

Brazilian Constitutional Amendment Proposal 187 of 2019: Budgetary rigidity, linked revenue, mandatory expenditures and public debt

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Abstract: The purpose of this paper is to discuss the Constitutional Amendment Proposal 187 of 2019 (PEC 187/2019), presented by the Brazilian Ministry of Economy as part of an Economic Reform Agenda to improve the budgetary and financial management of the Federal Entities. Through due process at the National Congress, the Proposal of Funds (PEC of Funds) includes constitutional changes in national public finances, which makes our research relevant. Also, by presenting technical arguments, favorable or not, to its approval, and identifying whether the current fiscal regulation needs to be reformed, we will analyze essential issues such as budget rigidity, linked revenue, mandatory spending, and public debt, based on data and information extracted from national and foreign literature and articles.

Keywords: Constitutional Amendment Proposal 187 of 2019, Special funds, Budgetary rigidity, Linked revenues, Mandatory spending, Public debt.

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Proposta de Emenda Constitucional Brasileira 187 de 2019: rigidez orçamentária, receitas vinculadas, despesas obrigatórias e dívida pública

Resumo: O objetivo deste artigo é discutir a Proposta de Emenda Constitucional 187 de 2019 (PEC 187/2019), apresentada pelo Ministério da Economia como parte de uma Agenda de Reforma Econômica para melhorar a gestão orçamentária e financeira das Entidades Federativas. Através do devido processo no Congresso Nacional, a Proposta de Fundos (PEC de Fundos) inclui mudanças constitucionais nas finanças públicas nacionais, o que torna nossa pesquisa relevante. Além disso, apresentando argumentos técnicos, favoráveis ou não, à sua aprovação, e identificando se a atual regulação fiscal precisa ser reformada, analisaremos questões essenciais como rigidez orçamentária, receita vinculada, gastos obrigatórios e dívida pública, com base em dados e informações extraídas da literatura e de artigos nacionais e estrangeiros.

Palavras-chave: Proposta de Emenda Constitucional 187 de 2019, Fundos especiais, Rigidez orçamentária, Receitas vinculadas, Gastos obrigatórios, Dívida pública.

Propuesta de enmienda constitucional brasileña 187 de 2019: Rigidez presupuestaria, ingresos vinculados, gastos obligatorios y deuda pública

Resumen: El objetivo del artículo es discutir la propuesta de enmienda constitucional 187 de 2019 (PEC 187/2019), presentada por el Ministerio de Economía de Brasil como parte de una Agenda de reforma económica para mejorar la gestión presupuestaria y financiera de las Entidades Federativas. Mediante el debido proceso en el Congreso Nacional, la Propuesta de fondos (PEC de Fondos) incluye cambios constitucionales en las finanzas públicas nacionales, lo que hace relevante nuestra investigación. Asimismo, presentando argumentos técnicos, favorables o no a la aprobación de la propuesta, e identificando si es necesario reformar la actual regulación fiscal, analizaremos temas esenciales como la rigidez presupuestaria, los ingresos vinculados, el gasto obligatorio y la deuda pública, a partir de datos e información extraída de literatura y artículos nacionales y extranjeros.

Palabras clave: Propuesta de Enmienda Constitucional 187 de 2019, Fondos especiales, Rigidez presupuestaria, Ingresos vinculados, Gasto obligatorio, Deuda pública.

Introduction

In 2019, the Brazilian Federal Executive Branch brought into discussion the More Brazil Plan³, prepared by the Ministry of Economy as part of an Economic Reform Agenda to modernize and improve the budget and financial management mechanisms of the Union, the States, the Federal District, and the Municipalities.

Among its measures, it proposes the Constitutional Amendment Proposal n. 187 (BRASIL, 2019), which has become known as the Proposal for Amendment to the Constitution of Funds, because it allows a review of the various existing public funds by the respective Legislative Branches in order to restore the Brazilian State's ability to define its public policies in line with the current socioeconomic reality. It departs from the priorities established more than 30 years, which, given the political, social, economic, and demographic dynamics, may no longer reflect the needs and priorities of today's Brazilian society.

The original Amendment proposal presented by the signatory Senators on November 5, 2019, establishes a complementary legal reserve to create public funds, and abolishes those not ratified by the end of the second financial year following its enactment. It also allows the immediate disengagement of 219 billion reais⁴ - calculated as financial surplus - which may be used in public debt amortization.

The proposal under investigation foreshadows the possibility of extinguishing 248 funds, 165 of which were established before the 1988 Constitution, while protecting those provided for in the Constitutions and Organic Laws of all Federated Entities, as in the Transitory Constitutional Provisions Act.

Thus, the following Constitutional Funds⁵ are preserved: Partisan Fund, Constitutional Fund of the Federal District (FCDF), Participation Fund of the States and the Federal District (FPE), Municipal Participation Fund (FPM), National Social Assistance Fund (FNAS), Workers Support Fund (FAT), Fund of the General Social Security System (FRGPS), and National Health Fund (FNS), Constitutional Financing Funds of the North (FNO), the Northeast (FNE) and the Midwest (FCO) (DIAS, 2020).

Throughout the Constitution and Justice Commission discussion, when the Substitutive⁶ was presented, there was a consensus between the Commission and the Rapporteur of the Funds proposal to preserve some infra-constitutional⁷ funds. They are the following: National Fund for Scientific and Technological Development (FNDCT), Fund for the Defense of Coffee Economy (FUNCAFÉ), National Public Security Fund (FNSP), National Penitentiary Fund

³ The More Brazil Plan includes three Constitutional Amendments of the Proposal: Emergency, Funds, and Federative Pact.

