

THE UNFUNDED MANDATES IN LOCAL GOVERNMENTS FINANCING: CRISES EXPERIENCES FROM ESTONIA¹

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Abstract

In many countries occur problems from unfunded mandates related to a shift of a function by an upper tier of government to lower rank governments without providing the lower one with financial means to perform these functions. The authors **define the unfunded mandates** and clarify how they relate to functions, uncovered costs and financial means of municipalities. Then they discuss the connexity principle in order to avoid unfunded mandates and respective functions variations in crises to avoid unfunded mandates. They point to conflicts which stem from allocation, stabilization and distribution activities. In Estonia the development of revenues and expenditures of central and local governments reflect **tendencies to cause unfunded mandates** especially in the period of crisis from 2009 to 2011. To fight unfunded mandates the connexity principle should be applied for municipal performance of central state functions and compulsory municipal functions. The central and local government finances should vary according to the **principle of parallelism**. If the total tax revenues vary the changes of block grants have to be parallel to the disposable incomes of the tiers of government.

Keywords: fiscal equalization, municipal finance, unfunded mandates, connexity, principles of parallelism, Estonia,

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Introduction

In Estonia the public sector is still in a late phase of transformation to a democratic one. Estonia shows a central government and municipalities as the sub-national jurisdictions. All municipalities perform a broad range of functions, very often under conditions of fiscal stress. In fiscal crises the dependency of the municipalities on the intergovernmental fiscal policies of the central government has grown. As the task distribution between the central government and municipalities is not tightly fixed, tasks are still shifted to municipalities. Unfunded mandates may appear. They force municipalities to substitute local tasks fulfilment by the newly received tasks.

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Municipalities' loose fiscal means for task achievement or they have to turn to debt finance. The intergovernmental relation policies of the central government between the years 2008 to 2011 point to the need to **regulate unfunded mandates practices**. This regulation might be oriented to the connection principle (Konnexitätsprinzip) as it is named in German that deals with the finance of so-called unfunded mandates according to the English terminology.

Therefore, this study primarily aims at dealing with the following **research topics**:

- (1) How can the connection principle to avoid unfunded mandates be interpreted and what is the theoretical basis of this principle.
- (2) Do unfunded mandates occur in Estonia and how are they practiced by Estonian central government in times of fiscal crises? Did the Estonian government consider this principle in his treatment of municipality tasks and local finance?
- (3) What institutional framework in intergovernmental fiscal relations would make the connection principle work sufficiently in Estonia also in times of crises?
- (4) Could the application of the principle of parallelism lead to fair block grants in times of crises?

The first question concerning interpretation of the connection principle is debated in the second section. The authors discuss the appearance of unfunded mandates in fiscal crises in the third section whereas some improvements to avoid unfunded mandates are mentioned in the fourth and fifth section. The final section briefly summarizes the major findings.

The Problem of Unfunded Mandates and the Connexity Principle

An unfunded (or underfunded) mandate occurs when a government performs certain functions or activities for which it has no (or inadequate) funds, and, that are not included in the powers and functions allocated to them by the Constitution or legislation (Steytler, Visser, R. Williams 2012). The policy decisions are made at higher jurisdiction level and result in lower rank jurisdictions facing underfunded or unfunded mandates. The reasons for unfunded mandates are sometimes historical ones, when in the past were functions performed, which have continued into a new constitutional era. In some transformation countries developed a weak, incomplete or confused allocation of functions as a result of poor policy-making, or a central government caused unfunded mandates by implicit or explicit choice. Unfunded mandates have implications for intergovernmental fiscal relations, the sharing of nationally collected revenue and the delivery of services.

Unfunded Mandates are defined in different ways: In **Canada** they are related to **downloading of service responsibility** from a higher level government to lower level ones, e.g. to a municipality, mostly not accompanied by sufficient compensatory funding (Slack, Bird 2006; McMillan, Melville 2006). In the **USA** they are named unfunded mandates, but also described as **Federal induced costs**. They concern the types of activities of higher level jurisdictions (Federation and states) that are related to statutory direct orders, total and partial statutory

preemptions, grant-in-aid conditions on spending and administration, including matching requirements, federal income tax provisions, Federal court decisions, and administrative rules issued by federal agencies, including regulatory delays and non-enforcement (ACIR 1994; Beth, Dilger 2013). In **Australia** they are characterized as **cost shifting** (Dollery, Crase, Johnson 2006; Samson 2009). In **South Africa** also the term **unfunded mandate** is in use (Financial and Fiscal Commission 2011).

In **Germany** unfunded mandates appear as well (Zimmermann 1999; Henneke 2003). The assignment of tasks to the Federation, the states and the municipalities in the constitution (G.G. Art. 28, Paragraph 2) is relatively complete but there are still possibilities to transfer tasks that create additional financial burdens to municipalities (Trapp 1997) although this is now not allowed according to articles 84, 85 of the constitution. According to the state constitutions a Land should assign or reallocate public activities to municipalities only if it offers **sufficient financial resources** to them required to execute new local functions (Trapp 1997; Hennecke 2003). This obligation corresponds to the connexity principle³. An imputation of a new function or a reallocation of functions from the central government or higher level government to municipalities is only allowed if the higher government provides the municipalities with necessary means to perform the function successfully (Zimmermann 1999). The situation becomes even more complicated as the **EU** can introduce regulations that cause additional costs to municipalities, which might not be introduced through federal law by an EU-directive but might stem from a direct EU regulation stipulating some standards and quality requirements for municipal services.

In **Estonia** unfunded mandates appear as well (OECD 2011). Some unfunded mandates developed in the transition process (Kirz 2008). They exist also in Switzerland (Schmitt 2012), in Argentine (Asenso 2012) and in Italy (Buglione 2012; Pola 2012).

The definitions used in public finance literature and the juridical debate are also differing with respect to the **functions** involved. In the USA the definition of unfunded mandates is rather broad. It includes even the shift of functions to private economic units. However the shift of tasks, which enforce constitutional rights of individuals, prohibit discriminations, are required for receiving grants, are necessary for national security, and to realize international treaties, are designed as emergency legislation, or relate to some social insurance issues (Steytler, Visser, Williams 2012) are not considered as reflecting unfunded mandates. In other countries unfunded mandates concern switches or introduction of **new functions**, (Dollery, Crase, Johnson 2006), and Australia (Financial and Fiscal Commission 2011). The content of what is considered as unfunded mandates depends rather from the prevailing order of intergovernmental fiscal relations, which exists in a country.

³ The principle is named Konnexitätsprinzip (Zimmermann 1999), connectivity or connection principle (Friedrich, Gwiazda, Nam 2004).

A rather **restrictive interpretation** is used in Germany (Lohse 2005). In Germany the assignment of tasks to the EU, the Federation, to the states (Länder) and to municipalities to a large extent fixed. Moreover, the competences for law formulation and their administration and realization are tightly fixed by Federal and state constitutions. The main actors for formulating laws on functions are the EU and the Federation and the execution of laws is mainly due to the states (Länder) and their municipalities (Becker 1999). Therefore, the scope of functions that can lead to unfunded mandates are restricted to some functions (Göring 2012) and more or less exceptional. Unfunded mandates primarily concern new functions. The assignment of tasks occurs according to the Federal constitution and the states' constitutions according to **two principles**. (Göring 2012). The first one concerns the principle of law enforcement. The jurisdiction, which is responsible for law enforcement has to cover the related expenses. It reflects the assignment of federal, state and municipal tasks according to the constitution. This occurred following the traditional view in public finance of the congruency of the service providing jurisdiction with the deciding inhabitants of the jurisdiction, which are going to be served. According to the principle of causality for law or regulation, the jurisdiction that has created the task has to finance the expenses. This is related to shifts in tasks from state to municipalities governed by the connexity principle Not many opportunities for unfunded mandates exist.

Moreover there are **regulations** how to apply connexity principle (Kluth 2009) if they shift a burden to the municipalities. These shifts may stem, from the Land's own power to stipulate conditions of goal fulfilment or from their power to change a respective law or to create a new law when municipalities administrate for the state (Land) or if compulsory municipality tasks⁴ get changed. The tasks of self administration freely chosen by the municipality are not considered as functions to be shifted. Therefore, the states transfer under the heading of fulfilling the connexity paradigm sometimes an compensation amount, which is only about 6% in relation to other grants paid in the framework of vertical fiscal equalization of a state to the municipalities of a Land, (e.g. 131.5 millions € to 1872.9 millions € in Rhineland-Palatine. (Göring 2012).

To receive cost compensation the mandate has to lead to **municipal costs**. Average full cost should be considered such as staff costs, materials, investments, etc. identified by the accounting system of the communities (North-Westphalia 2004; Rhineland-Palatine 2005; Baden-Württemberg (2008); Kluth 2009; Göring 2012). Costs of overheads not identified correctly or those, which are related to limiting production factors like management or installations, get not compensated. Savings due to the new tasks shifted should be deducted and additional revenues also, which are difficult to detect. However, higher and municipal expenses and smaller revenues due to indirect economic effects and even changes of block grants get not compensated. Defining the costs to be compensated represents a problem in case of **investments** already realized or if no reinvestment is planned. Then additional costs

⁴ They concern self administration, which is obligatory for the municipalities.

may consist only of the marginal costs of delivery. With investment one may refer to long term marginal costs according to the marginal cost principle (Nelson 1964; Dehne, Friedrich, Nam 2009; Friedrich 1969, 2014). Further difficulties occur as the economic public units of a jurisdiction are not defined clearly. Moreover, the choice of **municipal cost accounting** schemes is under municipal autonomy. No uniform cost centre accounting, unit accounting and kind of cost accounting of the municipalities is available for verifying costs. There are difficulties to assess calculative costs such as calculative interests, calculative depreciations and calculative entrepreneurial mark ups. The choice of **production function and techniques** is due to the municipalities if the law concerning the function is not determining totally the mode of production of services. In Sachsen-Anhalt and Thüringen the so-called **municipal interest share** should be considered. This quota could express some synergy effects or an incentive for the municipalities to save costs (Kluth 2009). It also points to the possibility to relate the cost compensation issue with the social benefits and social costs that can be attained by the transfer of function to the municipality. Then the analyst encounters the lack of a **social net benefit oriented accounting** for public units and the difficulties to develop instruments to identify the social net benefit for the municipal inhabitants (Friedrich 1971). According to the laws on connexity (North-Westphalia 2004; Rhineland-Palatine (2005); Baden-Württemberg (2008) the state (Land) has to estimate the cost consequences. In the version of the strict connexity principle it has to estimate the costs and in the version: “relative connexity principle” it is enforced to regulate the compensation (Ammermann 2007). For both cases the state (Land) has no cost accounting available to identify the costs occurring to the municipality, which produces the quantities of services at low costs.

Therefore, the state (Land) embarks to its own cost experience or to the costs of a similar function. To ease this procedure the definition of categories of cost situations may be defined (Kluth 2009). The laws on connexity stipulate **consultation procedures** to identify costs between the state and the municipal associations in a state (Land) (Baden-Württemberg (2008). They define also bagatelle cases and require that the compensation payments and shift of function should be timely coordinated. First court cases have been decided (Beckehoff, Bender 2011). The state (Land) has to provide a reliable cost estimation and adequate compensation payments have to be made in time (Beckehoff, Bender). The identification of the compensation amount remains a problem.

