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Regulatory Model for the Enforcement of the Budgetary Discipline in Central Europe

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INTRODUCTION

Budget law is one of the three principal components of the fiscal part of financial law and is addressed in both Czech[1] and foreign[2] financial law literature on financial law. However, the coverage is superficial for the most part, with many of the areas of budget law being overlooked by legal scholars. The same applies to the area of budgetary discipline. A common problem among central European countries is the lack of systematic legal regulation of budgetary discipline, and this contributes to budgetary discipline not being effectively enforced. In fact, issues related to budgetary discipline are not deeply analysed or discussed within the field of legal science, even in the sub-area of financial or specific budgetary law.[3] The result is a lack of proper jurisprudential theory of budgetary discipline.

The concept of budgetary discipline is defined as a legal obligation to comply with specific rules governing the process of the management of public funds[4] — it ensures the economical, effective, and efficient performance of public administration and the verification of compliance with legal provisions in the management of public funds, thereby preventing the uneconomical, inefficient, or ineffective use of public funds.

The subject of budgetary discipline, i.e., budget management, budget control, and the consequences of breaches of budgetary discipline, is often covered only in broad

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1 MARKOVÁ, Hana; BOHÁČ, Radim. *Rozpočtové právo [Budgetary Law]*, pp. 207–213; GRÚŇ, Ľubomír. *Finanční právo a jeho instituty [Financial Law and its Concepts]*; HRUBÁ SMRŽOVÁ, Petra; MRKÝVKA, Petr. *Finanční a daňové právo [Financial and Tax Law]*, p. 103 et foll.; KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, pp. 137–140; BAKEŠ, Milan, et al. *Finanční právo [Financial Law]*, p. 2012; MARKOVÁ, Hana. Finance obcí, měst a krajů [Finance of Municipalities, Cities and Regions], pp. 147–150; MRKÝVKA, Petr. *Finanční právo a finanční správa. 1. díl [Financial Law and Financial Administration. 1st part]*, pp. 318–338 et 379-385.

2 BABČÁK, Vladimír, et al. *Finančné právo na Slovensku [Financial Law in Slovakia]*, pp. 184–188; BABČÁK, Vladimír. *Slovenské daňové právo [Slovakian Tax Law]*, pp. 222–226 et 634-637; RUŚKOWSKI, Eugeniusz (eds.). *System prawa finansowego: Tom II [System of the Financial Law: Part II]*, pp. 227–230.

3 See for example: Gluminska-Pawlic J., Specyficzne zasady rachunkowości, sprawozdawczości, nadzoru, kontroli oraz odpowiedzialności w sektorze finansów publicznych, w aspekcie charakterystyki specyfiki gospodarki finansowej jednostek sektora finansów publicznych [Specific Principles of Accounting, Reporting, Supervision, Control and Responsibility in the Public Finance Sector, in Terms of the Characteristics of the Specificity of the Financial Management of Public Finance Sector Units]. In: RUŚKOWSKI, Eugeniusz (eds.). *System prawa finansowego: Tom II [System of Financial Law: Part II]*; PANFIL, Przemysław. Fiscal Rules and Fiscal Illusions – The Experience of Poland; KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*; MARKOVÁ, Hana; BOHÁČ, Radim. *Rozpočtové právo [Budgetary Law]*.

4 PEST, Przemysław. Legal Model of Enforcement of Budgetary Discipline in Poland, pp. 87–101.

terms (in textbooks or descriptive monographs), typically in the form of a simple list of existing legal instruments related to breaches of budgetary discipline. A systematic study of this topic and the formulation of a comprehensive model offering suitable law instruments to enforce a particular budgetary discipline policy are both absent from the financial and budget law literature. It can therefore be concluded that budgetary discipline, its enforcement, and related instruments and mechanisms are not currently a subject of great exploration within this field of study.

Budgetary law is inextricably linked to public finance, which constitutes a branch of economic theory. Consequently, the theory of public budgets and of the effective, efficient, and purposeful utilisation of public funds is addressed not only in the literature pertaining to financial and budgetary law, but also in the field of economic theory.[5] Nevertheless, even within the domain of economic science and literature, there is a paucity of attention devoted to the subject of budgetary discipline and its enforcement, with no substantial discourse on the legal or other instruments that may be employed for the enforcement of budgetary discipline.

The lack of a comprehensive theoretical model for the legal aspects of budgetary discipline represents a significant limitation to further research in this field. Without such a model, it is not possible to conduct a meaningful empirical study. Consequently, there is a clear need for research that addresses this gap through a critical and comparative approach, drawing on resources from multiple jurisdictions.

The objective of this study, which is presented in this book, is to address the aforementioned gap in knowledge and to provide a unified and clear legal regulation model for the enforcement of budgetary discipline. To achieve this aim, the study sets out three research questions, which are addressed in sequence.

Q1 — What is the optimal theoretical model of regulation for the enforcement of budgetary discipline to maximise compliance with an adopted public budget?

As previously outlined, the concept of budgetary discipline is an external phenomenon that does not originate from the legal framework itself. In order to respond to Question one, it was necessary to conduct a comprehensive literature review. This entailed identifying the known issues related to budgetary discipline and breaches thereof, examining their common features, and analysing the aim and purpose of related policies. The research is confined to the Visegrád Group countries; any issues unrelated to this group will be excluded. Based on this research, a uniform optimal regulatory model will be proposed. This model can be adopted in various jurisdictions and is not specific to a particular country; for example, it does not represent the specifics of the Czech budgetary discipline regulation in isolation.

[5] MANKIW, N. Gregory. *Zásady ekonomie [Principles of Economics]*; MUSGRAVE, Richard Abel; MUSGRAVE, Peggy B. *Veřejné finance v teorii a praxi [Public Finance in Theory and Practice*]; BUCHANAN, James; MUSGRAVE, Richard A. *Public Finance and Public Choice: Two Contrasting Visions of the State*; OCHRANA, František; PAVEL, Jan; VÍTEK, Leoš. V*eřejný sektor a veřejné finance: financování nepodnikatelských a podnikatelských aktivit [Public Sector and Public Finance: Financing Non-Business and Business Activities]*; MAAYTOVÁ, Alena; OCHRANA, František; PAVEL, Jan. *Veřejné finance v teorii a praxi [Public Finance in Theory and Practice]*, pp. 131–156.

The regulatory model addresses the pivotal matters of budgetary enforcement, encompassing supervisory procedures, refunds, and penalties.

Q2 — What is the existing budgetary discipline enforcement regulatory framework in the Visegrád Group countries?

The study posits the existence of regulatory frameworks designed to enforce budgetary discipline across all Visegrád countries, with minimal divergence in approach. However, each country may adopt a slightly different strategy. Consequently, the extant legal measures may not be optimal, and the study provides a context for a normative analysis.

A comparative analysis of a regulatory framework necessitates a comprehensive understanding of the framework in question. In order to attain this level of knowledge, we collaborated with legal scholars from all Visegrád countries[6] whose expertise lies in financial law. These scholars completed a questionnaire on the subject in question. The questionnaire contained questions covering a variety of aspects of the proposed optimal regulatory model for budgetary discipline enforcement. It focused on both the law as it is written and the law as it is practiced. Additionally, we consulted with these legal scholars about the details of regulatory frameworks in their respective countries. This was done to ensure that the information was accurately conveyed to us.

The primary methodology employed in addressing Question 2 is the comparative method, as delineated by Jansen[7]: Two regulatory frameworks, designated as A and B, are either analogous or disparate with respect to a specific *tertium comparationis* (T). There is no third option.

Two regulatory frameworks, designated as A and B, are considered to be analogous with respect to a specific tertium comparationis (T), if T represents a common attribute of both A and B. Conversely, two regulatory frameworks are regarded as disparate with respect to a specific *tertium comparationis* (D), if T is a distinctive attribute of either A or B, but not both.

The similarity of regulatory frameworks A and B with respect to a *tertium comparationis* T can be determined by estimating or measuring the intensity of T in each framework (IT(A) and IT(B), respectively). This is only possible if T is a common property of both frameworks and the intensities of T in A and B are similar. It is only the similarity of intensities that is relevant; thus, two regulatory frameworks will be deemed similar even though the intensity of T in both may differ according to the aforementioned definition. There is no general rule regarding an acceptable difference in intensities that would breach the similarity property. For each particular *tertium comparationis*, the researcher must state and justify this rule.

[6] Namely doc. JUDr. Gábor Hulkó, Ph.D. (Széchenyi Egyetem, Hungary); dr. hab. Przemysław Pest (Uniwersytet Wrocławski, Poland); prof. JUDr. Miroslav Štrkolec, Ph.D. (Univerzita Pavla Jozefa Šafárika v Košiciach, Slovakia).

[7] JANSEN, Nils. Comparative Law and Comparative Knowledge. In: REIMANN, Mathias and ZIMMERMAN, Reinhard (eds.). The Oxford Handbook of Comparative Law, pp. 290–319.

In order to facilitate a comparative analysis of the regulatory frameworks under consideration, a set of *tertia comparationis* ($T_{1,\ldots,n}$) was devised. These were formulated on the basis of the information captured in the questionnaire and were clearly defined. The relevant part of each regulatory framework pertaining to the area covered by the *tertium comparationis* was then described. Thereafter, all regulatory frameworks were compared using this *tertium comparationis* in order to identify similarities and dissimilarities as defined above.

The aforementioned comparisons provide an answer to research Question 2 in the areas of supervisory procedures, refunds, and penalties, which are the key issues of budgetary enforcement. Should the answer indicate a significantly different regulatory framework in a particular Visegrád country, the hypothesis stated in the introduction will be falsified. Otherwise, the hypothesis cannot be falsified.

Q3 — What is the quality of the national budgetary discipline enforcement regulatory framework in the Visegrád Group countries based on adherence to the optimal regulatory model?

The proposed model is not presented as a definitive, isolated concept; rather, it is situated within a discursive interaction with the actual law in the countries under discussion. Accordingly, this study assesses the quality of budgetary discipline enforcement regulatory frameworks in the Visegrád countries in accordance with the extent of adherence to the proposed optimal regulatory model.

Based on the findings of Question 1 and Question 2, namely the identification of the optimal regulatory model and the assessment of the legal instruments that ensure budgetary discipline in the Visegrád Group, a normative analysis is conducted to ascertain the compatibility and feasibility of the theoretical model stated in Question 1 with the existing regulatory framework included in Question 2. This evaluation determines whether the existing regulatory framework in the Visegrád Group countries should be amended to ensure greater compliance with the theoretical model, and what the benefits of such a change would be in comparison to the current state of regulation. The hypothesis underlying Question 3 is that the extant regulatory models for instruments enforcing budgetary discipline in the Visegrád Group are overly complex and opaque to the recipients of the law, particularly given the proliferation of overlapping regulatory instruments in the current regulatory landscape. The hypothesis will be rejected if the regulatory frameworks in the Visegrád countries do not align with the proposed budgetary discipline model.

The response to Question 3 is derived through a normative analysis of the regulatory frameworks in the Visegrád countries. The analysis is based on the assumption that the proposed regulatory model represents an optimal solution. This presumption is taken as an axiom. The key comparable attributes of the model are identified and the actual regulation in the Visegrád countries is compared according to these attributes. For each attribute, a score is assigned to the given country's regulatory framework on a scale of 0 to 5. A score of 0 indicates the absence of the attribute in question, while a score of 5 indicates that the regulatory framework is fully aligned with the proposed model. This range enables the assignment of discrete scores for

each country, contingent on the extent to which each country fulfils the given attribute. It should be noted, however, that this score is a qualitative one and not a quantitative one. Consequently, the results must be interpreted on an ordered scale for each attribute, as statistical methods such as mean, variance, or standard deviation cannot be applied.

It should be noted that the assigned score is largely a subjective evaluation by the research team. To enhance the transparency and reproducibility of our findings, we have based our analysis on the information provided in the questionnaires completed by local scholars. These questionnaires have been previously utilised and extensively discussed in published comparative studies. Furthermore, the questionnaires were discussed with the local scholars, and our own research of the local regulatory framework was conducted, with the limitation of our local language knowledge. The rationale behind the assigned score is thoroughly examined in the article's discussion section.

Notwithstanding the stated limitations of the scoring system, the results offer a valuable insight into the regulatory frameworks of the Visegrád countries. By evaluating the degree of compliance with the theoretical optimal model, we can assess the quality of these regulatory frameworks in a systematic manner.

The responses to the proposed questions have already been provided in five articles prepared by the research team. [8] This book aims to provide a comprehensive overview of the research in one place and to further elaborate on certain aspects of the research conducted.

[8] BOHÁČ, Radim; SEJKORA, Tomáš; ŠMIRAUSOVÁ Petra; TULÁČEK, Michal. Regulatory Model of the Budgetary Discipline Enforcement; MÁLEK, Ondřej; BOHÁČ, Radim; KERNDLOVÁ, Petra and TULÁČEK, Michal. Comparative Study on Supervisory Procedures in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries; KERNDLOVÁ, Petra; BOHÁČ, Radim; MÁLEK, Ondřej and TULÁČEK, Michal. Comparative Study on Refunds in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries; TULÁČEK, Michal; BOHÁČ, Radim; KERNDLOVÁ, Petra; MÁLEK, Ondřej. Comparative Study on Penalties in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries; BOHÁČ, Radim; KERNDLOVÁ, Petra; BOHÁČ; MÁLEK, Ondřej and TULÁČEK, Michal. Normative Analysis of the Budgetary Discipline Enforcement in the Visegrád Countries.

THEORETICAL ASPECTS OF THE BUDGETARY DISCIPLINE ENFORCEMENT

Budgetary discipline enforcement

Budget law constitutes one of the three principal components of the fiscal aspect of financial legislation, as this term is understood in Central European countries. The remaining two components of the fiscal part of financial law are tax law and subsidy law.[9] Budget law is primarily concerned with the legislation governing public budgets, including the establishment thereof, financial transfers between them, audits of the proper management thereof, the enforcement of appropriate conduct in accordance with the rules of budgetary management, and the enforcement of budgetary responsibility rules. This sub-branch of financial law is closely related to the field of public finance and public policy, specifically in regard to budgetary policy.

The fundamental principles of budgetary policy are the redistribution of public budget revenues and the allocation of public budget expenditures,[10] with the objective of influencing economic processes within the state. In order to achieve this objective, however, it is essential to develop and utilise instruments that are subject to legal regulation. The aforementioned instruments are subject to regulation by budget law. It is evident that budgetary policy identifies goals and economic processes that can be influenced by public funds, specifically budget revenues and expenditures. When there is no budgetary legislation, there is a lack of instruments to transform political decisions into action; thus the branch of budgetary legislation constitutes a principal instrument of budgetary policy. It establishes the procedures through which a political decision pertaining to public funds can be implemented. Budget law delineates the regulations and limitations governing the utilisation of public funds by the designated authorities and entities, in accordance with the stipulations pertaining to budgetary relations, rights and obligations, competencies, and the scope of budgetary authorities. Budget law also prescribes the procedures associated with the adoption of the public budget, the management of public funds, financial control, and the evaluation of public financial management, collectively referred to as the budgetary process.

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[9] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, pp. 117–182.

[10] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, p. 117.

In contrast to public finance and economic or fiscal policy, budget law does not address the question of what the optimal allocation of public funds is, nor which allocation should be selected. As with all other branches and subbranches of law, budget law establishes the necessary measures to implement a politically chosen policy, created outside the law, to enforce compliance with this policy and to prevent or reduce non-compliance. Consequently, the objective of budget law jurisprudence is to identify the challenges that arise from the implementation and enforcement of public policies related to public budgets.