⁴ Table 1

⁵ Table 2

⁶ The substitutive is a proposal submitted to replace/change the original proposal. The new term may partially or completely modify the original proposal.

⁷ Table 3

(FUNPEN), National Antidrug Fund (FUNAD), Export Guarantee Fund (FGE), Guarantee Fund for Promoting Competitiveness (FGPC), and Safra Guarantee Fund (FGS) (DIAS, 2020).

The present bibliographical and documental research work deals with a matter that has yet to be deliberated and voted in two rounds by the Plenary of the two houses of the National Congress, following the quorum and voting system required by the Constitution. However, the results can only be effectively measured in the future. Besides proposing a restart of the political process that could reconfigure the origin and allocation of public resources currently divided into the 248 funds aforementioned (RAIMUNDO; ABOUCHEDID, 2020), it also deals with tax reform as a part of the set of structural reforms so desired by the Federal Government and that makes up the More Brazil Plan which, specifically in the case of PEC no. 187, has as its secondary purpose the amortization of the public debt. Much is said about the compulsory application of public resources destined to enrich Special Funds⁸ existing in Brazil, as a way to increase the distribution of income and promote the economic and social development of the federative entity to which it is linked; and whether or not this budgetary rigidity harms the management of the public debt by not allowing the Brazilian Parliament to decide how to use the resources stopped in these funds.

There are divergences as to the purpose of the Amendment under discussion. Some argue that the funds have lost the advantage of being financial intermediaries for the management of resources linked to a specific purpose, hence the need for reform. Others understand the government should propose repairs or improvements, but not the extinction of a model that, according to them, has given good results in the more than 30 years of the 1988 Constitution. Remember that 165 funds were created before that year, as exposed in the Justification for the Constitutional Amendment Proposal 187.

For Bassi (2019a), for example, after the Federal Constitution and the creation of the Integrated System of Financial Administration of the Federal Government (SIAFI), which is the operational arm of the Single National Treasury Account - CTU, there is no longer a need for a fund to identify the source of the revenue and its direction to the expense to which it was linked. For him

[...] the funds also lost the ability to ensure that the allotted resources are entirely destined to the intended purposes since the legislation subordinates them to the search for the Primary Result, the Unbinding of Union Revenues, the Contingency Reserve, and the institution of the spending cap (BASSI, 2019 apud DEPARTAMENTO INTERSINDICAL DE ESTATÍSTICA E ESTUDOS SOCIOECONÔMICOS, 2020, p. 9, tradução nossa).

In another line, Scaff (2020) believes that the ideal would be an individual review of each fund and the adoption of measures for its improvement, ruling out its use for the payment of public debt. To him, such payment should occur through an express budget forecast, not through the financial surplus mechanism, which hides the exact forecast of how much should be paid, operating through contingencies to reach the annual amount to be disbursed.

⁸ Public Funds are funds supplied with money collected from taxes for specific spending according to their purpose.

In this paper, therefore, our goals are to enhance the debate on the subject and present the technical arguments in favor and against the approval of the Proposal for Amendment to the Constitution no. 187/2019, from the point of view of budget rigidity, revenue-binding, mandatory spending, and public debt. As a specific objective, we want to demonstrate whether the respective proposal is beneficial for the country's public finances, and thus identify whether or not this regulation (of the Funds) compromises or not the management of public debt so growing in recent years.

For this purpose, the paper is structured into four sections. The first section comprises the theoretical references, and the second presents the methodology with the most recent updates of the Constitutional Amendment Proposal 187. The third presents the demonstrative board of public debt's evolution, and the fourth and last one concludes the work.

Theoretical references

[...] the special funds had their first legal characterization established by the Public Accounting Code of 1922, which in art. 83 defined a special fund as the product of the sources of income to which, under precepts of law and contractual stipulations, a particular application has been determined [...] (SANCHES, 2002, p. 277, tradução nossa).

This definition of the Accounting Code was refined in article 71 of Law No. 4,320 of March 17 of 1964, (BRASIL, 1964), which states: a special fund is "the product of specified revenues that, by law, are bound to the realization of particular objectives or services, being allowed the adoption of peculiar rules of application" (SANCHES, 2002, p. 277, tradução nossa).

Between 1967 and 1988, there was a great proliferation of funds in the Brazilian public administration, especially in the Union, and in the states of the South and Southeast regions, where about 50 new special funds were created and implemented within the organs and entities of the federal government. This fact resulted from the advent of Decree-Law no. 200 of 1967 (BRASIL, 1967), especially with the new wording of article 172, of Decree-Law no. 900 of 1969 (BRASIL, 1969).

It is estimated that in 1977 there were 179 funds at the federal level (SANTOS, 1992 apud SANCHES, 2002). The nomenclature varied, demonstrating a certain misunderstanding about the operational systematics: accounting fund, merely accounting fund, revolving fund, and financial fund represent the retro-mentioned eclecticism (BASSI, 2019a).