In cases where the Land has no influence on the performance conditions the shift to municipalities does not lead to compensations⁵. Experts assume enough scope of decision making if the Land can choose whether the function can be performed by own public offices or through municipal public offices (Meffert, Müller 2008). Under discussion are cases when a municipal voluntary self administration task is

⁵ Example may refer to new EU directives transmitted into federal law or through regulation creating a new task for the states to be performed on the municipal level where the Land has no own scope of decision making to vary the quality, amount and conditions of service.

changed to a compulsory self administration task. With tasks that were shifted before the last functional reform in Germany the connexity solution is applicable only if the task could be able to be reshifted to the state (Land) (Göring 2012). Some flexibility exists as the compensated costs have to be checked after a specified period whether they really cover the costs and whether the solution found should be prolonged. The German solution is well specified, avoids unfunded mandates but turns out restrictive from the point of view of municipalities⁶.

Other problems cause the **finance and kind of compensation**, which should be provided to avoid unfunded mandates. In Germany there are several ways to provide the municipality financial means to compensate for additional costs according to the connexity principle (Mücl 2006). The Land can enable the municipalities to collect fees for the services in question, it can provide special grants, or it can combine such measures⁷. Compensations can consist also of a costs decrease related to the services. A government recommendation to finance through selling municipal property or taking on more municipal debts forms no compensation. The introduction of new urban taxes or tax rate changes are also no mean of compensation, and shares of tax participations are fixed by law⁸. The amount to be financed depends also on service volume quantity and quality, which is sometimes fixed by law. But in many laws there is a goal statement instead of a detailed description of services to fulfil the function. Then the costs and the performance size are different from the point of view of the state (Land) and the municipality. Therefore, a principle of reasonableness is to be followed, which means that an appropriate amount of function performance should be applied as cost basis (Kluth 2009). However, it might be sometimes open what appropriateness means in concrete situations. The usual economic or juridical treatment of the unfunded mandates assumes that a stable performance of functions exists. How to tackle unfunded mandates in times of **financial crises**, an extreme business cycle, a crises of currency and foreign trade, a change in order of economics, a change in economic structure and sector crises, a crises because of changes in attitudes and values of the economic and public agents, a climate change, natural disaster, diseases, an extreme income and wealth distribution situation, migration problems, political upheavals, wars, etc? Then the **public functions change** for three main reasons. The principal assignment of functions may be kept the same and a parallel policy or a policy of tax

⁶ That is not the case in other countries like **South Africa**, where provinces sometimes shift functions without consultation of municipalities, do not stick to the constitutional amendments and to laws on intergovernmental relations, do not sign management and service performance contracts and do not keep to their promises and agreements. Unfunded mandates are caused by the Federal government to the South African provinces with regard to many functions, too. Unfunded mandates occur more easily and concern a broader range of functions, Financial and Fiscal Commission 2011).

⁷ If a voluntary self administration task is switched to a compulsory self administration task the former grants to promote the voluntary task can be part of the compensation amount (Kluth 2009).

⁸ The legal chances are few and among municipalities prevails competition to attract firms or inhabitants.

increases is chosen. Another one is no variation of function assignment, but trying to apply the policy of deficit spending to overcome a recession (or budget surplus in boom times). The third attempt includes the introduction and reshuffling of functions that combined with deficit spending or budget surplus policies.

In the first case the function performance will vary. In a recession when the central state follows a balanced budget policy leads to expenditure cuts with the central state, a drop of grants and expenditure cuts with the municipalities. However, the functions shifted to the municipalities will not vary when the connectivity principle holds. There could not be caused unfunded mandates with municipalities as the central state has to supply the fiscal means to finance the adequate expenses. As the central state has to squeeze its expenditures even more its expenditures have to be reduced additionally. There will be a tendency to reduce grants. Therefore, the finance of the shifted functions takes place also on account of the non-shifted own municipal functions. As most of the functions cannot be renounced completely, if the central state, the municipalities and the economy want to survive, results a lower boundary of function performance characterized by no extensions of performance and capacity (just maintenance), a performance to satisfy minimum necessary service times and staff requirements. Transfers get restricted to the minimum sums guaranteed by law. Such a **minimum barrier** also depends on the laws on employment conditions, e.g. tenure of public officials, long term fixed salaries, on long term leases, and contractual service obligations, etc. The barriers may be due to public laws and binding principles of public administration. An **upper limit** might be defined as well where function performances may also hamper the survival of the central state, the municipality and the economy. Examples concern extensions of secret service, unlawful extensions of public services, volumes and kinds of administrative acts and services that correspond to the prohibition of excessiveness of public administration, abolishing the market economy, etc. Determining upper limits is not easy, but in times of many crises' not necessary as the adaptation policy becomes mostly applied in kinds of recessions. Function variations barriers correspond to **spending limits** that the jurisdictions should fall below. There will be a **difference** between the expenses of the jurisdictions before the recession and the minimum level just defined. For the central state results the following possibility of expenditure variation:

- (1) Normal level of central state expenditures – expenses to perform minimal levels of central state functions – expenses for shifted functions to municipalities – grants necessary to enable the municipalities to perform their minimal levels of functions.
- (2) The variation possibilities for municipalities encounter: The normal level of expenditure – their minimal expenditures + the grants which are necessary to keep the minimal level of functions + the expenses for shifted functions.

With respect to functions there is the question whether the shifted **functions are variable** too? That depends much on the legal situation in a country. In Germany as long as the laws and regulations for the functions are not changed the tasks shifted since 2004 are fixed and no unfunded mandates are allowed. If detailed laws exist that fix the performance conditions in detail the reduction of services can be legally

not possible unfunded mandates result. Sometimes the public offices of the jurisdictions apply marketing instruments enabling service reduction not violating the existing law such as opening times of offices, queues and waiting times, bureaucratic procedures, levels of fees, location assignments etc. For democratic laws changes the needed voting majorities have to be found, especially if tasks fixed in the constitution should be changed. Moreover, the kind of crises, the political conditions, etc. might decrease the scope of action to vary the functions.

How much the variation spaces become used depends also on the **development of revenues**. With a strict balanced budget policy crediting (mid and long term public debts policy)⁹ should not be used. If tax increases allow to finance the normal expense volume in the first round there is no need to vary the functions and for unfunded mandates. However, negative tax multipliers prevent the equality of tax receipts and expenses in coming periods and the necessity to vary functions occurs later. Negative effects on investments get expected. If tax revenue reductions get accompanied by cuts of expenditures the functions vary at once and the negative multipliers are even higher than the first ones. Investments are affected as well. One should also consider the other fiscal policy means. Increases in fees might enable higher revenues, which under some conditions increases the revenues connected to a decrease in function performance. Another policy to increase revenues is the sale of property and real estate, which is more or less a one time measure. Profits from public enterprises deteriorate because of demand drops in crises and a function decrease. With special grants negotiations between central government and municipalities occur (Courty, Marschke 2003; Grout, Stevens 2003; Friedrich, Gwiazda, Nam 2004). These grants may vary and reduce the function performance of municipalities. If there are shifted functions that are fixed the respective special grants cannot be shortened otherwise unfunded mandates would occur. The grants in need to balance budgets get higher in crises situations. The block grants depend mostly on a mechanism, which considers fiscal needs (expenditure need indicator) and fiscal strength (tax capacity indicator) of municipalities and the equalization funds the central state reserves for block grants. Grants policy serves to reduce function performance of municipalities and to balance the budgets through grants between the jurisdictions. In the course of strict budgeted balance policy functions are appropriately reduced to avoid municipal unfunded mandates. To what extent this parallel policy is possible depends on the function variation gap defined above.

The second option is to keep the principal assignment but to **fight the crises actively**. The scope of function variation might be similar but the anti-crises policy might cause to increase the performance of some functions necessary to induce demand. Those activities concern increasing public services connected to building activities, infrastructure investment even to increase transfers and subsidies to increase demand or to increase incomes of public officials, etc. This could be done by a deficit budget financed by credits a deficit without spending would leave the

⁹ Crediting from the central bank in the European Union or the debt limits defined by the Maastricht criteria or debt brakes or debt ceiling may make additional debts not possible.

functions and expenses at the former level and fill the budget gap by public credits¹⁰. The policy might be possible if the above mentioned credit limits are not reached. The multiplier effects are in tendency positive as in crises many times the crowding out effects concerning private investments are assumed to be low. The central state may try to increase its function performance especially concerning infrastructure, which are very investment and building intensive, may be with a focus on sectors that employ many regional factors in order not to lose the expansive effects through EU public procurement regulation to other European countries. Public works of maintenance etc. may assist too as well as transfer programs for which the central state is responsible like welfare and unemployment benefits. The municipalities might also increase some functions concerning infrastructure. Finance could be managed through special grants from the central state or through block grants and budget need grants to enable municipalities hold to their function performance level¹¹. Shifting functions to the municipalities will require long term finance by the central state to diminish the danger of unfunded mandates. Therefore, central state could shift functions temporarily when the central state provides the finance through special grants. To avoid unfunded mandates the central state has to provide financial means in such a way that the municipalities finance by public debts only that part of their budget deficit, which is due to keep the normal performance of their own functions. The policy details are also influenced by the kind of tax revenue losses they suffer from the crises. Keeping some function performance and revenues at the former level is not easy because of demand drop for public services, e.g. with respect to profits of public enterprises and fee collection for public services. Revenue and profit losses can follow and the budget deficit increases.

Another variant of stabilization policy is to **increase some function** performance and to **decrease some task realizations**. This can be managed with respect to own functions by the central state. The central state can try to increase the government expenditures for services and investment and reduces the expenses for transfers. That causes positive effects and keeps his former budget level constant. The same can be true for the municipalities for their own tasks. Both may strengthen the demand increasing performances additionally. Additionally the central state might manage through special grants or other grants to enable the municipalities to stabilize. To avoid unfunded mandates for municipalities he has to finance the main part of the stabilization policy through his budget.

In the framework of the third policy the actors create **additionally new functions** to fight the crises. As far as they should be carried out by the central state because they relate to the constitutional catalogue of central state functions it is his task to finance them perhaps by public debt. If it shifts the new function to the municipalities the central state should finance the municipal function performance through special

¹⁰ The deficit with spending gets financed by credit from private sector banks, if the access to the central bank is blocked as in the EU.

¹¹ They may use public debt too if they have not reached their debt limits.

grants to avoid unfunded mandates. Problematic is the case if the new function is related to the constitutional catalogue of the municipalities. Then it is due to them to perform the function. If they do not, but the central state is convinced that these functions are necessary to stabilize then it might be necessary to support this function performance through special grants to avoid an unfunded mandate.

A further problem relates to the **optimal mix of functions** in relation to stabilization, allocation and distribution (Timm 1974; 1983; Musgrave 2006, Musgrave, Musgrave 1989). The above reasoning was more or less assuming that an optimal mix of functions was realized and crises needed to act and redistribute the functions especially in favour of stabilization to come up nearly to the mix which was prevailing before. As the additional functions and actions may increase the volume of central state and municipal activities through higher expenses the share of the public sector grows. Then the optimal allocation between the public and private sector is disturbed and the former optimal mix gets not attained. Also the income distribution might have been changed through public demand intervention in favour of entrepreneurs and their profits. The best income distribution is not achieved again. We are also lost if the former mix of functions seems not to be the best one. Then one needs a sophisticated welfare function of an omniscient actor, which gives us a yard stick where to find an optimal mix and whether we improve or worsen our mix if we decrease, increase and shift function performances. This should be applied whether to judge if unfunded mandates should be avoided or how they should be financed. An alternative would be a public choice model which gives information on solutions the actors achieve in the framework of the political exchange, decision and voting system. The lack of both instruments prevents from determining optimal function mixes. However, on basis of experience experts in public law, in public management and in public finance recommend to avoid unfunded mandates in order not to undermine the political, justice and economic coordination procedures stipulated in the constitution (Beth, Dilger 2013).

