

Administrative Deficit in Public Sector

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Abstract

This paper aims to examine the administrative deficit in public sector, in Greece, through court decisions of the Hellenic Court of Audit, which is the Greek Supreme Financial Court. Specifically, we present the concept of management deficit created from the accounting officer, which is divided into substantive (or real) deficit and formal (or typical) deficit, examples of both categories and how principle of proportionality applies to each category of public deficit, depending on its distinctive characteristics. We also analyze the consequences of the public deficit to the State, the State's damage, the imputation procedure on the person accountable and the statute of limitation for imputing a deficit. Finally, we compare and we distinguish the concept of deficit from the concept consequential loss and the concept of 'stumbling block'.

Keywords: Public Deficit, Accounting Officer, Imputation, Proportionality

Introduction

The accounting officer in the exercise of his management authority may create a management deficit. The deficit found during the legal procedure of the ex-post audit is imputable to him (the accounting officer), as well as to any co-managers.

Concept

The management deficit is divided into substantive and formal. A substantial or otherwise real deficit, in the financial sense, is the slightly unjustified difference between the amount of money, stamps, materials, etc. that should exist, according to the results extracted from the accounts and based on the legal management data and that (amount of money, etc.) that actually exists [1, 2].

It Has Been Judged to Constitute a Substantial Deficit:

1. The acquisition of material goods that are less than the value or quantity of the disposed money, ie the money spent [3].
2. The receipts are more than the deposits in the Bank of Greece [4].
3. The failure to enter revenue in the relevant public management, provided that the legal title has been issued [5].

4. The deprivation of the State from money due to the culpable behavior of the accounting officer [6].
5. The undue payment made due to the accounting officer's fault [7].
6. The payment of statutory claims,
7. The extra-fund management [8].

A typical deficit is any unpaid payment, that is to say any payment that is not,

1. within the competence of the accounting officer [9, 10].
2. It was made without the supporting documents provided for by the applicable provisions, that is to say, any procedure for the collection of an amount, for which the legal procedure for admission as revenue to the relevant management is omitted, as well as any payment which is not based on legal and complete supporting documents and for which the procedure provided for by law for the disbursement of money through money orders has not been complied with [11, 12].
3. It concerns expenditure for which the legal procedures have not been complied with by the accounting officer [13].

4. It is irrelevant to the purpose of the management [14].
5. It follows from the above that this difference on the lesser of two occasions entails an equal loss to the State, Public Entity Law etc., so that the imputation is purely compensatory of the damage, while in other cases it does not entail actual loss, since it is due to formal omissions regarding the abnormal maintenance of the accounts.

Limitation Period for Imputing a Deficit

It was consistently accepted before the explicit statutory provision on the limitation of the deficit, that the claim of the State and the Public Entities for the replacement of the created deficit is subject to the 20-year limitation provided for in Article 249 of the Civil Code. The 20-year limitation period as generally applicable and foreseeable, which applies to the allocation of public deficits to the detriment of persons responsible for their rehabilitation, was considered not to exceed the necessary measure [15]. Of course, the facts of the case had to be assessed and evaluated in any case, and in particular the finding of the deficit took place or not in the context of the regular audit of the accounts, which must be completed within a reasonable time from their submission [16].

However, already with Article 152 of Law 4820/2021 it was explicitly provided that the claim for the replacement of a management deficit by the issuance of an accounting act by each competent body is barred after ten years from the end of the financial year in which the deficit was created. In fact, the notification of the sheet of changes and deficiencies does not interrupt the limitation period. However, if, within the last six months of the limitation period, the obligated party is notified of the change and defect sheet, the claim shall be time-barred six months after the end of the ten-year period.

Furthermore, if the application for imputation is entered before the completion of the above limitation period at the Court of Auditors responsible for imputation, this claim shall not be barred before the expiry of one year from the entry of the application at the Court of Auditors.

In addition, the limitation period is suspended for as long as the beneficiary has been prevented by force majeure from exercising his claim within the last six months of the ten-year limitation period, and the period of suspension is not counted in the period of limitation. When the suspension ceases, the limitation period shall continue, but in no case shall it be completed before six months have elapsed.

Finally, where the management deficit resulted from a criminal offence for which criminal proceedings have been instituted, the limitation period shall be suspended until the criminal court has issued an irrevocable decision on the criminal proceedings instituted.

The Principle of Proportionality on Management Deficits On the Formal Deficit

Where the finding of the deficit is not consistent with the existence of actual damage, that is to say, of formal deficits, a deficit may formally exist, but there is no actual damage to the legal person. It must be borne in mind that, in this category of deficits, the charge is of a penal nature, since it is a disapproval of the

managerial behavior of the accounting officer and not a compensation for the damage.