The 1988 Federal Constitution was rigid about the funds. During its elaboration, it was discovered that an excessive number of them were in the federal budget, probably some of them no longer justifiable (BRASIL, 2020). A period of two years was granted for the ratification of the existing funds, when the Constitution was promulgated. Most funds would simply disappear due to the lack of interest and/or mobilization. So, a solution was inserted in Law 8.173/1991, which maintained these public funds through the 1991 – 1995 multiannual Plan (BRASIL, 1991). The tail of article 6 kept in force the funds that would be extinguished under the terms of article 36 of the ADCT, until the end of the first fiscal year, following the

publication of the complementary law referred to in the Federal Constitution's art. 165, §9 (BRASIL, 2020). This solution frustrated the attempt to evaluate federal funds on a case-by-case basis (GIACOMONI, 2011). In the Transitory Provisions, two years were granted for ratifying the existing funds on the date of the promulgation of the Constitution⁹. Due to lack of interest and/or mobilization of those responsible, most of the funds would simply disappear when, and then, the solution was inserted in the text of Law 8.173/1991 (BRASIL, 1991), which provided for the Multi-Year Plan for the period 1991 - 1995. The tail¹⁰ of art. 6 kept in force the funds, which would be extinguished under the terms of art. 36 of ADCT, until the end of the first fiscal year following the publication of the complementary law, referred to in art. 165, §9 of the Federal Constitution. This solution frustrated the attempt to evaluate federal funds on a case-by-case basis (GIACOMONI, 2011).

"The Constitution of the Republic, in the permanent text and transitory provisions, references 11 different funds. Of these, five were instituted after 1988 through constitutional amendments, which proves the widespread preference and actuality of this type of mechanism" (GIACOMONI, 2011, p. 347, tradução nossa). Today, there are 248 infra-constitutional public funds in Brazil, encompassing those of the Union, the States, the Federal District, and the Municipalities (RAIMUNDO; ABOUCHEDID, 2020).

The Magna Carta (1988) generically dealt with the funds, establishing only that they must appear in the Annual Budget Law (LOA) and that they cannot be structured utilizing binding tax revenues. The special funds have their revenues tied and directed to a specific purpose. About accumulated resources resulting from financial surplus, these will be carried over to the next fiscal year, unless otherwise provided by the law that instituted it (BRASIL, 2020).

Furthermore, the Plenary of the Court of Audit (TCU) already decided, when considering the accounts of the Government in 2015 (Judgment No. 1497/2016), that the use of resources of special funds for a purpose other than the object of binding is in disagreement with the provisions of Article 73, Law no. 4.320/1964 (BRASIL, 1964) and in offense to the sole paragraph of Article 8 of Complementary Law no. 101/2000 (BRASIL, 2000). For the Rapporteur, the government could not use the Provisional Measure as a general rule to authorize the disbursement procedure without specifically mentioning each fund. The TCU understood that each of them should have a specific law (COSTA, 2017).

The Complementary Law no. 101/2000, known as Fiscal Responsibility Law (BRASIL, 2000), makes it mandatory that the bound revenues are used exclusively to meet the object of its linkage, even if in a different year from the one in which the inflow occurs, intensifying

⁹ Federal Constitution. ADCT: "Article 36. The funds existing on the date of the promulgation of the Constitution, except those resulting from tax exemptions that become part of proven assets and those of interest to national defense, will be extinguished if not ratified by the National Congress within two years."

¹⁰ "Budgetary tail" is the name given to extraneous matter eventually included in the text of budget laws. They were common practice at the beginning of the last century and disappeared with the incorporation into the Constitution of the principle of exclusivity, i.e., the budget laws have exclusive content: only revenue forecast and authorization of expenditure. By extension, the PPA also has exclusive content, in this case, the one established in article 165, § 1. Among these contents is certainly not the creation or re-creation of funds. Apart from this, the multi-year plan, like the budget, is formal law and, therefore, does not replace the substantive law

the problem of budget linkages. Thus, we verified the growth, during the last few years, of the number of bound revenues that cannot be destined to the payment of expenses whose purpose is different from what was pre-defined, even if an excess of resources linked to a particular item of expenditure is observed (SOUSA, 2008).

The linking of revenues with specific and positive purposes has caused immense debate on the rigidity of the budget. According to Complementary Law no. 101/2000 (BRASIL, 2000), this linkage is the act of making exclusive revenue to the funding of a particular expense (or a set of them, as in the case of social contributions), resulting in a ban on alternative uses. Hence, if there were a financial surplus among the affected resources and the impossibility of reallocating them by normative imposition, we would face the so-called cash hoarding (BASSI, 2019b).

According to Giacomoni (2011), public managers diverge on the binding of revenues depending on the office or position they hold. To him, those responsible for central bodies - Treasury and Planning - highlight the negative points, mainly: (a) the reduction of freedom and flexibility in programming resources; (b) the political difficulties of reviewing the binding rules; and (c) often, the interference of managers of protected areas as a result of the obligation to spend.

On the other hand, managers responsible for areas of public administration bravely defend the virtues of binding rules. One of the important merits is the certainty that earmarked revenues guarantee stable sources of funds to a specific sector over time. With this stability, it is possible to adopt long-term policies and formulate better plans and programs with feasible goals. According to Giacomoni (2011), this is not exactly a positive point, but the protection of resources prevents fund managers from participating in disputes concerning budget preparation and approval.

