

CHANGES IN THE FIELD OF BUDGETARY RESERVES MANAGEMENT IN CONNECTION WITH THE NEED TO ENSURE THE EPIDEMIC AND FINANCIAL SECURITY OF THE STATE DURING THE PANDEMIC OF SARS COV-2

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Abstract. The spread of the SARS-CoV-2 virus and the related restrictions on commercial transactions have an economic effect whose scale is difficult to assess. At the same time, the need for activities intended to prevent and counter the epidemic results in a significant increase in public spending, which undoubtedly threatens the financial security of the state. For the above reasons, numerous rules that modify the principles of public finance management were introduced to the Polish legal system after the state of epidemic had been declared. The aim of the article is to present and analyse the amendments in the field of management of the general reserve and special purpose reserves that were introduced to the Polish legal system in order to ensure the proper execution of budgetary tasks during the pandemic. This aim is achieved through the presentation and analysis of the so-called Second Anti-Crisis Shield, i.e. the Act of 31 March 2020 amending the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and the Resulting Crisis, as well as the provisions of the so-called Budget-Related Act for 2021, i.e. the Act of 19 November 2020 r. on Special Solutions to Implement the Budget Act for 2021. The implementation of the indicated research objective leads to the conclusion that the introduced changes significantly broaden the scope of the executive's decision-making competence in the implementation of the state budget, which may raise doubts in the light of the constitutional principle of exclusivity of the legislative authority in shaping state revenues and expenditures.

Keywords: general reserve, special purpose reserves, implementation of the state budget, COVID-19

INTRODUCTION

The growing number of SARS CoV-2 infections poses a risk to many aspects of social, economic and political life. The spread of the new pathogen and the related restrictions on commercial transactions have an economic effect whose scale is difficult to assess. At the same time, the need for activities intended to prevent and counter the epidemic results in a significant increase in public spending, which undoubtedly threatens the financial security of the state.¹ For the above reasons, numerous rules that modify the principles of public finance management were introduced to the Polish legal system after the state of epidemic had been

¹ More about the budget balance and equilibrium in the public finance sector as legal values see, among others: Łączkowski 1999, 283–91; Zubik 2000, 9–24; Skórzewska 2003, 229–40; Dębowska–Romanowska 2010, 118–22; Gorgol 2014, 23–35; Hanusz 2015, 20–33.

declared.² As far as the state budget is concerned, the provisions included in the amendments govern mainly the implementation of the Budget Act. This means that significant changes were introduced to those financial law institutions that provide for making various adjustments to the state budget without the need to amend the Budget Act, i.e., blocking expenditures planned in the Budget Act, transferring expenditures between the items of budgetary classification, and the management of budgetary reserves.³ As will be argued below, some of the legislative changes discussed can be viewed as controversial in light of the constitutional principle of exclusivity of the legislative authority in shaping state revenues and expenditures.

The aim of the article is to present and analyse the amendments in the field of management of the general reserve and special purpose reserves that were introduced to the Polish legal system in order to ensure the proper execution of budgetary tasks during the pandemic. This aim is achieved through the presentation and analysis of the so-called Second Anti-Crisis Shield, i.e. the Act of 31 March 2020 amending the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and the Resulting Crisis,⁴ as well as the provisions of the so-called Budget-Related Act for 2021, i.e. the Act of 19 November 2020 r. on Special Solutions to Implement the Budget Act for 2021.⁵

The provisions amending the principles of budgetary reserves management can be grouped into two categories, which determine the inner structure of the paper. The first category consists of those provisions set out in the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and the Resulting Crisis⁶ which contain legal norms ordering or authorising state authorities to take specific actions in order to “counteract COVID-19,” “perform tasks related to counteracting COVID-19” or “finance tasks related to counteracting COVID-19.” Consequently, actions referred to in the aforementioned regulations may be undertaken both during the legal state of epidemic and after it has come to an end. It is beyond doubt that in the case of highly transmittable pathogens, preventive measures need to be taken on a regular

² The state of epidemic was declared by the Regulation of the Minister of Health of 20 March 2020 on Declaring the State of Epidemic in the Area of the Republic of Poland, *Journal of Laws*, item 491 as amended. In this respect, it must be underlined that although the state of epidemic involves certain restrictions, it is not an extraordinary measure within the meaning of the Constitution of the Republic of Poland. See more in Krakala 2018, 87–103; Szmulik and Szymanek 2020, 9–20.