Given that the accounting provisions do not allow the competent bodies to assess the responsibilities of the accounting officer even in the case of the "standard deficit" and to attribute only part of the identified deficit, proportionate to the management behavior, it is possible that the attribution is not in a reasonable relationship with the behavior shown and is contrary to the principle of proportionality (no. 25 of the Constitution) [17].

More specifically, the imputability of the accountable persons must be in reasonable proportion to the gravity of the financial infringement, and must not exceed the intended purpose, by institutionalizing their specific public responsibility, of the legislator, which is to ensure the lawful allocation of public money to meet the existing needs of public bodies. In other words, the imputation must not be contrary to the constitutional principle of proportionality (Article 25 par. 1 of the Constitution), the most specific expression of which is the principle of a fair balance between the public interest and the attempted intervention by imputation in the property right of the person imputed, which is affected and protected by the provisions of Article 1 of the (first) Additional Protocol to the ECHR. Otherwise, the imputation would constitute, for the public body in favor of which it is imposed, unjust enrichment within the meaning of Article 904 of the Civil Code [18].

Accordingly, those provisions, interpreted in accordance with the principle of proportionality, must be interpreted as meaning that, in the case of a formal deficit, the Court of Auditors may, when examining the appeal, take into account the degree of deviation of the conduct of the person responsible for the creation of the deficit from the fiscal legality, the degree of culpability and the gravity of the financial infringement, as well as the observance of the required reasonable ratio between the financial result obtained and the gravity of the financial infringement with the amount of the imputation, which must not lead to the unjust enrichment of the public body and, finally, the observance of the fair balance between the enforcement of the latter and the right to the property of the person imputed, which is necessarily affected if the imputation does not fully correspond to the damage of a legal person [19]. If it finds that the amount charged is inconsistent with the other elements, it should adjust it to the appropriate amount at its discretion [20].

On the Material Deficit

As regards the substantive deficit, the case law has consistently held that the principle of proportionality does not apply [21]. However, by 490 and 491/2020 decisions of the Court of Auditors it was accepted that the Court should examine the possible application of this principle also to the specific deficit, which was of a substantive nature. Admittedly, the dissenting opinion emphasized, inter alia, the essential nature of the deficit and argued that the principle of proportionality did not apply. Also, in Decision No. 2014/2020 decision of the Plenary of the Court of Auditors the consensus opinion on the majority ruled that the observance of the constitutional principle of proportionality (article 25 par. 1 Constitution.) must be investigated by the court in the case of both the formal and the substantive deficit. This is because, in order to determine the amount of the imputation,

insofar as it inadvertently affects the right to the property of the person imputed, the severity of the financial infringement and its consequences, the extent of the deviation of the responsible party from the financial legality, the degree of his fault and the damage to the property of the person imputed as a result of the imputation must be balanced in any case, in order to respect the fair balance.

In summary, it seems that the position still holds that the principle of proportionality does not apply to a substantial deficit. However, this fixed position has already suffered cracks. It seems more consistent, however, not to exclude from the outset the application of the principle of proportionality solely on the basis of the nature of the deficit, but to take into account in each individual case the other factual elements.

Distinction of Deficit from Consequential Loss

A distinct case from that of the deficit is the finding of consequential damage. The consequential loss essentially does not constitute an increase of the property of the person to whom the imputation relates. For example, a failure to collect rentals in a building belonging to the audited entity is not a deficit, but a consequential loss [22]. Accordingly, the failure to issue or the improper issuance of the legal title required for the determination of a debt as a result of the admission of a specific interpretative version of the applicable legal rule, which respectively frustrates the increase in public property, does not cause a deficit of public management to be charged to the competent official as a public accountable, responsible for unlawful management, but, a consequential loss of the State [23].

Distinction of Deficit from 'Stumbling Block'

The management deficit differs from the "stumbling block". 'Obstacle' means the finding that the accounts of the accounting officer have been drawn up in a simple irregular manner or that no receipts have been entered or that expenditure has not been entered in the accounts. In other words, in the case of the obstacle, there is no competence to impute.

It is therefore concluded that the differentiation of the obstacle from the deficit is that the deficit presupposes the irrefutable finding of the lack of state property, while on the contrary, the obstacle does not imply a reduction of the state property [24].