Due to Oliveira, Tacca Júnior and Silva (1996), the main legacy of the 1988 Constitution, as far as the public finances of the Union are concerned, was an enormous budgetary rigidity, resulting from three main facts: the increases in revenue binding, the increase in mandatory expenses and the substantial expansion of resource transfers to the states and municipalities, without there being adequate planning regarding the decentralization of competencies (OLIVEIRA; TACCA JÚNIOR; SILVA, 1996, p. 104 apud SOUSA, 2008, p. 31, tradução nossa).

According to Graça (2003), budget bindings are desired to preserve the care of certain demands of society from the moods of both the Executive and the Legislative. Castro (2003 apud SOUSA, 2008) adds that the continuous growth of constitutionally and/or legally obligatory expenses also constitutes a restriction because it greatly hinders the flexibility of fiscal policy.

Mandatory expenses are even more responsible for the rigidity of the public budget than revenue bonds and funds. As an administrative act, the budgetary law does not create rights or obligations, limiting itself to estimating revenues and authorizing the realization of expenses, which will depend on the power of choice of the manager (GIACOMONI, 2011).

More than the revenue bonds and funds, mandatory expenses are responsible for the rigidity of the public budget. As an administrative act, the budget law does not create rights and obligations, limiting itself to estimating revenues and authorizing the realization of expenses, whose realization will depend on the manager's discretion, that is, his power of choice (GIACOMONI, 2011).

According to Mendes (2008), restricted revenue, which comes from a tax or contribution, is directed by law or the Constitution to a particular purpose. In his opinion, the binding of revenue to an expense makes this expense as rigid as a mandatory expense. If the government is obliged to apply X% of a tax to a given expense, and if the collection of such a tax grows, the expense to which the tax is linked will also grow.

The binding of resources limits its better allocation, since it excludes the possibility of discussing a better distribution of these resources. Therefore, reducing budget rigidity would consist in reducing or, preferably, eliminating resource binding, and expanding unrestricted revenues (SOUSA, 2008).

According to Rezende (2009), budget rigidity is not a typically Brazilian phenomenon. What distinguishes the Brazilian case is the preference for seeking these guarantees by including permanent and uniform provisions in the Constitution. It makes it extremely difficult to adjust spending to regional preferences and changes that occur over time due to the impact of the socioeconomic dynamics of society.

In a study presented by the World Bank Group, Muñoz and Olaberria (2019), when investigating the aftermath of the 2008 global financial crisis, highlighted a contrast between OECD and Latin American countries. While, overall, OECD countries have already undergone successful fiscal consolidation processes to reduce their primary deficits, in Latin America, the latter continues to increase, which for policymakers in the region stems from the restricted ability of governments to promote large fiscal adjustments due to the growing share of endogenous expenditure components, which stifles fiscal maneuvering power. For them, budget rigidities reduce the government's ability to change the size and structure of the public budget.

In a report on budget rigidities in Latin America and the Caribbean, Herrera and Olaberria (2020), when demonstrating the need for fiscal adjustments to contain and, if possible, reduce the debt-to-GDP ratio growing in recent years, highlight that the high degree of rigidity reduces the ability of policymakers to promote fiscal adjustments since a large part of public spending is difficult to cut for economic or structural policy reasons. Budget rigidity is institutional, legal, contractual, or other constraints that limit the government's ability to change the size and structure of the public budget, at least in the short run.

The tradition of linking percentages of budget revenue to sectoral spending is a source of distortions since the guarantees decrease in recessive economic cycles, or in those of low economic dynamism, precisely when the demand from the underprivileged population for services provided by the state increases. Moreover, a uniform percentage does not guarantee the territorial balance between resources and needs, since richer regions will have greater financial availability than poorer regions (REZENDE, 2009).

In addition to constitutional bindings, a vast range of long-term obligations assumed by the federative entities contributes to consolidating the little availability of free allocation of excess budget revenues. Although these are not constitutional provisions, their effects are similar, i.e., the decrease in the availability of public revenues. These are the cases of transfers and current expenses (MARTINS, 2011).

If, on the one hand, the binding of tax revenues ensures the application of resources in certain areas, on the other, it is cruel when it deprives attention of other priorities. Due to it, both the Chief Executive (as the holder of the power to propose the draft budget laws - art. 84, XXIII, and 165 of CF/1988) and the legislators working on projects find little freedom in the management of public resources, since almost all of them already have a particular destination (MARTINS, 2011).

The limited space in the budget to make choices that may eventually imply the redefinition of priorities regarding the allocation of revenues are already largely rubber-stamped, leaving the Executive and the Legislature little leeway to change their destination, unless they introduce changes in the corresponding legal provisions, several of them inscribed in the Federal Constitution (REZENDE, 2002 apud MARTINS, 2011).

In 2017, the International Monetary Fund (IMF) recommended that Brazil did a permanent rolling program of Spending Reviews¹¹. This is a good practice adopted in developed countries: for example, under the Organization for Economic Cooperation and Development (OECD), 16 member countries had conducted spending reviews by 2011. In 2018, there were already 27 participating countries. Expenditure reviews consist of a systematic reexamination of public spending, whether mandatory or discretionary, to control its amount or find fiscal space for expenditure reprioritization (AFONSO; RIBEIRO, 2020, p. 21, tradução nossa).

For Raimundo and Abouchedid (2020), the Constitutional Amendment resulting from PEC 187 would inaugurate a period of dispute for the resources released by the extinction of the funds, due to the immediate untying of a financial surplus of 219 billion reais¹². This money could be used to amortize the Union's public debt or in other destinations, such as projects and programs aimed at eradicating poverty or investments in infrastructure works, which covers a wide range of destinations made at the discretion of the Houses of Congress.