Unfunded Mandates in Estonia during Crises

In Estonia all municipalities have to perform a broad range of functions (Reiljan, Ramcke, Ukrainski (2006); Friedrich, Nam, Reiljan (2010). Moreover, new European Union task requirements have to be met, for which the municipalities are responsible according to the Estonian constitution. The same is true with social and population development (Friedrich, Ülper, Ukrainski 2014). This causes conflict potentials because the power to regulate fiscal affairs¹² is mostly in the hands of the central government, while the regulatory competence of the municipalities has remained rather weak. Estonian local government functions are relatively similar across counties.

In Estonia, local government's responsibility areas are determined by the **Local Governments Organization Act** (KOKS, RT I 1993, 37, 558). Yet, the functions of

¹² E.g. to fix conditional grants and/or the size of the funds to be transferred to municipalities.

local governments are not always explicitly described. According to a survey conducted by the Ministry of Internal Affairs, local government responsibilities have already been regulated in the mid-1990s by almost 450 different laws and legal acts that had assigned over 400 different tasks (De Mollo 2000). 2003 was implemented a reform of local government tasks and their financing where issues of avoiding unfunded mandates played a role.

The revenue distribution developed very much in favour of the central government. The share of municipalities of **all revenues, of revenues without social contributions, of personal tax income, and of grants**¹³ shrank especially in the times of crises from 2009 to 2012 (see Annex 1 - 5). The municipalities depend heavily on **grants**. They increased until 2008 and fell in 2009 and 2010 not reaching the former level until 2014. The development of public debts shows in particular in the period of crises increases of that of central government, but also that of municipalities. Between 2001 and 2007 the fiscal situation of the municipalities gradually improved, but during the last economic and financial crisis the central government of Estonia introduced cuts of municipal support funds and of local participation in tax receipts to safeguard the central government budget.

Total **expenditures** of municipalities increased until 2008 and decreased especially in 2009 and 2010 not reaching the former level until 2012. The share of municipal expenditures of all public expenditures which was 30.9% in 2003 declined to 21.73%.(see Annex 6) Similar tendencies show education, investments (capital formation), intermediate consumption, health, recreation, culture, and general public service expenditures. (see Annex 8-16) The shares of municipalities' expenditures went down in particular during the years of crises.

The figures show that the central government tried to keep his revenues and expenditures during crises stable and the **adaptation** was to a considerable extent due to the municipalities. Many unfunded mandate issues appeared this way, because many public services are mandatory tasks where the service conditions are heavily influenced by the central government. At least they should be according to the connexity principle financed by the central government directly or through specified conditioned grants to cover costs and to avoid a severe reduction of non-compulsory self administration tasks, if the laws do not determine performance reductions with shifted tasks. The reductions of free self administration task performances are also signalled by the shrinking block grants.

¹³ The share of grants to municipalities of total central revenues has fallen from 17.9% (2003) to 10.39 %. The share of state budget grants of total municipal revenues increased remarkably, from 25% in 1997–2002 to 35% in 2003–2006. Since the equalization fund resources (with the share of approx. 7%) remained stable, this fact in turn indicates that the share of **conditional grants** grew also steadily, from 18% to 28% in municipal total expenditures. The share of **unconditional grants** (block grants) of the total volume of central government grants to municipalities dropped from 28% in 1997–2002 to 21% in 2003–2006.

The problems become even more severe, because the **fiscal strength of municipalities differs** considerably (see Friedrich, Nam, Reiljan 2010). For some municipalities the danger to suffer from unfunded mandates is much more probable as municipal self revenues, shares of tax revenues, conditional grants, and block grants vary between municipalities in different regions and of different type. Unfunded mandates occur especially in South Estonia, the Eastern regions and on the Islands. There is no clear cut delineation of the central state and the municipal tasks and the central government likes to intervene in the administrative actions of the municipalities, but on the other hand hesitates to take over the finance of the function performance it tries to manage. In terms of the strict connexity principles most of the tasks are compulsory and should be totally funded by the central government through cost covering payments at best outside the fiscal equalization process.

However, the financial needs of Estonian municipalities have not been directly analytically assessed. In the year 2000 an international research group elaborating the so-called „Danish project“ tried to assess the lack of municipal financial resources. It stressed that first of all investments for maintaining the real estate value and for developing the **infrastructure of local life** gets insufficiently financed. The tasks of the Central Government and the municipalities are not clearly cut and too much interwoven. Estonian central government ministries try to use the municipalities like their low rank administrative offices. The Ministry of Finance concludes that the European Charter of Local Self-Government does not exclude the option of control over the rationale of municipal activities, when this is balanced with the importance of interests that need to be protected. This is also expressed in the Law of Municipal Financial Management that says the state can intervene in municipal activities, including the prescription of ways how local issues should be managed¹⁴. The central government stabilizes its performance on the cost of municipal possibilities to finance the truly municipal tasks of self administration. §154 of the Estonian Constitution stipulating that the municipalities decide and organise all elements of life in the local area protects the self administration of the municipalities not sufficiently.

The legal stipulations about **legal relations between the central budget and the municipal budgets** point to this situation as well¹⁵. The share of conditional grants

¹⁴ Seletuskiri kohaliku omavalitsuse üksuse finantsjuhtimise seaduse eelnõu juurdeseletu 2008

¹⁵ Paragraph §5 on “Revenues of Budget” of the „Law of Rural Municipal and Municipal Budgets provides a list of municipal revenue sources (Valla ja linnaeelarve seadus 1993): (1) taxes; (2) sales of goods and services (including user charges); (3) (one-time) sales of material and immaterial assets; (4) income from assets; (5) financial supports including foreign aids; and (6) other revenues including fines. The other revenues concern in Paragraph §8 the public debts of municipalities, that underlies strict restrictions. An important source of finance is according to Paragraph §9 of the State Budget Law: grants from the state budget passed to the municipal budget via (1) the equalization budget fund (block grants, Riigieelarve seadus 1999).; or (2) specific purpose-oriented (conditional) grants”. Remarkable municipal revenues come from the state budget.

to finance municipal total expenditures grew steadily, from 18% to 28% and shows the dependencies of municipalities and the growing influence of central government in performing municipal functions. As central government does not cover all expenses of function performance tendencies to unfunded mandates develop more and more. Conditional grants have primarily been provided in the fields such as salaries for teachers, family doctors, the social tax and unemployment insurance tax connected to those salaries; investments and expenditure connected with the public responsibilities of municipalities to “complement budget revenues”. The block grants available for self administration are much determined by central state actions through fixing the size of the equalization funds devoted to block grants and fixing the need indicators (so-called normative expenditures). Following §9 of the Law of Municipal Financial Management, there is a support fund in the state budget to cover revenue deficits in rural municipal and town budgets. But also the size of this fund is determined by central government.

The Estonian Constitution does not provide an essential own **independent tax** base for the municipalities. The personal income tax is shared between the central state and the municipalities where central government takes over some responsibilities for non-fiscal taxation measures. It has the dominating influence in fixing the share of municipal share of personal income tax revenues.

The fiscal conditions of Estonian municipalities are to a large extent fixed by the block grant, special grant and tax share policy of the central government. A vast volume of **unfunded mandates** have developed. They are caused by the general insufficient finance and the many functions that are municipal functions by constitution. The self finance revenues and block grants are not high enough to cover the costs of non-compulsory self administration. The appropriate mandates fixed by constitution get not sufficiently financed. Moreover, there are compulsory self administration activities where the tasks and service conditions are strongly influenced by the central government, which are not sufficiently funded by the central government through special grants. Duties to perform central government tasks exist for municipalities, where costs are not exactly compensated by the central government. As there was no precise definition of tasks and the fiscal resources from the very beginning of the post soviet Estonian Republic problems of unfunded mandates appeared since 1994. New tasks were shifted to the municipalities and in fiscal crises the central government caused new unfunded mandates by cuts of the fiscal means available to the municipalities. Formally stipulations in §4 of Law of the Relationship between Towns or Rural Municipalities and the State Budget and in §9 of the State Budget Law assist to balance the interests of the central government and the municipalities. Balancing fiscal means will be determined by **negotiations** between a state institution appointed by the central government and the municipalities or their unions. However, in the case that an agreement is not reached, the size of that sum and the equalization procedures and criteria get yearly determined by the government in the state budget accordance with Paragraph §9. Therefore, the conditions change and the municipalities are not protected against unfunded mandates.

Unions of municipalities are weak institutions with only a few officials, and cannot analyse or dispute the rules governing municipal budget supplements or the calculation methods developed by ministries with hundreds of civil servants. Currently, legally fixed methods or obligatory conventions to assess the expenditures for function performance legally designated to the municipalities are not available.¹⁶ Research based conventions to determine the expenditure needs, which would serve to fix compensation amounts to avoid unfunded mandates are lagging as well. There is no basis for assessing the different opinions during the negotiations. **Investment support** is due to the free political choice of the parliament and the central government, which in turn means that the municipalities are directly dependent on the central government's decision. Against resulting unfunded mandates municipalities are not protected. Estonian municipalities were characterised as being insufficiently funded, having a dependant mentality, struggling to obtain a larger share of the state budget grants and lacking in motivation to find alternative measures for revenue growth.

During the year 2003 was implemented the **reform of local government tasks** and their financing. To rise municipal independency and responsibility municipalities got a fixed share of personal income tax revenues (11.4% from 21%) paid by their inhabitants as a budget revenues base¹⁷. Central government has also allocated some important tasks to municipalities concerning general education, subsistence support of inhabitants at risk of poverty, maintenance of local roads etc. As there was no direct task wise compensation municipalities end up with unfunded mandates in general.

From 2004 on exist **protocols of official negotiations** between central government commission and local government union's commission about financial state guarantees to perform municipal tasks. These protocols reveal the municipal revenues need to perform different tasks and of financial support by central government of efforts to avoid unfunded mandates.

In the final negotiation protocol from 15.09.2004 are fixed **the principles of negotiations** on funded and unfunded mandates, on which were referred in all negotiation protocols in following years:

- The central state guarantees to municipalities the **covering of the expenditures** for fulfilling the tasks given by laws, and perform the investments needed for local development;
- The negotiations of **shift of local functions** from central government to municipalities should continue. A shift of functions has to be accompanied

¹⁶ Only a calculation of normative expenditure based on general characteristics of a municipality exists.

¹⁷ At that time these revenues make up to 50% of total municipal revenues. Conditional and unconditional grants from state budget got fixed that made up to 35% of total municipal revenues.

by handing over the resources to cover municipal expenditures to fulfil these functions.

For all **new appearing functions** and tasks the municipal revenues base has to be increased with resources needed to perform these.

Following these principles turned out problematic because the function distribution was not precise enough, assessment methods and precise kinds of compensation were not fixed, and in the crisis time the negotiations have been replaced by dictate of central government. If an agreement was not achieved, the central government has made the decisions alone. In times of fast growth it was possible to find distribution of budget resources satisfying both partners. The crisis has revealed that municipality's interests and rights are not guaranteed in Estonia and that they are not protected against unfunded mandates.

