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CONTROVERSIES IN THE PROCESS OF MANAGEMENT OF FREE FUNDS BY LOCAL GOVERNMENT UNITS

Local government units, responsible for the execution of tasks in the following areas: technical infrastructure (e.g. road traffic organization), social infrastructure (e.g. education), public order and safety (e.g. fire protection), spatial and ecological order (e.g. environmental protection) should have ensured financial resources to execute the aforementioned tasks. However, in case of a shortage of financial resources to execute these tasks, the management of free funds is an important issue, which has not been a subject to many studies within the scope of existing scientific works. Therefore, the goal of this article is to present the controversies in laws that regulate the management of free funds in local government units. A hypothesis has been formulated: controversies in the area of free funds management relate to considering this concept as synonymous with budget excess, as well as the limited scope of depositing such funds in the form of financial instruments, and financing the budget deficit. A critical analysis of the public finances sector and literature on financial instruments has been applied to verify the hypothesis. The results of the analysis were also supported by conclusions from LGU reports addressed to Regional Accounting Chambers (RAC) by the example of the Małopolskie Voivodeship (province) (years 2015–2017).
Results of research indicate that:
1) The concept of free funds is not synonymous with a budget excess;
2) Depositing such funds is limited due to the specificity of financial instruments;
3) The possibility to incur further loans to finance the deficit with simultaneous spending of free funds by the LGU is not considered economic.

Due to the controversies in the laws, an amendment is expected.

Keywords: finance, local government, free funds, economy, controversies

1. INTRODUCTION

Decentralization of administration is expressed through a statutory transfer of public liability for the execution of defined public tasks onto independent administrative entities, authorities or institutions, which are not a part of the centralized government administration[2]. Such legal independence is held by local government units (LGUs), which have the attributes of a public authority. Public authorities, within the meaning of the

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[2] H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne,* Warszawa 1999, p.106.

Constitution of the Republic of Poland, may include all institutions with statutory competences to undertake authoritative decisions, binding for citizens and other bodies governed by law[3]. The local government meets social needs with primary importance for the society[4]. Hence, the authoritative nature of the decisions of LGU bodies towards citizens is subject to social control. This control concerns, amongst others, the management of public funds by LGUs in the context of guaranteeing their safety and effective management. The course of the control is not always possible to foresee due to the existing groups of interest, meaning collective entities able to undertake organized activities and represent common interest before public bodies[5].

Management of public funds is also subject to budget discipline regulations, meaning the obligation to observe the rules of legality and cost-effectiveness defined in the law, during the process of managing public funds[6]. The public finance area is usually defined as observing any and all legal norms applicable to government units which have budget funds at their disposal, which norms define the rules and mode of collecting and spending public funds[7]. Therefore, RAC decision-making panels issue opinions on draft budget resolutions in formal terms, and then bookkeeping terms, and assess the correctness of defined amounts comprising the projected budget, and take account of the legality criterion in their assessment. RAC assessments also cover, amongst others, the amount of planned reserves, the plan of revenues and costs of local-government budget entities, attachments concerning the deficit presented by the LGU in the draft budget resolution[8]. The responsibility of LGU bodies, in particular in case of a shortage of financial resources to execute local government tasks should be aimed at exercising the rule of using budget funds in accordance with the purpose and in a cost-effective manner[9]. In this context, the assessment of managing free funds remains an important issue. The purpose of the article is to present the controversies in the laws regulating free funds management in local government units. A hypothesis has been formulated: controversies in the area of free funds management relate to considering this concept as synonymous with budget excess, as well as the limited scope of depositing such funds in the form of financial instruments, and financing the budget deficit. A critical analysis of the public finances sector and literature on financial instruments has been applied to verify the hypothesis. The results of the analysis were also supported by conclusions from LGU reports addressed to Regional Accounting Chambers (RAC) by the example of the Małopolskie Voivodeship (years 2015–2017).

