

Administrative and Procedural Mechanism of Interbudget Lending as A Method of Budgetary Sustainability

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Abstract

The goal of the article is to make a theoretical and legal description of the administrative and procedural mechanism of interbudget lending for subjects of the Russian Federation as a method of budgetary sustainability. This mechanism is considered as a set of two subsystems that combine normative modes of lending to regions. The first subsystem is lending to partially cover deficit in the Russian subject's budget. The second subsystem is lending to replenish the balances of funds on the accounts of the Russian subjects' budgets. The stages of managerial activity of authorized federal bodies and public authorities of Russian subjects in the area of interbudget lending, as well as the purpose of this activity are defined. Such methods of study as analysis, synthesis, comparative-legal and statistic have been used.

Keywords: Administrative and procedural mechanism; Budget law; Interbudget lending; Budget sustainability.



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1. Introduction

The need to improve the regulation of financial and legal instruments on maintaining sustainability and balanced functioning of the budget system is determined by the objective conditions of the current stage of the Russian economy development, namely, a considerable debt burden of public and legal formations and budgetary risks associated with it. Thus, as on July 1, 2018, in 43 Russian regions, the state debt exceeded the annual tax and nontax revenues of the budget by more than 50%. In 29 regions it exceeded 70% of their own income. At the same time, in the structure of the national debt, public budget loans account for more than half (51.6%).

It is well-known that providing any entities (private, public, interstate) with financial resources from any sources (budgets, funds, and mutual assistance funds) implies adherence to a certain legal procedure or a set of such procedures. Under the conditions of insufficient budget funds, there is an objective need in regulating all stages of their distribution and redistribution. Hence, the requirements to the quality of such procedures increase. According to the authors, it confirms the need in theoretical and legal interpretation of the administrative and procedural mechanism of interbudget lending as a method to achieve sustainable functioning of regional budgets.

The researchers' interest in administrative procedures has considerably increased over the recent years. This is due to the fact that, according to T.Ya. Khabriev, "when implementing socio-economic and political reforms, it was necessary to form a new system of administrative bodies that operated in a single and clear frame of administrative procedures".

The issues of administrative procedures are considered in the works of O.S. Berkutova, M.Ya. Maslennikov, G.V. Matvienko, N.G. Salishcheva, Yu.N. Starilov, Yu.A. Tikhomirov, E.V. Talapina, T.Ya. Khabrieva, S.D. Khazanov et al. The article by V.Yu. Sinyugin gives a rather complete overview of the opinions of the above and other researchers on the notion of an administrative procedure.

It is necessary to note that representatives of the modern science on administrative law rather actively study the problems on improving the organizational support of the financial system and its individual elements. However, the theory of financial law sparsely covers the issues on procedural financial (including budgetary) legal relationships. As a rule, it touches upon the characteristics of procedural tax and budgetary legal relations. The monograph of the authors' team edited by M.A. Lapina is devoted to the problems of administrative jurisdiction in the financial area. Some works give types and classification of administrative procedures in finances, taxes and fees, as well as

various aspects of the activities performed by executive bodies that have powers in the financial area. Besides, they study procedural terms.

Based on the fact that: 1) the budget sustainability is a cross-cutting goal of budgetary activity of a public and legal formation, 2) budgetary activity is a management activity, 3) budgetary process is a management process, the authors of this article characterized interbudget lending as an administrative procedure and a method of budgetary sustainability. It is substantiated that the achievement of sustainability (in relation both to each budget and the budgetary system, as a whole) can be presumed as the main final goal of any budget-legal procedure, including interbudget lending.

The main methods of the study included analysis, synthesis, comparative-legal and statistic methods.

2. Theoretical and Legal Characteristics of Interbudget Lending To the Russian Subjects

2.1. Interbudget Lending

One of the most demanded ways of balancing the national budget system and smoothing budget imbalances is a loan – state, municipal, and banking.

The financial and legal science considers the state and municipal loan (public loan) in two aspects: economic (as a certain type of social relations associated with the change of value under conditions of urgency, repayment and serviceability) and legal. The latter is interpreted as an independent institute of financial law that is an aggregate of financial and legal norms that govern public relations on accumulating temporarily idle funds of legal entities and individuals and other entities by the state and municipal entities according to the principles of voluntariness, urgency, payability and repayment in order to cover the budget deficit and regulate monetary circulation (Gracheva, 2003).