³ See more in: Stepaniuk 2006, 123–31.

⁴ Act of 31 March 2020 amending the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and the Resulting Crisis and Some Other Acts, *Journal of Laws*, item 568 as amended [hereinafter: Second Anti-Crisis Shield].

⁵ Act of 19 November 2020 on Special Solutions to Implement the Budget Act for 2021, *Journal of Laws*, item 2400 [hereinafter: Budget-Related Act for 2021].

⁶ Act of 2 March 2020 on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, other Infectious Diseases and the Resulting Crisis, *Journal of Laws*, item 1842 as amended [hereinafter: Anti-Crisis Act].

basis: vaccination of the new population members is a good case in point. Without question, it will also be necessary to take measures to alleviate the economic effect of the epidemic. The second category consists of temporary regulations contained in both the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and the Resulting Crisis and the Budget-Related Act for 2021. The main difference between the regulations contained in both Acts is that while the provisions laid down in the Anti-Crisis Act were already in effect in 2020, the provisions of the Budget-Related Act for 2021 have come into force in 2021.

1. PROVISIONS GOVERNING THE MANAGEMENT OF BUDGETARY RESERVES THAT REMAIN IN EFFECT INDEFINITELY

The provisions governing the management of budgetary reserves that remain in effect indefinitely concern two aspects of budgetary reserves management, i.e. their creation and division. Changes in the field of creation of budgetary reserves relate exclusively to special-purpose reserves, whereas amendments to the provisions on their division are applicable to both the general reserve and special purposes reserves. Modifications to the rules on creation of special-purpose reserves are strictly related to the extension of the executive's power to block expenditures planned in the Budget Act. The first of the aforementioned amendments applies to the institution of blocking which is placed at the disposal of the Minister of Finance under the provisions of the Polish Public Finance Act.⁷ The second amendment is consequential on the provisions of the Anti-Crisis Act establishing the legal basis for budget expenditures being blocked by the President of the Council of Ministers (Prime Minister). The amendments to the provisions dealing with division of special-purpose reserves are mainly intended to ensure adequate funds for the budgetary tasks related to preventing, counteracting and combating COVID-19 as well as its consequences.

In accordance with the provisions of the Public Finance Act, blocking of expenditures provided for in the Budget Act means a ban on administering a part or the whole of planned expenditures for a specific period or until the end of the year (Article 177(2) of the Public Finance Act).⁸ Such a decision can be made in a limited number of prescribed situations, namely: mismanagement in specific units, delays in the execution of tasks, excessive amount of funds held, and violation of the principles of financial management specified in the Public Finance Act

⁷ Act of 27 August 2009 on Public Finance, Journal of Laws of 2019, item 869 as amended [hereinafter: Public Finance Act].

⁸ The institution of blocking expenditures planned in a Budget Act makes it possible to introduce changes in the state budget without the need to amend the Budget Act. However, it is also one of the instruments for the supervision exercised by the Minister of Finance and the administrators of budget parts, as well as an instrument for the protection of budget balance. See more in: Lipiec-Warzecha 2011; Kosikowski 2011b; Durczyńska 2014a; Idem 2014b; Duda 2014a, 905–909, Idem 2014b, 911–15; Miemiec 2019; Nowak 2019.

(Article 177(1) of the Public Finance Act). It should also be noted that under the Public Finance Act, it is the Minister of Finance who is authorized to block planned expenditures within the scope of the whole budget, with the exception of the expenditures of the public authorities and institutions that have a special budgetary position (the so-called privileged budget parts).⁹ Nevertheless, the Minister of Finance must then inform the Council of Ministers about this decision, which, in turn, may repeal it within 30 days of receiving the information (Article 177(5) of the Public Finance Act). As it is aptly pointed out in the literature, the provision empowering the Council of Ministers to repeal the decision on blocking planned expenditures is consistent with both the formal supervision of budget implementation exercised by this authority and the relationship between the Council of Ministers acting collectively and particular ministers [Misiąg 2019b]. Through the revision of the Anti-Crisis Act, the Minister of Finance has been endowed with full autonomy over the decisions to block planned expenditures – at the expense of the competences of the Council of Ministers (Article 15zi(7) of the Anti-Crisis Act).