[3] P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2008, p. 28.
[4] K. Surówka, *Samodzielność finansowa samorządu terytorialnego w Polsce*, Warszawaw 2013, p. 9.
[5] P. Tłaczała, *Analiza grup interesu* [w:] *Teoria wyboru publicznego*, ed. J. Wilkin, Scholar, Warsaw 2005, p. 184.
[6] E. Chojna – Duch, *Polskie prawo finansowe, finanse publiczne*, Warszawa 2003, p. 124.
[7] W. Ziółkowska, *Finanse publiczne. Teoria i zastosowanie*, Poznań 2012, p. 318.
[8] Por. A. Gerasimiuk, *Kontrola planowania budżetowego j.s.t. przez RIO* [w:] *Ustawa o finansach publicznych Komentarz dla jednostek samorządowych*, ed. P. Walczak, Warszawa 2017, p. 496–497.
[9] S. Owsiak (ed.), *Finanse publiczne. Współczesne ujęcie*, Warszawa 2017, p. 606.

2. CONTROVERSIES RELATED WITH THE DEFINITION-RELATED RECOGNITION OF THE FOLLOWING CONCEPTS: FREE FUNDS AND BUDGET EXCESS

Budget excess should be differentiated from free funds in the LGU budget. Budget excess is a positive financial result, meaning a situation where budget income is higher than budget expenditures (Article 217.1 of the Act of 27 August 2009 on public finance – hereafter: APF)[10]. To determine the result of executing the LGU budget, it is essential to reclassify the balances of nominal accounts (for registering incurred expenditures and achieved income) at the end of the budget year to account 961 "Budget execution results". The balances of accounts: 901 "Budget income", 902 "Budget expenses" and 903 "Unexecuted expenditures" are transferred to this account.

Whereas the concept of free funds was referred to numerous times in the aforementioned Act on public finance. In Article 48 APF, the legislator indicates that these resources cannot include budget donations. This statement excludes both state budget funds and other LGU budget funds. In turn, in Article 264.3 APF, the concept of free funds is presented in the context of possibilities to authorize LGU management boards to deposit free funds on accounts in banks, which do not handle the budget of the given LGU. The construction of this Article may be controversial, because it does not define "free funds" but only introduces the term "free budget funds"[11]. Moreover, Article 217.2.6 defines free funds as excess financial resources on the current account of the LGU budget, resulting from settlements of issued securities, credits and loans from previous years. This should be understood literally, meaning financial resources on the LGU budget account at the end of the budget year, which were not "used" to finance expenditures and outlays in the given budget year. The source of free funds in the LGU budget is a lack of (technical, organizational) ability to ensure balance, described with the following formula, at the budget execution stage:

$$D + P = W + R$$

where: D – total income of the LGU budget during year n,
P – revenues of LGU budget in the year n,
W – total expenditures of the LGU budget in the year n,
R – outgoings of the LGU budget in the year n.

The above situation is caused by the indicative nature of the volume of planned D and W parameters. In principal, the following regularities occur:

Planned D < executed D – this is the pessimistic income planning rule;
planned W > executed W – this is the optimistic expenditures planning rule.

Therefore, the most frequent situation in a LGU budget is where the deficit is executed in the given budget year at a level lower than planned (only then free funds may be available), whereas often revenues on debt instruments (loans and credits) are at the planned level. This results in financial results being collected on the LGU budget account, which

[10] Uniform text in Journal of Laws from 2017, item 2077 as further amended.
[11] P. Galiński, *Lokowanie wolnych środków przez jednostki samorządu terytorialnego w Polsce w latach 2008-2011*, "Zarządzanie i Finanse" 2012, Vol. 10, No. 4/3, 2012, p. 37–38.

constitute free funds[12]. It may be stated that free funds include both funds within the meaning of Article 2017 APF from 2009, as well as resources from the undistributed accumulated budget excess, and other undistributed funds for the given period, whereas these funds cannot have their source in a received budget donation[13]. Therefore the basis for free funds derives from actual financial resources, having the source only in incurred and unused (or planned for repayment or repurchase – not paid, purchased) credits, loans and issued securities, as well as granted and repaid loans, meaning the result of settlements of receivables and liabilities made for previous years due to: issued securities, credits and loans.