Considering only the funds with financial assets above 300 million reais¹³, we observed that 24 funds concentrate 93% of the resources estimated by the government (203 billion of 219 billion reais). These funds are destined for social policies, specific sectors, technological development, and public security, and are, therefore, priority areas to develop and contemplate current socioeconomic needs (RAIMUNDO; ABOUCHEDID, 2020).

Hence, it is understood that, although the funds were created from political processes before the 1988 Constitution, their concerns are consistent with the guidelines defined by it

¹¹ Continuous spending review program

¹² 219 billions reais = USD 39,8 bi

¹³ 300 mi reais = USD 54,5 mi

and the main argument for redefinitions of priorities listed in the basic text of the PEC 187/2019 does not justify the extinction of all funds (BRASIL, 2019). For Raimundo and Abouchédid (2020), the redirection of resources could concentrate them in the hands of a few - today's members of Congress and public debt creditors - affecting the redistributive characteristic of the legal funds.

According to Dias (2020), PEC 187/2019 confers rationality to the budgetary and financial administration of the Union, the States, the Federal District, and the Municipalities. According to him, the underlying idea is that it would be better if resources were freely allocated in the budget process each year according to the government's priorities. This would be more efficient than maintaining the automatic linkages.

In Commentary No. 4/2019 on the PEC of the Funds (SALTO; PELLEGRINI; COURI, 2019), the Independent Fiscal Institution (IFI)¹⁴ informs that, with the end of the constraints without constitutional support, the respective revenues not used for investment in infrastructure and poverty eradication will be of free use, including to reduce the primary deficit. It emphasizes, however, that there will only be a fiscal gain if the portion directed to these two destinations is lower than the portion of the revenues of these funds that are not currently used for the purposes for which they were created, increasing the single account of the entities with tied resources.

According to Oreiro and Silva (2020), PEC 187 constitutes a severe threat to Brazil's institutional dimension of public policy management. He understands that the combined effect of the primary result target and the spending cap that prevents the realization of discretionary spending, even when there is a budget forecast, as well as the resource contingencies periodically made by the government, ends up preventing the realization of discretionary spending that has been approved in the Annual Budget Law, are the causes for the accumulation of financial results.

Oreiro and Silva (2020) states that the stabilization/reduction of the public debt (as a proportion of the GDP) will not be obtained by the extinction of federal funds or the untying of revenues. It can only occur by reducing the nominal deficit of the public sector, which can be done in three ways: (i) expenditure reduction¹⁵, (ii) tax increase¹⁶, or (iii) reduction of the financial burden of the public debt¹⁷.

Linking revenues to specific expenditures and establishing mandatory expenses reduces the decision-making power of the public manager. The discretionary power to assess public needs and priorities and define which and how they will be met is mitigated. The pre-determination of which resources will be allocated to which purposes can cause an excess of

¹⁴ The Independent Fiscal Institution was created to disclose its estimates of relevant parameters and variables for the construction of fiscal and budgetary scenarios.

¹⁵ Example: reducing tax expenditures

¹⁶ Institution of income tax on distributed profits and dividends, and tax on large fortunes

¹⁷ Basic reduction of the interest rate

resources in programs of lower priority, and a shortage in other, more relevant programs (BIANCO, 2010)

[...] revenue links are rigid, and valid for all years after they are created. Therefore, they do not adjust themselves to society's changes and alterations over time. The resources remain frozen and directed to relevant needs, which may not be as in need of public resources as others, while new needs will have to compete for the scarce unbound resources (MERESSI, 2005, apud BIANCO, 2010, p. 110, tradução nossa).

Dias (2020) considers the changes proposed in the Substitute approved in the CCJ to be correct because, by excluding important funds for the continuity of public policies, it implemented changes that corrected inconsistencies in the original proposal. For him, the PEC of the Funds seems, to some extent, inspired by zero-based budgeting, developed in the business context and adopted in some US states, in which priorities must be reviewed and justified every fiscal year. He argues that its approval is necessary to extinguish funds that are already deactivated or no longer justified and to untie accumulated financial resources.

On the contrary, Bassi (2020) believes that the resources effectively released through the untying of the sources are inexpressive - something around 15 billion reais¹⁸ - compared to the planned appropriation of more than 298 billion reais. That is, about 5% of the amount approved would be immediately available, a figure that reduces the potential of the PEC 187/2019, particularly if we consider that these resources should be directed to the payment of the public debt. According to him, 409 billion Reais are spent on interest charges annually.

Thus, it is worth rethinking whether public funds should be extinguished or not. Budgetary flexibility is a worthy goal, but it will not be achieved through this financing mechanism. If they want to extinguish the funds, regardless of whether or not it generates malleability, the destination of the future cash flow should be reconsidered. If it is irrelevant to reducing public debt, it seems more fruitful to direct it, for example, to poverty eradication actions (BASSI, 2020).

Methodology: Procedure and updates of the constitutional proposal of the Budget Funds

The methodology employed in this work is developed from documentary research -, which refers to the analysis of documents that contain information about the phenomenon we seek to understand (BAILEY, 2007). Thus, during the budgetary fund's proposal, 77 Amendments were presented to the Proposal of Constitutional Amendment 187/2019 (BRASIL, 2019), and the matter has been ready for deliberation in the Plenary since March 9, 2020.