The second thing that was changed by the Second Anti-Crisis Shield was the treatment of the funds blocked. Under the Public Finance Act, the funds blocked in accordance with the foregoing procedure shall reduce the total expenditure that may be incurred in the budgetary year in the course of budget implementation or shall be reallocated and used for other purposes. The funds blocked may be reallocated only to a limited extent; to be more precise, reuse of the resources is permissible in two cases only. First, in the event that there are delays in the implementation of a budgetary task. Second, in the event that an excessive amount of funds has been earmarked for a given budgetary task. More importantly, the funds blocked may be reallocated exclusively by means of establishing a special-purpose reserve to finance the State Treasury's liability, or for purposes separately laid out in the Budget Act (Article 177(7) of the Public Finance Act). It is also worth noting that in accordance with the Public Finance Act, the decision on establishing a new special-purpose reserve shall be made by the Minister of Finance; however, it has to be preceded by the approval given by the Sejm committee on budget (Public Finance Committee) (Article 177(6) Public Finance Act). The Second Anti-Crisis Shield established the legal basis for the reuse of all funds blocked, including the cases where the reason for initiating the blocking procedure is mismanagement or a violation of the principles of financial management detected in the course of implementing the budget. As a result, the Minister of Finance has been authorized to establish a new special-purpose reserve. In the light of the analysed provision, the Minister of Finance, by order of the Prime Minister, shall establish a new special-purpose reserve and place in it the funds blocked. The Act also states that the opinion of the Sejm committee on budget (Public Finance Committee) is not required (art. 15zi, sect. 6 of Anti-Crisis Act).

⁹ The authorities and institutions are enumerated in Article 139(2) of the Public Finance Act.

The analysis of the provisions invoked may give rise to the following considerations. First, in contrast to the decisions setting up special-purpose reserves taken in accordance with the Public Finance Act, the decision made by the Minister of Finance pursuant to the provision referred to above is neither autonomous nor is subject to government supervision. The Anti-Crisis Act expressly provides that the new reserve is established as a consequence of an order given by the Prime Minister. Under the Public Finance Act, the legal concept of a binding command given by the Prime Minister to the Minister of Finance represents a novelty and might give rise to controversy both in the constitutional and legal-financial aspects [Duda-Hyz 2020, 67]. In the constitutional aspect, the aforementioned competence must be considered against the dominant role of the Council of Ministers as a body which shall manage the internal affairs of the Republic of Poland. In accordance with the provisions of the Constitution of the Republic of Poland, it is the Council of Ministers, not its president, that ensures the implementation of statutes, supervises the implementation of the state budget, passes a resolution on the closing of the state's accounts and reports on the implementation of the budget.¹⁰ It should also be stressed that the power to give orders is a management tool of a clearly substantive nature,¹¹ whereas there is no unity of opinion in the constitutional law literature as to whether the Prime Minister's competence entails substantive management of the Council of Ministers.¹² In the legal-financial aspect, it remains an open question whether the Prime Minister should be entrusted with the power to give an order to establish a new special-purpose reserve.¹³ It is beyond doubt that this legal solution results in the weakening of the position of the Minister of Finance, who is an authority that performs and – according to the representatives of the legal-financial doctrine – should perform a key role in the process of public financial management.¹⁴

Secondly, the decision to create the special-purpose reserve does not have to be preceded by obtaining a positive opinion issued by the Sejm committee on budget. In consequence, the process of establishing the new reserve is the exclusive competence of the bodies bestowed with the executive power. The participation of the Public Finance Committee in the process of budget implementation, which should be seen in the broader context of the so-called executive's veto powers,¹⁵ is assessed differently in legal literature.¹⁶ Nevertheless, it seems that even in the

¹⁰ Article 146(4)(1) and (6) of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: Constitution of Poland]. In view of the Constitution, the public finance sphere is one of the areas of specific tasks, but it is also a responsibility of the Council of Ministers. See more in: Dudek 2016; Zubik 2001, 291–300.

¹¹ See more in Sarnecki 2011, 68.

¹² See more in Kuciński 2017a, 65–68.

¹³ The conferral of such powers might raise doubts in the light of Prime Minister's accountability. Under the provisions of the Republic of Poland the vote of no confidence against the Prime Minister is not acceptable. See more in: Kuciński 2017b; Eckhardt 2018.