The amount of free funds is presented in D16 – the quarterly Rb-NDS report on LGU excess/deficit, and in row D161 – in regard to free funds used to cover the deficit. The data regarding planned amounts should be consistent with the budget plan, determined by the LGU decision-making body at the end of the reporting period. On the executed amounts side, the data should be consistent with the data presented in the balance sheet in regard to the LGU budget execution. This amount is presented in the Rb- NDS report in the same amount on the side of executed amounts for all quarters of the following year, for which the amount has been determined[14]. The amount of free funds may be determined in the manner presented in table 1.

Table 1. Manner of determining the amount of LGU free funds

Manner of determining the amount of LGU free funds		
Approach I	Approach II	Approach III
financial resources on account 133 + financial resources for expenditures, non-expirable account 135 + other financial resources on account 140 + receivables on account 224 – liabilities (224 + 240) – reserve for expenditures, non-expirable account 904 – accruals and prepayments, account 909 _____ free funds	balance on account 960 balance on account 961 balance on account 962 – granted loan + loans and credits (acocunt:134, 260) _____ free funds	financial resources on account 133 + other financial resources + receivables on account 224 – liabilities 224, 240 – accruals and prepayments 909 free funds

Approach I: based on funds on the bank account.
Approach II: based on nominal accounts.
Approach III: based on funds on the bank account, without consideration for non-expirable expenditures.
Source: Free funds calculation method according to the Regional Accounting Chamber in Cracow.

[12] M. Szczubiał., *Wolne środki*, „Finanse Publiczne", January 2015.
[13] E. Rutkowska-Tomaszewska, *Lokowanie wolnych środków przez jednostki samorządu terytorialnego w bankach*, "Finanse Komunalne" 2012, No. 4, p. 26.
[14] M. Cellary, *Różnica między nadwyżką budżetową a wolnymi środkami* [in:] *Ustawa o finansach publicznych Komentarz dla jednostek samorządowych*, ed. P. Walczak, Warszawa 2017, p. 1090.

Summing up, although free funds are an effect of better results of budget execution for previous years in regard to those planned by LGU, similarly to budget excess, however they constitute a separate category of revenues in the LGU budget.

3. CONTROVERSIES RELATED WITH DEPOSITING FREE LGU FUNDS

Free funds may be deposited solely in the financial instruments, which have been listed exhaustively in the provisions of Article 48 of the aforementioned Act on public finance. In accordance with these provisions, the LGU may deposit free funds in:

1. Securities, including:
   - treasury securities (treasury bills, treasury bonds),
   - municipal bonds;
2. Bank deposits, including:
   - deposits in banks having their seat in the territory of the Republic of Poland,
   - deposits at the Ministry of Finance, maintained by the Bank Gospodarstwa Krajowego.

The catalogue of financial instruments indicated by the legislator is controversial in particular in relation to the indicated securities. All the more, the financial law doctrine provides for differentiated construction of financial instruments in normative and operational model[15]. However, in case of a shortage of financial resources in the local government sector, the level of interest of LGU in acquiring funds is limited. This mainly results from the fact that securities belong to instruments, within the scope of which funds are deposited for longer periods. For example, in 2016 fixed interest rate bonds included 40% of debt securities with 10- and 5-year initial repurchase dates[16].

Whereas such restrictions are not connected with bank deposits. They constitute an obligation of LGU to provide to the bank's disposal a defined about of funds on terms agreed in the agreement, to achieve certain financial benefits. LGUs, sometimes compared to a corporation, are treated by banks as a specific corporate client. Therefore, they are offered basically the same products and bank services and large enterprises[17]. The literature provides for numerous types of deposits offered to LGUs. Due to the possibility to agree on detailed terms and conditions, this may include the following deposits:

- standard deposits (mainly characterized by the same interest rate for all types of agreements);
- negotiated deposits (financial departments of the LGU may usually negotiate the amount of the interest rate on the deposit)[18].

Due to the term of the agreement, this may include the following deposits:

- deposits payable on demand,
- term deposits[19].