During the debates and consideration of the Substitutes in the Constitution, Justice and Citizenship Committee, the Report presented by the Rapporteur at the time, Senator Otto Alencar, brought some changes to the original term, with the delimitation of constitutional

¹⁸ Should the Constitutional Amendment be enacted in 2020, the funds would immediately release 15 billion reais

funds and infra-constitutional funds deserving greater emphasis, as shown in Appendices 1 and 2 of this work.

As far as the disengagement of public revenues is concerned, the substitutive foresees the following destinations: (i) projects and programs to eradicate poverty; (ii) investments in infrastructure aimed at national reconstruction, with priority to the implementation and completion of highways and railroads, in addition to the internalization of natural gas produced in Brazil; (iii) projects and programs aimed at the security of border regions; (iv) revitalization of the São Francisco River Basin; and (v) scientific, technological and innovation research and development projects. Regarding the financial surplus of the public funds of the Executive Branch, these will be used to amortize the public debt of the respective entity.

In March 2020, the World Health Organization (WHO) declared the outbreak of SARS-CoV2 (Covid-19) as a pandemic due to the worsening health crisis, and changes in the fiscal framework became necessary. Given this, on March 15, 2021, Constitutional Amendment 109, nicknamed the Emergency PEC (EC 109), was enacted. This Amendment had the double objective of allowing the payment of emergency aid throughout 2021 and of creating instruments of future fiscal adjustment, which compensate part of the extra expense with the aid (BRASIL, 2021a, 2021b; MENDES, 2021).

The article 5th of the aforementioned Constitutional Amendment allows the allocation, until the end of the fiscal year 2023, of the financial surplus of public funds of the Executive (of all entities of the federation) to the amortization of debt, except from sources that finance regional development funds and funds whose revenues/resources are reserved in the rule that prohibits the linkage (art. 167, IV) (TAVARES et al., 2021).

The value of the untied balances exceeds 170 billion reais¹⁹. In January 2021, the public debt's liquidity reserve was 806 billion reais. Therefore, the untying of the financial surplus represents a 20% reinforcement in this maneuvering margin for public debt management (MENDES, 2021).

Constitutional Amendment 109 did not abolish any fund. However, it prohibited the creation of new funds when their objectives could be achieved through specific budget revenues or by direct implementation of the budget and financial programming of an organ or entity of the public administration. It also authorized the use of the surplus to amortize the public debt (TAVARES et al., 2021).

Results: public debt statement

The importance of presenting, in this section, a panorama of the national public debt²⁰, which has been on a continuous scale of growth, further aggravated by the effects of the

¹⁹ Table 4

²⁰ Table 5

Covid-19 pandemic, is to identify whether or not the reforms sought to be introduced by the PEC 187/2019 will contribute to improving the fiscal framework.

Salto and Barros (2018) show that the growth of Brazilian public debt has shifted from the dynamics seen in the average of emerging countries. While the average level was less than 50% of GDP in 2017²¹, Brazil recorded a much higher level of 84% of GDP²². If there are no changes in the factors conditioning this dynamic, the trend is to quickly approach the level of 100% of GDP, close to the average of advanced economies, with a fundamental difference: the cost of rolling over this debt. The average rates of Brazilian bonds are substantially higher, due to the macroeconomic imbalances.

Developed countries have a greater degree of freedom in formulating, executing, and financing their policies, being able to assume higher levels of debt, precisely because their interest rates are much lower than those of Brazil and emerging countries in general. However, changing this picture depends essentially on rebalancing public accounts (SALTO, 2018).

According to Rosen, Gayer and Florissi (2015), interest rates can be expected to rise gradually as fears of default increase. However, the experience of other high-debt countries shows that loss of confidence can occur abruptly, causing sudden and sharp increases in interest rates. This, in turn, can lead to lower investment and slower growth in output and wages²³. At the same time, governments with higher interest costs face the unpleasant choice between cutting spending, raising taxes, or issuing even more debt.

Resende (2020) notes that, since the early 1990s, the real interest rate in Brazil has always been much higher than the growth rate of the economy, except for the period between 2007 and 2014, when it was slightly above. Since 2015, when the economy entered the most severe recession in its history, with a three-year cumulative drop of almost 10% in per capita income, the interest rate was again much higher than the growth rate.

When comparing the relationship between Brazil's interest burden and gross debt per GDP with other countries, Lacerda (2019) highlights that Brazil is the country that pays the most interest on its debt, even when compared to those with proportionally larger public debts per GDP. Countries with higher debt levels, such as France, Canada, Japan, and Italy have a lower interest payment burden. In this way, Brazil is isolated as one of the countries whose cost of financing the public debt is one of the highest in the world.

Conclusion

The Proposal for Constitutional Amendment no. 187/2019, which aims to optimize the budgetary and financial management of the federal entities by allowing the revaluation of the various public funds and authorizing the use of financial surplus to amortize the public debt, brought us the need to discuss the budgetary rigidity. The excess of binding revenue

²¹ Table 6

²² Methodology applied by the IMF

²³ Congressional Budget Office, 2010.

and mandatory expenses plagues both the Executive and the Legislative, with restrictive reflections on the freedom of management of public resources, given that they are almost entirely stamped and with a particular destination (BRASIL, 2019).