¹⁴ See more in: Kucia-Guściora 2015, 73–222; Kosikowski 2011a, 491–96.

¹⁵ See more in: Czarny 2016; Kuciński 2017c, 20–22; Pajdała 2003, 70–75.

¹⁶ See more in: Zubik 2003, 321–23; Mojak 2007, 431; Kucia-Guściora 2015, 193; Miemiec 2019.

light of the position that the role of the Committee is justified under the Constitution of Poland,¹⁷ there are no grounds for a profoundly negative assessment of the adopted solution. The need for a smooth adjustment of the state's financial management to the exceptional circumstances arising from the epidemic, as a general rule, justifies broadening the scope of the executive's decision-making competence in the implementation of the state budget. It is also worth noting that the explanatory statement to the Second Anti-Crisis Shield does not give any specific reasons for the exclusion of the Public Finance Committee from the process of creating a new special-purpose reserve.¹⁸ However, it can be assumed that the solution was motivated by the need to shorten the duration of the process and, consequently, to ensure greater flexibility in budget implementation [Duda-Hyz 2020, 68].

The last issue to be mentioned here is the allocation of funds transferred to the newly created special-purpose reserve. The essence of a special-purpose reserve is that the appropriations entered in it may be allocated solely to the specific purpose for which the reserve has been established [Augustyniak-Górna 2002, 9; Lipiec-Warzecha; Kosikowski 2010, 385]. However, there is no clear indication of the purpose of the newly created reserve in the wording of the regulation discussed. Yet, the structure of the provision, as well as the content of the explanatory statement to the Second Anti-Crisis Shield, seem to imply that the intention of the legislature was to establish the legal basis for the allocation of the funds blocked to tasks related to counteracting COVID-19. In the context of the division of the newly created reserve, it should also be noted that the wording "counteracting COVID-19" has a predefined meaning. In accordance with the definition provided in the Anti-Crisis Act, 'counteracting COVID-19' means all activities related to fighting infection, preventing transmission, prophylaxis, and combating effects, including the socioeconomic impact, of the disease caused by the SARS-CoV-2 virus (Article 2(2) of the Anti-Crisis Act).¹⁹ In the light of this legal definition, there is every reason to claim that the appropriations entered in the newly created reserve can be allocated to executing a broad spectrum of budgetary tasks. Needless to say, the existence of such reserves broadens the scope of the executive's decision-making competence in the implementation of the state budget.

The second change in the establishment of special-purpose reserves is connected with empowering the Prime Minister to block expenditures planned in the Budget Act, which represents a novelty in the Polish legal system. Within the meaning of the analysed provision, in order to counteract COVID-19, the President

¹⁷ See more in: Stankiewicz 2015, 287–301.

¹⁸ Explanatory statement to the Bill Amending the Act on Special Solutions Related to Preventing, Counteracting and Combating COVID-19, other Infectious Diseases and the Resulting Crisis, Sejm print no. 299, Sejm of the 9th term, henceforth cited as: Explanatory statement to the Second Anti-Crisis Shield.

¹⁹ The definition was broadened in the Second Anti-Crisis Shield to include the "socioeconomic impact of the disease caused by the SARS-CoV-2 virus."

of the Council of Ministers may decide to block planned expenditures in the scope of the whole budget, specifying the part of the state budget and the total amount of expenditure subject to blocking (Article 31(2) of the Anti-Crisis Act). A detailed analysis of the provision within the context of separation of powers in the budgetary process goes beyond the scope of this article. However, it is important to point out that the regulation might give rise to controversy. Both the condition for the utilization of the blocking instrument and the scope of expenditure subject to blocking are defined very broadly. As a result, the President of the Council of Ministers has a greater power of discretion with regard to the blocking of expenditures than the Council of Ministers itself, i.e., the authority responsible for the implementation of the budget.²⁰ This being the case, the so-called Anti-Crisis Shield authorizes the Minister of Finance to establish a new special-purpose reserve of the funds blocked by the Prime Minister. Appropriations entered in the reserve shall be allocated to “counteracting COVID-19.” However, the decision to allocate the reserve is not autonomous. This is because it has to be preceded by a request from the administrator of the budget part carrying out a given task related to counteracting COVID-19, which in turn must find acceptance from the Prime Minister (Article 31(4) of the Anti-Crisis Act). In view of the presented provisions, a conclusion can be drawn that there is a marked tendency to strengthen the Prime Minister’s position in the process of budget implementation at the expense of the competences of the Minister of Finance.