Public loan is a form of loans. It is “... a mechanism of the state’s anti-crisis policy that allows regulating the volume of money in circulation, and obtaining additional funds from budgets of various levels when the access to market resources is complicated” (Soloviova, 2013). The peculiarities of the relations arising in this case include the following: their subject composition – the Russian Federation, its subjects and municipalities act as a lender or a borrower here, the purpose of borrowing is to meet public interests, and the result is a public debt (Pokachalova, 2011).

The authors note that unlike commercial lending, budget loans aim at solving social and economic problems associated with supporting various industries that are strategic or important to ensure the state security in the broad sense of the word, or a business entity that has an important economic or social value, or an object, the functioning failure of which can cause unfavorable consequences (Decree of the Constitutional Court of the Russian Federation: 20-P, 2014).

The interbudget loan is a type of public budget loans and a form of domestic government borrowings. A distinctive feature of the legal relations arising in connection with them is their subject composition (both the lender and the borrower are public legal entities), as well as the main target purpose – to ensure the budget sustainability of the loan recipient. It is necessary to note that in July 2017 the Government of the Russian Federation made the decision to increase the amount of budgetary allocations for providing budgetary loans from the federal budget to the budgets of the Russian subjects up to 91 billion rubles (Order of the Government of the Russian Federation: 1564-r, 2017). In December it made the decision to restructure regional obligations (debt) on budgetary loans (Decree of the Government of the Russian Federation: 1531, 2017). These measures aim, first of all, at replacing the commercial debt of entities related to bank loans, and secondly, at releasing the monetary resources the region had to transfer to the federal budget, and now will not do it but will direct them to solve social and economic problems, including to reduce the budget deficit.

According to the analysis, these acts determine the *procedure* for restructuring, and, what is especially important, contribute to the implementation of the *stimulating* function of interbudget loans. According to the authors, it confirms the implementation of such principle of the financial law as economic stimulation of financial activities, the importance of which was convincingly emphasized by Khimicheva (2009).

2.2. Procedural Mechanisms of Budget Law

In the theory of financial law, there is a wide-spread opinion about the equivalence of budget procedural and budget procedural relations. Thus, D.L. Komyagin defines the legal relationship on budget execution as procedural (procedural) relations (Komyagin and Kozyrin, 2011).

According to the authors, the position of I.A. Tsindeliani is more convincing. According to this researcher, “... it is possible to speak about procedural norms and the formation of financial and procedural institutions in the financial law system. Its structure contains procedural norms that are most clearly defined in the subsectors of the financial law in budgetary and tax law” (Tsindeliani, 2011). In other words, procedural financial (including budgetary) legal relations are a broader category and include procedural social relations.

The most obvious example is the budget process. The budget process is undoubtedly a management process that allows exchanging information, planning, analyzing, budgetary accounting and control. It reflects direct and inverse relations among the management subjects (members of the budget process) related to the objects – income and expenditures of budgets of the budget system, interbudget transfers, budget loans, budget-planning acts, etc.

The articles of the Budget Code of the Russian Federation (hereinafter referred to as the BC RF) (No. 145-FZ, 1998) set the procedural and procedural model of actions performed by participants in legal relations within the

relevant stage of the budget process. The authors think that all stages of the budget process that are normatively defined in the current legislation (Article 6 of the BC RF, Part III of the BC RF, bylaws adopted in accordance with them) are to some extent interrelated with administrative procedures if the latter are considered as a system of interrelated power actions based on implementing material and procedural norms of the law when providing public legal formations, citizens, and organizations with public benefits.

The degree of this interrelation is not the same: at the stages where the active role belongs to the executive authorities (the stage of drafting, budget execution, current accounting and control over execution), it is high. It will be less noticeable at the stages when predominantly the powers of legislative bodies (elected representative bodies of local self-government) are exercised.

Another example is *the procedural mechanism for the national budgetary system sustainability* that is an element of the general mechanism for the legal regulation of the budget sustainability and can be defined as a relatively independent subsystem of legal means. It makes it possible to adjust the activities of the authorized bodies that pursue the budgetary policy of public and legal entities on maintaining sustainability and balanced functioning of the Russian budgetary system.