The excess of revenue binding reduces the space in the budget. It prevents the Brazilian State from allocating public resources following the current socioeconomic reality, since it is stuck to those needs established more than 30 years ago, which may no longer reflect the demands of today's society. Hence the importance of reform in public finances at the national level, such as the one proposed in the PEC of Funds, which seeks to give more flexibility to budget management and reduce the burden of public debt that in recent years showed a very sharp growth.

In March 2020, the Substitute of the PEC of the Funds presented to the Board of the Federal Senate improved the original text that foresaw the extinction of all funds within two years and required those intended to be maintained to be ratified by a specific law. The new proposal preserved the constitutional funds and excluded the infra-constitutional funds, especially those related to science and technology, public security, and the granting and guaranteeing of guarantees, as presented in annexes 1 and 2 of this work.

The extensive national and international literature we have researched showed us that a high degree of revenue binding prevents a better allocation of public resources, and that countries with rigid budgets, as is the case in Brazil, have extreme difficulty in adjusting their spending according to regional preferences and the changes that take place over time. They also show that budget rigidity reduces the probability of successful fiscal adjustments, which can contribute to getting the country into fiscal difficulties.

We consider it relevant and necessary to approve the Proposal for Constitutional Amendment No. 187/2019 (BRASIL, 2019), as presented in the Substitutive, which removed the risk of discontinuity of priority public policies by preserving essential infra-constitutional funds and authorized the use of financial surplus to amortize the public debt. The PEC of Funds will give more flexibility to the budgetary and financial management of the federal entities. It will bring important fiscal adjustments to the country, establishing the rebalancing of public accounts and creating a favorable economic environment for the investments needed to resume the growth of the Brazilian economy.

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RECEBIDO: 24 JUL 2022

APROVADO: 13 OUT 2022

PUBLICADO: 20 JAN 2023

Table 1: Financial Surplus Recorded in Public Funds - Year 2018

FUND	ACCUMULATED SURPLUS	AREAS OF ACTIVITY
Workers Support Fund - FAT	46.540	Work
Social Fund - FS	27.703	Economy and Development
Export Guarantee Fund - FGE	26.537	Economy and Development
National Civil Aviation Fund - FNAC	17.333	Transportation
National Fund for Scientific and Technological Development - FNDCT	17.227	Science and Technology
Special Fund for Development and Improvement of Inspection Activities	16.119	Other
Salary Compensation Fund	12.160	Economy & Development
National Traffic Safety and Education Fund - FUNSET	7.920	Transportation
Merchant Navy Fund	7.378	Transportation
Aeronautical Fund	7.288	National Defense
Telecommunications Services Universalization Fund (FUST)	4.388	Communications
Rural Insurance Stability Fund	3.927	Public Administration
National Culture Fund	3.749	Culture
Defense of Diffuse Rights Fund	2.842	Citizenship Rights
Naval Fund	2.144	National Defense
Guarantee Fund for Promoting Competitiveness	2.063	Public Administration
Telecommunications Technological Development Fund	1.957	Communications
National Press Fund	1.780	Public Administration
National Social Housing Fund (FNHIS)	1.526	Housing
Army Fund	1.408	National Defense
Maritime Professional Education Development Fund	1.272	National Defense
Extinct RFFSA Contingent Fund - Resources under MF Supervision	1.190	Others
National Education Development Fund - FNDE	882	Education
Revolving Fund of the House of Representatives	665	Other
National Development Fund	652	Economy and Development
National Penitentiary Fund - FUNPEN	630	Public Security
National Public Security Fund - FNPS	381	Public Safety
National Health Fund	342	Health
National Environment Fund	180	Environmental Management
Federal Senate Special Fund	128	Other
National Anti-Drug Fund - FUNAD	125	Citizenship Rights
Partisan Fund	83	Other
National Fund for Children and Adolescents-FNCA	65	Citizenship Rights
Constitutional Fund of the Federal District - FCDF	65	Other
National Fund for the Elderly - FNI	59	Citizenship Rights
Military Service Fund	39	National Defense
Ministry of Defense Fund	22	National Defense
Special Training and Development Fund	20	Other
Coffee Economy Defense Fund	18	Agriculture
National Social Assistance Fund	16	Social Welfare
Land and Agrarian Reform Fund - Land Bank	13	Agrarian Organization
National Climate Change Fund	5	Environmental Management
Armed Forces Hospital Administration Fund	3	National Defense
Brazil Sovereign Wealth Fund	0	Economy and Development
TOTAL	218.845	

Source: Fonte: (DIEESE, 2020, p. 8)

Table 2: Constitutional Funds – 2020²⁷

	Fund	Establishing Rule	Current Funding	Paid
1	Fund of the General Social Security System (FRGPS)	Complementary law n.º 101/2000	674.243.441.039	627.878.641.706
2	National Health Fund (FNS)	Decret n.º 64.867/1969	184.491.548.755	149.135.703.597
3	Workers' Assistance Fund (FAT)	Law n.º 7.998/1990	88.038.660.438	75.691.911.160
4	Party Fund (Fundo Partidário)	Law n.º 9.096/1995	959.015.755	943.120.124
5	Middle-West Constitutional Financing Fund (FCO)	Law n.º 7.827/1989	8.426.418.136	7.742.615.100
6	Northern Regional Fund (FNO)	Law n.º 7.827/1989	8.426.418.134	7.692.452.026
7	Northeast Constitutional Financing Fund (FNE)	Law n.º 7.827/1989	25.276.426.440	23.566.330.531
8	Constitutional Fund of the Federal District (FCDF)	Law n.º 10.633/2002	15.697.985.449	15.217.327.020
9	National Social Assistance Fund (FNAS)	Law n.º 8.742/1993	67.393.045.482	66.646.145.861F
10	Municipal Participation Fund (FPM)	CF/1988 e LC n.º 62/1989	92.570.982.412	84.918.514.056
11	States and Federal District Participation Fund (FPE)	CF/1988 e LC n.º 62/1989	80.830.089.325	72.881.694.126