For negotiations 2004 the municipalities have argued that through the **implemented reforms** they have in year 2004 lost 200 million Estonian crowns (EEK) from unfunded mandates and requested the compensation of this sum. The loss was obvious and the central government agreed to raise the municipalities share in personal income tax from 11.4% to 11.6%. However, that was not a precise compensation of costs. The municipalities argued also that they need for the equalisation of salaries for teachers and for employees in cultural activities additional 324 millions of Estonian crowns, however, they got as one-shot transfer of 100 millions. Then in 2006 they got 115 millions crowns by increasing the municipal share of personal income tax by 0.1% which brought about 60 millions crowns and an increase in the equalization funds by 55 millions of crowns. In 2007 the municipalities got 0.1 % and an increase in equalization funds by 28.5 millions of crowns. This was less than the municipalities claimed. The municipalities have assessed a **fiscal resource shortage** of 384 millions crowns. This examples show that there was no regulation how long the function should be executed and how high the compensation payments should lastly be, considering inflation, etc. the amount was not assessed exactly. The demand of the municipalities might have been to high and the offer of the central government to low. An unfunded mandate is probable.

Municipalities have announced that for fulfilling **new tasks shifted** to them by laws; they need additionally 357 millions crowns. The municipalities have requested to strengthen their share of personal income tax by 0.4% to 12% in 2005 and also for 2006. The central government did not agree. It also shows that the municipalities did not insist on an exact expenditure compensation of shifted or lately allocated functions. They should have requested full cost compensation by extra payment through special grants and should have brought a case before the constitutional court. Unfunded mandates occurred.

Unfunded mandates occurred also with respect to **maintaining local roads**. In year 2003 municipalities requested 315 millions crowns (15% of state total expenditures for roads), but they got only 117 millions crowns (about 5%). For the followings

years the municipalities requested the raising of financing for local roads maintenance. In the years 2006 they wanted 20%, of all roads expenditures for municipal roads. For 2007 they claimed for 25% and in the year 2008 for 30%. This request was not satisfied by central government, although certain growth occurred in boom years. During negotiations for budget 2006 the municipalities requested 380 millions crowns and have got 265 millions crowns (about 10% of total state expenditures for roads). For the year 2007 the municipalities got nearly the requested amount (15% of total spending for roads). The sum was– 429 millions crowns. Unfunded mandates occurred.

The central government has handed over to communities the **provision of general education** and accepted to finance by targeted grant the covering of teachers' salaries and schooling, expenditures for teaching materials and the investments need for development the teaching environment. The municipalities have assessed that the financing offered do not cover the expenditure needs in 2006. Municipalities asked to raise special grants by 10% compared to 2005 to perform the tasks as fixed in laws. This request was not satisfied by central government. The municipalities were left with unfunded mandates.

In 2006 a **shift** of the payment of custodians of **disabled people** to municipalities took place concerning 186.5 millions crowns. To compensate the municipal share in personal income tax was raised by 0.1% to 11.7% which brought 60 millions crowns and the equalization fund was raised by 126.5 millions crowns. This example shows too that no exact compensation with respect to shifted mandate was elaborated. The negotiations reflect more a general finance game and not a precise compensation to protect the performance of non-compulsory self administration.

Central government shifted to municipalities the payment of subsistence support to **people at risk of poverty**, but it did not provide fiscal resources to cover expenditures for administration of these activities. For this purpose municipalities wanted for budget 2007, 38 millions crowns that means 15% of the expenses to be paid. Instead, the financing of subsistence support payments decreased in 2007 in comparison with 2006 by 68 million crowns, a difference of 106 millions crowns remained as unfunded mandates.

In the negotiations end-protocol of central government and municipality unions commissions from 26.09.2006 we find that the central government decided that municipalities have to carry **all preparation costs of introducing the euro**. It might be questionable whether this task is one of the central state functions, a shifted one to the communities or whether both have to bear the introduction costs related to their administrative activities. But as the communities had to perform this task during crisis in the years 2009 and 2010 unfunded mandates occur because of budget cuts.

In autumn 2008 it became obvious to political decision makers that the **economic situation turned unfavourable**. The end-protocol of negotiations from 19.09.2008

shows the negotiation position of municipalities. Municipality unions pointed to the urgent need to improve the financing of municipalities, but postponed their requests one year to the negotiation round on the budget of 2010. The central government and the municipalities agreed that the revenues base and the financing current municipal spending supported by conditional grants stays at the level of the year 2008. Therefore, existing unfunded mandates got not reduced.

The central government decreased the **investments support** to municipalities for education from 250 million crowns in 2008 to 50 millions crowns in 2009, for culture from 126 millions to 26 millions, and in social care from 21 millions to zero. The financing of the local roads maintenance got reduced from 633 millions crowns in 2008 to 378 millions in 2009. Thus the performance decreased and some unfunded mandates have additionally occurred because of repairs, which could not be postponed. About the central government support of **music, art** etc schools and associations fixed in law, has been formulated in the protocol “according to the possibilities of budget”. Here again some unfunded mandates arose if the laws enforce performance without conditional grants.

A remarkable role in municipality finance played **EU grants**, making up over 10% of total municipal revenues in 2009. Unfunded mandates may occur if the municipalities have to finance their contributions to expenses and if the projects or activities are necessary to fulfil European requirements. Although the worsening of economic situation was perceived, tax estimations were positive. However, at the beginning of 2009 the central government realized the drastic economic turn down. The next meeting of the central government and municipal unions’ commissions on 11.02.2009 was not for negotiations. The delegates of municipality union complained that they were not treated as partners, did not receive adequate information and were not given time for analysis and consulting. The minister for regional affairs pronounced total municipal budget cut-backs by over 875 millions crowns and that already decided was the decrease of local roads maintenance financing by 200 millions crowns. The Municipal delegates were allowed to choose what **cuts** they prefer. The decision had to be made urgently because the draft budget had to be introduced to an extraordinary meeting of parliament. The municipalities declared that the central government should cut the central government conditional grants and it is not acceptable to cut the municipal revenues base concerning the share of personal income tax and the equalization fund. Although the municipalities have made the decision requested, the “flexible” central government decided in the opposite way.

It decreased the municipal share in **personal income tax** by 0.53% from 11.93 to 11.4 and the equalization fund was decreased by 278 million crowns from 1.43 billion crowns to 1.152 billion crowns. Moreover, the revenues base has until 2014 not been recovered. Therefore, this policy caused a lot of unfunded mandates in compulsory self administration. It created also unfunded mandates and a decrease of free self administrative activities. Unfunded mandates already existing with respect to municipal performance of central government tasks did not disappear.

Compared to the planned budget of 2009 of 24.5 billion crowns, the real **municipal budgets** have fallen by 5.3 billion crowns to the level 19.5 billions crowns¹⁸. The municipal revenues reached the nominal level of 2008 only in 2013, and for the 2014 it shows a small growth. Considering inflation the real revenues are far from the level of 2008. The municipal gap in revenues will increase more and more and the problem of unfunded mandates as well.

A Policy to Avoid Unfunded Mandates in Estonia

The example of Estonia shows that constitutionally unprotected municipalities suffer easily from an unfunded mandate policy in crises. In countries where the public sector is still in transition from a centrally planned socialist state to a market or social market economy and democratic political order the function competences are not separated enough between central state and municipalities and in a small country with many small and administratively weak municipalities central state ministries and municipalities get interwoven. A country like **Estonia still shifts functions**. During the next five years must be finally decided about the **distribution and separation of functions** and which functions of central state should be executed by the own administration of the central state and which central state functions should be performed by municipal public offices. The EU functions have to be considered as well. Without a clear cut separation of functions between free self administrations, compulsory self administration and municipal execution of central state tasks the identification of possible unfunded mandates becomes difficult. Additionally the legal competences for the functions must be clearly separated and or at least precisely determined. The central government should not have the opportunities to intervene or act against statutes and municipality laws as far as they are in accordance with the constitution referring to the local community. The example of Estonia also shows that the municipalities should have **sufficient municipal self revenues**. In future the municipalities should have an **own important tax** or addition to it, e.g. an own income tax, business tax, or excise (turnover)tax, where the municipalities are able to determine the tax rates themselves in order to be more independent from central state tax sharing policies. The non-compulsory self administrative municipal functions should be financed by this way and by block grants and municipal debt if allowed. The performance of true government functions by municipalities should be really financed through conditional grants (compensations) from the central state separated from the fiscal equalization mechanism. The cost assessment has to include also indirect burdens of administration management such as costs of general municipal offices (overhead costs). The connexity principle should be applied after the final function assignment for **new upcoming central state functions** to be shifted to the municipalities. With the compulsory municipal self administrative functions a minimum function

¹⁸. The municipal budgets of 2008 with a volume of 22.7 billion crowns fell in the year 2009 by 3.2 billion crowns. The municipal revenue loss from personal income tax realized in 2009 was 1.53 billion crowns. Compared to 2009 the loss got 2.31 billion crowns.

performance and the related costs with respect to current performance and capacities should be evolved and financed through conditional grants out of the central state budget. A rest, which results if the municipalities want a higher activity level, should be financed through the municipal self revenues. If the central state wants to increase the compulsory self administrative activities or if he is going to introduce new ones the connexity principle should be applied as well.

A legislation concerning the avoidance of unfunded mandates through strictly applying the **connexity principle** has to concern the procedure of cost estimations, the rights of central government and municipality union to determine the costs involved, the estimation of costs in advance, the kinds of costs to be considered, and the checks of realized costs and activities after a specified period to decide whether the shift of function should continue. Procedures for administrative and constitutional court cases have to be introduced and sanctions against decision makers not respecting the constitution or the constitutional court decisions.

There remains still the problem how to avoid unfunded mandates in times of crises especially when in the European Union¹⁹ central bank crediting is no revenue source for the jurisdictions. A total protection of the municipal activities from budget cuts would shift the adaptation totally on the central state. During the last crises in Estonia the adaptation burden was partly shifted to the municipalities leading to large unfunded mandates and protection of central state budget. **Both situations** should be avoided. Therefore, a legislation has to be developed how to act in case of crises. Undoubtedly the task fulfilments should be variable that means they performances should be reduced without running into unfunded mandates.

As mentioned above one of the problems is to determine the scope of decreasing or increasing the **function performance** (see page 7). Particular research should find out reasonable minimum levels and upper levels of functions. This has to be adapted to city sizes, administrative districts, and population and central functions of the municipality with respect to the perspective functions. For the municipal functions concerning the execution of central government functions the decision of function reduction or extension should be made by the central government but under strict connexity principle. The conditional grants for that purpose can only be cut if the function performance is cut as well. That deals with current conditional grants and investment funds. With respect to compulsory municipal functions there might be a reduction possible down to the minimum standards and therefore also a proportional reduction in conditional grants. If the municipality likes to offer a higher activity level it is its decision and does not lead to an unfunded mandate. Difficulties arise with the **<non-compulsory municipal self administrative functions** and the central state function executed by the respective central state public offices. For both groups of tasks again minimum activity levels might exist as well as upper levels, which define the scope of possible variability. When the municipality loose self

¹⁹ At present the European court decides on the open market policy and the security procurement policy of the ECB.

revenues then they also have to reduce their non-compulsory self administration activities and its free share of compulsory activities. To the upper limit there are restrictions of possibilities of self revenues. For the central state the same happen with his functions which could be decreased in fiscal stress or enlarged in times of growing revenues. For the central state, there is also the need to assist and supplement the financial means for non-compulsory municipal functions and the part of compulsory functions, which are not financed through conditional grants by block grants. For this task we need a rule and principle of justice to allocate fiscal adjustment between the central state and the municipalities. In the light of such a rule the existence of unfunded mandates will be not very probable as the variations are accompanied by adequate revenue corrections. Such a rule which might be helpful could be the rule of parallelism.

