

INTERVENTIONS ON THE LEGAL FRAMEWORK OF FINANCIAL-BUDGETARY REASONS OF NATIONAL DEFENSE

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Abstract: *This paper aims to approach the issue of military spending of Romania, as a member of OTAN, in relation to the legal and financial perspective and changes of specific rules that have occurred recently. For this, we proceeded to investigate the operational legal corpus in this matter, but also to the study of scientific papers and reports issued by certain public bodies of high prestige. First, we present a general outline on military spending of Romania and OTAN member states and then focus on exemptions from legal and financial regime applicable to public procurement system for the Romanian Army. The final part of the paper is devoted to the approach of (possible) new guidelines on national security / regional and conclusions. We note that some content elements found in this study have been published by the author in mainstream media (national), usually daily, at a much smaller scale, ethics forcing us to do here the due details and bibliographical references.*

Keywords: *armed forces; financial and budgetary rules; flexible rules; GDP; Grinding / supplementary budget; military interoperability; OTAN; public expenditure; purchasing / procurement programs.*

1. GENERAL OUTLINE REGARDING MILITARY SPENDING OF ROMANIA AND OTAN MEMBER STATES

For various reasons, but certainly most economic, over time there have been several delays for the start of the programs endowment structures of the Ministry of National Defense (MND) in Romania (Bostan, 2016a). Relatively recently, it has been scheduled for the year 2017 military spending accounted for 2% of Romania's GDP, to fit the recommendations of OTAN (Dinu et al., 2016; Bostan, 2016b). The "10th power number of troops under OTAN with a staff of 70.000 troops" (Lupitu, 2016), is that, based on budget allocation re-assumed at the OTAN summit in Warsaw (at least 2% of GDP), as pledged by all member states summit in Wales in 2014, to start massive program of modernization of the Romanian Army. Currently, OTAN member states which meet or exceed a threshold of 2% of GDP on defense are: USA (3.61%), Greece (2.38%), the UK (2.21%), Estonia (2.16%) and Poland (2%). Just have to mention the restriction that at least 20% of the total military expenditures to look procurement of military equipment. According to the aforementioned source, the restriction is respected by ten Member States. Let us remember that between them, Romania ranks third with 26.13%, after Luxembourg (32.82%) and Lithuania (27.65%).

Moreover, the reasons of the picture sketched here in the last amendment budgetary in 2016 settled in favor of the Defense Ministry "to increase commitment appropriations by 5 million ROL to start procurement of technical and specific equipment" (the Ministry of Finance, 2016). That amount covers - between 2016-2022 - a strategic program to equip the Romanian Navy special warfare vessels (corvettes multifunctional), and initial purchase ammunition and logistical support. Considering the rigor / rigor which should manifest itself in the space budget (Anitei, 2011a,b; Burciu, 2008; Costas and Minea, 2015a,b; Costea, 2015a; Dascălu, 2006; Dascălu and Nicolae, 2006; Drosu-Şaguna and Tofan, 2010; Hurjui, 2008; Lazăr and Bundă, 2012; Niţă, 2010, 2013; Radu et al., 2015; Dascălu et al., 2016), the following lines we bend on the issue of military spending of Romania, OTAN member state, relating to our financial and legal perspective of specific rules changes have occurred recently.