Budgetary discipline can be defined as the state of fulfilling an adopted public budget in an appropriate manner, including the proper usage of budgetary funds, the proper inter-budgetary transfers of funds, and the proper use of subsidy funds from this budget. It is therefore evident that budgetary discipline cannot be confused with budgetary responsibility, which focuses on the responsible and long-term balanced management of public funds, and which primarily impacts the stage of public budget adoption.[11] In the context of budgetary process regulation, budgetary discipline is a component of the budgetary process pertaining to the phase of budget management and supervision. The fundamental premise of budget management is the realisation of revenues and expenditures that have been anticipated and planned for within the context of the public budget, typically within the span of a fiscal year. It is important to note that public budgets must be understood in a broad sense, encompassing not only budgets of public law entities (such as state and local self-governing entities, contribution organisations, and state funds) but also budgets of private individuals or entities authorised to perform financial public administration or to manage public funds transferred to them (such as health insurance companies or state enterprises).

For the purposes of this book, the term **'public budget' is used to refer to a budget of a public law entity, such as a state, local self-governing entity, contributing organisation, or state funds. It is also used to refer to a budget of a private person who is authorized to perform financial public administration or to manage public funds transferred to him/her.**

The foundation of budgetary supervision is an evaluation of whether budgetary management is conducted in accordance with legal requirements and whether it is effective, efficient, and purposeful.[12] The satisfactory fulfilment of the aforementioned requirements is contingent upon the proper performance of budget management, which may be defined as **budgetary discipline**. The foundation of budgetary discipline is the utilisation of budgetary instruments in public budgets, particularly expenditures, in accordance with legal mandates, and adherence to the principles of effective, efficient, and purposeful use. It is incumbent upon all budgetary units

[11] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, p. 141.

[12] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, p. 139.

managing funds from a public budget to observe and adhere to the principles of budgetary discipline. Indeed, budgetary discipline is a prerequisite for the effective, efficient, and purposeful utilisation of public funds (expenditure of public budgets).

It is imperative that budgetary discipline be enforced in a duly, timely and strong manner. This directly implies the need to implement and utilise a system of instruments for genuine enforcement — that is to say, effective and efficient enforcement. The instruments for the enforcement of budgetary discipline fall within the domain of budget management and supervision, otherwise known as budgetary supervision. They encompass supervisory processes that facilitate the identification and resolution of instances of a lack of budgetary discipline. Such instruments may be either mandatory or non-mandatory in nature, and in practice are typically in the form of budget supervision and the imposition of measures to correct and punish potential breaches of budgetary discipline.

It should be noted that the concept of budgetary discipline is not necessarily synonymous with budgetary responsibility, which is a topic beyond the scope of this book. Indeed, while budgetary discipline is closely associated with the concept of budgetary responsibility, these are two distinct legal mechanisms. A comparison of the two concepts reveals that budgetary responsibility is primarily concerned with the sustainable creation of public budgets, whereas budgetary discipline is clearly related to the right and proper management of budgets.

In the current context, budgetary discipline is of paramount importance to ensure strict adherence to the regulations governing the utilisation of public funds by public authorities for the fulfilment of public needs through public budgets. It is noteworthy that each country, based on its own considerations, cultural context, experience, and priorities, employs distinctive methods and processes for financing public needs. Nevertheless, there is a notable absence of genuine interest in studying, researching and comparing these approaches and methods, as well as a dearth of critical awareness concerning the legal instruments that are employed for the enforcement of budgetary discipline in the European Union member states. This is despite the fact that there is a certain degree of harmonisation at the EU level in this regard. Furthermore, there is a lack of awareness concerning the advantages, disadvantages, and challenges associated with these instruments, as well as comparisons thereof. Indeed, academic research has thus far devoted only minimal attention to the legal instruments for the enforcement of budgetary discipline, and there are few comparative studies in this area.

The term ‘budgetary disciplinep’ is employed in the legal literature in instances where difficulties emerge in the financing of public needs, or when there is a risk of a contravention of the regulations governing the utilisation of public funds. This occurs irrespective of whether the breach in question was perpetrated by an authority within the country or an individual. Consequently, the issue of budgetary discipline is prevalent in numerous jurisdictions, with each attempting to resolve it in a manner reflective of their respective national particularities. This pattern can also be observed across the EU, where each EU member state addresses the issue

of budgetary discipline to a certain extent. In Czechia, the establishment of legal norms and regulations aimed at preventing the ineffective, inefficient, and purposeless utilisation of financial resources within the context of public budgets was a significant legislative achievement. This culminated in the enactment of three key pieces of legislation: Act No. 218/2000 Sb. on budgetary rules, Act No. 250/2000 Sb. on budgetary rules for local public budgets, and Act No. 219/2000 Sb. on the property of Czechia. Budgetary discipline in the country is predominantly determined by the Act on Budgetary Rules and the Act on State Budgets, while the framework for the application thereof is determined by the Acts on Local Budgets. While the term "budgetary discipline" is not explicitly defined in any of the acts on budgetary rules, it is nevertheless defined indirectly, as both acts define breaches of budgetary discipline. The primary objective of the aforementioned acts on budgetary rules is to establish the regulations governing the management of public funds, thereby ensuring compliance with the principles of budgetary discipline. In the event of a breach of these regulations, the consequences are clearly delineated. These acts and the implied regime have been the subject of criticism from both the professional public and academia, due to the perceived duplication of supervisory procedures, ambiguity of proceedings based on the tax procedure code, and the frequent disputes among financial authorities, providers, and the recipients of public funds.

At the EU level, budgetary discipline is primarily reflected in regulations that set financial rules for the general budget of the EU. One such regulation is Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union. Again, budgetary discipline is not explicitly addressed in the regulation; instead, the regulation merely stipulates compliance with the multiannual financial framework. In essence, the general budget of the EU must align with the multiannual financial framework (Regulation 2020/2093/EU, Euratom) and the decision on the system of own resources of the European Union (Decision 2020/2053/EU, Euratom). While it is clear that all the aforementioned EU regulations are relevant and can be compared, both the general budget particularities and the multiannual framework demand a cautious approach and a selective, critical transposition. The Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests remains in force; it is essential therefore to grasp its general principles (Art. 2 and 3 Regulation 1995) and administrative measures and penalties (Art. 4 et seq. Regulation 1995). The supervisory and penalising mechanism of Regulation 1995 is comprehensive and encompasses both EU and national oversight (Art. 8 et seq. Regulation 1995).

Basis for regulation of the public fund management system

The regulation of the budgetary system is a pivotal aspect of the public finance system. [13] The legislation that governs the budgetary system provides a formal framework for the rules that guide the budgetary process and the process of public finance decision-making by the legislative and executive branches of government.[14] The budgetary system is connected to the public fund management system, which is in turn linked to the rules of budgetary discipline. [15] The existence of an effective public fund management system is crucial for the successful implementation of public policies, the enhancement of budgetary discipline, the strategic allocation of resources, and the efficient provision of goods and services. The regulations governing this system are designed to guarantee effective oversight of the management of public funds, while also facilitating a more comprehensive budgetary discipline. This, in turn, enables the implementation of public policies in accordance with government priorities, or those of other public entities with their own public budgets. Furthermore, it ensures the efficient delivery of goods and value for money, which can be achieved through proper economic management.[16]

In order to evaluate the strength of a public fund management system, the PEFA[17] has identified seven pillars which must be assessed in order to gain an understanding of the system's performance. These pillars are as follows: [18]

1. Budget reliability;
2. Transparency of public finances;
3. Management of assets and liabilities;
4. Policy-based fiscal strategy and budgeting;
5. Predictability and supervision in budget execution;
6. Accounting and reporting; and
7. External scrutiny and audit.

These seven pillars represent the core areas of public funds management, and PEFA has defined 31 quantitative indicators to measure the success achieved in these pillars. It is essential to recognise the interdependence of these pillars, with

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[13] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 63.

[14] Ibid.

[15] PEFA, *Public Financial Management Performance Measurement Framework,* p. 1.

[16] Ibid.

[17] Public Expenditure and Financial Accountability (PEFA) program is a methodology for assessing public financial management performance initiated in 2001 by The European Commission, International Monetary Fund, World Bank, and the governments of France, Norway, Switzerland, and the United Kingdom.

[18] PEFA, *Framework for Assessing Public Financial Management. Improving Public Financial Management. Supporting Sustainable Development*, p. 2.

the transparency of public finances and the management of assets and liabilities forming the foundation of the regulations governing budgetary discipline and the attainment of defined objectives. Additionally, PEFA establishes policy-based fiscal strategy and budgeting, predictability and supervision in budget execution, accounting and reporting, and external scrutiny and audit. These pillars are designed to record the state of compliance with the rules relating to the core pillars of budgetary discipline. The overarching objective of this system is to ensure budget reliability, which is contingent upon the collective efficacy of these pillars. [19]

In order to define the object of budgetary discipline regulation, it is essential to answer several sub-questions. As previously indicated above, the object of regulation (budgetary discipline) is subject to varying degrees of regulation across different jurisdictions, with each jurisdiction focusing on its own specific nuances. Consequently, there is no uniform standard for budgetary discipline regulation, in contrast to other branches of law.

The initial question that must be addressed is which budgetary process is sufficiently important to warrant regulation. [20] This aspect of regulation thus entails the identification of the relevant budget processes that are subject to regulation, given that in certain instances there may be no public interest in having budgetary rules apply to a specific area of public funds. This may be the case in certain public sector entities where the handling of public funds is fiscally neutral, for instance due to a general prohibition on borrowing or because this particular sector is not subject to political manipulation.[21] As previously stated, this is a specific area of fiscal regulation, primarily concerned with fiscal responsibility. Nevertheless, budgetary discipline rules should be applied in this case as well. This question also identifies the sub-parameters of a regulation that can be described as the substantive scope of the legal norm. The question thus arises as to what should be subject to budgetary regulation. In this regard, there is a consensus among experts in the field that the objective of developing and evolving budgetary rules should be to achieve full coverage. The full coverage principle requires the comprehensive application of budgetary rules to all budgets that contain public funds and to the entire public sector.[22] In the case of public budgets, they encompass all financial resources belonging to the entity, including those that are not included in the budgetary process. However, in the case of private budgets, their coverage is limited to managed public funds only.[23]

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[19] Ibid, p. 3.

[20] L LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The international Handbook of Public Financial Management*, p. 63.

[21] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). *Public financial management and its emerging architecture*, p. 89.

[22] BOHÁČ, Radim; SEJKORA, Tomáš; ŠMIRAUSOVÁ, Petra; TULÁČEK, Michal. Regulatory Model of the Budgetary Discipline Enforcement, p. 15.

[23] For further remarks to the definition of public and private budgets see KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al., *Teorie finančního práva a finanční vědy [Theory of*

That being said, insofar as the public fund management system encompasses regulations pertaining to public procurement, [24] the budget rules may also be applicable to proprietary (private) funds, for instance, in the event of a public grant recipient.

The second question pertains to the delineation of responsibilities for each phase of the budgetary process. The response to this question thus delineates the distribution of the various budgetary roles between the different entities, for example, by conferring powers upon specific legislative bodies or other public authorities or by assigning responsibilities to individual budget units.[25] It thus becomes a matter of establishing the personal scope of the legal norm of budget law, that is to say, determining which individuals or entities are obliged to comply with the budgetary rules. Accordingly, in order to achieve the full-coverage principle, budgetary rules should not be applied only to the state, but rather to the entire public sector, as well as to each entity that handles public funds. Indeed, the various sectors of the public sector do not function in isolation. The incorporation of lower-level public sector entities, such as regional and local authorities, into budgetary regulations can facilitate enhanced coordination of government activities and the realisation of government policies. [26]

The third question concerns the identification of the specific rules of budget law and the placement of these rules within the legal framework. This includes determining whether they should be included in constitutional law, statutory law, sub-legislative norms, or even soft law. This section does not address individual rules. However, if we begin with the individual pillars established by PEFA, it is evident that the generic rules will concern not only the actual rules governing the handling of public funds (e.g., the prohibition on lending by state entities or the obligation to follow public procurement regulations) and how to enforce them, but also the transparency of public fund management, accounting, auditing, and the supervision of the budgetary process. Jack Diamond posits that the fundamental prerequisite for attaining a high degree of budgetary discipline is the presence of an efficacious supervisory system and transparent and unambiguous norms of financial law. [27] In the absence of clear and transparent norms of budget law, the level of legal certainty would be insufficient, thereby undermining the efficacy of the supervisory system.

An alternative perspective posits that a certain degree of flexibility is indispensable for the effective functioning of budgetary law.[28] In particular, in less developed

Financial Law and Financial Science], p. 128.

[24] OECD. *Using Country Public Financial Management Systems. A Practitioner's Guide*, p. 6.

[25] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 63.

[26] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). *Public Financial Management and its Emerging Architecture*, p. 89.

[27] DIAMOND, Jack. Background Paper 1: Sequencing PFM Reforms, p. 33.

[28] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 76.

countries, it is frequently necessary to commence with relatively straightforward regulations within a more modest and flexible framework when establishing budgetary rules. Thereafter, the legislative anchoring of individual rules in generally binding legislation should be pursued in a gradual and incremental manner, with the objective of achieving comprehensive coverage of public budgets.[29] This approach helps to achieve a balance between a sufficiently flexible regulatory framework and maintaining the highest possible degree of cohesion, clarity, predictability, and transparency of the standards applied. One illustrative example of flexibility is the general definition of budgetary discipline in the opposite sense, namely, by its violation. In this instance, *"a budgetary entity, other person or an entity which, in the course of budgetary management, violates a budgetary regulation commits a breach of budgetary discipline."*[30] Typical breaches of budgetary discipline may include the unauthorised use of funds, the unjustified retention of funds, the failure to transfer funds, or the breach of rules laid down by the provider of the grant or grant programme. [31] It is not uncommon for legal frameworks to employ flexible definitions.

In terms of the sources of law, budgetary rules may be incorporated into a number of legal frameworks. Such regulations may be enshrined in the legislation of local authorities, or conversely, they may be part of the constitutional order or an international treaty in its highest form.[32] A certain degree of rigidity in the legal framework of budgetary rules is appropriate,[33] as guaranteed by the incorporation of these rules into the constitutional order or existence in the form of organic law. This rigidity allows for the enforcement of compliance with the legal framework of the budgetary process to exert a strong controlling influence on the actions of politicians, who are responsible for setting and executing policies.[34] Nevertheless, the determination of the most appropriate source of law for the regulation of a particular budgetary rule is contingent upon the specific characteristics of the rule in question.

Therefore, when discussing the sources of constitutional or organic law, it is essential to consider that the constitutional order at the highest level provides the legal framework for all other ordinary laws. From this perspective, therefore, the sources of this legal force should aim to define the general responsibilities of the executive

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[29] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). *Public Financial Management and its Emerging Architecture*.

[30] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science],* p. 139.

[31] Ibid.

[32] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). *Public Financial Management and its Emerging Architecture*, p. 89.

[33] TOMMASI, Daniel. *Strengthening Public Expenditure Management in Developing Countries: Sequencing Issues,* p. 50.