Such changes in fiscal relations considering the **connexity principle** to avoid unfunded mandates are very important for Estonia if the advantages of local and municipal activities should be realized. The battle for the budget between the central government and municipalities have to come to an end.

Application of the Principle of Parallelism

If Estonia achieves a balanced distribution of functions and an appropriate assignment of fiscal means among tiers of government and a block grant system unfunded mandates could be avoided in steady growth or non growth situations. But in real situations occur business cycles – also in growth – where the financial means available for the public sector jurisdictions increase and decrease. Then there is a yard-stick necessary to distribute and assign these changes to the central state and the municipalities. In the framework to avoid unfunded mandates as elaborated above, balancing would be achieved through the variation of functions accompanied by special grants for compulsory self administrative functions, for varying compensations (special grants) for performing central state functions and by varying central state finance of its own performed functions. But the problem remains to steer the assignment of block grants between central government and the municipalities, e.g. example to size the equalization funds for block grants thus reducing or increasing the finance and performance for free self administrative tasks? The experience of Estonia shows that an overwhelming powerful central state shifts the adaptation burden of a crisis to the municipalities in the framework of a principle agent relation between the central government and the municipalities. A **principal agent solution** results (Friedrich, Nam, Reiljan 2010).

If on the other hand the municipalities get extraordinarily protected in order to avoid unfunded mandates with the municipalities, e.g. by guaranteeing an unchanged equalization funds, the adaptation to the crises and the burden is primarily with the central state. In the field of conditional grants there might be a negotiation solution, which in crises might reduce the performance standard to some extent, therefore not leading to unfunded mandates. Such solutions could be modelled according to a negotiation model between the central government and the

municipalities leading to Nash bargaining solutions (see Friedrich, Nam, Reiljan 2010). The compensations keep unchanged and coincide with the connexity principle as long as the laws of function performance keep unchanged stable.

Such extreme solutions correspond to normative evaluations of **social welfare** that refer to the performance of the central state functions and municipalities function with high social evaluation of central state functions or with high evaluation of municipal functions. This might be reflected in a positive “**public choice sense**” by a politically fixed strong power of the central state (the present situation in Estonia) or by high power of municipalities in the course of protection from unfunded mandates). However such a social welfare function is not available and the amendments of the constitution and the prevailing laws do not allow delineating such a welfare function.

Therefore a principle is needed to balance the importance of the central and municipal functions. After ending the transition and having achieved a clear cut function and finance assignment in the constitution, there might result a proportion between both groups of functions. A division of finance and of all revenues between central state and the municipalities will result as well. One simple idea of reaction of assignment of changes in total revenues to crises would be to promote a **principle of parallelism** as underlying the fiscal equalization in the state of Saxony (§2 SächsFAG). It says that there should be a parallel development of the “disposable income” of the central state minus the block grants and the “disposable income” of the municipalities plus the block grants (Nam, Pasche, Steinherr 2001; Friedrich, Gwiazda, Nam 2004; Friedrich, Nam, Reiljan 2010). The block grants are the main mean to change the fiscal endowment of the central state and the municipalities. Therefore, the adaptation would lead to a block grant variation through the variation of the related equalization fund. Such kind of variation would then not lead to unfunded mandates supposed the variation of the free self administrative functions of the municipalities and the central state functions and the municipal functions to execute state functions keep in the scope of performance variances discussed above. Politicians should be obliged to consider such a parallelism when they determine the equalization funds for block grants. Exemptions from this principle should only be allowed according to the specifications in the law concerning war, epidemics, deep economic crises, natural disasters, serious demographic difficulties, etc.

The **choice of the parallelism relation** turns out problematic. A one to one relation would imply that the size of tasks of both levels is the same. Especially if investments are included it might be more in favour of the municipalities. In reality there exists not a rule to define the relation of parallelism. Even in Germany there is only a responsibility of a Land to guarantee self-administration of municipalities (Kirchhoff 2002). Practically there is a priority of state tasks which is now restricted by connexity principle. One solution would be to take a relation value of a year when the actual relation was acceptable for both partners. That is for Estonia not easy as the transformation process has not come yet to an end. The block grant development differs if the proportion of 1997 would have been chosen. Then the

block grants in the following years would have been lower than the actual ones but in the years 2002 to 2008 higher than the actual ones (Friedrich, Nam, Reiljan 2010). If in table 1 one takes the relation of 2003 the block grants would be more between 2004 and 2007, less during the crises and higher again from 2011 on.

If the year 2004 after the finance reform of 2003 is taken as a basis the development is similar. Much is depending on the kind of relation and year, which is going to be chosen.

The parallelism result depends much on the size and consistency of the “**disposable income**”. Should fiscal revenues from taxes, custom duties, grants, fees, profits from public enterprises, sanctions, sales of property, and donations from private economic units be included to measure the revenues a state or municipalities can dispose? The discussion of the possible components shows that those components, which do not increase the fiscal scope such as customs to be transferred to the EU, and those revenues which are related to charged services should be excluded (Friedrich, Gwiazda, Nam 2004; Friedrich, Nam, Reiljan 2010) thus following the traditional approach to fiscal equalization. Also for sake of data availability we take as disposable income measure the tax revenue of central state and of the municipalities. One empirical difficulty is not to avoid. When the Estonian central state has changed the **tax share** of the municipalities he influences the parallelism proportion and the size of the equalization fund under the parallelism perspective.

By introducing the principle of parallelism into the block grant equalization formula (see Friedrich, Nam, Reiljan 2010) used in Estonia one achieves the results in table 1. We learn that the policy to avoid unfunded mandates to protect the municipalities has two sides. There may result also “**unfunded mandates**” on the side of central state. They occur if the central state tasks have to be shortened more than the parallelism requires. On the one hand the central state caused unfunded mandates for municipalities in crisis times because of its conditional grant policy with respect to compulsory self administration and municipally executed central tasks, which could not be reduced adequately, and because of his investment policy with respect to municipalities. On the other hand he kept the equalization funds higher than according to parallelism needed.

There must be a **match of opinions** with respect to the correct parallelism relation, which is not easy to agree upon central government and municipalities, especially under consideration of political circumstances. The investigation shows that a referee to fix parallelism is necessary. One solution might be to formulate a corridor for such a constant of parallelism, to give within this corridor the central government the say, and to let the constitutional court decide short term whether such a corridor is violated by the equalization fund fixation.

Table 1. Parallelism calculations of Estonian central government block grants to local governments on 2003 and 2004 basis (millions Euro)

	EL	EG	SZ	EL+EG	EG+SZ	EL-SZ	(EG+SZ)/ (EL+EG)	(EL-SZ)/ (EL+EG)	Parallelism 2003 basis	Parallelism 2004 basis
2003	1379	348	72	1727	419	1308	0,243	0,757	X	X
2004	1500	390	61	1890	451	1439	0,239	0,761	69	X
2005	1730	446	61	2177	507	1670	0,233	0,767	82	73
2006	2092	543	73	2635	616	2019	0,234	0,766	97	86
2007	2522	676	91	3199	768	2431	0,240	0,760	101	87
2008	2296	794	91	3090	886	2204	0,287	0,713	-44	-57
2009	2288	693	70	2981	764	2218	0,256	0,744	31	18
2010	2294	653	70	2947	723	2224	0,245	0,755	63	51
2011	2485	698	72	3183	770	2413	0,242	0,758	75	62
2012	2716	740	72	3456	813	2644	0,235	0,765	99	85

Total tax revenues without social security contributions (millions Euro)

EL - Central government tax revenues

EG - Local government tax revenues

SZ - Block grants from CG to LG

Conclusions

In many countries such as USA, South Africa, Australia, Germany, Estonia, occur problems from unfunded mandates related to a shift of a function by an upper tier of government to lower rank governments without providing the lower one with financial means to perform these functions. In Estonia these governments are the municipalities. Unfunded mandates become a special problem in times of fiscal crises. The authors **defined the unfunded mandates** and how they relate to functions, uncovered costs and financial means of municipalities. Then the connection principle was elaborated and applied to avoid unfunded mandates. The necessity to vary functions in crises to avoid unfunded mandates got debated and suggestions for general limits of function reduction or increase were mentioned. Conflicts with respect to allocation, stabilization and distribution activities when leaving an optimal mix of function performance were pointed too.

In Estonia the development of revenues and expenditures of central state and municipalities point to **tendencies to cause unfunded mandates** also reflected by the shares of municipalities in revenues, debts and expenditures in the period of crisis from 2009 to 2011. Estonian municipalities are affected by these developments unevenly. Especially municipalities in South Estonia, the islands and in the North east are touched by unfunded mandates. Unfunded mandates from shifting of functions and fiscal reforms that happened in the boom period and the times of crises. Although the fiscal equipment should be debated and decided in negotiations by the central government and the union of municipalities the solution finding turned to dictate in the times of crises. Conditional grants, needed investments, compensations for execution of central state tasks and the municipal share of personal income tax were cut The connexity principle was not applied.

To avoid unfunded mandates Parliament should clarify the **constitutional function assignment and the fiscal responsibility** between central state and municipalities under considering a trend to balanced budget policies of municipalities. The connexity principle should be applied for municipal performance of central state functions and compulsory municipal functions. The free administrative functions should be influenced by block grants and municipal self revenues. Investments related to those functions should be financed according to the same connection principle. The recommendations to avoid unfunded mandates refer to a basic task assignment as well as to varying functions within the scope of function variation mentioned.

To vary the block grants and to influence the free self administrative functions the Estonia should apply the **principle of parallelism**. It concerns the relation between disposable income expressed in tax revenues of the central state minus the block grants and the disposable income also in terms of tax revenues of the municipalities plus the received block grants. If the total tax revenues vary the changes to both tiers of government are according parallel to this proportion by adapting block grants.

Problems cause the determination of such a relation as no welfare function is available. The politicians may choose an acceptable relation size directed to a satisfactory year of fiscal assignment. After having achieved a specified constitutionally satisfying distribution of functions for Estonia a corridor of higher and lower parallelism relations should be defined in the constitution and protected by the constitutional court. The **choice of a base year** to fix the relation of parallelism influences the size of the equalization funds. Equalization funds referring to different reference years were accounted. In times of boom the actual equalization funds was bigger than those under parallelism. In times of crises it would have been even smaller than the actual ones. These facts point to possible **unfunded mandates for the central state**, although unfunded mandates for the municipalities may occur at the same time. The unfunded mandates for municipalities result when the central, state does not compensate enough for the municipal performance of central state functions or the special grants for compulsory get shortened but the laws determine a level of function performance that is not covered by the central state finance. The mentioned scopes of function variations mentioned have to be considered.