In the context of problems on improving the efficiency of the normative regulation of budgetary relations, the authors believe that the compilation, approval and execution of the budget by the state authorities and local self-government bodies, as well as control over its implementation (i.e. the entire budget process and its budget procedures) should contribute to the efficient functioning of the economy and social area of the state and its territories that, in its turn, is difficult to achieve under unsustainable budget system. In this regard, the achievement of sustainability (both of each budget, and the budgetary system, as a whole) can be presumed as the main final task of any budget-legal procedure, including interbudget lending.

3. Terms and Conditions of Budget Lending

3.1. Lending to Partially Cover the Regional Budget Deficit

Article 93.3 of the BC RF defines general terms and conditions for providing subjects of the Russian Federation and municipal entities with budget loans (according to the terminology used by the authors, these are interbudget loans).

The authors think that taking into account the current regulations and with regard to the goal of the budget sustainability, the administrative and procedural mechanism of the budget lending for the “Russian Federation – Subject of the Russian Federation” line can be represented by the aggregate of two subsystems that unite modes of regional lending defined on the regulatory basis: 1) lending to partially cover the budget deficit of the Russian subject, 2) lending to replenish the balance of funds on the accounts of the Russian subjects’ budgets, including to cover temporary cash gap that arises when meeting the budget by the Russian subject.

In accordance with the Rules for Providing (Using and Repaying) Russian Subjects with Budget Loans from the Federal Budget for 2017, in order to partially cover the budget deficit of a subject of the Russian Federation, loans are provided if the projected expenditures exceed the revenues of the consolidated budget of the Russian subject (taking into account the sources of financing the budget deficit), as well as to repay the debt obligations of the Russian subject in the form of debts on other loans, including commercial ones. In this case, the subject of the Russian Federation (the applicant of a budgetary loan) is obliged to accept a number of obligations of *organizational and legal* (approval of the subject’s debt policy for the fiscal year and planned period by the highest executive authority, providing the Ministry of Finance with the information on the compliance of the parameters approved by the budgetary law of the subject with the indicators of the budget loan agreement) and *financial and economic* (compliance with the norms of planning expenditures for salary of regional state employees and keeping public authorities established by the Government of the Russian Federation) nature. At the same time, according to the authors, fixing norms about the responsibility of the authorized officials of regional public bodies for violating these acts and programs will contribute to improving the efficiency of legal regulation of administrative procedures related to interbudget lending [Bochkareva \(2017\)](#).

It is necessary to note that the financial law substantiates the conclusion about a special type of financial legal relationship of a contractual type, for example, the budget loan agreement ([Rukavishnikova, 2016](#)). The regulation of the arising relations is peculiar by the fact that the civil legislation of the Russian Federation is applied to them on a subsidiary basis, i.e. additionally, in case the norms of the BC RF do not provide other rules and requirements.

3.2. Budget Loan for Replenishing Balances on the Budgets’ Accounts

The permanent threat of nonentry of the planned tax and nontax revenues into the budgets of public legal entities substantiated the need in developing instruments to cover temporary cash gaps and to ensure liquidity of the Russian subjects’ budgets. *Budget loan to replenish the balances of funds on the accounts of budgets* of the above public legal entities became such instrument. It is provided by territorial bodies of the Federal Treasury at the expense of balances on the single account of the federal budget within one twelfth of the budget revenues of the Russian subject on the returnable and paid basis for up to 30 days (Article 93.6 of the BC RF).

In accordance with the Rules of Providing Budget Loans to Replenish Fund Balances on the Accounts of the Russian Subjects’ Budgets (Local Budgets) approved by the Government of the Russian Federation, the loans under consideration are provided by the Russian Federation subject to the debtor’s compliance with the following conditions:

a) Opening accounts with institutions of the Central Bank of the Russian Federation to record transactions with the funds that enter budgets of Russian subjects,

b) Concluding a loan agreement, the parties of which include the territorial body of the Federal Treasury and the subject of the Russian Federation; it states the purpose and subject of the agreement, terms and conditions of the loan provision and repayment, the loan amount, the fee for using the loan, the term of using the loan, the date of loan repayment, responsibility of the parties for violating the terms of the agreement, the procedure for resolving disputes, rights and obligations of the parties, and the procedure of their interaction when implementing the agreement.