2. EXCEPTIONS TO THE LEGAL AND FINANCIAL REGIME APPLICABLE TO PUBLIC PROCUREMENT SYSTEM FOR THE ROMANIAN ARMY

2.1. Elimination of legal barriers on purchases of equipment and lots of ammunition with long manufacturing cycle

The investment process of the Romanian Army procurement programs correlated with those developed in OTAN, has faced a certain period of time with a big problem of legal and financial order. Namely, the purchase of equipment and lots of ammunition with long manufacturing cycle (12 months) was extremely difficult due to restrictions found in Law 500/2002 on public finances (Bostan, 2016c). Thus art. 52 paragraph (1), (3) - (8) and (10) creates real barriers in this context as any payments made to suppliers in advance (up 30%), unjustified by delivery of goods / works executed up to the end year, were to be recovered by the one who granted the advance and shall be returned to the budget. Moreover, "if non-delivery of goods, works and services for missing employed for which advances were paid, the recovery of sums by the public institution is made by charging interest and penalties for late payment or late payment penalties (...), calculated period when they were granted until recovered" (Government of Romania, 2016a). But an evolution of things on this line in 2016, when aimed at laying the Alliance's capabilities for enhanced response force of OTAN (FCRN), was no longer possible. Let's just mention that provision by Romania, in addition to the necessary infrastructure, system communications and necessary Command, is supported by the Agency OTAN Communications and Information (NCIA), requesting advance payment for the services rendered (Government of Romania, 2015a). Therefore, through an Ordinance introducing more fiscal measures (Government of Romania, 2015b), they were brought to derogate from the provisions of art. 52 parag. (1) (3) - (8) and (10) of Law no. 500/2002, to which we referred above. As a result, in 2016 "authorizing officers in MND can engage and use public funds by using letters of credit or payments in advance for purchases (...) designed to achieve or ensure logistical support for the military equipment for the period of realization exceeds the budget year in which it was made legal commitment or providers do not want to deliver the goods where payment is not made through the use of such instruments, as well as for equipment covered by supply contracts" (Government of Romania, 2015b). However, the same law stipulates that "Payments made in advance by authorizing officers (...) can not exceed the amount of 30% of the products / services / works under the contract" and "For the amounts paid in advance (...), beneficiaries are required to provide the authorizing officers letters of guarantee whose value can not be less than the amount paid as an advance".

In addition, "Liquidation amounts committed, authorized and paid (in advance - n.ns.) is based on the reports of provisional acceptance or minutes commissioning and technical audits and accepting ...". Then, even if it is about OTAN and the FCRN reasons, our references regarding investments intended solely to equip MND approved laws or decisions of the CSAT was established and a maximum time. Specifically: "Liquidation amounts of advances (...) be justified by suppliers no later than 36 months from the date of granting of advances by deliveries of finished products or parts thereof" (Government of Romania, 2015b). In addition, these products come into question whether complex military equipment, ships, missiles, guns, tanks, etc., ammunition, must meet an important condition. Respectively, which is to operate independently and meet all those responsible in national defense system.

2.2. Maximum budgetary flexibility and increase commitment appropriations aimed at increasing the combat capacity of the Romanian Navy Forces (RNF)

Public signals that the wider Black Sea region is one generating anxiety in the "peace" there earlier (Bostan, 2016b), which is credible as possible. For instance we have no reason to not believe what just executive Romania argues in a paper of his own, namely that the area "is characterized by the actions of breach of international law by putting into question the international order, preservation frozen conflicts and the intensification of military presence" (the Romanian Government, 2016b). Then, the authorized person in official, Vice Admiral dr. Alexandru Mîrșu, Chief of Staff RNF, in a recent interview with AGERPRES brought some technical details to that effect. Textual, dignitary military claimed that "The 2016 - just as in March 2014 with the annexation of the Crimean Peninsula of the Russian Federation, when did this climate of tension growing in the Black Sea and can even say in what we, military, call the wider Black Sea - is marked by an unpredictable security environment. In these circumstances, the RNF, part of the national defense system must remain vigilant, level of education and training up to show that we have capabilities to patrol our areas of responsibility" (Mihăescu, 2016). Obviously those mentioned personality capabilities mentioned involve special investment effort (Bostan, 2016c). Or today, according to the assertions of the Government Background note by the aforementioned, RNF have "four corvettes obsolete operationally and technically, with limited interoperability in relation to ships other OTAN member states, with the resource life exhausted and equipping and technical eastern origin, whose modernization is not feasible". RNF ensure operational certainty required specific missions requires provision of "multifunctional corvettes new modern equipment interoperable with vessels from other OTAN member states, tailored actual missions". In fact, corvettes are most effective surface warships in the seaside area, with average displacement, and is capable of performing a wide range of missions in difficult hydro-meteorological conditions. Being made at all levels that a military procurement of this type is a strategic necessity that must be met speedily towards the end of 2016 have taken steps in insurance budget (Romanian Government, 2016b). Note substantiating the Government Emergency Ordinance (GEO) rectifying the state budget for 2016 is proposed for MND "to increase commitment appropriations by 5 000 000 thousand ROL (Romanian Lei) to start procurement of technical and specific equipment" (Government of Romania, 2016c). Later, once adopted that GEO, art. 8 among other provisions aimed at MND, we find that the (al. 3) that "in the Annex is authorized MND. 3/18/29 «Sheet goal / project / category of investment», Chapter 60.01 "defense" title 71 "Non-financial assets", Article 71.01 "Fixed Assets" (...) to increase the amount of commitment appropriations 5 000 000 thousand ROL".