[34] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). *Public Financial Management and its Emerging Architecture*, p. 86.

power and the legislature, as well as the relations between these two branches. Additionally, they should define the legislative process, the relations between the central (or federal) government and the subnational governments (local governments), and the overarching principles relating to the budgetary system. At the same time, it is necessary to examine the principles pertaining to the budgetary system and the establishment of an autonomous entity entrusted with the external audit of the government (the Supreme Audit Institution, SAI) and other public sector entities that play a pivotal role in public finance, such as the central bank or independent commissions that determine the remuneration of senior public officials.[35]

It is not always necessary for statutory laws to explicitly include every budgetary rule. Nevertheless, a robust legal foundation for the budgetary rule in question can markedly enhance the likelihood of effective compliance and transparency in the budgetary process.[36] The objective of a public fund management system is to establish a robust legal framework, and in instances where budgetary regulations are more stringent and binding, the incorporation of well-designed and transparent escape and revision clauses (statutory exceptions for ad hoc situations) becomes paramount to ensure an appropriate degree of flexibility within the confines of budgetary law.[37] It is of the utmost importance to achieve a balance between strict and vague budget rules. The efficacy of the public fund management system is contingent upon its proper anchoring in generally binding regulation, complemented by the presence of sub-legislative legal norms and administrative practice.[38]

Furthermore, experts advise that the number of laws and their legal force should reflect the balance of power between the executive and legislative branches. The optimal scenario would be the consolidation of budgetary rules into a single piece of legislation, thereby ensuring coherence within the budget system and reducing the risk of inconsistencies, incoherence, or ambiguity between the various pieces of legislation. Such exceptions typically pertain to matters of constitutional significance. Examples of this include the regulation of the Supreme Audit Office regarding the requirement to guarantee its independence, as well as the relationship between the state budget and the budgets of local self-government units.[39]

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[35] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 65.

[36] ORBACHO, Ana; TER-MINASSIAN, Teresa. Public Financial Management Requirements for Effective Implementation of Fiscal Rules. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 41.

[37] Ibid.

[38] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). *Public Financial Management and its Emerging Architecture*, p. 102.

[39] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 67.

Sub-legislative sources of law typically regulate the technical aspects of budgetary legislation. It is therefore recommended that sub-legislative budget legislation should only regulate areas that relate to the delegated powers of public authorities by the legislature, the setting up of internal processes, and the responsibilities of the executive (e.g., in relation to subsidies provided from the budget chapter of the central administration) or rules of the budget process that are volatile and risk being derogated or amended soon after their introduction for this reason.[40] To illustrate, it would be prudent to refrain from regulating subsidy programmes and their specific rules at the legislative level due to their inherently temporary nature. This is provided that the parameters or indicators for their announcement as set forth in the legislation are maintained, or in the case of one-off benefits granted in connection with emergencies. In the case of such benefits, it would appear prudent to allow the law to stipulate a clause that would permit the executive to adopt an efficacious policy instrument in the event of an emergency, in accordance with the aforementioned requirement for flexibility in the legal framework of the public fund management system. This would ensure that the legal framework remains as clear as possible while maintaining the predictability of budgetary rules.

The final question pertains to the temporal aspect of the legal norm. This is not concerned with establishing the temporal scope of the legal rule, but rather with determining the point in time at which a budgetary law rule should be applied.[41] Furthermore, determining the appropriate time for the implementation of the relevant budgetary rule is of paramount importance. If the legal framework of the public fund management system is excessively inflexible, it may prove impossible to achieve the system's stated objectives in accordance with a policy that would otherwise lead to a strategic and efficient allocation of public resources.[42] The inappropriate timing of deadlines or periods for the establishment of a particular budgetary rule may also result in suboptimal outcomes, typically in relation to the clarity and predictability of the legal regulation of the public fund management system. This may occur with deadlines for the preparation of the draft state budget or determining the point in time at which the consequences for breaches of budgetary discipline are decided. Timing that is appropriate for the system of budgetary management ensures its effective operation and achievement of its intended goals.

Causes of breaches of budgetary discipline

In order to develop an effective model for enforcing budgetary discipline, it is essential to identify the primary instances where entities responsible for managing public funds violate budgetary discipline and the underlying factors that contribute

[40] Ibid, pp. 66–67.
[41] Ibid, p. 63.
[42] PEFA, *Public Financial Management Performance Measurement Framework,* p. 2.

to such violations. The identification of these factors is of particular importance, as it informs the selection of suitable enforcement measures.

The fundamental responsibility of any entity managing public funds is to utilise those funds in accordance with the adopted budget. This entails fulfilling the public needs as defined in the budget, and in the amount defined therein at a maximum. In light of this fundamental obligation, it is imperative that public funds be utilised in an efficient, economical, and effective manner,[43] or in accordance with other obligations set forth by legislation or other formal sources of law (it should be noted that these obligations will typically be concretisations of, or in addition to, the aforementioned overarching obligations).

In this book, the causes of breaches of budgetary discipline are divided into two main groups depending on their nature: (1) those deriving from the distinctive characteristics of the public sector, and (2) those emanating from the legal framework governing budgetary management. This distinction is crucial for the subsequent determination of the most appropriate tools for enforcing budgetary discipline, or for determining the most effective measures to eliminate these causes or to counteract the negative consequences thereof.

Much of this distinction can be attributed to the fact that the management of public funds (as well as the preparation and approval of the public budget itself) is a social problem. The making of budgetary decisions is a matter of public choice, with the general interest, that is to say a criterion imbued with a normative content, constituting the fundamental criterion of evaluation.[44] Accordingly, the legitimacy of different decisions may vary, and no single decision can be considered inherently right or wrong.[45] Furthermore, additional factors are specific to public finance. The first of these is the fact that the responsibility for decision-making in these cases is largely borne by public administration entities, namely the executive authorities or analogous executive bodies at the level of the various federative units or local government units and institutions.[46] A further defining feature of the public sector is the relative certainty of resources and the level of funds raised, in comparison to the private sector.[47] A further distinctive feature is the absence of market forces in certain areas, which consequently exerts pressure on the efficient spending of public resources.[48]

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[43] GODDARD, Andrew. *Are Three "E"s enough? Assessing Value for Money in the Public Sector*, pp. 16–19;
LIU, W. B.; CHENG, Z. L.; MINGERS, J.; QI, L. and MENG, W. The 3E Methodology for Developing Performance Indicators for Public Sector Organizations, pp. 305–312.

[44] MUELLER, Dennis C. *Public Choice III*, p. 1.

[45] MAAYTOVÁ, Alena; OCHRANA, František; PAVEL, Jan. *Veřejné finance v teorii a praxi [Public Finance in Theory and Practice],* p. 18.

[46] POTTER, Barry H.; DIAMOND, Jack. *Guidelines for Public Expenditure Management*, pp. 34–58.

[47] Usually, this income primarily consists of tax revenue (approximately 60%) and secondarily of social insurance contributions (approximately 25%). See OECD. *Government at a Glance 2021*, p. 82.

[48] An example would be ensuring the existence and functioning of the judicial system. Conversely, an example of a service that can be provided by both the state and the private sector is health care. See OECD, *Government at a Glance 2021*, p. 84.

In this context, the executive bodies of public administration, which are responsible for the management of public funds and therefore subject to budgetary discipline, are accountable for the implementation of public expenditure and the rational, economical, efficient, and effective use of public economic resources.[49] Examples of such entities include the administrator of a budget chapter in the form of a ministry, other central government body, or state funds; the executive authorities of a local government unit; or a public funds manager within other separate institutions that are financed from public funds, such as public universities, institutions conducting research, or institutions providing for other needs of society.[50] The aforementioned entities of budgetary responsibility are then complemented by entities of a private-law nature which manage public funds provided to them in the form of grants to support predetermined socially beneficial activities.[51]

The specific form of the entity managing public funds, its position in relation to other stakeholders, and the public budget affected by the decision all contribute to the identification of potential negative consequences. It is also important to note that, in each of the aforementioned situations, it is imperative that the entity responsible for managing public funds exercises economically rational behaviour. This implies that the objective is to maximise the benefit of that entity.[52]

The key criteria for distinguishing between individual situations and assessing their riskiness in terms of a potential breach of budgetary discipline include:

1. The form of the entity managing public funds — whether it is managed by an individual or a collective.
2. The voting method used in collective entities — how decisions are made when a collective is responsible for managing public funds.[53]
3. The "distance" between the entity managing public funds and the voter — how closely connected the entity managing public funds is to voters.[54]
4. The degree of separation between the entity managing public funds and the voter is also a significant factor. This can be measured by the level of connection between the two entities and the extent to which the entity managing public funds is accountable to the voters.[55]

Furthermore, the accessibility of information to the public funds manager is a crucial aspect. The availability of information can influence the decision-making process and the management of funds.

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[49] POTTER, Barry H.; DIAMOND, Jack. *Guidelines for Public Expenditure Management*, section 4.

[50] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, chapter 1.1.4.

[51] Ibid, chapter 1.3.

[52] TRESCH, Richard W. *Public Finance: A Normative Theory*, p. 16.

[53] Ibid.

[54] VACHRIS, Michelle A. Principal-Agent Relationships in the Theory of Bureaucracy. In: ROWLEY, Charles K.; SCHNEIDER, Friedrich (eds.). *The Encyclopedia of Public Choice: Volume II*, p. 434.

[55] ALTAY, Asuman. The Efficiency of Bureaucracy on the Public Sector, pp. 41–42.

In regard to the magnitude of the entity responsible for the management of public funds, two scenarios are of particular significance. In the initial scenario, the entity in question is an individual. This creates a risk of abuse of position (or moral failure on the part of the individual) and, concurrently, the risk of an inadequate professional capacity to assess the facts on which decisions are based (i.e., professional failure of the entity).[56] In the second case, where the entity is collective in nature, the individual risks depend on the voting method. In the event that a consensus-based voting system is selected (i.e., a system whereby unanimous consent of the members is required for a decision to be taken), there is a risk that one of the members may act as a stalling actor, imposing unacceptable conditions and ultimately demonstrating a lack of interest in reaching an agreement. This could result in the complete paralysis of the decision-making process.[57] Such risks may be mitigated through the implementation of a majority voting system.[58] However, this is counterbalanced by an increased risk of the sub-optimal use of available public resources. This can manifest in two ways: first, as a redistribution of resources exclusively in favour of the majority (i.e., the minority suffers a loss), and second, as government failure, whereby the resulting situation (i.e., the situation after the vote and the implementation of the decision) is worse for all stakeholders.[59] The potential causes of these adverse phenomena are numerous — the main one being an insufficient understanding of the electorate, whether in terms of the quality or quantity of the information provided. Inadequate, erroneous, or absent forecasts of economic development may be a factor, but so too may be the absence and inadequacy of a concept of social development and the lack or absence of good-quality data to develop such a concept. Other potential causes include the incompetence of members of a body responsible for managing public funds, who may be unable to make a qualified decision; the preference for ideology over the professional side of the problem, or the prioritisation of individual, party, or other group interests over the public interest. The prevalence of these risks is contingent upon the voting rules that are selected, or more accurately, the size of the majority whose consent is required for a decision to be enacted. A fundamental distinction can be made between relative, simple (supermajority), and qualified majorities.[60]

A further significant factor is the relationship between the entity responsible for managing public funds and the electorate, or the extent to which the entity is connected to the electorate. If the distance between the entity managing public funds and the electorate is small, there is a risk that current and capital expenditure will

[56] TRESCH, Richard W. *Public Finance: A Normative Theory*, p. 16.

[57] MUSGRAVE, Richard Abel; MUSGRAVE, Peggy B. *Public Finance in Theory and Practice*, p. 94; TRESCH, Richard W. *Public Finance: A Normative Theory*, p. 16.

[58] MILLER, Charles E. *Group Decision Making Under Majority and Unanimity Decision Rules*, p. 55.

[59] VOLZ, Lukas J.; WELBORN, Locke B.; GOBEL, Matthias S.; GAZZANIGA Michael S., GRAFTON Scott T. *Harm to Self Outweighs Benefit to Others in Moral Decision Making*, p. 7963.

[60] MAAYTOVÁ, Alena; OCHRANA, František; PAVEL, Jan. *Veřejné finance v teorii a praxi [Public Finance in Theory and Practice]*, pp. 29–30.

be implemented in a sub-optimal proportion.[61] This is particularly the case for politicians who have been directly elected or who have derived their office indirectly from that election. Such politicians are likely to be motivated by political preferences and the desire to maximise utility (i.e., to seek re-election). A bias towards current expenditure inevitably leads to an increase in such expenditure over time. Furthermore, the implementation of expenditure for the sole or indirect purpose of achieving re-election inevitably entails a suppression of interest in the efficient allocation of resources, to a greater or lesser extent. If the entity responsible for managing public funds occupies the opposite end of the spectrum, or if such an entity does not make decisions independently but exerts significant influence over the decision-making process of the relevant entity (in particular, the bureaucratic apparatus), then there is a risk of inefficiency due to bureaucratic behaviour, which can be defined as actions taken by an organisation with the aim of maximising its own utility without consideration of the efficient use of public resources.[62] In the case of the support apparatus of the executive, there is a risk of so-called inefficiency of bureaucratic behaviour,[63] which may be defined as behaviour consisting in the maximisation of the utility of one's own organisation without regard to the criterion of efficient use of public resources.[64]

This latter distinction is also linked to another fact that has a significant impact on the use of public resources in accordance with the requirements of budgetary discipline. This is the issue of the access of the entity managing public funds to the information needed to make an informed decision.[65] It is typically the civil service apparatus that has exclusive access to information, which enables it to exert influence over the decision-making of politicians and, consequently, to increase public expenditure that is ultimately directed towards benefiting their own interests.[66]

Furthermore, the outsourcing of public projects, whether through public procurement or long-term forms of collaboration with the private sector, such as concessions and quasi-concessions, can also have an impact on the management of public funds. Both instruments have the potential to significantly reduce the expenditure required to provide essential goods and services, thereby enhancing the efficiency of the entity in question. However, they also entail a number of risks and may not necessarily achieve this positive outcome. [67]

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[61] If there is an overweighing in favour of current expenditure at the expense of capital (investment) expenditure, the equipment of the funded entities may become obsolete and consequently current expenditure may increase further due to repairs, incompatibility of systems, etc. see Ibid, p. 49.

[62] OCAMPO, Emilio. *The Economic Analysis of Populism. A Selective Review of the Literature*, p. 15.

[63] For a graphical representation of this model, see NISKANEN, William A., *Bureaucracy and Representative Government*, chapter 5.

[64] MUSGRAVE, Richard Abel; MUSGRAVE, Peggy B. *Public Finance in Theory and Practice*, p. 101.

[65] ALTAY, Asuman. The Efficiency of Bureaucracy on the Public Sector, pp. 41–42.

[66] NISKANEN, William A. *Bureaucracy and Representative Government*, chapter 5.

[67] For example, in the form of a debt trap, monopoly dependence on a supplier, or bankruptcy. MAAYTOVÁ, Alena; OCHRANA, František; PAVEL, Jan. *Veřejné finance v teorii a praxi [Public Finance*

The administrative complexity of monitoring compliance with budgetary discipline obligations is another significant factor that has a detrimental impact on the management of public resources. In particular, the monitoring of economic policy and the efficient and effective use of funds necessitates a comprehensive examination of a multitude of facts and assessment thereof in comparison with the desired outcome across a range of areas. It is therefore essential that the body responsible for the audit has a sufficiently large and qualified staff of individuals with the necessary expertise to conduct an effective audit.

The reasons for this complexity are also significant and are based on the level of clarity, systematicity, or duplication of obligations. When obligations are confusing or overly complex, entities managing public funds may be less willing to follow them. This can increase administrative costs for both the entity managing public funds and the supervisory authority, and may result in the inefficient use of public resources.