Fonte: Elaborated by authors

Table 3: Infraconstitutional Funds Preserved – 2020

	Fundo	Norma Instituidora	Dotação	Pago (R\$)
1	National Fund for Scientific and Technological Development (FNDCT)	Law-Decret n.º 719/1969	5.216.447.372	746.853.185
2	Fund for the Defense of the Coffee Economy (FUNCAFÉ)	Law-Decret n.º 2.295/1986	45.148.761	3.441.775
3	Export Guarantee Fund (FGE)	Lei n.º 9.818/1999	2.133.578.298	866.094.750
4	National Public Security Fund (FNSP)	Lei n.º 10.201/2001	2.238.393.954	1.588.274.289
5	National Penitentiary Fund (FUNPEN)	LC n.º 79/1994	703.166.820	166.098.803
6	Safrá Guarantee Fund (FGS)	Lei n.º 10.420/2002	468.040.642	468.040.642
7	Guarantee Fund for Promoting Competitiveness (FGPC)	Lei n.º 9.531/1997	138.364.203	97.058
8	National Antidrug Fund	MP n.º 2.216-37/2001	69.840.171	5.850.278

Fonte: Elaborated by Authors

Table 4: Fund Financial Surplus subject to disengagement from 2021 to 2023 - Constitutional Amendment 109 of 2021 – (Emergency PEC)

Designation	Acronym	Total Financial Surplus 2020 (R\$ Million)
Social Fund	FS	45.997
National Civil Aviation Fund	FNAC	26.215
National Fund for Scientific and Technological Development	FNDTC	26.479
Merchant Navy Fund	FMM	23.952
Aeronautical Fund		8.382
National Traffic Safety and Education Fund	FUNSET	11.695
Telecommunications Surveillance Fund	FISTEL	3.385
Telecommunications Services Universalization Fund	FUST	6.503
National Culture Fund	FNC	3.918
Defense of Diffuse Rights Fund	FDDD	3.198
Naval Fund		2.487
Telecommunications Technological Development Fund	FUNTEL	2.161
National Press Fund	FUNIN	1.882
National Social Housing Fund	FNHIS	1.760
Coffee Economy Defense Fund	FUNCAFÉ	17
Army Fund	FEX	1.701
Maritime Professional Education Development Fund	FDEPM	1.671
Airways Fund		1.467
National Environment Fund	FNMA	233
National Antidrug Fund	FUNAD	120
National Social Assistance Fund	FNAS	176
National Nuclear Energy Fund		55
Military Service Fund	FSM	24
National Forest Development Fund	FNDF	8
Defense Ministry Fund		22
Special Fund for Training, Qualification, Training and Development of Public Servants	FUNDASE	21
Total Financial Surplus Untied by EC 109/2021		173.542

Fonte: (TAVARES, 2021, p. 50-51)

Table 5: Data from the main Public Debt indicators: 2013 – 2020

	2013	2014	2015	2016	2017	2018	2019	2020
DBGG	2,74	3,25	3,92	4,37	4,85	5,27	5,50	6,61
DLSP	1,62	1,88	2,13	2,82	3,38	3,69	4,04	4,67
	(%PIB)	(%PIB)	(%PIB)	(%PIB)	(%PIB)	(%PIB)	(%PIB)	(%PIB)
DBGG	51,5	56,3	65,5	69,8	73,7	75,3	74,3	88,8
DLSP	30,5	32,6	35,6	46,1	51,4	52,8	54,6	62,7

Fonte: Elaborated by authors

Table 6: General Government Gross Debt (in % GDP) - Comparative Table

General Government Gross Debt	2015	2016	2017	2018	2019	2020
Brazil	72,6	78,3	83,6	85,6	87,7	98,9
Emerging & Developing Asia	44,7	49,6	52,3	53,8	56,6	66,6
Emerging & Developing Markets - Europe	31,8	32,6	30,6	30,3	29,7	38,2
Emerging Markets and Developing Economies	43,1	47,8	50	51,8	54,1	63,3
Latin America & the Caribbean	52,8	56,2	60,8	67,1	68,1	77,2
Major Advanced Economies (G7)	116,2	119,3	117,2	116,8	118	136,7
Other advanced economies	41,6	42	41,6	41,3	43,7	50,3

Fonte: Elaborated by authors

Table 7: Nominal Interest on Public Debt - Period: 2013 - 2020

DBGG	2013	2014	2015	2016	2017	2018	2019	2020
R\$ milhões	273.207	313.211	446.693	511.619	439.776	406.402	409.213	347.179
% PIB	5,1	5,4	7,5	8,2	6,7	5,8	5,5	4,7

Source: Central Bank of Brazil

DLSP	2013	2014	2015	2016	2017	2018	2019	2020
R\$ milhões	248.856	311.380	501.786	407.024	400.826	379.184	367.282	312.427
% PIB	4,7	5,4	8,4	6,5	6,1	5,4	5,0	4,2

Fonte: Elaborated by authors