The agreement is concluded in a special order and in the form established by Order of the Ministry of Finance of Russia No. 74n dated July 26, 2013. In fact, it can be defined as a credit line agreement. In accordance with additional agreements, it defines certain amounts and terms of borrowings.

The control over the expenditures of the Russian subjects' budgets that are financially secured by budget loans is assigned to the Federal Treasury of the Russian Federation as a federal executive body that controls and monitors the financial and budgetary area.

When using a budget loan not subject to the designated purpose, the amount of debt, interest for using federal budget funds, as well as fines (penalties) are withheld at the expense of the income to be credited to the budget of the Russian subject in accordance with the procedure established by the Ministry of Finance of the Russian Federation.

According to the specialists, the well-developed mechanism of treasury lending is an efficient instrument for maintaining the liquidity of budget accounts, and allows solving the local problems of budgets within the shortest period of time (Gzyzin and Kuzina, 2015).

4. Conclusion

Thus, the activity of the authorized federal bodies and state authorities of the Russian subjects in the area of interbudget lending includes several general, successive, and interrelated stages of carrying out administrative procedures:

Stage 1 – a request on providing a budget loan, substantiation of the need in the loan and provision of the stipulated data,

Stage 2 – undertaking certain obligations by the loan applicant,

Stage 3 – taking a decision about providing a loan by the authorized federal body (the Ministry of Finance of the Russian Federation, the Federal Treasury), and

Stage 4 – control over the target use and timely and full repayment of the loan.

To paraphrase the thesis that procedural law is an indicator of the society civility, it is possible to formulate a provision. According to it, *administrative procedures are an indicator of the state civility*. Despite a different qualitative composition of legal facts that various relations arise, change or terminate from, their different subject composition, the difference in the relationships of participants of legal relations and in the nature of the legal relationship, a balanced functioning of the budgetary system as a whole, and each of its levels is a type of “the attraction point” that combines the whole variety of legal means in a unified mechanism for the legal regulation of budgetary relations.

References

- Bochkareva, E. A. (2017). Nauka administrativnogo prava ob upravlenii finansovoy sistemoy i yeye otdelnymi elementami, *Administrativnoye pravo i administrativnyy protsess* [Science of Administrative Law on Managing the Financial System and Its Individual Elements, Administrative Law and Administrative Process], № 2.
- Gracheva, E. Y. (2003). *Finansovoye pravo v voprosakh i otvetakh: uchebnoye posobiye* [Financial Law in Questions and Answers]: A Manual. Moscow, “Velby.
- Gzyzin, O. L. and Kuzina, M. I. (2015). *Kaznacheyskiy kredit kak instrument upravleniya likvidnostyu schetov byudzhetrov v regionakh* [Treasury credit as an instrument for managing liquidity of budget accounts in regions]. *Budget*, 9. 2015.
- Khimicheva, N. I. (2009). *Nauchno obosnovannyye printsipy finansovogo prava kak vektor yego deystviya, razvitiya i formirovaniya novoy metodologii prepodavaniya* [Scientifically grounded principles of financial law as a vector of its action, development and formation of a new teaching methodology]. *Financial Law*, 2.
- Komyagin, D. L. and Kozyrin, A. N. (2011). *Byudzhethnoye pravo Rossii* [Russian Budget Law. Institute for Public Law Research: Moscow.
- Pokachalova, E. V. (2011). *Publichnyy (gosudarstvennyy, munitsipalnyy) i chastnyy (bankovskiy) kredit kak element finansovoy sistemy i sfera imperativnogo vliyaniya gosudarstva* [Public (state, municipal) and private (bank) credit as an element of the financial system and the area of imperative state influence]. *Banking Law*.
- Rukavishnikova, I. V. (2016). *Osobennosti byudzhethnogo kreditovaniya subyektov Rossiyskoy Federatsii* [Peculiarities of budgetary crediting of subjects of the Russian Federation]. *Financial Law*, 6.
- Soloviova, E. V. (2013). *Publichnyy kredit kak institut finansovogo prava na primere Rossiyskoy Federatsii i SSHA* [Public credit as an institution of financial law through the example of the Russian Federation and the USA]. Moscow.
- Tsindeliani, I. A. (2011). *Protседurnyye normy v sisteme finansovogo prava* [Procedural norms in the system of financial law]. *Financial Law*, 11.