The next category of changes that have been introduced by the Second Anti-Crisis Shield is related to the division of already existing budgetary reserves. According to the provisions of the Public Finance Act, the general reserve must not be allocated to increase expenditures which have been reduced in the process of budget implementation through the institution of transferring expenditures between items of budgetary classification (Article 155(3) of Public Finance Act). Namely, the provisions refer to a procedure in which the administrators of budget parts at first reduce expenditures for a given purpose, and then strive to increase those expenditures by means of releasing of appropriations from the reserve [Borodo 2020]. The above limitation has been abolished by the Second Anti-Crisis Shield. In consequence, the general reserve may be allocated to increase expenditures which have been previously reduced provided that the purpose of this is to “perform tasks related to counteracting COVID-19” (Article 15zi(2) of the Anti-Crisis Act).

The procedure of change of the designated use of special-purpose reserves has also been modified. Under the Public Finance Act, special-purpose reserves can be allocated only for the original purpose they were earmarked for and used in accordance with the classification of the expenditure. The Act also states that the Minister of Finance, after obtaining a positive opinion of the Sejm committee on budget, may change the purpose of a special-purpose reserve (Article 155(7) of

²⁰ See more in Duda–Hyz 2020, 72–75.

the Public Finance Act). Through the Second Anti-Crisis Shield, a new regulation providing for changes in the original purpose of special-purpose reserves has been introduced. According to this provision, the President of the Council of Ministers, in order to finance tasks related to counteracting COVID-19, may give the Minister of Finance binding orders to change the purpose of a special-purpose reserve, along with the indication of the item and the amount of the reserve. What is important, the opinion of the Public Finance Committee is not required in the abovementioned procedure. It is also worth mentioning that the change may be made by the end of the budgetary year (Article 15zm of the Anti-Crisis Act). According to the wording of the above provision, the Prime Minister has been authorized to dispose of all appropriations of a special-purpose reserve. Still, it should be borne in mind that some of special purpose reserves are related to the legally determined state budget expenditures, which means that the appropriations placed in them, at least in part, must be used for the original purpose they were earmarked for.²¹ Limitations in this field may also result – at least at the political level – from the institution of the so-called assurance of funding granted by the Minister of Finance.²²

2. TEMPORARY REGULATIONS GOVERNING THE MANAGEMENT OF BUDGETARY RESERVES

As already mentioned, the temporary regulations that remained in effect during the year 2020 were introduced by the so-called Second Anti-Crisis Shield. They concern the date by which special-purpose reserves must be divided, as well as the allocation of appropriations entered in those reserves. Under the provisions of the Public Finance Act, special-purpose reserves are generally divided by the Minister of Finance in cooperation with competent ministers or other administrators of budget parts not later than by 15th October (Article 154(1) of the Public Finance Act). The Act also states that the competent ministers or other administrators of budget parts shall apply to the Minister of Finance, by 30 September at the latest, for the division of special-purpose reserves resulting in an increase in expenditures in the budget parts whose administrators are voivodes (Article 154(2) of the Public Finance Act). In accordance with the provisions of the Anti-

²¹ A good illustration of such a reserve is reserve item 64 – *Appropriations for tasks in the field of health protection*, which is included in part 83, division 851, chapter 85195 of Annex 2 to the Bill on Budget for 2021, Sejm print no. 640, Sejm of the 9th term. The reserve amounts to PLN 4,872,391,000, of which 4 billion is designated for the so-called “contribution from the state budget” to the Medical Fund (state special-purpose fund) and, according to the Act on the Medical Fund, constitutes a legally determined state budget expenditure (Article 8(2) of the Act of 7 October 2020 on the Medical Fund, Journal of Laws, item 1875).

²² According to Article 153 of the Public Finance Act, the Minister of Finance, upon request of the administrator of the budget part, may provide an assurance of funding from the state budget of some of the budgetary tasks during the budgetary year and in the following years, provided that the funds were anticipated in a special-purpose reserve. See more in: Świąch–Kujawska 2019; Münnich 2014, 833–35; Misiąg 2019a.