On the other hand, for the remainder of the year 2016, the same EO provides that (art. 8, parag 4) 'notwithstanding the provisions of art. 30 parag. (2) of the Law on Public Finances no. 500/2002 (...) from the Budget Reserve Fund available to the Government, by Government decision, MND can allocate money to finance expenses related to the obligations deriving from procurement of materials, fixed assets, services, works for performing repair and overhaul the current combat equipment and military equipment. "This exemption means that allocations will be made even if it is not necessarily "urgent or unforeseen expenses incurred during the budget year" in the primary vision of the legislature (Parliament of Romania, 2016). Finally, it stipulates that in the same period (art. 8, parag. 5) "notwithstanding the provisions of art. 47 parag. (9) of Law no. 500/2002 (...) to finalize the procurement of military equipment, authorizing the Defense Ministry to carry out transfers of budgetary credits and commitment between budget chapters and between programs, over thresholds, without exceeding the approved budgetary provisions". These legislative provisions should be noted that beyond the fact that it gives guarantees in terms of financial resources necessary to cover the value of acquisitions RNF, we are dealing with a budget bureaucratization, thanks derogations from the common law MND data. Strict regarding the purchase of corvettes, the Romanian Government adopted on 29 November 2016 Decision approving the specific circumstances and procedure related to strategic procurement program „corvettes multifunction" (Government of Romania, 2016d). As created mounting financial budget, the total value of the investment project in question (construction and equipment of ships will be done at Damen Shipyards Galați) is approximately € 1,6 mld. This is to be paid in installments over the period 2016-2022, within the limits of funds estimated to be allocated in the budget of Defense, under the heading "Non-financial assets" by Law no. 339/2015 of the state budget for 2016. Note that this sum includes the initial purchase ammunition and logistical support, which includes the training of crews. What is hoped, following huge financial effort to equip the state RNF it is that they fulfill specific tasks in an efficient way in the politico-military context to which earlier referred.

2.3. The budgetary costs related to military aviation patrolling the eastern border

1990 was the year in which finalized the purchase of the lot MiG 29 (21 machines), made in the USSR. Highly praised at the time, this type of fighter after nearly three decades and appeared to maturity shutdown. Given that our fleet of MiGs may serve only until this year (2017), four years before it was decided to replace it, with all that means some legislative commitments to OTAN, financial support etc. (Bostan, 2016f). Thus, by Law no. 240/2013 for achieving operational capability airlines have made an important step. That phase (I) is included in the initial stage of transition gradual realization of the concept of air defense capability in the 'multi-role aircraft of the Air Force. "It was stated that the capability will be achieved through" award by the Government of Romania Government of the Portuguese contract purchase 12 F-16A / B MLU M 5.2 of surplus service training of seafarers and technical Portugal and Romania has technical support in Romania, and the elements of logistics support" (the Romanian Parliament, 2013). On the other hand, the Romanian Government (through the National Company "Romtehnica" SA) will assign US Government 'successive contracts Type Letter of Offer and Acceptance - LOA Specific Programme Foreign Military Sales - FMS for the purchase of weapons and ammunition necessary complement package initial logistic support and service training". When it comes to fiscal effort, since 2013 these contracts have assumed insurance from the state budget, the commitment appropriations in the amount of about 218 million. € and budgetary appropriations, in the amount of 97 mil. € (Government of Romania, 2013).