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[15] M. Lemonnier, *Europejskie modele instrumentów finansowych*, Warszawa 2017, p. 115–134.
[16] *Rozwój systemu finansowego w Polsce w 2016 r.*, NBP, Warszawa 2017, p. 256.
[17] B. Filipiak, M. Zioło (ed.), *Współpraca jednostek samorządu terytorialnego z instytucjami finansowymi*, Warszawa 2016, p. 77.
[18] K. Brzozowska, *Bankowość – wybrane zagadnienia*, Szczecin 2003, p. 92.
[19] M.M. Golec, *Usługi bankowe. Podstawowe zagadnienia*, Poznań 2011, p. 36.

Deposits payable on demand mainly serve to deposit temporarily free funds, which the LGU may dispose of at any time[20]. The interest rate on such deposits is relatively lower, or there is no interest at all. Hence, depositing financial resources by LGUs in such manner may be controversial, since such deposits do not bring any measurable benefits. In turn, term deposits – although concluded for a defined period, are also characterized by a restricted scope of their use by LGUs. The lack of sufficient funds for the execution of individual tasks reported by the LGU determines the shortening of the term of concluded deposit agreements, often to one year.

Another criterion of dividing deposits for LGUs may be the type of the depositary. Due to this criterion, this may include the following deposits:

- deposits offered by commercial or cooperative banks,
- deposits at the Ministry of Finance.

In the second aforementioned example, pursuant to Article 3 of the Regulation of the Minister of Finance of 15 April 2011 on free funds of defined public finance sector units accepted by the minister of finance to deposit or to manage[21], free funds are deposited as:

- overnight deposits (one-day deposits opened on a defined business day and released on the following business day),
- term deposits i.e. other than overnight deposits.

Opening such type of a deposit may also be recognized as a controversial solution, because the Minister of Finance may obtain free funds from the LGU to regulate the ongoing financial liquidity of the state budget. Therefore, LGU free funds in the form of such deposits do not directly serve for financing the local needs of such governments.

The selection by the LGU of a possibility to deposit free funds depends on several factors:

1. External factors (including interest rate on deposits). In the process of negotiating the interest rate on bank deposits, the LGU bodies should apply the provisions of the Act of 29 January 2004 – the Public Procurement Law[22] (hereafter PPL), pursuant to which an inquiry should be addressed to selected banks, which are invited to submit an offer on the amount of the interest rate for free funds for a given period (Article 69 PPL). To ensure competitiveness and to select the most favourable offer, several banks are invited to bid. However, due to the different amount of funds for depositing and different deposit terms, detailed regulations concerning the procedure of depositing free funds should be included in w Public Procurement Regulations implemented pursuant to a decision of the unit's management. Such Regulations mainly describe the requirements related to the quantity of offers – depending on the type of deposit (whether a term deposit or overnight deposit), financial situation – amount of funds to be provided for depositing or management for a defined period, as well as the manner of addressing the inquiry – orally and in writing, by telephone, fax or email, and the manner of documenting the procedure and negotiations. Deposits negotiated in terms of the amount of the interest rate should be opened by employees authorized, in account of the need to maintain the given LGU's ongoing

[20] M. Iwanicz-Drozdowska, W.L. Jaworski, Z. Zawadzka, *Bankowość. Zagadnienia podstawowe*, Warzawa 2007, p. 134.

[21] Journal of Laws no. 81, item 443.

[22] Uniform text in Journal of Laws from 2017, item 1579, 2018.

activity and to respect the requirement of timely payment of liabilities and performing risk assessments (e.g. related with the amount of interest rates).

2. Internal factors (including financial liquidity of the given LGU at the given time).

It is worth noting that bank deposits opened by LGUs are more favourable for commercial banks, since these deposits increase the banks' resources, which they may freely dispose of if only overnight. Therefore, it may be stated that public funds bring benefits to private entities and not to the public interest. Banks appreciate LGU deposits, which are used to conduct their ongoing crediting activity.