Formulation of the optimal regulatory model and detailed explanation thereof

The model for enforcing budgetary discipline should be designed in accordance with the aforementioned parameters, ensuring its legislative foundation while addressing or, at the very least, reducing the aforementioned common cases of breaches of budgetary discipline. These shortcomings can be classified into three categories, as outlined below:

1. Self-enrichment;
2. Political miscalculation; or
3. Operational inefficiencies.

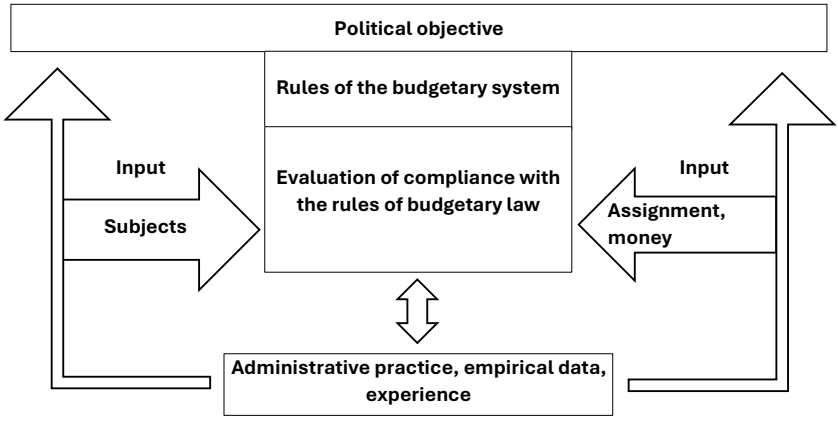
This classification has significant implications for the design of the model of rules for enforcing budgetary discipline. Indeed, in the case of a deficiency of the nature of a policy error, it is difficult to envisage a subsequent linkage between the regulatory framework and legal consequences, given that it will typically cover an inappropriately stated policy objective to be achieved through the expenditure of public funds. An effective public fund management system, of which the system of rules for enforcing budgetary discipline is a component, should be designed with the objective of achieving this outcome, rather than with a view to reviewing it. It is therefore crucial to prevent such mistakes. This includes historical and empirical knowledge and familiarity with it on the part of the person or body setting the policy objective. Furthermore, this categorisation determines the type of penalties that will be effective and capable of achieving long-term disciplined public management in

in Theory and Practice], pp. 71–74.

individual cases or the way in which public management oversight procedures are exercised.

The structure of the model of budgetary discipline enforcement will be explained step by step in the diagram below, with a brief explanation and additional diagram provided for each component.

Figure 1: Diagram of general structure of the model.



Source: Authors' own creation.

The **political objective** is not a defining or influencing factor in the enforcement of budgetary discipline. However, since political objectives are inherently flexible and subject to change, budget law must also allow for a degree of flexibility, as is widely acknowledged within the expert community, in order to ensure that budget law regulation does not impede the achievement of these objectives.[68] Nevertheless, an incorrectly stated policy objective, whether due to its de facto impossibility of implementation through the rules of budgetary discipline or its inappropriate choice in terms of public choice theory, represents one of the shortcomings of compliance with budgetary discipline. This may be attributed to the previously identified deficiency in the regulatory framework, which does not provide the delegated entity with the requisite tools to implement the policy and achieve the stated objective, or vice versa, whereby the utilisation of the entrusted tools results in the inefficient deployment of public funds. It is therefore essential to prioritise the role of prevention, given that an incorrect or inappropriate policy objective cannot typically be penalised by budget law. Prevention should be based on a sufficient understanding of the budgetary rules by the individual or body setting the policy objective, as well as an economic analysis of the behaviour of the actors whose actions are crucial to achieving the policy objective. This can be

[68] See chapter "Basis for regulation of the public fund management system" above.

greatly assisted by knowledge of administrative practice, empirical data and, in general, experience.

The rules of the budgetary system are a second attribute that neither defines nor influences the model of budgetary discipline enforcement. Nevertheless, in contrast to the policy objective, it is an indispensable attribute for the implementation of the fiscal discipline enforcement model. These rules provide the framework for determining the criteria for the disciplined management of public funds. The definition of budgetary discipline is closely linked to these rules, as any violation of a rule for the management of public funds constitutes a violation of the discipline. Consequently, any contravention of a rule of budgetary law may result in the implementation of the measures included in the model for the enforcement of budgetary discipline. These rules must provide a sufficient degree of cohesion, clarity, predictability, and transparency, while simultaneously allowing for sufficient flexibility in their specification for individual cases of public fund management. In most cases, this will entail the specification of a rule pertaining to the efficient, economic, and effective management of public funds (e.g., the prohibition of loans and the implementation of public procurement regulations).

The **input of the entities** responsible for managing public funds, the **input of the funds** that will be delegated to each entity to manage in order to achieve the policy objective, or the **input of the assignment** specifying the procedures and sub-objectives to be undertaken or implemented in order to achieve the policy objective are other attributes that play a fundamental role in the model of enforcing budgetary discipline. With regard to the input of the entities concerned, the manner in which this input is incorporated into the management of public funds is of paramount importance with respect to the model. This can occur in two ways, but in both, the role of prevention is crucial in terms of considering empirical data, experience, and sufficient knowledge of the behaviour of the actors involved in achieving the policy objective. The initial approach entails the establishment of a public institution (public authority or public law person) or the conferral of public authority upon an existing entity (extension of the scope/power of an existing public authority or conferral of scope/power on a private law person). It is therefore a situation in which input is provided. Consequently, in this instance, the role of prevention is to inform the decision as to whether the entity should be established or whether the power to exercise public authority should be conferred upon it. The second manner in which an entity may enter in the management of public funds is through a legal fact distinct from the instrument of incorporation or the law establishing it. This form of entry will henceforth be referred to as "as a result of a legal fact". The most typical case in which this can occur is the granting of public support, which is typically requested by the entity seeking entry. In this context, entry is contingent upon the successful completion of a competitive process, the specific parameters of which may vary (e.g., speed, qualifications, economic situation). Nevertheless, from a theoretical perspective, entry may also be the consequence of an involuntary legal occurrence. In this type of entry of an entity into

the budgetary process of managing public funds, the decision to grant public funds to the entering entity is contingent upon the will of the entity itself and, as a rule, on the entity providing the public funds. Consequently, prevention plays a role in this decision. In this regard, the model of enforcing budgetary discipline may provide for a range of legal instruments. These regulations serve to distinguish which individuals or transactions are eligible to receive public funds. This will entail, for instance, the implementation of an ex ante supervisory procedure to ascertain whether the entering entity meets the criteria for the allocation of public funds, or the establishment of specific parameters for the competition for entry (e.g., the setting of subsidy conditions).

To illustrate the **assessment of adherence to budgetary regulations**, it is beneficial to utilise an alternative diagram that delineates the methodology employed and the interconnectivity between the various procedures. Nevertheless, it is accurate to conclude that the assessment of compliance with budgetary regulations occurs at two distinct stages: the initial fulfilment of the input assignment and the subsequent evaluation of the publicly funded output.

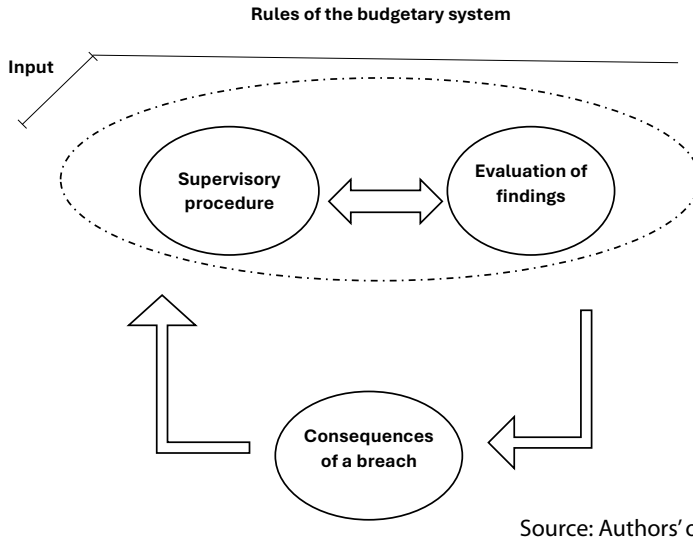
The systematic process of evaluating compliance with the rules of budget law then gives rise to the emergence of **administrative practice, empirical data, and experience**. These represent a degree of binding for the public authorities carrying out this evaluation,[69] while also serving as a source of information for the prevention of deficiencies in budgetary discipline. As previously stated, this knowledge can inform the formulation of policy objectives and influence decision-making processes regarding entity participation and the management of public funds. Furthermore, empirical data and experience furnish the requisite feedback to ascertain the optimal configuration of the specific individual rules of the budgetary discipline enforcement model, as well as the rules of the budget system itself. Furthermore, administrative practice can influence the development of budgetary rules in certain circumstances.

In conclusion, while political objectives should not form part of the model for enforcing budgetary discipline, they, along with the empirical data and experience gained, can influence the design of specific rules of the budget system and input parameters in the form of both subjects and inputs to public fund management. The rules of the budget system and administrative practice thus constitute a kind of framework for the model of budgetary discipline enforcement, within which the individual rules of the model will be applied. The model for enforcing budgetary discipline is founded upon a set of rules and procedures designed to assess compliance with the established norms and regulations pertaining to budgetary law. In certain instances, these procedures may also encompass the processes governing the admission of entities and the distribution of public funds.

To elucidate this further, we may turn to the following diagram, which illustrates the assessment of compliance with the aforementioned rules of budgetary law.

[69] HENDRYCH Dušan, et al. *Správní právo: Obecná část [Administrative Law: General Part],* pp. 81–82.

Figure 2: Diagram of assessment of compliance with the rules of budgetary law.



Source: Authors' own creation.

As illustrated in the diagram, the input and rules of the budget system define the procedure and criteria for evaluating compliance with budget law. As these aspects have already been covered, they will not be revisited here. It is, however, important to note that this may represent the initial stage at which the regulations governing budgetary discipline are implemented. Subsequently, two further phases are identified: the input enforcement phase and the output enforcement phase.

The implementation of an effective set of **supervisory procedures** is of paramount importance for the enforcement of budgetary discipline within the model. The general requirements for the regulation of the budgetary system, namely clarity and transparency of the relevant standards, can be applied to the regulation of the supervisory procedures. A further theoretical requirement for the implementation of supervisory procedures within the budgetary discipline enforcement model is the existence of an external auditing body, which may be responsible for the audit of the government or any other public sector body with a role in the budgetary process concerning public budgets (e.g., the central bank).[70] In the majority of cases, this function will be discharged by the Supreme Audit Office or a comparable institution. The independence of the supervisory procedure is an inherent criterion of any supervisory procedure. However, it is not a prerequisite, as the central role responsible for the scrutiny of the management of public funds by the executive is usually assumed by the Ministry of Finance.[71]

[70] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 65.

[71] Ibid, p. 70.

Furthermore, the authors posit that in instances where deficiencies in budgetary discipline have been identified, which are typologically based on self-enrichment or operational inefficiency, the internal audit, i.e., the component responsible for supervisory procedures within the entity managing public funds, plays a pivotal role. From this perspective, it is challenging to overcome the inherent tripartite nature of the supervisory procedures conducted in relation to a single supervised entity. In order to ensure clarity, predictability, and transparency of the law, it is essential to establish clear boundaries for the exercise of supervisory procedures and their results in relation to non-subordinate entities. This is particularly important in situations where supervisory procedures are exercised in relation to entities which have entered into the management of public funds as a result of a legal fact. In such a case, the extent to which the Supreme Audit Office is empowered to impose sanctions will be of crucial importance.[72]

If this institution were based on the Latin model of sanctioning breaches of budgetary discipline, it would appear inappropriate for another public authority to carry out the supervisory procedure with respect to the entities subject to supervision. An alternative approach would be to consider the possibility that a supervisory procedure initiated by a superior supervisory authority or a supreme audit institution would preclude the latter from carrying out a supervisory procedure. In the event that the supreme audit institution is unable to impose penalties, it is reasonable and appropriate for there to be another public authority with sanctioning powers. From this perspective, it is thus fitting that this additional public authority should also possess the authority to conduct the supervisory procedure. That being said, the supervisory conclusion of the supreme audit institution could be binding upon it, for instance, as an assessment of a preliminary question.

With regard to the audit, the decision to establish an internal audit should be left to the discretion of the specific non-subordinate entity subject to supervision. Nevertheless, for those that fulfil the pre-established criteria, there may be a necessity for an external audit, thus facilitating a more systematic assessment of the findings by the supervised entity.

The supervisory procedures may be classified into the following categories: ex ante, ongoing or random, and ex post.[73] The implementation of supervisory procedures in a pre-emptive manner can prove invaluable in circumstances where it is deemed necessary to ascertain the suitability of an entity for the management of public funds. This is illustrated in the initial diagram above, which depicts the process of entities entering into such management. A continuous or random supervisory procedure will then be conducted at the stage of implementation of the entry assignment. Both types of random surveillance procedures may be implemented in situ or ex situ, with the random surveillance procedure always present at the ad

[72] ARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, p. 99.

[73] HENDRYCH, Dušan, et al. *Správní právo: Obecná část [Administrative Law: General Part]*, p. 287.

hoc initiation of the surveillance procedure. In the case of an interim surveillance procedure, this may exist in another specific form of ex situ procedure, namely in the form of a so-called interim report, on the basis of which an exchange of information between the supervising public authority and the supervised entity takes place. It is important to note that the intermediate supervision procedure will often occur at specified intervals as outlined in the budgetary rules, and that the formal initiation of the supervision procedure by the supervising public authority may not be required. The ex post supervisory procedure is typically employed at the final stage of the assessment of compliance with budgetary discipline, specifically at the stage of the assessment of the output of the assignment. This type of supervisory procedure may be conducted randomly in situ or ex situ, or it may be carried out obligatorily whenever the conditions set out in the relevant regulations are met, such as the achievement of an objective or the expiration of a time limit.

The second essential element of the model for enforcing budgetary discipline is the **assessment of the evidence** obtained from the surveillance process. The implementation of the procedures set forth in this component of the model is contingent upon two primary factors. The first aspect to be considered is the availability of sufficient information and evidence on the management of public funds. It is only with comprehensive information and evidence on the supervised activity that the supervising public authority is able to accurately determine whether a breach of budgetary discipline has occurred. The second crucial aspect is the quality of the assessment carried out. It is imperative that the supervising public authority be able to evaluate the information and supporting documentation in a truthful and comprehensive manner. Consequently, in the context of supervisory procedures, the efficacy of the algorithm and the manner in which information is conveyed (via the establishment of machine-readable data through designated forms or the exporting of data in the requisite format) are of paramount importance. In the event that an evaluation is conducted manually, the resulting outcome is contingent upon the input of the human evaluator. As previously stated, this factor may be susceptible to a range of potential failures, including moral failure on the part of the individual, capacity failure on the part of the public authority, professional failure on the part of the individual, and so forth.

The result of this assessment will indicate whether the utilisation of public funds is in accordance with the regulations of the budgetary system and therefore within the bounds of propriety. It is recommended that this finding be recorded, for example, in the form of an audit report, which should be made available to the supervised entity. In the event that no breach of budgetary discipline has been identified, the supervisory authority is furnished with the relevant information, which is then utilised in the final assessment of the achievement of the policy objective. However, in the event of a breach of budgetary discipline in the management of public funds, the final component of the model for enforcing budgetary discipline, namely the measures to be imposed in the case of a breach of budgetary discipline, will be implemented.