References:

1. **ACIR (1994)**, Federally Induced Costs Affecting State and Local Governments, M-193, Washington, DC
2. **Ammermann, Th. (2007)**, Das Konnexitätsprinzip im kommunalen Haushaltsrecht, Baden-Baden: Nomos
3. **Asenso, M.A. (2012)**, Constitution and Fiscal Constitution. Central Government Influence on the Federal System in Argentina, in: G. Färber (ed), Governing from the Center: the Influence of the Federal/Central Government on Subnational Governments, Deutsches Forschungsinstitut für Öffentliche Verwaltung, Speyer, 157-174
4. **Baden-Württemberg (2008)**, Gesetz zu einem Konsultationsverfahren zur Kostenfolgenabschätzung nach Artikel 71 , Gesetzesblatt von Baden-Württemberg, vom 6.5. 2008, Gesetzes und Verordnungsblatt Baden Württemberg 2009, Nr. 4, 119-121
5. **Beckehoff, J. and F. Bender (2011)**, Das Konnexitätsprinzip aus Artikel 78 Abs. 3 der Verfassung des Landes Nordrhein- Westfalen in der aktuellen verfassungsgerichtlichen Rechtsprechung, Bonner Rechtsjournal, Vol. 4, 53-57
6. **Becker, B. (1989)**, Öffentliche Verwaltung, Percha: Schulz
7. **Beth, R.S. and R.J. Dilger (2013)**, Unfunded Reform Act: History, Impacts, and Issues, CSR Report for Congress, Congress Reserch Service, no. 7-5700, Washington, www.crs.gov
8. **Buglione, E (2012)** Central Government Influence on Sub-Central Governments: The Case of Italy, in: G. Färber (ed), Governing from the Center: the Influence of the Federal/Central Government on Subnational Governments, Deutsches Forschungsinstitut für Öffentliche Verwaltung, Speyer, 215-230
9. **Courty, P. and G. Marschke (2003)**, Dynamics of Performance Measurement Systems, Oxford Review of Economic Policy, Vol. 19, 268-284
10. **Dehne, A., Friedrich, P and C.W. Nam (2009)**, Determination of Fees for Local Services under the Consideration of Public and Management Objectives, Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, Vol. 32, 1–18
11. **De Mello, L. R. (2000)**, Fiscal Decentralization and Intergovernmental Fiscal Relations: A Cross-country Analysis, World Development, Vol. 28, 365-380

- 12. Dollery, B. Crase, L. and A. Johnson (2006)**, Australian Local Government Economics, Sydney: University of South Wales Press
- 13. Financial and Fiscal Commission (2011)**, The impact of Unfunded Mandates in Southern African Fiscal Relations, Policy Briefs, Vol.3, 1-3
- 14. Friedrich, P. (1969)**, Investitionskriterien für Gemeindeunternehmen, Tübingen: Mohr
- 15. Friedrich, P. (1971)**, Die Nutzen-Kosten-Analyse als Entscheidungshilfe für Industrieansiedlungen aus der Sicht der Maximierung der isolierten Wohlfahrt, in: H. K. Schneider (ed.), Nutzen-Kosten-Analysen bei öffentlichen Investitionen, Münster, 163-224: Beiträge und Untersuchungen des Instituts für Siedlungs- und Wohnungswesen der Universität Münster
- 16. Friedrich, P. (2014)**, Marginal Cost Pricing of Public Enterprises in Competition, Innovation, Psychology, Economics, Vol.2, (in publication)
- 17. Friedrich, P., Gwiazda J. and C. W. Nam (2004)**, Strengthening Municipal Fiscal Autonomy through Intergovernmental Transfers, in: R. Cappelo, P. Nijkamp, Urban Dynamics and Growth, Amsterdam et al., 691-728: Elsevier
- 18. Friedrich, P., Nam, C.W., Reijan, J. (2010)**, Local Fiscal Equalization in Estonia: Is a Reform Necessary? Review of Urban and Regional Development Studies, Vol. 22, 165 – 180
- 19. Friedrich, P., Ülper, A., Ukrainski, K. (2014)**, Shrinking Cities and Processes in Estonia, in: C.W. Nam, H.R. Richardson, Shrinking Cities a Global Perspective (forthcoming)
- 20. Göring, U. (2012)**, Das Konnexitätsprinzip im System kommunaler Finanzausstattung, paper presented at a conference on: Neue Aufgabenverteilung in Ländern und Kommunen, 16.2.-17.2. 2012 at Speyer, Speyer: <http://www.dhv-Speyer.de/Kuhlmann/Mitarbeiter/Kuhlmann/Weiterbildung/Verflechtung> von Funktionalreform/G%C3%Bohring.pdf (last access 1.2. 2014)
- 21. Grout, P.A. and M. Stevensen (2003)**, The Assessment: Financing and Managing Public Services, Oxford Review of Economic Policy, Vol. 19, 215-234
- 22. Henneke, H.G.(2003)**, Darf der Bund bestellen, wenn erbezahlt, oder soll der bezahlen müssen, wanner bestellen darf, Landkreistag, Vol. 73, 137-148
- 23. Kirchhof, P. (2002)**, Die Reform der kommunalen Finanzausstattung, Neue juristische Wochenzeitschrift, Vol. 55, 1549-1553
- 24. Kirz, K.A. (2008)** Local Government finance in Estonia, in: Zeljko Sevice, (ed.) Local Public Finance in Central and Eastern Europe, Northampton: Elgar, 161-182
- 25. Kluth, W. (2009)**, Das kommunale Konnexitätsprinzip der Landesverfassungen – Überblick über Rechtssetzung und Rechtssprechung, landes- und Kommunalverwaltung, Vol.8, 337-384
- 26. Local Government Organisation Act, KOKS. (1993)**, Kohaliku omavalitsuse korralduse seadus. Vastu võetud 02.06.1993. a seadusega (RT I 1993, 37, 558).
- 27. Lohse, F. (2005)**, Kommunale Aufgaben, kommunaler Finanzausgleich und Konnexitätsprinzip, Baden-Baden: Nomos
- 28. McMillan and L. Melville (2006)**, Municipal Relations with the Federal and Provincial Governments: A fiscal Perspective, in: R. Young and CH. Leuprecht (eds.) Canada: the State of the Federation 2004: Municipal-Federal-Provincial Relations in Canada, Montreal, Kingston: McGill-Queen's University Press, 45-82
- 29. Meffert, H. and W. Müller (2008)**, Kommunaler Finanzausgleich in Rheinland-Pfalz, Stuttgart: Kohlhammer
- 30. Musgrave, R. (2006)**, Public Finance and the Three Branches Model, in: A. Ott, R. J. Cibula (eds.), The Elgar Companion to Public Finance, Cheltenham, Northampton: Elgar, 3-8
- 31. Musgrave, R. and P. Musgrave (1989)**, Public Finance in Theory and Practice, New York et al.: McGraw-Hill
- 32. Nam, C.W., Pasche, R. and M. Steinherr (2001)**, The Principles of Parallel Development of State and Municipalities as Useful Benchmarks for the Determination of Intergovernmental Grants in Germany, European Planning Studies, Vol. 9,525-537

- 33. Nelson, J.R. (1964)**, *Marginal Cost Pricing in Practice*, Englewood Cliffs, N. J.: Prentice-Hall
- 34. Mückl, St. (2006)**, Konnexitätsprinzip in der Verfassungsordnung von Bund und Ländern, in: H. Henneke, H. Pünder, Ch. Waldhoff (eds.), *Recht der Kommunalfinanzen*, München, 33-39: Beck
- 35. Nordrhein-Westfalen (2004)**, Gesetz zur Änderung der Verfassung für das Land Nordrhein-Westfalen und zur Regelung eines Kostenfolgeabschätzungs- und eines Beteiligungsverfahrens gemäß Artikel 78 Abs. 3 der Verfassung für das Land Nordrhein-Westfalen, Gesetz- und Verordnungsblatt (GV. NRW.), Ausgabe 2004 Nr. 23 vom 9.7.2004, 359- 374
- 36. OECD (2011)**, *Estonia: Towards a Single Government Approach*, OECD Public Governance Reviews: OECD publishing and <http://dx.doi.org/10.1787/9789264104860-en>
- 37. Pola, G. (2012)**, Italy: Financial Implications of the Transition to Fiscal Federalism. Fears and Hopes, in: G. Färber (ed), *Governing from the Center: the Influence of the Federal/Central Government on Subnational Governments*, Deutsches Forschungsinstitut für Öffentliche Verwaltung, Speyer, 201-214
- 38. Protocols of official negotiations** between central government commission and local government union's commission about financial state guarantees to perform municipal tasks, 2004 – 2010
- 390. Reiljan, J., Andresson, K. and K. Ukrainski (2006)**, Spatial Disperities in Central Governmental Grants to Local Governments, in: Liu, G.V. (ed.), *Perspectives on International, State and Local Economics*, 85 - 114, Nova Science Publishers
- 40. Rheinland-Pfalz (2005)**, Landesgesetz zur Ausführung des Artikels 49 Abs.5 der Verfassung für Rheinland-Pfalz (Konnexitätsausführungsgesetz – KonnexAG –) Landtag Rheinland-Pfalz – 14. Wahlperiode Drucksache 14/4675
- 41. Samson, G. (2009)**, Commonwealth in Australia, in: N. Steytler (ed), *Local Government and Metropolitan Regions in Federal Systems*, Montreal, Kingston,7-36: MCGill-Queen's University Press
- 42. Scherf, W. (2009)**, *Öffentliche Finanzen*, Stuttgart: Lucius and Lucius
- 43. Schleswig Holstein (2012)**, Gesetz zur Regelung eines Beteiligungs- und Kostenfolgeabschätzungsverfahrens nach Artikel 49 Abs. 2 der Verfassung des Landes Schleswig-Holstein (Konnexitätsausführungsgesetz-KonnexitätsAusfG) Vom 27. April 2012, Gesetz- und Verordnungsblatt 2012 Schleswig-Holstein, Nr 8, 450-451
- 44. Schmitt, N. (2012)**, The Role of the Political Culture of Non-central Government for the Vertical (Lack of) Influence of the Federation and How It Affects Cantons and Communes in Switzerland, in: G. Färber, *Governing from the Center: the Influence of the Federal/Central Government on Subnational Governments*, Deutsches Forschungsinstitut für Öffentliche Verwaltung, Speyer, 175-199
- 45. Slack, E. and R.M. Bird (2006)**, Cities in Canadian Federalism, paper presented at a conference on Fiscal Relations and Fiscal Conditions, Georgia State University Atlanta, 20.4.-21.4. 2006: BirdSlack-Cities%20in%20Canadian %20Federation 2006 [1] pdf (last access 28.1.20149
- 46. Steytler, N., Visser J.d. and R. Williams (2012)**, Unfunded mandates: Directing subnational governments, in: G. Färber (ed), *Governing from the Center: the Influence of the Federal/Central Government on Subnational Governments*, Deutsches Forschungsinstitut für Öffentliche Verwaltung, Speyer
- 47. Timm, H. (1974)**, *Finanzwissenschaft*, Manuskript, Institut für Finanzwissenschaft der Universität Münster, Münster
- 48. Timm, H. (1981)**, Finanzwirtschaftliche Allokationspolitik, in: F. Neumark (ed.), *Handbuch der Finanzwissenschaft*, Vol., Tübingen, 135-255: Mohr
- 49. Trapp, G. (1997)**, *Das Veranlassungsprinzip in der Finanzverfassung der Bundesrepublik Deutschland*, Berlin: Duncker und Humblot

50. Zimmermann, H. (1999), Kommunalfinanzen, Baden-Baden: Nomos

Annexes

Central Government and Municipalities Revenues and Expenditures in Estonia 2003-2012

(Source: Estonian statistics, authors' compilation)

Annex 1. Total revenues including social security contributions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Central government, Mill €	2640	2985	3525	4336	5240	5423	5476	5610	5890	6427
Local government, Mill €	747	822	937	1157	1288	1454	1292	1270	1324	1411
Share of local government	28.31	27.52	26.59	26.68	24.57	26.81	23.59	22.64	22.48	21.96