In summary, it should be underlined that funds on LGU accounts constitute public monies, subject to inspections, therefore they should be well secured. The safety of depositing the funds is subject to legal regulations. In comparison with e.g. budget funds deposited in other banks than the bank handling the LGU budget or in the form of a deposit at the Ministry of Finance, an authorization is required from the establishing body (municipal/district council, provincial assembly) to deposit free budget funds on bank accounts by the management of local government units (commune head, town/city mayor, president of town, district management, province management), granted pursuant to Article 264.3 APF.

4. CONTROVERSIES RELATED WITH FINANCING A DEFICIT WITH FREE FUNDS

Free funds constitute non-refundable sources of revenues serving for financing the budget deficit. The following problems may be defined in this area:

1. Estimating free funds or budget excess from previous years in the budget plan, which are not reflected in the results of budget execution from previous years.
2. Financing the deficit with further credits and loans incurred by LGUs or with the issuance of securities, in comparison to disposing of free funds not included in the budget revenues plan.
3. Recognizing the budget excess from previous years and free funds in the total amount confirmed in the results of budget execution from previous years, however assigning it to individual separate sources (excess from previous years and free funds) in incorrect amounts[23].

In the first event, supervisory bodies verify both the amount of free funds as well as budget excess, from previous years, introduced in the budget by LGUs to the extent of their actual occurrence, so that they are reflected in the results of budget execution for previous years; in case of any errors in this regard, such errors are challenged.

In the second event it should be indicted that a failure to account to for free funds constituting an excess of funds on the current account of the LGU budget, resulting from settlements of issued securities, credits and loans from previous years, as a manner of financing the budget deficit, but instead incurring new credits or loans for this purpose or issuing securities may be deemed doubtful from the point of view of rational management of public funds, unless justified reasons occur to apply such solution (e.g. securing funds for pending procedures and appeals, which may result in urgent payments or tax reimbursements). To give credibility to the possibility of the occurrence of the aforementioned

[23] B. Dziedziak, *Źródła pokrycia deficytu budżetu* [in:] *Ustawa o finansach…*, p. 569.

circumstances, presented below is a scale of free funds being unused credits, loans and securities for exemplary municipalities in the Małopolskie Voivodeship (see table 2).

Table 2. Scale of free funds from the years 2015–2017 in selected municipalities of the Małopolskie Voivodeship as a percentage (%) of all incurred credits, loans and securities

LGU	2015	2016	2017
Rural communes			
Drwinia	19	41	86
Żegocina	4	15	40
Czernichów	15	27	22
Urban and rural communes			
Ciężkowice	31	80	45
Szczucin	36	31	21
Maków Podhalański	68	58	22
Urban communes			
Kraków	29	6	79
Tarnów	48	41	25
Niepołomice	6	0,4	6

Source: own elaboration based on LGU reports from the Małopolskie Voivodeship from the years 2015–2017.

For each of the above municipalities, in case a credit was incurred to repay the deficit while free funds were available, such circumstances should be a subject of an in-depth social assessment in the context of public funds management.

In the third case, it seems justified to reference the standpoint of J.M. Salachny in the comment to Article 217[24], pursuant to which the view, according to which only the existence of an accumulated budget excess in spite of the occurrence of budget excess for the previous budget year(s) entitles to present budget excess from previous years as a source of covering the planned budget deficit, is not reflected in the current version of Article 201.2.6 APF, since otherwise the budget excess would constitute free funds on the LGU budget account. The continued standpoint on the requirement of existence of accumulated budget excess seems to be an over-interpretation of the current wording of the provisions of Article 217.5 and 6.2 APF. In consideration of the legal status applicable to the end of 2006, the then-applicable provision of Article 168.2.6 APF 2005[25], being the equivalent of the current Article 217.6.2 APF, read as follows: "free funds constituting the budget excess on the LGU budget current account, including those resulting from settlements of credits and loans from previous years". Therefore, based on the previous provision, the basis for calculating the amount of free funds included a wider scope of settlements from previous years, not only credits, loans and issued securities. In that case, calculations may account for budget excess from previous years. At the moment, calculations of free funds are limited in terms of the

[24] E. Ruśkowski, J.M. Salachna (ed.), *Nowa ustawa o finansach publicznych wraz z ustawą wprowadzającą. Komentarz praktyczny*, Gdańsk 2010.