It is important to note that the legal **consequence of a breach** of budgetary discipline does not always have to be established following an assessment of the

findings resulting in a breach of budgetary discipline. It is only within the context of legislation that measures may be imposed for breaches that reach a certain level of severity. In the case of minor violations, the supervising public authority may simply acknowledge the breach in an audit report without further action. In such instances, there are no immediate consequences resulting from the breach. Nevertheless, even in the absence of immediate consequences, the discovery of a breach may result in the imposition of future penalties by the budgetary system. This could occur, for instance, when establishing the parameters for further input into the management of public funds. Subsequently, the consequence of a breach of budgetary discipline may be, for example, the rejection of a grant application. Furthermore, the parameters set should reflect the political will of the state to enforce procedural and political rules.[74]

Once more, the overarching stipulations pertaining to the governance of the budgetary system, namely the necessity for clarity and transparency in the relevant regulations, can be extended to encompass the regulation of the measures imposed after a breach is identified.

The potential measures imposed for a breach of budgetary discipline can be broadly categorised as follows:

1. Corrective measures;
2. Exclusionary measures (including termination of already financed activity);
3. Budgetary measures; and
4. Penal measures.

Corrective measures for a breach of budgetary discipline are typically established at the stage of implementation of the input assignment or during the evaluation of the publicly funded output. It should be noted, however, that the specific form of these measures may differ depending on the stage in question. During the implementation phase, the objective of corrective measures should be to eliminate a remediable breach of budgetary discipline. Once this has been achieved, the form and quality of the public budget output will not be affected. Such an example could be the abandonment of an infringement. In the case of output, however, it is difficult to envisage a scenario in which a breach of budgetary regulations could be rectified without further postponement through the elimination of the breach of budgetary discipline. In such a case, the appropriate remedy will therefore normally be to restore compliance in a way that is unaffected by the breach of budgetary discipline, with the understanding that such project will no longer be financed from public budgets. In addition, the remedy may seek to restore public funds to their intended purpose, namely, withdrawing them from the entity in question and returning them to the public budget or to the administrator of its respective chapter. In such a case, the entity responsible for managing the public funds may be subject to a levy for

[74] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). Public Financial Management and its Emerging Architecture, p. 92.

breach of budgetary discipline. This requires the entity to return the funds in question to the competent or designated public authority. In cases where the lack of compliance with budgetary discipline involves self-enrichment, the repayment of the funds is particularly appropriate. Nevertheless, even in the case of operational inefficiencies, corrective measures may be considered, typically comprehensive in nature. These may include, for instance, the reorganisation of the processes, procedures, or assets of the supervised entity. A less invasive corrective measure is the so-called managerial action, which is determined by the managing person within the supervised entity.

An entity may be **excluded from the management of public funds** or the **termination of an activity financed from public budgets** at both the entry and implementation stages. As previously stated, a breach of budgetary discipline may result in the entity failing to meet the entry criteria for public funding in the future. This, in turn, gives rise to the legal consequence of the entity being excluded from the management of public funds. This consequence of a breach of budgetary discipline assumes greater significance in the implementation phase. In the event of a long-term and serious breach of budgetary discipline in the implementation phase, it may be more effective, from the standpoint of achieving the policy objective, to proceed directly to the cancellation of public financing for the relevant activity. Cancellation of funding will thus be associated with instances of significant non-compliance with budgetary regulations, occurring concurrently with the absence or partial provision of public budgetary resources. In the event of the obligation to return of public funds due to a breach of budgetary law, this may be regarded as a remedial measure. In cases where a breach of budgetary discipline results in self-enrichment or greater operational inefficiency, exclusion or termination of the entity in question is an appropriate measure. This is particularly the case when the entity in question has been granted management of public funds as a result of a legal fact. Such measures are not typically applicable in cases where the entity in question is a budgetary unit, such as a public office or ministry, which is funded exclusively from public budgets and is responsible for implementing essential public policies within its remit. Nevertheless, this type of measure remains applicable to this category of budgetary units when the selection procedure for funding is competitive.

In the event of a breach of budgetary discipline, a **budgetary measure** may also be imposed. This typically entails the supervisory public authority imposing an obligation on the supervised entity. Nevertheless, the obligation in question will not entail the return of funds to the public budget or to the administrator of a specific budgetary chapter. Rather, it may assume a pecuniary form, for instance, requiring the provision of a security deposit or the reduction of non-essential expenditures (such as bonuses or salary increases). It may be deemed appropriate to implement budgetary measures in instances where operational inefficiencies can be addressed through the imposition of an additional obligation on the supervised entity.

The final category of measures imposed for a breach of budgetary discipline comprises **penal measures**, which serve to punish the addressee of budgetary law for

failure to fulfil the primary obligation imposed by budget law.[75] Such penalties may be of a criminal, administrative or civil nature. In general, the public tends to favour penalties that are both severe and credible, given the special status of public budgets.[76] It is also important to consider the principle of non bis in idem, which restricts the imposition of multiple penalties for the same violation. Civil penalties in the context of budget law are either absent or severely limited. In general, such penalties are interest on late payment or an obligation to compensate for damage. Given their private law nature, the enforcement of civil penalties would fall within the competence of the civil courts. It therefore seems more appropriate to impose other payment penalties for a breach of budgetary discipline such as those of a corrective nature referred to above. The imposition of these additional payment penalties can then be delegated to the executive public authorities, thereby ensuring the more effective imposition and enforcement thereof. Nevertheless, it is essential to ensure that these measures are subject to judicial review. With regard to criminal penalties, their presence within the legal order is justifiable, but they should reflect the distinctive position of criminal law as a means of last resort. Furthermore, the establishment of criminal penalties appears to be a suitable course of action, given the personal scope of criminal law regulations, which are primarily based on the premise that it is the individual perpetrators of the crime who are primarily subjected to punishment. In contrast to penalties imposed on legal entities, criminal penalties are primarily designed to deter natural persons involved in the management of public funds.

Administrative penalties are thus pivotal in addressing violations of budgetary discipline. Such penalties can then be classified into two principal categories: monetary and non-monetary. The efficacy of monetary penalties has been called into question by the professional community, which asserts that the success of such penalties has been limited. In many instances, the parties responsible for breaching fiscal regulations would not be the ones bearing the burden (often the previous government), rendering the instrument politically unpalatable.[77] Nevertheless, this conclusion is contingent upon the imposition of monetary penalties within the context of a public administration organisation. Conversely, if monetary penalties are imposed on an entity entering into the management of public funds due to a legal fact, the entity in breach of the budgetary rule will be the one to bear the financial burden. It is essential that such penalties are clearly defined and transparent in their design. It is evident that non-monetary penalties, particularly those of a reputational nature, play an intrinsic role. It is our contention that this is the only type of penalty that can be imposed in the case of a lack of budgetary discipline resulting from a political error. This type of non-monetary penalty involves the public dis-

[75] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, p. 108.

[76] EDEN, Holger van; KHEMANI, Pokar; EMERY Richard P. jr. Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters. In: CANGIANO, Marco; CURRISTINE, Teresa a LAZARE, Michel (ed.). Public Financial Management and its Emerging Architecture, p. 92.

[77] Ibid, p. 91.

closure of the breach of budgetary discipline, accompanied by an explanation of the circumstances surrounding it. A typical example is the publication of reports by supreme audit institutions addressed to both the public and the legislature.

Summary

This chapter presents a theoretical model of budgetary discipline enforcement, which serves as a foundation for evaluating the effectiveness and impact of specific budgetary discipline regulations. It should be noted that this model is presented without reference to a specific legal system or to the particularities of the budgetary framework of individual countries or the European Union. However, its development is based on the general attributes of the budgetary system and the legal instruments for enforcing budgetary discipline, which are commonly shared across countries and the European Union. It is only through this process that the model can serve as a normative benchmark for comparing and assessing the regulatory frameworks of budgetary discipline in different countries.

The model is defined on the basis of existing knowledge concerning the regulation of budgetary discipline and economic aspects thereof. From a regulatory standpoint, clarity and transparency are pivotal requirements, counterbalanced by a degree of flexibility, along with the substantive and personal scope of the legal rules governing budgetary discipline. The flexibility inherent in the model allows for the temporary or ad hoc nature of certain budgetary processes, for example, to be taken into account, while maintaining a basic framework of rules that provide a sufficient level of legal certainty and predictability. In order to achieve this balance, it is necessary first to minimise the number of legal provisions (sources of law) in which the legal norms of budgetary discipline regulation are found. Second, it is essential to recognise the legal force and the resulting rigidity or flexibility of the individual sources of law in the development of budgetary discipline regulation. From a substantive standpoint, it is crucial to acknowledge that the administration of public finances is a matter of public policy. The resources allocated for this purpose and their quantity are, for the most part, relatively predictable, and market forces do not play a significant role in many instances. These factors heighten the risk of the uneconomic, inefficient, or ineffective use of public funds. Furthermore, the considerable administrative and staffing demands placed on the entity responsible for overseeing the management of public funds serve to exacerbate this risk.

The objective of the authors is to structure the model in a way that allows the identified relevant issues to be addressed in a consistent manner while ensuring the enforceability of the desired outcomes and guaranteeing clarity and intelligibility. As the model represents a subset of the broader public funds management issue, the initial step was to identify the attributes of this area that are pertinent to the enforcement of budgetary discipline. These attributes may therefore be referred to as the attributes of budgetary discipline enforcement.

The second stage of the process was to define the fundamental characteristics of the model within the aforementioned attributes. One of the principal attributes is the set of rules that constitute the budgetary system, which serves as a framework for the application of the model of budgetary discipline enforcement. In other words, these rules delineate the extent to which the obligation to manage public funds in accordance with budgetary discipline is applicable. Additional sub-attributes emerge during the budget management process. These include the entities responsible for managing public funds, the public funds themselves, and the terms of reference that specify how the stated policy objective is to be achieved using public funds.

Preventive measures based on empirical data, experience, and knowledge of the entity in question, whether it is an entity set up authoritatively or an entity managing public funds on the basis of another legal reality (e.g., if it is a recipient of public aid), play a crucial role in the assessment of the entity's capacity to manage public funds in accordance with the rules set out. Another significant attribute is administrative practice, which, in conjunction with empirical data and experience, gradually evolves through the ongoing evaluation of budgetary legislation. As a result administrative practice becomes, to some extent, binding on the public authorities responsible for the evaluation. In conjunction with empirical data and experience, this practice provides an informative basis for preventive measures and feedback, enabling the assessment of the efficacy of the rules governing budgetary discipline and the overall budgetary system.

The final, and most crucial, attribute is the process of assessing compliance with the rules of budget law. The domain of evaluation is circumscribed by three factors: the scope of the budgetary system's rules and the individual inputs in the form of public funds, the entities managing these funds, and the intended purpose for which these funds are to be used. The evaluation of breaches of budgetary discipline can be defined in terms of two sub-activities: the supervisory procedure and the subsequent evaluation of the findings of the supervisory procedure. Should the evaluation of the findings conclude that budgetary discipline has been breached, the legal consequence of such a breach may ensue.

The supervisory procedure can be defined as an active process conducted by the supervising body with the objective of obtaining and subsequently evaluating knowledge regarding the management of public funds, with the aim of determining whether such management is occurring in a fiscally disciplined manner. The model identifies the key aspects of the supervisory procedures that are essential for achieving this goal, beginning with the clarity and transparency of the relevant standards. The independence of such procedures is also essential, but is not sufficient on its own. However, the authors see the establishment of an autonomous entity with the authority to conduct external audits of the government as a crucial element in fulfilling this requirement.

The authors further posit that the specific circumstances surrounding breaches of budgetary discipline can vary considerably, encompassing a spectrum of factors, from inadvertent political missteps to instances of self-aggrandizement and

operational inefficiency. Given these discrepancies, it is unlikely that a single, uniform set of supervisory procedures will prove effective in addressing all causes of breaches. Accordingly, the authors conclude that internal auditing is the most suitable instrument for addressing non-political factors within the context of supervisory procedures. The central government body, such as the Ministry of Finance, would also be responsible for conducting supervisory activities.

In order to guarantee effective supervision, the model proposes a triangular approach involving a different supervisory bodies. It is of the utmost importance that a clear and adequate division of powers be established, particularly given that the entities subject to supervision may not be directly subordinate to the supervising authority. The capacity to impose penalties is a case in point. The role of the entity in question is indispensable to the defined model; however, it should not be given the power to impose penalties on several entities in a duplicative manner.

The timing and frequency of supervisory procedures are also of significant importance. It would be optimal for supervisory procedures to be conducted at each stage of budgetary management, given that each stage gives rise to the potential for breaches of budgetary discipline. It would also be prudent to diversify the supervisory procedures, in accordance with current practice, into ex ante, ongoing, or random procedures and ex post procedures. This approach would facilitate the consideration of the particularities of each phase, the specifics of the anticipated breach of budgetary discipline, or the relationship between the entity managing public funds and those funds.

The authors posit that the success of the evaluation process hinges on two fundamental pillars. The first foundation is the availability of a comprehensive information base, encompassing both quantitative and qualitative data. The second pillar is the quality of the assessment of the information in question. It is therefore essential that the algorithm and method of information transfer are correctly set up, and that a sufficiently large and qualified team is in place to assess the situation correctly.

The measures to be imposed after a breach of budgetary law are the final aspect considered when assessing compliance with budgetary law. These measures constitute a system of secondary obligations that arise after a breach of the rules of the budgetary system is identified in the evaluation of the findings obtained by the supervision. Such obligations may include the fulfilment of the primary obligation by the public authority, or the creation of an obligation of a corrective, punitive or, preventive nature (preventing future access).[78] Furthermore, the system is supported by the processes through which these obligations are created or imposed and the processes through which they are subsequently enforced by public authorities. The structure of this system has a significant impact on the enforceability of the primary budgetary rules.

The legal regulation of the procedure for imposing and enforcing secondary obligations may be subject to the requirements typically imposed on any procedure

[78] KNAPP, Viktor. *Teorie práva [Theory of Law]*, p. 152.

in which public administration is exercised. In addition to the aforementioned requirements of clarity and transparency of the relevant standards, which are common to the legal regulation of the entire area of the management of public funds, these requirements encompass generally accepted principles of public administration, including the guarantee of judicial review.[79] The range of actual measures imposed for breaches of budgetary discipline is considerable and encompasses corrective measures, the exclusion of the entity managing public funds from further management of those funds, the cancellation of activities financed from public budgets or budgetary measures, and measures of a punitive nature.

Corrective measures are primarily designed to eliminate the breach of budgetary discipline, provided that the breach, once eliminated, will not affect the form or quality of the output financed from public funds. In instances where this is not feasible, the corrective measure may entail the completion of the assignment without the utilisation of public funds. An additional corrective measure could entail returning the public funds to the source so they can be used for their intended purpose. Given their nature, these tools for addressing an undesirable situation that has already arisen are most applicable at the stage of implementation of the initial assignment or at the stage of evaluation of the publicly funded output.

In the event of non-compliance, the entity in question may be excluded from any further involvement in the management of the funds in question, or the funded activity may be cancelled. These measures may be applied, particularly before or at the beginning of the implementation phase of the task, although each of them is slightly different in nature. The cancellation of financing for an activity is an appropriate response to breaches of budgetary discipline that occur during the implementation phase of a publicly financed assignment. Nevertheless, its utilisation is contingent upon the public funds having been made available to the managing authority or the total amount pledged. The exclusion of the entity is primarily a preventive measure, aimed at preventing the entity from accessing public funds in the future, subsequent to a breach of budgetary discipline.