Conclusion

This study highlights the significant influence of social media marketing on consumer purchase intention within the Malaysian retail fashion industry. By employing the Stimulus-Organism-Response (S-O-R) framework, the research confirms that interactivity, informativeness, and entertainment are key components that shape consumers' emotional and cognitive responses, thereby affecting their purchase intentions. The findings contribute to both academic literature and practical applications by demonstrating how social media strategies can effectively engage users and drive purchasing behavior. Retailers and marketers are encouraged to enhance their social media presence by focusing on these elements to build stronger consumer relationships and achieve competitive advantage. Future research may expand on this study by exploring other sectors or integrating additional psychological and technological variables to further enrich understanding in this evolving digital landscape.

References

1. See instead of many ElSyn (dec. VII Sq.) 1092/2017.
2. ElSyn (Dec. I Dep.) 896/2021, (Plenary Session) 1824/2019, 477/2019, 1025/2011, (Dec. I Dep.) 1026/2011, 1007/2011, 1174/2009.
3. ElSyn (dec. IV Sections) 2182/1994.
4. ElSyn (dec. I Dep.) 578/1998.
5. ElSyn (Dec. I Dep.) 896/2021, (Plenary Session) 1781/2018, (Dec. IV Sections) 2793/2009.
6. ElSyn (dec. IV Sections) 547/2012.
7. 152, par. 1 case d of Law 4270/2014.
8. ElSyn (dec. VII Sq.) 1708/2007.
9. 152, par. 1 subpar. b of Law 4270/2014.
10. See (Plenary Session) 1084/1997, which considered that the expenses of a financial prepayment order (APO) that fall within its purpose, but were carried out after the deadline for the presentation of an account or before the issue of a APO, do not fall under the competence of the accounting officer.
11. See ElSyn (Dec. II Section) 316/2021, which considered that the use of the receipts for the execution of expenses without the issuance of financial warrants accompanied by legal and complete supporting documents constitutes an unlawful management act from which a deficit is created in its own right. See also ElSyn (Plenary Session) 1894/2009, which considered that the Director of the Hospital's Pharmacy, ordered cellulose wool from a company, but this company is not contracted with the Hospital for the supply of this material and despite the existence of a relevant contract between the Hospital and another company, resulting in the burden of the Hospital with the additional amount of 32,790.33 euros which is an equal deficit in the management of this Pharmacy.
12. ElSyn (Dec. II Sect.) 316/2021, which considered that compliance with the accounting rules regarding the conduct of the cash management of the relevant Local Authority or Public Entity is an essential procedural formula aimed at the transparency of the movement of money and values and the avoidance of the risk of misappropriation and illegal appropriation of public money.
13. See ElSyn (dec. IV Dept.) 2092/2004, which considered that for the legal introduction of revenue in the management of NPDD, the issuance of the relevant receipt is required, while for the legal execution of the expenses of NPDD, the prior assumption and clearance of the relevant expenditure is required, as well as the issuance of the relevant AF, accompanied by legal and full supporting documents. Therefore, the concept of deficit includes any collection of an amount of money, the introduction of which is omitted as revenue in the management of the Legal Entity with the issuance of the relevant receipt, as well as any payment of an expenditure for which the prescribed procedure was not followed.
14. See also ElSyn (dec. I Dept.) 1686/1987, which considered that it is irrelevant whether the unrelated payment addressed other existing needs of the service, because the judgment on the urgency and necessity of any expenditure is the responsibility of the relevant authorizing officer and not the accounting officer, while it is also contrary to the principle of specialization of appropriations.
15. Elsyn (Plenary Session) 2121/2021.

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16. Elsyn (Plenary Session) 2121/2021.
 17. See for the principle of proportionality in B. Gemo, General theory of fundamental rights and primary EU law, PUBLIC law, (www.publiclawjournal.com) 2018, p. 213 et seq.
 18. ElSyn (Dec. II Sect.) 241/2021.
 19. ElSyn (Dec. II Dept.) 241/2021, (Dec. VII Sq.) 653/2020, (Dec. VII Sq.) 489/2020.
 20. ElSyn (Dec. VII Sections) 490/2020, (Plenary Session) 4314/2013, (Dec. VII Sect.) 842-843/2017, (dec. I Dep.) 1917/2013. See also E. Balta, The principle of proportionality as a methodological and interpretative tool in the budgetary trial on the imputation of public accountants, EVDD 2/2014, p. 175 et seq.
 21. See instead of many ElSyn (dec. IV Sect.) 718/2020, (Dec. VII Sq.) 653/2020, etc.
 22. ElSyn (Dec. VII Sq.) 2933/2014.
 23. ElSyn (Plenary Session) 1033/2019, 1775/2018, (dec. I Dep.) 510/2017, IV 1841/2019, etc.
 24. ΑΠ Gerontas Fiscal Law, 2005, p. 428.
 25. “ΕλΣυν”/Elsyn” for “Hellenic Court of Audit - Supreme Financial Court”.