However, the total amount related to these aircraft, including upgrade (Lockheed Martin) is over 600 mil. €. This is because it will be acquired and weapons for the fighters F-16 will modernize Fetești airbase - extending the runway from 2.5 km to 2.8 km, adaptation hangars, fuel depots and armory, etc. Then, just to serve the 12 multi-role aircraft have undergone a special training program not less than 100 people (crew and technical). As the cost per flight hour (CPFH) of the device concerned, it is appreciable. In rough terms (InfoMondo Military, 2012), for example, if finally we get to fill the need for 24 F-16 (at least for Romania, according to OTAN standards) x 3 pilots need / airplane x 120 flight hours / pilot / year (minimum) x \$ 7 000 CPFH yields a total per year - just CPFH - of 60 480 000 million dollars / year. Obviously, this value must be allocated from the state budget for MND. And the existence and allocation of its quality depends defense missions Romanian air space, which means more than just patrol in height, given the obligations to OTAN, it is necessary to comply Service Anti - Air Police, on the eastern border. A look at what was designed, in terms of budget, to be spent this year by MND reveals allocate 11.23 mld. ROL, 51.65% more than in 2015. Only for Chapter "defense" (Manolache, 2015), are provided 7.64 mld. ROL, of which 2.64 mld. ROL for Land forces, 2.24 mld. ROL for the Air Force, 911 million ROL for the Navy and 631 million ROL for Logistic Support. The main source of funding is the defense budget (92.14%), coming in completing their income (7.86%). We retain only so that their role assumed by Romania to OTAN directly MND depends mode on the resources allocated to them and require supplementation to reach the level of 2% of GDP (the Romanian Presidency, 2015). Also on this plan target is to maintain that rate for the period 2017-2027, and if possible, even be increased, "according to security needs and obligations that Romania can take."

2.4. Additional budget allocations aimed at increasing the operational capacity of the army

As is well known, the consequences of the crisis were to be affected structures MND procurement programs, including those of strategic importance. However their mark on completing battle stocks, the readiness status of equipment and perhaps even on the level of training of Romanian soldiers (Bostan, 2016a). Perhaps (and) therefore, by a recent decision of the Executive Romania, the necessary conditions to ensure delivery of products / services contracted have been allocated to the Ministry of Defense, in addition, approx. 146 million € from government reserves. The justification is given by the need to build financial support of "key actions for enhancing the operational capacity of the Romanian Armed Forces in accordance with the provisions of the transformation program, developing and equipping the Romanian Army until 2026 and in the future" (Government of Romania, 2016e). Moreover, it must accelerate implementation of these actions; given the operational requirements critical to the responsible majority a capability is entirely new role early warning and deterrence. "In terms of technical and budgetary amount mentioned is given to Title 20" Real and services' – 191 423 thousand ROL, and another part of Title 71 "non-financial assets" – 460 577 thousand ROL (Government of Romania, 2016f). So all in all, Chapter 60.01 "Defense", the sum amounts to 652 000 thousand ROL. According Substantiation Note the related "targeted some of actions respond to major priorities of 2016, but to be initiated immediately...". In this respect reference is made to the purchase of military equipment, current repair aircraft up of stocks of spare parts for C-27J Spartan and IAR-330L, serving our troops available to the ONU. Also part of the allocation for the completion of the project "communication system for radio relay lines and upgrading access for RTP / RMNC, Phase I".

Recall that the project to modernize the transmission grid Permanent extensions / multiple subscribers / digital terminals with embedded encryption. Regulatory approach of the Romanian Government, on which we are now focused, is consistent with GEO no. 86/2016 regarding the revision of the state budget for 2016 (art. 8, parag. 4) (Government of Romania, 2016g).

3. CONCLUSIONS

In a context that emerged after the time of the annexation of Crimea by the Russian Federation, Romania proximate space has become manifestly suffering from Chapter security. Procurement programs of the Romanian military structures to which we referred here, we meet as a budgetary effort, which should make him the Romanian state, in the context of obligations as a member of OTAN. If efforts are already outstanding on this line, we highlighted the legislative component that manifests itself very active lately. As we have shown in this paper, it is about eliminating latest of legal barriers on purchases of equipment and lots of ammunition with long manufacturing cycle, but also flexible budgetary undertaken and increase - the law of nature executive - credits commitment, which are designed to enhance the combat capacity of the structures in question. Finally, we approached the issue of those budgetary costs related to patrolling military aviation at the eastern border - Romania and also the European Union - and some parameters of allocation of public financial resources additional to the stated purpose of enhancing operational Romanian Army.

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