It is important to note that budgetary measures differ from corrective or punitive actions. These measures impose additional obligations on the entity responsible for managing public funds, and may include the requirement to utilise the funds for a specified purpose or to provide them as a security. It is important to emphasise that these measures are intended to guarantee the appropriate administration of public funds (for instance, to ensure that a specified amount of public funds is allocated for a particular purpose or to provide them as a security). They are not designed to impose penalties or rectify past violations.

In the model, penalties represent the ultimate legal consequence of a breach of a primary legal obligation and serve as an instrument of last resort, to be applied only after other measures have been exhausted. Criminal penalties are an indispensable component of the enforcement of budgetary discipline. They permit the

[79] SLÁDEČEK, Vladimír. *Obecné správní právo [General Administrative Law]*, pp. 31, 115, 146–149.

attribution of liability for breaches of obligations not only to legal persons, which will typically be entities managing public funds, but also to natural persons who are in an employment or analogous relationship with the entity managing public funds and who have contributed to the breach of obligations through their activities. Nevertheless, the primary focus of penal measures for breaches of budgetary discipline is within the domain of administrative law. It is also important to consider the role of non-monetary penalties, particularly those related to reputation. As they are typically applied through the publication of a specific breach of budgetary discipline, accompanied by an explanation of the nature of the breach, these penalties are also of considerable importance in terms of preventing similar breaches in the future. Such measures thus have the effect of both prevention and deterrence. Furthermore, the authors contend that this particular measure is the sole one applicable to instances of budgetary misconduct resulting from political malfeasance. Monetary penalties are an alternative option, but their application appears more suitable when directed towards entities outside the public administration domain. In many instances, the implementation of such penalties within the public administration may not effectively penalise the individuals whose actions resulted in the breach of budgetary discipline, particularly in cases where political misconduct is involved. It is possible that political responsibility has already been incurred towards these individuals (for example, in the context of elections). Consequently, they are not part of the entity being penalised after the end of the evaluation phase of the supervisory procedure, which occurs at the time when the penalty is imposed. This highlights a potential misalignment between the timing of the penalty and the individuals accountable for the breach after the evaluation phase is completed.

CURRENT REGULATORY FRAMEWORK IN VISEGRÁD COUNTRIES

Comparison of supervisory procedures[80]

The mere existence of the rules of budgetary discipline enforcement is insufficient in and of itself; there must also be a supervisory procedure in place to assess whether these rules are being met. Thus the implementation of the budgetary enforcement framework is guaranteed through the procedural legal instruments.

The pivotal component of the supervisory framework is an efficacious procedure that assesses the management of public funds. The objective of this procedure is to ensure the economical, effective, and efficient performance of public administration, as well as the verification of compliance with legal provisions in the management of public funds. Furthermore, it aims to guarantee that public funds are not used uneconomically, inefficiently, or ineffectively. The establishment of an appropriate supervisory procedure is of paramount importance in the enforcement of budgetary discipline. The general requirements for the regulation of the budgetary system, namely clarity and transparency of the relevant standards,[81] can be applied to the regulation of the supervisory procedures. A further theoretical requirement for the establishment of supervisory procedures in the context of budgetary enforcement is the existence of an independent body responsible for the external audit of those entities involved in the management of public funds.[82]

A set of 11 distinctive *tertia comparationis* (T1, ..., T11) was devised for the purpose of assessing the various aspects of the regulation of the supervisory procedures. The data obtained from the questionnaire surveys were employed for the purpose of identifying the law in books and the law in action in relation to these *tertia comparationis*.

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[80] The chapter provides the quintessential comparative study on supervisory procedures. The full comparative analysis can be found at: MÁLEK, Ondřej; BOHÁČ, Radim; KERNDLOVÁ, Petra and TULÁČEK, Michal. Comparative Study on Supervisory Procedures in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries.

[81] PEFA. *Framework for assessing public financial management. Improving public financial management. Supporting sustainable development*, p. 2.

[82] BOHÁČ, Radim; SEJKORA, Tomáš; ŠMIRAUSOVÁ Petra; TULÁČEK, Michal. Regulatory Model of the Budgetary Discipline Enforcement, p. 28.

n	T_n
1.	The policy (political) objectives are evaluated from a public funds management perspective.
2.	The administrative practise in supervisory procedures is legally binding.
3.	There is an independent public authority responsible for evaluating compliance with budgetary law rules.
4.	An internal supervisory procedure exists.
5.	An external supervisory procedure exists.
6.	The supervisory authority has the discretion to initiate different types of supervisory procedures.
7.	Multiple supervisory procedures can be carried out simultaneously for a single fact related to budgetary discipline compliance.
8.	The full coverage principle is applied in the supervisory framework.
9.	There are formal requirements for the outcome of a supervisory procedure.
10.	It is possible to appeal against the supervisory procedure report.
11.	It is possible to lodge an administrative lawsuit against the supervisory procedure report.

T_1: The management of public funds is inextricably linked to the policy objectives that determine the allocation of expenditure. It is therefore necessary to evaluate these objectives from the perspective of public fund management. In order to guarantee such an evaluation, a procedure which assesses policy (political) objectives from the perspective of public fund management must be in place. Such a procedure provides information on the assessment of fiscal effects prior to the approval of any regulation, policy, or other governmental decision. All Visegrád countries have some form of policy evaluation system in place, which operates in a similar manner. Each legislative proposal is required to include a Regulatory Impact Assessment (RIA). The RIA encompasses a range of elements, including the anticipated economic and financial impact of the proposed legislation on public budgets. It serves as both a document and a process for supporting decision-makers in determining whether and how to regulate in order to achieve public policy goals.[83]

T_2: The legal systems of the Visegrád countries are founded upon the rule of law, as set forth in written statutes. However, the role of administrative practice is significant, as it represents a direct application of the principles of legitimate expectations and legal certainty for the parties involved.[84] Administrative practice is defined as a practice established in accordance with the law or created based on authority conferred by law that does not interfere with the legally guaranteed rights of the parties involved and is generally accepted and followed by the competent administrative authorities. In all the Visegrád countries, administrative practice is

[83] OECD. *Regulatory Impact Assessment.*
[84] BRAITHWAITE, John. *Rules and Principles: A Theory of Legal Certainty.*

considered binding, as it forms the legitimate expectation that the administrative authority will treat one case similarly to other comparable cases considered in the past by the same authority.

T_3: All Visegrád countries have established constitutionally-based supreme audit offices, which are designated as follows: Nejvyšší kontrolní úřad (Czechia), Najvyšší kontrolný úrad Slovenskej republiky (Slovakia), Állami Számvőszék (Hungary), and Najwyższa Izba Kontroli (Poland). In general, supreme audit offices serve as independent national-level institutions that conduct audits of government activities not exclusively from an economic perspective. Notwithstanding their pivotal function in the oversight and accountability of the state, these institutions are also capable of appraising the value of public service in other respects, such as the level of digitalisation or the state's preparedness for extraordinary incidents. The aforementioned supreme audit offices share a common characteristic, namely a lack of power to impose any refunds or penalties in the event of a breach of budgetary discipline.[85] Consequently, their function is to provide an independent surveillance service at the highest governmental level, typically with the option of publishing their findings or submitting recommendations to the government or other competent bodies. Despite the absence of authority to impose refunds or penalties of the supreme audit offices in the Visegrád countries, all countries under comparison have developed a system of alternative public authorities with sanctioning powers.

T_4: The supervised entities are primarily responsible for establishing an internal audit mechanism. Such a duty is observed in all the Visegrád countries. In Czechia, the aforementioned internal audit must be conducted by a functionally independent unit or a specially designated staff member, which is organised separately from the executive management structure. In Slovakia, each public fund manager is obliged to establish an internal audit unit that is accountable to the executive management, while maintaining operational autonomy from other organisational units. In Hungary, public bodies that fall under the umbrella of the central and local government sub-system of the Hungarian public finance system are obliged to implement an internal control system and internal auditing procedures. In Poland, entities that manage public funds are required to conduct their own internal audits,[86] which can be carried out by an internal auditor or a contracted audit service provider.

T_5: The implementation of external supervisory procedures serves to guarantee the impartial assessment of public fund management, which is independent of the executive management of the supervised body. The objective is to achieve economical, effective, and efficient performance of public administration, as well as to verify

[85] See DEVIATNIKOVAITE, Ieva (ed.). *Comparative Administrative Law. Perspectives from Central and Eastern Europe.*

[86] DABEOWSKI, Marci; KOPACZ, Marta; LIS-STARANOWICZ, Dorota; ZINIEWICZ, Monika. Administrative Law in Poland. In: DEVIATNIKOVAITE, Ieva (ed.). *Comparative Administrative Law. Perspectives from Central and Eastern Europe*. S. 156.

compliance with legal provisions in the management of public funds. Furthermore, it is intended to ensure that public funds are not used uneconomically, inefficiently, or ineffectively. A system of supervision of public fund administration in the form of financial control exists in Czechia and Slovakia. The financial control is conducted by the Ministry of Finance and tax authorities, the administrators of the chapters of the state budget, the managing authority, the paying agency, or the territorial self-government units in Czechia, and by the Ministry of Finance or the Government Audit Office in Slovakia. In Poland, a system of adjudicating commissions exists. In Hungary, the assessment of public funds is conducted by the Hungarian State Treasury, which oversees the utilisation and accounting of budgeted and disbursed funds. Consequently, all the Visegrád countries have a system of external, independent public fund supervision under the executive branch of state powers, despite the varying degrees of centralisation observed.

T_6: As previously discussed in T3 and T5, there exists a duality of supreme audit offices that are unable to impose penalties or refunds, and administrative control bodies that are empowered to rectify or impose sanctions for breaches of budgetary discipline. Consequently, a variety of supervisory procedures may be conducted. However, each procedure is specific to a particular supervisory authority. Therefore, supervisory authorities are not at liberty to determine the type of supervisory procedure they conduct, as they are constrained by the limitations of their rights and duties as set forth in the law.

T_7: The coexistence of supreme audit offices with limited enforcement capabilities and administrative control bodies with the authority to address budgetary irregularities presents a potential scenario in which multiple supervisory procedures may be conducted concurrently for a single instance of budgetary non-compliance. This concurrence can result in the initiation of multiple supervisory proceedings that assess the same single fact simultaneously. In Czechia, Slovakia, and Poland, the legislation does not directly regulate the relationship between several simultaneous supervisory procedures. In Hungary, external supervisory procedures are typically directed at different subjects and objectives, therefore, the simultaneous supervisory procedures should not occur. However, such regulations are not necessary as the supervisory proceedings are conducted by different supervisory authorities with different powers, thereby providing different perspectives.

T_8: One of the fundamental aspects of any regulatory framework is the scope of its substantive provisions.[87] In the case of budgetary law, the question thus arises as to what should be regulated by the budgetary rules. The full coverage principle requires the application of budgetary rules to all budgets that contain public funds and to the entirety of the public sector.[88] There is a consensus among experts in the field that the full-coverage principle should be applied to the substantive scope

[87] OGUS, Anthony I. *Regulation: Legal Form and Economic Theory*, pp. 4–5.

[88] BOHÁČ, Radim; SEJKORA, Tomáš; ŠMIRAUSOVÁ Petra; TULÁČEK, Michal. Regulatory Model of the Budgetary Discipline Enforcement, p. 15.

of budgetary law norms, as this is the objective of the development and evolution of budgetary rules.[89] In accordance with the full-coverage principle, budgetary rules, including supervisory procedures, should be applicable to the entirety of the public sector, encompassing all entities and all types of budgets. The full-coverage principle is applicable to all public budgets and to all subjects engaged in the management of public finance in Czechia, Slovakia, and Hungary. All three countries have introduced rules that cover all public budgets and various types of managing entities. In Poland, however, only some of the entities carrying out public tasks or managing public funds are covered by the public finance rules. Consequently, there are budgets and entities that are not covered by the rules and are excluded from the supervisory procedures, as they are not considered to be part of the public finance sector.

T_9: The format and content of reports on supervisory procedures in budgetary discipline are prescribed in all the Visegrád countries. Typically, such reports include the name of the supervisory body, the name of the supervised body, the subject of the supervision, the duration of the supervision, the control methods and procedures employed, and an executive summary. They also present the findings of the supervision, conclusions, and recommendations.

T_{10}: In the Visegrád countries, the supervisory procedure report is not regarded as a decision, and thus an appeal against such report is not permitted. Nevertheless, a decision regarding a refund or penalty in the event of a breach of budgetary discipline may be based on the supervisory procedure report, and an appeal may be made against such a decision. With the exception of Czechia, the standards of defence against a decision imposing an obligation to refund or a penalty are not distinct from those applicable to decisions against standard administrative individual legal acts. In accordance with Czech legislation, the aforementioned process is overseen by the Tax Procedure Code. Consequently, the conditions for an appeal in a tax proceeding differ from those applicable to a standard administrative appeal. Notwithstanding the absence of a direct avenue for appealing the supervisory procedure report, the supervised entity is entitled to provide explanations and comments pertaining to the supervisory procedure findings.

T_{11}: In the absence of a decision and the availability of an appeal only upon the delivery of a decision imposing a refund or penalty, it follows that no administrative lawsuit can be brought. An administrative lawsuit may be filed, however, against a final decision on a refund or penalty in all the Visegrád countries. The aforementioned action shall subsequently be decided by the administrative courts.

The following table provides a simplified overview of the relationship between the legal frameworks of each country and the *tertia comparisons*. The letters 'Y' and 'N' are used to indicate whether a statement is true or false, respectively. A 'Y' indicates that the statement is true and that the legal frameworks can be considered similar. Conversely, an 'N' indicates that the statement is false.

[89] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, p. 128.

T_n	Czechia	Hungary	Poland	Slovakia
1.	Y	Y	Y	Y
2.	Y	Y	Y	Y
3.	Y	Y	Y	Y
4.	Y	Y	Y	Y
5.	Y	Y	Y	Y
6.	N	N	N	N
7.	Y	N	Y	Y
8.	Y	Y	N	Y
9.	Y	Y	Y	Y
10.	N	N	N	N
11.	N	N	N	N

As illustrated in the table, the system of supervision in public fund management is strikingly similar across the Visegrád countries, with numerous analogous legal concepts present in all of these jurisdictions.

First, the examined jurisdictions have incorporated supreme audit offices into their constitutional law as autonomous national audit bodies, although lacking any distinctive powers pertaining to corrective measures. Second, all the Visegrád countries have established a system of bodies with the authority to audit public fund management and impose corrective measures, such as refunds or penalties. The aforementioned two-pronged surveillance of public funds gives rise to the possibility of multiple and simultaneous supervisory procedures. However, as the bodies offer disparate perspectives, they are not in alignment. Third, the countries accept administrative practice as binding in order to meet the principles of legitimacy and legal certainty. Ultimately, all supervisory procedures culminate in a formalised report that may include an obligation to refund, the penalty itself, or that may serve as the basis for determining the penalty. Consequently, the possibility of an appeal or an administrative lawsuit arises at some point during the enforcement of budgetary discipline.

Notwithstanding the aforementioned conclusion that the legal systems of the Visegrád countries are, for the most part, similar, it is important to note that there are, of course, several aspects in which the presented legal regulations differ. The first noteworthy distinction relates to the fact that Hungary does not acknowledge the concept of breach of budgetary discipline. However, this absence has no implications for the supervisory procedure itself, but rather for the potential measures imposed for the unauthorised use of budgetary support. Second, Poland does not apply the full-coverage principle, as only some of the entities engaged in the performance of public tasks or the management of public funds are subject to the public finance rules. It should be noted that not all entities are considered part of the public finance sector. Consequently, there are budgets and entities that are not covered by

the rules and are excluded from the supervisory procedures. Finally, it is important to highlight that the Czech law differs from the aforementioned jurisdictions in that it applies the Administrative Code in the supervisory procedure and the Tax Procedure Code in the imposition of corrective measures stage. Such distinctions are rather a question of legislative technique and do not interfere with the essence of the surveillance process in public budget management.