Crisis Act, the division of special-purpose reserves might have taken place until 31st December 2020. Accordingly, the time limit for application to the Minister of Finance had been extended until 5th November (Article 31n of the Anti-Crisis Act). The extension of the time limit for the division of budgetary reserves during the SARS-CoV-2 virus epidemic seems fully justified. The reason behind it is that at the time of adoption of these provisions, it was anticipated that there would be a second wave of the epidemic in autumn; however no one knew what proportions it would assume.

In view of the fact that under the Constitution of the Republic of Poland it is the Sejm that shall adopt the state budget for a fiscal year and, consequently, shape state revenues and expenditures, the second amendment that was in effect during the year 2020, namely the change in the allocation of appropriations entered in special-purpose reserves, should be given substantially greater weight. As has already been indicated, pursuant to the Public Finance Act, the appropriations entered in a special-purpose reserve may be allocated solely to the specific purpose for which the reserve has been established (Article 154(7) of the Public Finance Act). The Minister of Finance may change the designated use of the funds on condition that the Sejm committee on budget issues a positive opinion on the matter (Article 154(9) of the Public Finance Act). According to the regulations of the Anti-Crisis Act, appropriations entered in special-purpose reserves might be allocated to the execution of tasks related to counteracting COVID-19 regardless of the intended use of the reserves. Even more importantly, the division of the reserves in the abovementioned procedure did not have to be preceded by obtaining the approval of the Public Finance Committee. Special-purpose reserves could be divided by the Minister of Finance at the request of the competent administrator carrying out a given task related to counteracting COVID-19, with the authorization of the President of the Council of Ministers (Article 31o of the Anti-Crisis Act). As a result of these provisions, the executive was granted the right to change the designated use of all appropriations entered in special-purpose reserves, which amounted to PLN 22,734,149,000.²³ Nevertheless, as it was argued previously, limitations within the above-mentioned scope are, as a rule, imposed by the legally determined state budget expenditures and by the institution of the so-called assurance of funding granted by the Minister of Finance.

As indicated previously, changes in the field of budgetary reserves management were also introduced by so-called Budget-Related Act for 2021. The essence of the first category of these amendments is the abolition of limits on some budgetary reserves. Under the Public Finance Act, special-purpose reserves may be established in the state budget: (1) for expenditures which may not be precisely divided into budget classification items during the period of drawing up of the Budget Bill; (2) for expenditures whose implementation depends on incurring a loan at an international financial institution or obtaining funds from other sour-

²³ Annex 2 to the Budget Act for 2020 of 14 February 2020, Journal of Laws, item 571.

ces; (3) for expenditures related to the implementation of programmes co-financed with EU funds or EFTA countries' funds; (4) whenever separate acts provide for this effect. The sum of the special-purpose reserves referred to in point 1 and 4 may not exceed 5% of budget expenditures (Article 140(2) and (3) of the Public Finance Act). According to the Budget-Related Act, the provision establishing limit on these reserves will not be in force during 2021 (Article 49 of the Budget Related Act for 2021). It is also worth mentioning that pursuant to the explanatory statement to the Budget-Related Bill, during the period of drawing up of the Budget Bill, it was not possible – due to the epidemic and the economic situation – to plan in detail the expenditures in different parts of the budget, with divisions into budget classification items. In the opinion of the Council of Ministers, the financial consequences of the epidemic that might occur in the following budgetary year justify an increase in the level of appropriations in part “83-special-purpose reserves” in relation to the total amount of the planned expenditures. It is stressed that the adopted solution will make it possible to execute those tasks for which cost figures cannot be assigned to specific public finance sector units. In other words, thanks to this amendment, the budget expenditures can be planned more flexibly, which in turn will make it possible to divide the appropriations in a more efficient way.²⁴

The Public Finance Act also states that a reserve in the amount of up to 1% of the planned expenditure, excluding grants for local government units, may be established in the budget parts which are administrated by particular voivodes (Article 140(4) of the Public Finance Act). In accordance with the Budget-Related Act, the provision will not remain in effect in 2021 (Article 50 of the Budget Related Act for 2021). It is worth pointing out that pursuant to the explanatory statement to the Budget-Related Bill, the amendment is to provide the legal basis for including larger amounts in the reserves created in voivodes' budgets. The justification for that change is a difficult situation connected with the spread of the COVID-19 epidemic and a large number of separate units financed from the voivodes' budgets.²⁵