Annex 2. Revenues without social security contributions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Central government, Mill €	1730	1980	2366	2947	3498	3423	3681	3913	4088	4494
Local government, Mill €	747	822	937	1157	1288	1454	1292	1270	1324	1411
Share of local government, in %	43.22	41.50	39.62	39.27	36.82	42.48	35.09	32.46	32.39	31.40

Annex 3. Grants to local governments

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Central government, Mill €	1730	1980	2366	2947	3498	3423	3681	3913	4088	44944 63
Grants to local governments, Mill €	297	292	330	384	428	470	417	432	441	48454 8
Share of grants to local governments, in %	17.19	14.76	13.93	13.05	12.23	13.73	11.34	11.04	10.79	10.78

Annex 4. Total tax revenues without social security contributions

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Central government, Mill €	1379	1500	1730	2092	2522	2296	2288	2294	2485	2716
Local government, Mill €	348	390	446	5431	676	794	693	652	698	740
Share of local government, in %	25.20	26.03	25.80	25.96	26.81	34.60	30.30	28.45	28.07	27.26

Annex 5. Personal income tax revenues

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	583	646	688	832	973	1121	1017	994	1053
Local government, Mill €	340	408	439	515	592	685	598	565	574
Share of local government, in %	58.29	63.15	63.81	61.86	60.88	61.12	58.80	56.91	54.52

Annex 6. Debt burden of municipalities

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Net revenues of municipalities, , Mill €	677	744	856	1044	1162	1317	1166	1140	1184	
Total debts of municipalities, , Mill €	217	232	281	358	420	549	593	569	565	
Net debt burden of municipalities, Mill €		198	216	247	325	456	541	499	476	469
Total debts burden in %	32	31.2	32.8	34.3	36.1	41.7	50.8	49.9	47.7	
Net debts burden in %		26	25	25	27	34	45	43	39	37

Annex 7. Total expenditure

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Central government, Mill €	2520	2873	3370	4132	4860	5759	5426	5393	6121	6567
Local government, Mill €	780	836	960	1141	1305	1518	1359	1249	1296	1427
Share of local government, in %	30.97	29.10	28.48	27.60	26.85	26.35	25.04	23.17	21.18	21.73

Annex 8. Expenditure on General Public Services (administration costs)

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	529	485	571	692	789	800	775	755	816
Local government, Mill €	76	74	69	93	94	143	121	117	111

Share of local government, in %	14.30	15.34	12.15	13.44	11.90	17.91	15.62	15.55	13.65
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Annex 9. Expenditure on education

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	584	646	688	832	973	1121	1017	994	1053
Local government, Mill €	340	408	439	515	592	685	598	565	574
Share of local government, in %	58.29	63.15	63.81	61.86	60.88	61.12	58.80	56.91	54.52

Annex 10. Expenditure on gross capital formation

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	384	365	443	636	814	892	726	556	679
Local government, Mill €	123	141	148	244	336	347	254	153	197
Share of local government, in %	32.07	38.53	33.45	38.30	41.24	38.92	35.02	27.52	28.97

Annex 11. Expenditure on recreation, culture and religion

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	189	222	269	305	346	396	336	310	318
Local government, Mill €	83	87	117	145	155	195	153	133	136

Share of local government, in %	43.79	39.03	43.49	47.59	44.74	49.37	45.43	42.76	42.59
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Annex 12. Expenditure on health

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	258	274	329	416	528	633	565	553	598
Local government, Mill €	106	122	149	187	227	251	236	232	269
Share of local government, in %	41.10	44.43	45.27	44.94	43.04	39.56	41.82	41.95	45.07

Annex 13. Expenditure on social protection

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	789	905	10110	1166	1375	1710	1862	1910	1945
Local government, Mill €	69	65	80	71	96	113	117	116	123
Share of local government, in %	8.76	7.17	7.91	6.12	6.97	6.60	6.29	6.08	6.33

Annex 14. Expenditure on compensation of employees

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Central government, Mill €	889	985	1104	1242	1527	1830	1775	1707	1771	1837
Local government, Mill €	363	410	458	507	611	736	703	662	682	702
Share of local government,	40.83	41.64	41.49	40.80	39.99	40.22	39.61	38.78	38.53	38.23

in %										
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Annex 15. Intermediate consumption

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	685.13	679.60	766.60	868.10	991.40	1134.00	1044.30	1068.60	1131.00
Local government, Mill €	259.14	277.60	323.30	360.00	416.50	477.10	418.20	421.00	455.10
Share of local government, in %	37.82	40.85	42.17	41.47	42.01	42.07	40.05	39.40	40.24

Annex 16. Final consumption expenditure

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Central government, Mill €	1489	1583	1784	2013	2443	2890	2750	2704	2825
Local government, Mill €	605	672	760	842	1007	1182	1097	1065	1118
Share of local government	40.66	42.47	42.61	41.82	41.20	40.90	39.89	39.38	39.55

FINANTSKATTETA ÜLESANDED KOHALIKE OMAVALITSUSTE FINANTSIDES: KRIISIKOGEMUSED EESTIST¹

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TÜ majandusteaduskond

Eestis, analoogselt USA, Austraalia ja Saksamaaga, on probleemiks finantskatteta ülesanded kohalike omavalitsuste rahastuses, st riigivõimu kõrgemalt tasandilt suunatakse ülesandeid kohalikule tasandile ilma piisavate rahaliste vahenditeta nende täitmiseks. Autorid määratlevad finantskatteta ülesannete olemuse ning avavad nende seose kohalike omavalitsuste funktsioonide, nende täitmise kulude ja rahastamisega. Seejärel käsitletakse seoseprintsipi finantskatteta ülesannete vältimiseks ja funktsioonide erinevat rahastamisvajadust finantskriisi tingimustes.

Eesti on alles demokraatliku avaliku sektori kujundamise protsessis. Kahetasandilises administratiivsüsteemis täidavad kohalikud omavalitsused laia funktsioonide kompleksi, seejuures väga sageli rahandusliku stressi tingimustes. Kriisiperioodil suurenes kohalike omavalitsuste sõltuvus keskvalitsuse poliitikast administratiivtasemete vaheliste rahandussuhete kujundamisel. Ühepoolsed otsused võivad kohalikel omavalitsustel tekitada finantskatteta ülesanded, mille tulemuseks on raskused ülesannete täitmisel või vajadus võtta laenu. Aastatel 2008-2011 ilmnis selgelt vajadus reguleerida paremini administratiivtasandite vahelised rahandussuhted. See reguleerimine võiks olla suunatud seoseprintsipi (connection principle, Konnexitätsprinzip) rakendamisele.

Artikli eesmärgiks on analüüsida finantskatteta ülesannete tekkimist ja pakkuda seoseprintsipi rakendamist nende ärahoidmiseks kohalikel omavalitsustel. Seejuures otsitakse vastest järgmistele uurimisküsimustele:

- * Kuidas aitab seoseprintsipi rakendamine vältida finantskatteta ülesannete tekkimist ja millisele teoreetilisele alusele selle printsipi rakendamine toetub?
- * Kas Eesti kohalikel omavalitsustel ilmneb finantskatteta ülesandeid ja kuidas keskvalitsus sellega finantskriisi tingimustes tegeles? Kas keskvalitsus arvestas seoseprintsibiga kohalike omavalitsuste ülesannete ja finantside kujundamisel?
- * Milline institutsionaalne raamistik on vajalik, et seoseprintsipi järgitaks Eesti administratiivtasandite vahelistes rahandussuhetes ka kriisi tingimustes?
- * Kas seoseprintsipi erijuhtu – paralleelsusprintsipi – rakendamine võimaldab kriisiajal kujundada õiglase keskvalitsuse eraldiste taseme kohalikele omavalitsustele?

¹ The full article “Unfunded Mandates in Local Government Finance: Crises Experiences from Estonia” is located on CD.

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Artiklis vaadeldakse juhtu, mil rahastamisotsused langetatakse kõrgemal administratiivtasandil ja rahastamata või alarahastatud ülesanded ilmnevad madalamal administratiivtasandil. Sellisel olukorral võivad olla ajaloolised põhjused, kui täidetavate funktsioonide ja rahastamiskorra muutused ühest olukorrast teise üle mines toimuvad kooskõlastamatult. Need on seotud administratiivtasemete vaheliste suhetega maksutulude ja avaliku sektori teenuste pakkumise ülesannete jaotamisel. Finantskatteta ülesannetega seonduvatele probleemidele lähenetakse eri riikides erinevalt. Artiklis viidatakse finantskatteta ülesannete käsitlustele Kanadas, USA-s, Lõuna-Aafrika Vabariigis, Saksamaal, Shveitsis, Argentiinas ja Eestis. EL riikides komplitseerib olukorda asjaolu, et EL direktiivide täitmine võib kohalikes omavalitsustes põhjustada kulusid, mille jaoks rahvuslikus fiskaalpoliitikas ei ole ette nähtud katteallikaid.

Eelkõige erinevad finantskatteta ülesannete käsitlused selle poolest, milliseid avaliku sektori funktsioonide komplekse vaadeldakse. Teiseks on riikide lõikes erinevad õiguslikud vahendid, millega kohalikud omavalitsused saavad kaitsta end finantskatteta funktsioonide tekkimise eest. Saksamaal on avaliku sektori ülesannete jaotus EL, liidumaa ja kohalike omavalitsuste vahel täpselt fikseeritud ja kompetents nende administreerimiseks ning täideviimiseks vajaliku seadusloome osas on järgalt fikseeritud Saksamaa LV ja liidumaaade konstitutsioonides, mistõttu on võimalused finantskatteta ülesannete tekkimiseks väga piiratud. Saksamaa käsitlus võiks olla eeskujuks avaliku sektori funktsioonide ja nende täitmise katteallikate süsteemse jaotuse kujundamiseks erinevate administratiivtasandite vahel. Süsteem peab olema piisavalt paindlik, et ära hoida finantskatteta ülesannete teke nii avaliku sektori funktsioonide koosseisu üldisel muutumisel (suurenemisel või vähenemisel) kui ka nende jaotuse muutumisel administratiivtasandite vahel. Seejuures tuleb tagada funktsioonide optimaalne jaotus, arvestades avaliku sektori ülesannet saavutada majanduse stabiilne areng, ressursside parim (efektiivseim) paigutus ja heaolu sotsiaalselt õiglane jaotus. Arvestama peab ka lahendusvariantide poliitilise teostamise võimalusi ühiskondlike huvigruppide konkreetsete jõuvahekordade tingimustes.

Eestis on kohalike omavalitsuste ülesannete ring väga lai ja kõigile ühesugune, sõltumata omavalitsusüksuse suuruselt ja majandusliku võimekuse tasemest. Pärast ühinemist EL-ga tekkisid kohalikele omavalitsusüksustele uued ülesanded seoses EL poliitikate elluviimisega keskkonnakaitse, regionaalarengu ja muudes valdkondades. Avaliku sektori ülesannete koosseisu muutus kujutab endast Eesti kohalikele omavalitsustele potentsiaalset finantskatteta ülesannete tekkimise ohtu, sest finantseerimise küsimustes on otsustamisõigus keskvalitsuse tasandil ja kohalike omavalitsuste positsioon eelarveläbirääkimistel on nõrk. Eriti teravaks muutus avalike teenuste pakkumise rahalise katte küsimus kohalikes omavalitsustes 2008-2010. aasta finantskriisi tingimustes, sest keskvalitsus kitsendas otseselt kohalike omavalitsuste finantsbaasi. Selle tulemusena vähenes kohalike omavalitsuste osatähtsus avaliku sektori kulutustes 2003. aastast 30.9%-lt 21.73%-le 2012. aastal. Kuna kohalike omavalitsuste täidetavate funktsioonide hulk sel perioodil suurenes, siis on tulemuseks alafinantseerituse probleemi teravnemine nende täitmisel.