Comparison of refunds[90]

The role of refunds in enforcing budgetary discipline across the regulatory frameworks of the Visegrád Group countries is important. Indeed, an obligation to refund is one of the most commonly imposed measures for a breach of budgetary discipline. Despite the absence of literature concerning the theoretical background of refunds, they can be defined as a measure aimed at returning public funds either back to the public budget or to the administrator of its respective chapter. In essence, refunds emerge as a novel (secondary) obligation in the event of financial mismanagement, particularly in instances where budgetary discipline has been breached (or in analogous situations in countries where the concept of budgetary discipline is not recognised). Refunds are typically classified as corrective measures, although depending on the circumstances under which they are imposed, they may also have a punitive aspect. Nevertheless, the principal objective of refunds is reparative, as they serve to compensate for the damage caused by a breach of legal obligation and to guarantee that public funds are not misused for unintended purposes.

A comparison of the obligation to refund was conducted using a set of 16 distinctive tertia comparationis (T_1, ..., T_{16}), which encompassed the legal framework, nature, and other conditions under which obligation to refund is imposed, as well as the distinct administrative aspects thereof. The data obtained from the surveys was used to assess the various aspects of the regulation of refunds in the Visegrád Group countries.

n	T_n
12.	The legal framework regarding the substantive aspects of refunds is at least to some degree codified.
13.	Refunds are regulated as more than one legal institute/concept.
14.	The obligation to refund is directly linked to the breach of budgetary discipline.
15.	Unauthorised use or retention of funds is a reason for obliging a refund.
16.	The purpose or objective of the refund is corrective.

[90] The chapter provides the quintessential comparative study on refunds. The full comparative analysis can be found at: KERNDLOVÁ, Petra; BOHÁČ, Radim; MÁLEK, Ondřej and TULÁČEK, Michal. Comparative Study on Refunds in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries.

n	T_n
17.	Another measure may be imposed in case of late refund.
18.	The amount of the refund is determined as an amount of the funds improperly used or withheld.
19.	There is a de minimis rule when the obligation to refund the funds does not arise.
20.	All entities and all types of public budgets may be obliged to refund funds received.
21.	The procedure of the obligation to refund is regulated as a standard administrative procedure.
22.	The body that conducts the control of the management of the funds is the same as the entity deciding on the refund.
23.	The administrative practise is legally binding when it comes to returning of public funds.
24.	The authority has no discretion as to whether or not to impose the obligation to refund.
25.	It is possible to appeal against the decision obliging a refund.
26.	It is possible to lodge an administrative lawsuit against a final decision obliging a refund.
27.	The public funds are protected in case of a diversion of the funds or foreclosure of the managing entity.

T_{12}: In evaluating the possibility of refunds, it is essential to ascertain the nature of the regulatory framework in question. This framework may be classified as either codified, partially codified, or fragmented. In general, the legal regulation of budgetary discipline in Central European countries is poorly organised and lacks systematic coherence. The optimal situation is for the regulatory framework to be contained within a single piece of legislation, given the necessity for coherence in the budgetary system. Therefore, the legal framework should be codified, as proposed in T_{12}.[91] The legal framework was deemed codified despite the fact that the regulation of the substantive aspects of refunds (e.g., the circumstances under which an obligation to return funds arises and the manner in which the amount of the refund is determined) is encompassed by a single piece of legislation, while the regulation of the procedural aspects of refunds (e.g., the obtaining of evidence, the issuing of decisions, and the imposition of an obligation to return the funds) is addressed in another.

The regulatory framework of budgetary discipline is regarded as partially codified in the Visegrád countries, given the existence of numerous legislative instruments that regulate the various aspects of budgetary discipline, including control, penalties, and liability for breach. With regard to refunds, specifically in terms of their substantive aspects, the framework is relatively well codified across the Visegrád countries, with the exception of Czechia.

In Czechia, two principal pieces of legislation govern refunds: Act No. 218/2000 Sb., on budgetary rules (including, but not limited to, Sections 14f, 44 and 44a),

[91] BOHÁČ, Radim; SEJKORA, Tomáš; ŠMIRAUSOVÁ Petra; TULÁČEK, Michal. Regulatory Model of the Budgetary Discipline Enforcement.

which addresses the breach of budgetary discipline and the return of funds from the state. The aforementioned legislation includes the state level budgets and Act No. 250/2000 Sb., on budgetary rules of the local self-government unit budgets (including but not limited to Sections 22 and 28). The latter governs the breach of budgetary discipline and return of the funds from the local self-government unit budgets. In Hungary, the legislation governing the refund of budgetary support is set out in Act CXCV of 2011 on public finance, which provides comprehensive coverage of the public finance system. Similarly, in Poland, the regulation of refunds is addressed by the Act No. 157 of 2009 on Public Finances, which is a law that governs the entire public finance system. In Slovakia, the issue of refunds is also addressed by a single legislative instrument, namely Act No. 523/2004 Sb. on the budgetary rules of the public administration. Although the Czech legal framework is not yet fully codified, it is not inconsistent or incoherent. The two laws are clear in their distinct application to different budget levels, reducing the risk of contradictions or ambiguity. Furthermore, local government budgeting is one of the areas that is recommended to be regulated separately.[92] The legal framework regarding the procedural aspects of the refunds is described below in the section on T_{10}.

T_{13}: The question of refunds is one that can be regulated in a number of different ways, as addressed in T_{13}. These include, but are not limited to, the regulation of refunds as a single legal institute or concept, or as more than one legal institute or concept. In accordance with Czech legislation, two distinct legal concepts may be identified as refunds. The first is the "repayment of the subsidy", which is applicable only in regard to subsidies (of course). The repayment of a subsidy constitutes a preventive measure that is imposed exclusively on the basis of the results of the supervisory procedure. The second is the "levy for breach of budgetary discipline", which is imposed in the event of a breach of budgetary discipline and as a result of a formal procedure to determine whether budgetary discipline was breached. In the event that a levy is imposed and the entity has already made a repayment of the subsidy, the repayment of the subsidy is set off against the levy. In the other Visegrád countries, only one legal concept governs refunds. In Hungary and Poland, the legislation does not specify the terminology to be used in relation to the refund obligation, merely stipulating that the funds must be returned if certain conditions are met. In Slovakia, the legal concept is referred to as a "levy for the breach of budgetary discipline", and its nature is comparable to that of its Czech counterpart.

T_{14}: Given that refunds constitute a mechanism for enforcing budgetary discipline, the obligation to refund is typically associated with a breach of budgetary discipline, as delineated in T_{14}. In this regard, the legal frameworks of Czechia and Slovakia exhibit notable similarities. Both legal systems define specific breaches of budgetary discipline and provide clear guidance on which of these breaches result

[92] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 67.

in an obligation to refund funds. In contrast, Hungary's legal framework does not include the concept of budgetary discipline or a breach thereof — a key difference from the other Visegrád countries. Consequently, the obligation to refund is not based on the concept of budgetary discipline in Hungary. While Polish law defines breaches of budgetary discipline, they are not explicitly listed as grounds for an obligation to refund. However, in practice, the majority of refunds occur due to breaches of budgetary discipline.

$T_{15:}$ Given the variability of the concept of budgetary discipline and breaches thereof across countries, and the potential for some countries to lack an explicit recognition of this concept, T_{15} posits that the most prevalent breach — unauthorised use or retention of funds — should give rise to a refund obligation in all legal frameworks. In Czechia and Slovakia, the unauthorised use or retention of funds is regarded as a form of breach of budgetary discipline. Consequently, the obligation to refund may be imposed in instances of unauthorised use or retention of funds. In Hungary, the obligation to refund arises exclusively in instances of unauthorised utilisation of budgetary resources. In Poland, funds must be refunded if subsidies from the state, local budgets, or EU funds are misused, improperly applied, or used in excess, which essentially constitutes unauthorised use or retention of funds. In summary, all the Visegrád countries require refunds in cases of unauthorised use or retention of funds, although they differ in whether the obligation is tied to a breach of budgetary discipline.

T_{16}: As previously stated, the principal aim of a refund is to return public funds so they can be used for their intended purpose and rectify any infringement. In light of this, T_{16} postulated that the purpose of refunds is corrective, a hypothesis that was borne out by subsequent events in all the Visegrád countries. Refunds are regarded as corrective measures since the amount refunded is typically proportional to the breach. Nevertheless, in instances where the refund amount exceeds the severity of the breach, it may also be perceived as a punitive measure, with some viewing the refund as a form of sanction.[93] This is particularly evident in the Czech case of the levy for the breach of budgetary discipline, where the levy has a dual nature, serving both corrective and punitive functions. Thus it is possible to speak of the dual nature of a levy, although this potential dual nature of a refund does not negate the fact that its purpose is corrective.

T_{17}: Given that the primary purpose of the refund is to rectify the infringement and restore the public funds, it is common practice to impose an additional penalty in the event of a late refund. In accordance with Czech legislation, this penalty may be imposed concurrently with the levy for the infringement of budgetary discipline.[94] Given that repayment of the subsidy is regarded as a precautionary measure,

[93] BOHÁČ, Radim. *Daňové příjmy veřejných rozpočtů v České republice [Tax Revenues of the Public Budgets in Czechia]*, pp. 260–263.

[94] Except in cases of a breach of the budgetary discipline caused by a contributory organization according to the Section 28 of the Act on budgetary rules for local budgets.

no sanction is imposed for a late refund. The penalty is calculated as of the date of the unauthorised use or retention of funds (unless the breach occurred prior to the funds being made available to the beneficiary) and is limited to the amount of the levy. This implies that the penalty accrues even before a determination is made regarding the existence of a breach of budgetary discipline. The current penalty rate is 0.04% of the levy. In Slovakia, the penalty is analogous, with a slightly higher rate of 0.1%, and it also commences from the date of the breach. Slovakia also permits the imposition of fines for breaches of budgetary discipline.

Hungary and Poland adopt disparate approaches with regard to the imposition of measures in the event of a late refund. In these jurisdictions, interest is employed in lieu of penalties. The principal distinction between penalties and interest is that the former are subject to a fixed rate, as defined by the legislation governing the refund, whereas the latter are set by other legislation and applied to a range of late payments. In general, the interest rate is regarded as the cost of capital. In Hungary, the interest rate is determined in accordance with the governmental decree (which is the central bank-based rate plus 8 bps), whereas in Poland, the interest rate is identical to the interest rate for tax arrears. These interest rates serve not only to cover the cost of money but also to act as a deterrent, discouraging the entity in question from repeating violations. While sanctions for late refunds are similar across the Visegrád countries, each jurisdiction has its own particular nuances, especially with regard to the nature of the sanctions imposed.

T_{18}: The calculation of the amount to be refunded is contingent upon the specific nature of the refund. In general, two approaches may be taken with regard to the determination of the amount to be refunded. The initial approach necessitates the return of all funds, irrespective of the nature of the contravened obligation. The second approach requires the entity to return solely the amount of funds that were utilized or withheld in an improper manner. The second approach is deemed to be more appropriate, as the primary objective of the obligation to refund is to serve a corrective function.

In all the Visegrád countries, the general rule is that the amount to be refunded is equal to the sum of the funds that were improperly used or withheld. Although this rule may appear straightforward, determining the precise amount in practice can be complex and may give rise to difficulties. In Czechia, the amount to be refunded can be specified in the decision on the granting of the subsidy (or the public law contract), depending on the infringed obligation. Such an amount may be specified as a fixed sum, a fixed percentage, or a percentage rate. In the event that a percentage rate is determined, the authorised entity is tasked with assessing both the gravity of the breach of obligation and its impact on compliance with the purpose of the funds provided. In the Czech legal system, the principle of proportionality has been emphasised, whereby the amount of the refund should reflect the severity of the infringed obligation, unless the amount of the refund is specified as a fixed amount. Previously, case law implied that the authorised body may determine the levy to be the total amount of the funds provided, even in instances where the breached

obligation was of an administrative nature or was less significant. The primary rationale for this approach is that there is no inherent right to a subsidy, and it is a benefit of the state, therefore it is not unjust to impose a full refund even in the event of a breach of an administrative obligation. However, this approach is contrary to the corrective nature of refunds.

T_{19}: Given that refunds are primarily corrective measures, the maximum amount of the refund is capped at the amount of the funds provided. It should be noted, however, that the majority of Visegrád countries, with the exception of Poland, have also implemented a de minimis rule. This exempts refunds or penalties in small amounts from the obligation to refund such amounts. In Czechia, no refund or penalty is imposed if the amount of the levy is CZK 1,000 or less (equivalent to approximately EUR 40) or the amount of the penalty is CZK 500 or less (equivalent to approximately EUR 20).[95] In Hungary, the minimum amount is set at HUF 1,000 (equivalent to approximately EUR 2.5), but this only applies to budgetary support of local budgets. In Slovakia, the minimum refund amount, in conjunction with the penalty, is set at EUR 40. It is evident that the threshold at which the obligation to pay a refund or penalty does not arise is most leniently set in Czechia, while in Hungary, this de minimis rule could be considered rather symbolic. This raises the question as to whether it would be beneficial for the legislature to consider raising this limit to give the de minimis rule more practical relevance.

T_{20}: The full-coverage principal stipulates that the budget rules should be applicable to all budgets and all entities responsible for the management of public funds.[96] This principle is the objective of the budgetary rules, including the enforcement of budgetary discipline. The objective is to guarantee that any entity that misuses public funds is required to return them, and that all public budgets are subject to the budgetary rules. Although no legal framework explicitly excludes any entity responsible for managing public funds or types of budget from the obligation to refund, exceptions may arise implicitly due to the fact that refunds are only imposed in situations governed by law.

In Hungary, the obligation to return funds is limited to funds provided through budget support and subsidies; other public budgets are not subject to the same obligation to return funds. Similarly, in Poland, the obligation is limited to subsidies, whether originating from state or local self-government budgets, as well as European resources. In contrast, in Czechia and Slovakia, the levy for the breach of budgetary discipline applies to nearly all public budgets and entities. This marks a key distinction between the legal frameworks for refunds in Hungary and Poland versus Czechia and Slovakia. The fact that refunds are limited to subsidies in Hungary and Poland means that the full-coverage principle does not apply in these countries.

T_{21}: In the field of administrative law, an Administrative Code (or other analogous legislation) typically serves to regulate procedural aspects such as the

[95] For local budgets the minimum penalty amount is also CZK 1,000 (which equals to circa EUR 40).
[96] WORLD BANK. *Beyond the Annual Budget*.

commencement of proceedings, the presentation of evidence, the issuance of decisions, or the review of decisions pertaining to any administrative procedure. In the event that specific fields of administrative law encompass additional stipulations governing particular aspects of the administrative procedure within that field, the Administrative Code is typically applied in a subsidiary capacity. Given that the imposition of a refund is regarded as falling within the purview of administrative law, it may be reasonably assumed that the refund process is subject to the same standard administrative procedures that govern other such matters. In general, the Administrative Code or other analogous legislation that governs the imposition of individual legal acts is employed for the administration of refunds (and the penalty or interest). This is the case in Hungary, Poland, and Slovakia. In Poland, a hybrid approach is employed, whereby both the Administrative Code and the Tax Procedure Code are utilised for the administration of refunds. In Czechia, however, the administration of refunds is exclusively governed by the Tax Procedure Code, which categorises levies (refunds) as a form of taxation. There are significant discrepancies between the Tax Procedure Code and the Administrative Code with regard to the administration of refunds. To illustrate, in the context of tax proceedings, an appeal does not have the effect of suspending the proceedings, in contrast to administrative proceedings. Furthermore, the Tax Procedure Code includes more detailed regulation of certain institutes regarding the procurement of evidence. Some Czech legal scholars posit that the levy should be administered under the Administrative Code, given its closer resemblance to a fine than to a tax. A comprehensive comparison of these laws would be necessary to determine the most appropriate approach. Nevertheless, the fact that the Tax Procedure Code is used on its own in Czechia and simultaneously with the Administrative Code in Poland, while Hungary and Slovakia use only the Administrative Code (or similar legislation), marks a significant distinction between these legal frameworks.

