are part of a bilateral legal rapport, with successive performance, in which, as consideration for their work, receive a salary, remuneration, compensation from budgetary resources.

These procedures also require advertising and transparency in the selection of staff, usually done on a competitive basis. The peculiarity of these ratios derives, on one hand, from the nature of the work performed and, on the other hand, from the payment regulation. In the public system, remuneration shall be made in legal limits under Law no 284/2010 regarding the unitary remuneration of personnel paid from public funds, and not as an element of the contract negotiation.

Thirdly, in some cases, a public institution assures a public service directly through the remission of a certain amount of money to the beneficiary (scholarship, allowance, compensations). In this context, legal commitment does not correspond to a contract (in the traditional sense, although a form of covenant is generated. When the beneficiary applies for the service, the public institution verifies the fulfilment of legal requirements and, where appropriate, decides to grant that benefit by decision of the authorizing officer following an internal selection process or reasoning.

3.2. Validation of expenditures

Validation of expenditure is the operating expenditure phase where the authorizing officer verifies the existence of the creditor's entitlement, determines or verifies the reality and the amount of the obligation to pay, and checks the conditions in which the payment is due, according to article 88 from Regulation (EU, Euroatom) no 966/2012, article 2 par.33 Law no.500/2002 and article 2 par.41 Law no.273/2006. Following this process, the claim on the budget is certain, liquid and due.

Executing the legal commitment will generate patrimonial obligations for the public institution, according to contractual or legal time-flow.

For contractual commitments validation means, firstly, performance by the contractor (goods were delivered, work is delivered etc.) (Tabară, 2009, p.103). Simultaneously with the performance, the contractor shall issue and confirm records that prove fulfilment of its own obligation. Underlying validation of expenditures are documents certifying delivery of goods, performance of works, provision of services (Şaguna, 2013, p. 100). Typically, the document recording the public institution's obligation is the invoice issued by the private entity (other written evidence could be:

reception note, reception minute, time-sheets, minutes of installation and testing based on the nature of the good or service and contract terms). According to the facts of these documents, the authorizing officer will confirm quality and compliance in relation to contractual conditions. Expenditure validation is given through the mention: *good to pay* made by the authorising officer on documents attesting compliance. Thus, public institution owes a certain, liquid and due obligation (Postolache, 2013, p.72).

For unilateral commitments, expenditure's validation is difficult to distinguish from expenditure's commitment. Once the payment decision is prepared, validation requires supplemental verifications only for successive benefits when each payment is assured, and only if conditions that underpinned this obligation subsist (paying allowance if the child still attends academic formation). If conditions subsist, authorising officers will make the mention *good to pay*, which will lead to confirmation of certain obligations.

A procedural variable is given by the nature of the benefit, singular or repeated. If enforcing *uno actu* provisions, validation is done at the time of full implementation. If enforcing successive acts, validation will be repeated at every interval of performance (pensions, allowances, utilities bills).

Regarding the certain, the liquid and the due nature of the obligation, a series of clarifications are necessary. The claim of the private entity versus the public entity is certain, meaning that it is certain to be due; this certainty comes from the application of the exception for non-performance reinforced in the budgetary commitments. The budget revenues are forbidden to be spent in advance (with low percentage exceptions), so the performance by the contractor and validation of the conformity of the previously mentioned performance allow the public institution to regard the price as due. Secondly, the claim is liquid, meaning that the precise amount is set. An expense knows several dimensions: provisional estimate in the budget, limited credit opening (90% of previous), and estimate price for the contract concluded by the parties (which may not exceed the budget estimate for opening credit, but that may be below this ceiling). Compared to these estimates, the debt is liquid when supporting documents determine the actual amount of the duty. Equally, the claim is due, since performance may be required.

3.3. Authorisation of expenditures

Authorisation of expenditure is the operating expenditure phase where the authorizing officer instructs the accounting officer by issuing a payment order, to pay an amount of expenditure which the authorising officer responsible has validated, according to article 89 from Regulation (EU, Euroatom) no.966/2012, article 2 par.34 Law no.500/2002, and article 2 par.43 Law no.273/2006. Based on a certain liquid and due obligation, authoring officer issues payment authorisation. Payment authorisation is an act of financial law, a public institution's internal act by which the authorising officer instructs the accounting officer to extinguish financial rapport and draw up payment instruments (Şaguna, 2013, p.101). Payment instruments are the documents that allow Treasury or, in some cases, institution's cashier, to hand over the amount in question. The

legal form most commonly used is the order of payment, as the sums are deposited in Treasury accounts and cash payments are limited by law.

3.4. Payment of expenditures

The payment of expenditures is the operating expenditure phase representing the final act, where public institution pays its obligations to third parties, according to article 90 from Regulation (EU, Euroatom) no.966/2012, article 2 par.35 Law no.500/2002, and article 2 par.44 Law no.273/2006. These payments seal budgetary obligations, legally committed, validated, and authorised. Payment transactions are made by transfer from Treasury accounts or in cash. Payment by bank transfer means that public institutions order Treasury to individualize and to transfer sums of money into the beneficiary's account (Postolache, 2013, pp.72-73). In the absence of voluntary compliance, the right holder may use debt enforcement proceedings against public debtors, to obtain performance of the obligation. In the event that legal or contractual deadlines are not respected, public institution interest and penalties are due, according to Law no.72/2013, which offers measures to combat the delay in the execution of the payment obligations of money resulting from contracts concluded between professionals, and between them and contracting authorities.

4. CONCLUSIONS

The highly regulated procedure for operating public expenditures is derogation from general provision. This comes in regard to the patrimonial obligations, in order to protect public interests. Budgetary provisions are implemented under specific regulation and control, so as to assure maximum off economy, efficiency and effectiveness. As the article underlines, the legal background of the procedure has a specific model in the European regulations, which are directly applicable to European expenditures and a source for national regulation.

The CVAP procedure is a model both strong and flexible, as guarantees legality of a variety of contractual and legal obligations.

References

- [1] Bene F.Gh. (2011), *Cod de bune practici în colectarea creanțelor fiscale*, Ed. C.H. Beck, București.
- [2] Fanu-Moca A.(2013), *Drept financiar public*, ed. a II-a, Ed. Universiul Juridic, București.
- [3] Niculeasa M.I. (2012), *Legislația achizițiilor publice. Comentarii și explicații*, ed. 3-a, Ed. C.H. Beck, București.
- [4] Postolache R. (2013), *Drept financiar*, ed. a II-a, Ed. C.H.Beck, București.
- [5] Saidj L., Albert J.-L. (2007), *Finances publiques*, 5^e édition, Ed. Dalloz, Paris.
- [6] Șaguna D.D. (2012), *Drept financiar public*, ed. 5, Ed. C.H. Beck, București.
- [7] Tabără V. (2009), *Finanțele publice și controlul financiar în administrația publică locală*, Ed. C.H. Beck, București.