Finantskatteta ülesannete probleemi lahendamise tähtsust suurendab asjaolu, et Eesti kohalike omavalitsuste eelarvetulude tase inimese kohta on väga erinev, mis tähendab nõrgematele omavalitsustele suuremaid raskusi oma funktsioonide täitmisel.

Alates 2004. aastast on olemas eelarveläbirääkimiste protokollid kohalike omavalitsuste liitude ja keskvalitsuse komisjonide vahel kohalike omavalitsuste ülesannetele rahalise katte tagamise küsimustes. 15.09.2004.a protokollis on fikseeritud läbirääkimiste põhimõtted, millele viidatakse ka järgmiste aastate läbirääkimiste protokollides:

- Keskvalitsus tagab rahalise katte kohalikele omavalitsustele seadustega pandud ülesannete täitmiseks ja arenguks vajalike investeeringute tegemiseks;
- Jätkuma peavad läbirääkimised avaliku sektori kohalike funktsioonide üleandmiseks keskvalitsuselt kohalikele omavalitsustele koos nende täitmiseks vajalike rahaliste vahendite üleandmisega keskvalitsuse eelarvest kohalikesse eelarvetesse;
- Uute ülesannete ilmnemisel tuleb kohalike omavalitsuste tulubaasi suurendada nende täitmiseks vajalikus ulatuses.

Nende põhimõtete järgimine osutus problemaatiliseks, kuna funktsioonide jaotus administratiivtasandite vahel ei olnud piisavalt täpne, funktsioonide täitmiseks vajalike vahendite hindamise meetodid ja suurus olid fikseerimata ning kriisiperioodil asendusid läbirääkimised sisuliselt keskvalitsuse diktaadiga. Seaduse kohaselt on kokkuleppe mittesaavutamisel keskvalitsusel õigus teha otsus vahendite ja ülesannete jaotamise kohta ühepoolselt. Majandusbuumi tingimustes kasvasid laekumised eelarvesse kiiresti ja mõlemaid osapooli rahuldava kokkuleppe saavutamise oli suhteliselt lihtne. Kriisi tingimustes ilmnes aga, et Eesti kohalike omavalitsuste huvid on piisava õigusliku kaitseta, mitõttu ohustavad neid majandusraskuste ilmnemisel ülesannete alarahastatus võrreldes keskvalitsusega.

Eesti on olukorras, kus põhiseadusliku kaitseta kohalikud omavalitsused kannatavad neile seadustega pandud ülesannete alarahastatuse all, eriti just kriisiperioodil. Sellise olukorra vältimiseks tuleb täpselt määratleda avaliku sektori funktsioonide jaotus keskvalitsuse ja kohalike omavalitsuste vahel ning täpselt hinnata funktsioonide täitmiseks vajalike rahaliste vahendite suurus. Seejuures tuleb arvestada ka EL direktiividest ja poliitikest tulenevate ülesannete ja vahenditega. Sellel alusel saab välja tuua kohalike omavalitsuste alarahastatud või koguni rahalise katteta funktsioonid. Administratiivtasandite kompetentsid peavad olema õiguslikult selgelt eraldatud või vähemalt täpselt määratletud. Kohalike omavalitsuste seadustes fikseeritud õigused peaks olema põhiseaduslikult kaitstud keskvalitsuse sekkumise eest.

Kohalikel omavalitsustel peaks olema piisava ulatusega omatulude baas. Seejuures peavad omavalitsuste tulubaasi hulka kuuluma ka maksuliigid, mille maksumäär saaks kohalikul omavalitsusel ise määrata, et muutuda sõltumatuks keskvalitsuse

maksutulude jagamise poliitikatest. See looks kohalikele omavalitsustele võimaluse rahastada kohalike maksude või maksulisadega mittekohustuslikke (ise kujundatud) kohalikke avaliku sektori funktsioonide täitmist. Keskvalitsuse poolt kohalikele omavalitsustele täitmiseks antud üldiste avalike teenuste (nt haridus) pakkumise kulud peab aga sihtfinantseerimise teel täielikult äle kandma keskvalitsuse eelarvest.

Finantskatteta (alarahastatud) ülesannete vältimisele suunatud õigusaktid peavad seoseprintsiiibi arvestamiseks sisaldama funktsioonide täitmiseks vajalike kulude eelneva hindamise ja täitmisele järgneva kontrolli protseduure, nende administratiivtasandite vahelise kooskõlastamise mehhanisme ja perioodilise uuendamise võimalusi. Need protseduurid peaks olema tagatud halduskohtumenetluse normidega ja Riigikohtu lahenditega, mis näevad ette sanktsioonid nendele, kes õigusnorme või kohtulahenditega antud juhiseid rikuvad.

Õigusaktides tuleb ette näha finantskatteta ülesannete käsitlemine kriisiperioodidel, mil valitsussektori eelarvetulud tervikuna vähenevad. Kriisikoomat (eelarvetulude vähenemisest tungitud raskusi ülesannete täitmisel) peavad tasakaalustatult kandma nii keskvalitsus kui ka kohalikud omavalitsused. Keskvalitsusel ei tohi olla võimalust sundida kohalikke omavalitsusi üksinda kriisikoomat kandma. Samas ei saa kohalike omavalitsuste õigust avalike teenuste pakkumise kulude täielikule kaetusele kaitsta viisil, mis nihutaks kriisikooma üksnes keskvalitsuse kanda. Tasakaalu leidmine ei ole lihtne ülesanne, sest erinevate avaliku sektori funktsioonide tähtsus on kriisi ületamise seisukohalt erinev ja seega tuleb ka nende täitmise kulude katmist käsitleda erinevalt. Osa funktsioonide rahastamine peab jätkuma varasemal (kriisieelsel) tasemel, samas kui teiste rahastamine tuleb ülemäärase eelarvedefitsiidi vältimiseks viia hädavajalikule miinimumtasandile. Erinevalt käsitletakse näiteks jooksvaid ja investeerimiskulusid, sotsiaalsele kaitsele ja meelelahutusele suunatud kulusid jne. Kriisiperioodil võib aktsepteerida mõnede funktsioonide täitmisel kvaliteedi langust, nt teenuse ooteaja pikenemist.

Seoseprintsiiibi rakendamine peab tagama, et kriis ei tooks kaasa keskvalitsuse ja kohalike omavalitsuste lahinguid vähenevate eelarvetulude pärast, vaid tasakaalustatud lähenemise mõlema tasandi funktsioonide täitmise rahastamisele parimal võimalikul viisil konkreetseid tingimusi (majandustsükli faase) arvestades. Eesti kogemus näitab, kuidas suvaotsuste langetamise õigusega keskvalitsus nihutas kriisikooma kohalike omavalitsuste kanda. Selline õiguste tasakaalustamatus on kohalike funktsioonide alarahastuse tekkimise otsene põhjus.

Pärast avaliku sektori transformatsiooniperioodi lõppemist peaks kujunema selge avaliku sektori funktsioonide ja nende täitmist tagavate eelarvetulude jaotus keskvalitsuse ja kohalike omavalitsuste vahel. Majanduskriisi tingimustes alarahastatud ülesannete tekkimise vältimiseks ühel või teisel administratiivtasandil on eelarvevahendite jaotamisel soovitatav rakendada seoseprintsiiibi erjuhtu – parallelsusprintsiiipi. Selle printsiiibi kohaselt peaks mõlema administratiivtaseme kasutusse jääv eelarvevahendite summa muutuma samas tempos, st stabiliseeritakse nende suhe. Selle printsiiibi rakendamisel paraneb majanduskasvu tingimustes mõlema administratiivtasandi funktsioonide finantskate võrdsel määral ja võrdselt

kantakse ka kriisi tingimustes finantskatte vähenemise koormust. Probleeme tekitab seejuures aga avaliku sektori erinevate funktsioonide erinev tähtsus ühiskonnaelu arendamisel või kriiside ületamisel. Seega tuleks erinevate funktsioonide rahalise katte muutumisel rakendada nende funktsioonide tähtsusele vastavaid proportsioone.

Eesti avaliku sektori ülesannete rahalise katte hindamisel parallelsusprintsiiibi alusel tuleb arvestada asjaoluga, et vaadeldakse avaliku sektori transformatsiooniperioodi, mil rahalise katte proportsioonid administratiivtasandite ja funktsioonide lõikes on pidevalt muutunud. Selle tulemusena saame ülesannete rahalise katte muutumise parallelsusprintsiiibile vastavuse hindamisel erineva tulemuse, kui lähtume erinevast baasaastast (selle jaotusproportsioonist). Artiklis analüüsiti kohalikele omavalitsustele ülekantavate sihteraldiste osatähtsuse muutusi, lähtudes baasaastast 1997 (statistiliste vaatlusandmete rea algus), 2003 (viimane aasta enne kohalike omavalitsuste rahastamise reformi) ja 2004 (esimene aasta pärast reformi). Parallelsusprintsiiibist lähtuvad hinnangud sihteraldistega kaetavate funktsioonide ala- või ülerahastamisele kujunevad eri baasaastatest lähtudes erinevaks. Parallelsusprintsiiibi rakendamise eelduseks on seega administratiivtasandite kulukatte optimaalse proportsiooni kvalitatiivne määratlemine ja kvantitatiivne hindamine.

Hälbed administratiivtasandite funktsioonide rahalise katte muutumise parallelsusprintsiiibist tekivad nende eelarvetulu allikates toimuvate mitteparalleelsete muutuste tõttu. Artiklis analüüsiti mõlema administratiivtasandi maksutulude proportsioonide muutusi majandusbuumi ja kriisi tingimustes. Seejuures muutis aga keskvalitsus 2009. aastal ühepoolse otsusega kohalike omavalitsuste eelarvesse laekuva füüsilise isiku tulumaksu osatähtsust 11,93%-lt 11,4%-le. Algset füüsilise isiku tulumaksu määra ei ole kohalikele omavalitsustele senini taastatud.

Kõige raskem on kahtlemata parallelsusprintsiiipi rakendada avaliku sektori investeeringute jaotuse kujundamisel. Üheltpoolt tuleb arvestada, et väikeses riigis võivad üksikud suured investeerimisprojektid proportsioone valdkondade ja valitsustasandite vahel oluliselt muuta. Teisalt on investeerimisvahendite proportsioonidele suur mõju EL toetustel, mis on suunatud ainult mõnede võtmevaldkondade arendamisele ja mille kättesaamine on paljudes valdkondades tsükliline.

Kokkuvõttes näitab analüüs, et avaliku sektori funktsioonide rahastamise proportsioonid administratiivtasandite vahel on Eestis paljuski veel suhteliselt ebastabiilsed, mis tähendab paratamatult alarahastatud ülesannete teket eelkõige nõrga õigusliku kaitsega kohalikel omavalitsustel. See on transformatsiooniprotsessis oleva avaliku sektori puhul arengu mõneti paratamatu kaasnähtus. Samas tuleb töötada selle nimel, et avalikus sektoris minimeerida finantskatteta ülesannete tekkimise võimalus, eriti kriisi tingimustes. Sisuliseks lahenduseks võiks siin olla parallelsusprintsiiibi rakendamine ja sellele tugineva õigusliku regulatsiooni jõustamine.