[25] Text in Journal of Laws from 2005, no. 249, item 2104 as further amended.

scope of considered settlements and take account only of credits, loans and issuances of securities[26].

5. SUMMARY

As a result of conducted analyses it may be stated that the hypothesis on the controversies in LGU fee funds management was verified. The results of research indicated that:

1) The concept of free funds cannot be synonymous with budget excess;
2) Depositing free funds is limited due to the specificity of financial instruments;
3) Possibility to incur further credits to finance the deficit with simultaneously disposing of free funds by LGUs is not economic.

Ultimately, legislative changes are expected in regard to the Act on public finance, aiming at introducing integrity in the provisions regulating the management of free funds in LGUs.

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[26] B. Dziedziak, *Źródła pokrycia deficytu budżetu* [in:] *Ustawa o finansach publicznych Komentarz dla jednostek samorządowych,* ed. P. Walczak, Warszawa 2017.

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LEGAL ACTS

1. Ustawa z 29 stycznia 2004 r. Prawo zamówień publicznych, Uniform text in Journal of Laws from 2017, item 1579, 2018.
2. Ustawa z 30 czerwca 2005 r. o finansach publicznych, Text in Journal of Laws from 2005, no. 249, item 2104 as further amended.
3. Ustawa z 27 sierpnia 2009 r. o finansach publicznych, Uniform text in Journal of Laws from 2017, item 2077 as further amended.
4. Rozporządzenie Ministra Finansów z 15 kwietnia 2011r. w sprawie wolnych środków niektórych jednostek sektora finansów publicznych przyjmowanych przez ministra finansów w depozyt lub zarządzenie, Journal of Laws no. 81, item 443.

KONTROWERSJE W PROCESIE GOSPODAROWANIA WOLNYMI ŚRODKAMI PRZEZ JEDNOSTKI SAMORZĄDU TERYTORIALNEGO

Jednostki samorządu terytorialnego odpowiedzialne kompetencyjnie za realizację zadań z zakresu: infrastruktury technicznej (np. organizacja ruchu drogowego), infrastruktury społecznej (np. oświata), porządku i bezpieczeństwa publicznego (np. ochrona przeciwpożarowa), ładu przestrzennego i ekologicznego (np. ochrona środowiska) powinny mieć zagwarantowane środki finansowe na realizację powyższych zadań. W sytuacji jednak niedoboru środków finansowych na realizację tych zadań ważną kwestią pozostaje gospodarowanie wolnymi środkami. W dotychczasowym dorobku nauki zagadnienie to nie było przedmiotem licznych opracowań. Dlatego też celem artykułu jest wykazanie kontrowersji w zapisach regulujących gospodarkę wolnymi środkami w jednostkach samorządu terytorialnego. Sformułowano hipotezę: kontrowersje z gospodarowaniem wolnymi środkami dotyczą utożsamiania tego pojęcia z nadwyżką budżetową, a także ograniczonym zakresem ich lokowania w instrumenty finansowe oraz finansowaniem deficytu budżetowego. Zastosowano do weryfikacji hipotezy analizę krytyczną regulacji sektora finansów publicznych oraz literatury z zakresu instrumentów finansowych. Wyniki analizy zostały wsparte także wnioskami ze sprawozdań JST skierowanych do Regionalnych Izb Obrachunkowych na przykładzie woj. małopolskiego (lata 2015–2017).

Wyniki badań wskazują, iż:
1) pojęcia wolnych środków nie można utożsamiać z nadwyżką budżetową;
2) lokowanie tych środków jest ograniczone ze względu na specyfikę instrumentów finansowych;
3) możliwość zaciągania kolejnych kredytów na sfinansowanie deficytu przy jednoczesnym dysponowaniu przez JST wolnymi środkami jest niegospodarne.

W związku z kontrowersjami w zapisach prawnych oczekiwana byłaby ich nowelizacja.

Słowa kluczowe: finanse, samorząd, wolne środki, gospodarka, kontrowersje.

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