The purpose of the third change introduced by the Budget-Related Act is to create the legal basis for establishing a new special-purpose reserve in 2021. According to the provision introduced by the Act, in order to carry out the tasks related to the prevention and remediation of natural disasters, including crop losses stemming from drought, as well as prevention and remediation of the epidemic, the President of the Council of Ministers may give the order to the Minister of Finance to establish a new special-purpose reserve and to place in it the funds blocked in accordance with Art. 177(1) of the Public Finance Act. As in the case of the provisions outlined above, a positive opinion of the Public Finance Commi-

²⁴ Explanatory statement to the Bill on Special Solutions to Implement the Budget Act for 2021, Sejm print no. 641, Sejm of the 9th term, p. 7 [hereinafter: Explanatory statement to the Budget Related Bill].

²⁵ Ibid.

tee is not required in the process of the establishment of the new reserve. The Act also states that the reserve may be created until 22 December 2021 and shall be divided by the Minister of Finance upon request of the competent minister (Article 75 of the Budget Related Act). It is also worth mentioning that the provision was introduced to the Bill on Special Solutions to Implement the Budget Act for 2021 at the initiative of the Chief of the Chancellery of the Prime Minister. Nevertheless, the Chief 's letter did not provide any justification for such a solution.²⁶

CONCLUSIONS

It is beyond doubt that exceptional situations call for exceptional measures. The above statement holds true for the COVID-19 epidemic, which poses a risk to so many aspects of social, economic and political life that the situation it results in can be assessed as exceptional. At the same time, it is necessary to emphasise that the Polish Public Finance Act contains provisions that address special circumstances and are aimed at making the process of budget implementation more flexible. However, the condition for the application of these provisions is the exercise of any of the extraordinary measures laid down in the Constitution of the Republic of Poland. In spite of the fact that the outburst of the epidemic may be assessed as exhibiting characteristics of a natural disaster the consequences of which threaten the life and health of a great number of people, the state of a natural disaster as defined in the Constitution has not been declared, the result being that the above-mentioned provisions of the Public Finance Act could not be applied. Instead, new regulations concerning the process of budget implementation have been adopted, including provisions on budgetary reserves management. The analysis of these regulations leads to the following conclusions.

Firstly, the regulations discussed are intended to ensure both the epidemic security of the state – through the allocation of appropriate funds for the execution of tasks related to counteracting COVID-19, and its financial security – by providing the legal basis for changing the allocation of expenditures planned in the Budget Act. Hence, the purpose of the amendments seems understandable and deserves full approval.

Secondly, the essence of these amendments is a significant extension of the powers of executive authorities to make adjustments to the state budget without the need for amending the Budget Act. By way of the analysed provisions, the President of the Council of Ministers has been granted previously unknown powers to create budget reserves and change their allocation. Notably, some of the abovementioned amendments are strictly associated with conferring on the Prime Minister new powers in the field of expenditure blocking. In this regard, it is parti-

²⁶ See The letter from Michał Dworczyk the Chief of the Chancellery of the Prime Minister to Mariusz Skowroński the Secretary of the Permanent Committee of the Council of Ministers, <https://legislacja.rcl.gov.pl/projekt/12337613/katalog/12713880#12713880> [accessed: 10.05.2021].

cularly noteworthy that in matters related to the creation of new special-purpose reserves or changing the allocation of the existing ones, the need to obtain a positive opinion of the Sejm committee on budget has been completely abandoned, which undoubtedly means that the legislature has lost one of the important instruments of ongoing oversight over the implementation of the state budget.

Thirdly, it should be emphasised that the state of epidemic introduced in Poland is something generically different from the constitutional extraordinary measures. While the situations classified as the state of epidemic threat or the state of epidemic do constitute a danger, they are not a “particular danger” as defined in the provisions of the Constitution of the Republic of Poland, and do not interfere with the normal functioning of state institutions. Therefore, if the legislative process is not disrupted, i.e. there exists a possibility of amending the Budget Act, a question arises about the constitutional basis that would justify such a significant shift of competence for determining the expenditure side of the state budget to the bodies of the executive branch.

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