T_{22}: It is of paramount importance to ascertain which entity is vested with the responsibility of determining refunds, as this has a significant bearing on the efficacy of the transition from fund management control to the refund process. If the authority responsible for the control of the management of funds is also tasked with the decision-making process regarding refunds (as T_{22} suggests), the length of the refund process can be reduced, as new authorities do not need to familiarise themselves with the relevant documentation in order to issue a decision. In accordance with Czech legislation, there are a number of authorised bodies that are able to decide on the imposition of a refund, based on the specific type of refund (levy for breaches of budgetary discipline or repayment of subsidies) and the fund or entity to which the breach of budgetary discipline relates. The entity responsible for providing the subsidy also assumes the role of fund controller and is thus empowered to determine the manner in which the subsidy is to be repaid. In the case of levies pertaining to state budgets, the responsibility for processing the relevant documentation falls upon the relevant tax office. In contrast, local bodies assume responsibility for breaches of local budgets, while the founder of a contributory organisation is

held accountable for any breaches that may occur. With the exception of tax offices, all of the aforementioned authorities are empowered to oversee the management of the funds in question. The function of the tax offices is to assess whether budgetary discipline has been breached and, if so, to determine whether a levy for the breach of budgetary discipline should be imposed. In Hungary, the body responsible for overseeing the management of funds is the Hungarian State Treasury, with regional bodies authorised to impose an obligation to return funds that have been used improperly. In Poland, the Minister of Finance is empowered to determine the refund for the entire national budget, while budgetary unit managers are responsible for making such decisions for their respective portions of the national budget. Furthermore, these authorities are empowered to carry out internal audits at all managerial levels. It is important to note that in Poland, the ruling on a breach of budgetary discipline is distinct from the ruling on a refund, as well as the authority responsible for making these decisions. In Slovakia, the imposition and enforcement of the levy for the breach of budgetary discipline (or penalty or fine) is the responsibility of the controlling authority, the auditing authority, or the supervisory authority of the State, in accordance with the scope of their respective competencies. This competence is set forth in Act No. 357/2015 Sb. on financial control and audit. In the majority of cases, this authority is the Government Audit Office or the Ministry of Finance. In general, the prevailing approach is for the body responsible for overseeing fund management to determine the refunds. However, there is a notable exception in Czechia, where tax offices are responsible for addressing breaches of the state budget due to the necessity of adhering to the Tax Procedure Code. Nevertheless, it may be beneficial to assess whether the current legislation in Czechia should be revised to align with the approach observed in other countries, whereby the supervisory authorities are responsible for determining these refunds.

T_{23}: The question of whether the administrative practice pertaining to refunds can be regarded as legally binding and employed as a source of law is addressed in T_{23}. The administrative practice concerning refunds is characterised by a high degree of similarity across all the Visegrád countries. The consistency in decision-making regarding refunds is underpinned by principles derived from the rule of law, specifically the principles of legal certainty and legitimate expectation, which are universally applicable in all of these countries. The principle of legitimate expectation is an expression of the more general requirement of the principle of legal certainty. The principle of legitimate expectation plays a pivotal role in ensuring legal certainty in these countries, guaranteeing that decisions in analogous or identical cases remain consistent and uniform. In order to assess the status of administrative practice as a source of law, it is first necessary to distinguish between formal and material sources. Although administrative practice does not constitute a formal source of law, it may be regarded as a material one. This is due to the principles of legal certainty and legitimate expectation, which together ensure that specific practices are binding in given situations. In accordance with case law in Czechia, if the legal practice that gives rise to legitimate expectation is a settled, uniform, and long-standing activity

(or even inactivity) of public authorities that repeatedly confirms a certain interpretation and application of legal regulations, the administrative authority is bound by such practice. Only such administrative practice is complementary to written law and can modify written law. This indicates that in some cases, an administrative practice can be binding.

T_{24}: The question of whether an authority has any discretion in deciding to impose a refund obligation is closely related to the level of independence that it enjoys. In the event that the authority is not afforded any discretion (as T_{24} proposes), the authority is obliged to adhere to the stipulations set forth in the legislation. This ensures uniformity in decision-making processes and upholds the principle of legitimate expectation. Nevertheless, there may be instances where the application of the legislation in its original form may be unduly harsh or even unfair. To address this issue, mechanisms such as the waiver of the refund or the de minimis rule exist. In all the Visegrád countries, the authority is not permitted to exercise discretion in determining whether or not to impose an obligation to refund. However, the authority may have some discretion with regard to the determination of the precise amount to be refunded (as indicated in the section pertaining to T_{18}). The absence of discretion regarding the imposition of the obligation to refund may be mitigated through the utilisation of the aforementioned institutions. Based on the information available to the authors, the waiver of the refund is possible only in Czechia. Furthermore, all the Visegrád countries except Poland apply the de minimis rule (see part dedicated to T_{19}).

T_{25}: In the majority of administrative proceedings, it is customary to permit appeals against the individual legal act. In light of the aforementioned, T_{25} assumes that an appeal against the decision on the refund is a viable course of action. In all the Visegrád countries, should a person (or entity) be dissatisfied with the decision of the authority imposing the obligation to refund (or pay a penalty or interest), they are entitled to appeal against such a decision. In Czechia, the appeal procedure is governed by the Tax Procedure Code, as is the case with the initial proceedings. The appellate authority is contingent upon the authority that rendered the initial decision regarding the refund. In the event that the initial decision-making body is the tax office, the Appellate Tax Directorate, an entity responsible for overseeing the activities of tax offices, is responsible for adjudicating the appeal. In the case of decisions issued by bodies other than tax offices, the appeal is decided by the respective superior authority. In the remaining Visegrád countries, appeals may be made in accordance with the relevant Administrative Codes. In Hungary, the regional body of the Hungarian State Treasury is responsible for determining the initial refund. Consequently, the second-instance body, which adjudicates the appeal, is the Hungarian State Treasury. In Poland, appeals are assessed by a higher administrative body, such as the Minister of Finance, institutions managing EU funds, or the director of a tax administration chamber. In Slovakia, the appellate body against the decision of the Government Audit Office is the Ministry of Finance. Therefore, all the Visegrád countries permit appeals against refund decisions, with a separate authority overseeing appeals to ensure an independent review process.

T_{26}: A lawsuit is a typical method of defence against an individual legal act, forming the basis for this tertium comparationis. The Visegrád countries demonstrate a unified approach to the judicial review of final refund decisions. In all of these jurisdictions, the aforementioned decisions are subject to judicial review, with administrative courts integrated into their respective judicial systems. Given that the final decision imposing the obligation to refund in the Visegrád countries is of an administrative nature, the aforementioned decisions are subject to review by the administrative courts. Additionally, there is a specific type of administrative action that can be taken against decisions made by administrative authorities. In Czechia, for instance, while the decision to impose a levy (or penalty) is made by the tax authorities, an action against the decision of an administrative authority may also be brought against such a decision by the tax authority. This action is assessed in a manner similar to the decisions of any other administrative authority. It is noteworthy that the defence mechanisms for refund obligations align with standard practices for challenging individual legal acts.

T_{27}: It is in the state's interest to ensure the protection of public funds, not only in the event of a breach of budgetary discipline, but also in the context of other potential risks, such as foreclosure or diversion of funds. This resulted in the introduction of T_{27}, which is based on the assumption that public funds are protected in the event of a diversion of funds or foreclosure of the managing entity. In Czechia, funds designated for a specific purpose, such as subsidies, are exempt from the debtor's assets and therefore not subject to the effects of bankruptcy proceedings. Furthermore, the legal systems of the Czechia and Slovakia employ the concept of the "ineffectiveness of legal acts", which enables courts to invalidate certain debtor transactions if they prove detrimental to creditors or if they unduly favour certain creditors over others. In the event of such ineffective acts, those who have benefited may be required to return the assets in question. However, subsidies are protected from the debtor's assets under Czech legislation. In Hungary, claims from international sources based on public finance, the European Union, or international treaties are accorded priority in the event of their satisfaction from the debtor's assets over general claims. In the event of an entity's diversion of public funds to a third party, and subsequent requirement for repayment, the obligation to make restitution falls upon the third party in question. Similarly, Poland has adopted a comparable approach to the diversion of public funds. In instances where public funds are misappropriated and diverted to a third party as a result of a breach of budgetary discipline, the obligation to refund can be extended to the third parties who are responsible for such diversions, even in the form of joint and several liability. In particular, the principles of solidarity and third-party liability are applicable in cases where EU funds are misused. Thus all the Visegrád countries have measures in place to safeguard public funds, although the emphasis is placed on different aspects. Hungary, Poland, and Slovakia place greater emphasis on the protection of public funds against diversion, while Czechia exempts funds designated for specific purposes, such as subsidies, from the debtor's assets in the event of bankruptcy.

To facilitate comprehension, the authors have provided a tabular representation of the relationship between the legal frameworks of each country and the *tertiary comparisons*. The notation 'Y' indicates that the statement in the tertiary comparison is true and that the legal frameworks can be considered to be similar. Conversely, 'N' denotes that the statement in the tertiary comparison is false.

T_n	Czechia	Hungary	Poland	Slovakia
12.	N	Y	Y	Y
13.	Y	N	N	N
14.	Y	N	N	Y
15.	Y	Y	Y	Y
16.	Y	Y	Y	Y
17.	Y	Y	Y	Y
18.	Y	Y	Y	Y
19.	Y	Y	N	Y
20.	Y	N	N	Y
21.	N	Y	N	Y
22.	N	Y	Y	Y
23.	Y	Y	Y	Y
24.	Y	Y	Y	Y
25.	Y	Y	Y	Y
26.	Y	Y	Y	Y
27.	Y	Y	Y	Y

The authors concluded that the legal regulation of refunds is strikingly similar across the Visegrád countries, with numerous analogous legal concepts present in all these jurisdictions. This is also evident from an examination of the data presented in the above table.

The first similarity is that all of the analysed jurisdictions have a similar variation of the same concept: funds must be returned if they are misused. Second, the primary rationale for the obligation to refund is the unauthorised utilisation or retention of funds. The third similarity pertains to the purpose of this measure, which is consistent across all jurisdictions. Primarily corrective in nature, the measure is intended to address a breach of legal obligations. Fourth, the amount to be repaid is typically identical to the amount of funds that were misused or improperly retained. Furthermore, all jurisdictions impose penalties for late refunds, whether as a penalty in Czechia and Slovakia or as interest in Hungary and Poland. The objective of these measures is punitive, with the intention of penalising the entity in question for failing to return the funds in a timely manner.

Numerous procedural similarities can be identified. In all jurisdictions, the authority responsible for determining the refund has no discretion in imposing the

obligation, which is therefore mandatory. The principles of legal certainty and legitimate expectation play a significant role in all the Visegrád countries. Furthermore, decisions on refunds (including penalties or interest) may be appealed, and in the event that a review is sought, an administrative lawsuit may be filed with the courts.

Ultimately, the protection of public funds is a fundamental tenet across all jurisdictions, even in instances where funds have been misappropriated or the managing entity is facing foreclosure. These shared aspects contribute to the overall similarities in the manner in which refunds are regulated and utilised in the Visegrád countries.

In addition to the aforementioned similarities, there are naturally several aspects in which the presented legal regulations diverge. The first key difference is that in Czechia, refunds are governed by multiple legal concepts, including the repayment of subsidies and the imposition of penalties for breaches of budgetary discipline. In contrast, other jurisdictions recognise refunds as a single legal concept.

A second distinction pertains to the obligation to return funds in the event of a breach of budgetary discipline, which is only recognized in the Czech and Slovak legal systems. In Hungary, the concept of a breach of budgetary discipline is not recognised. Instead, the obligation to return funds is tied to the unauthorised use of budgetary support. It should be noted that Poland does indeed recognise the concept of a breach of budgetary discipline; however, this does not directly lead to the obligation to return funds. In Poland, a breach of the relevant regulations gives rise to personal liability (for example, for an employee), and the obligation to return funds arises when these are used in an improper, illegal, or excessive manner. Given that the obligation to refund arises under comparable circumstances in these countries, the absence of a discrete "breach of budgetary discipline" concept was not regarded as a substantial distinction.

A third distinction pertains to the extent of compliance with the full-coverage principle. In Czechia and Slovakia, the levy for breaches of budgetary discipline encompasses the majority of public budgets and entities, which aligns with the full-coverage principle. Conversely, in Hungary and Poland, the refund is confined to subsidies alone.

A further noteworthy distinction pertains to the legal framework employed for the administration of refunds. In Czechia, the Tax Procedural Code is applied, whereby the levy is treated as a tax. In other jurisdictions, the relevant legislation is found in the Administrative Codes or similar general regulations. In Poland, both the Administrative and Tax Procedural Codes are applicable. However, this dual approach in Poland was not considered a significant distinction. As no detailed comparison between the Czech Tax Procedural Code and the Administrative Codes in other Visegrád countries was conducted, the differences were not regarded as fundamental as they would be in the case of the use of legal regulation under private law.

Comparison of penalties[97]

In accordance with the tenets of legal theory, a valid legal norm must include a penalty for violation thereof.[98] Nevertheless, it is not obligatory to impose criminal sanctions exclusively. Numerous potential measures can be classified as a sanction for a breach of a legal norm. In this context, the term "penalty" is defined as a measure imposed by a public authority on an entity responsible for a breach of budgetary discipline as a response to the breach, provided that the measure intentionally leads to a loss of some kind (other than refund of budgetary funds received).[99] According to this definition, there are numerous types of penalties, including criminal penalties (such as imprisonment or pecuniary punishment), administrative penalties (such as a fine), or contractual penalties. This study will primarily focus on penalties that fall within the scope of financial law.

Based on the optimal regulatory model and responses to the aforementioned questionnaires, we have created a set of eight *tertia comparationis* focusing on penalties.

n	T_n
28.	There is a broad variety of penalties that can be imposed in connection with breaches of budgetary discipline.
29.	Public authorities have a broad discretion when imposing penalties.
30.	Public authorities are bound by previous actions when imposing penalties.
31.	There is one central public authority responsible for imposing penalties.
32.	Penalties can be imposed only as a result of an audit or another control procedure.
33.	There are different penalties for different entities.
34.	There is a defence against the imposition of penalties.
35.	The ne bis in idem principle applies when imposing penalties.

T_{28}: The initial step is to examine all penalties outlined in the financial legislation that are associated with the violation of budgetary discipline. In all the Visegrád countries, there is a number of countermeasures related to the breach of budgetary discipline. One such measure is the obligation to return funds related to the budget. The nature of the imposed return duty determines whether it should be regarded as a refund or as a punitive measure. In all the Visegrád countries, a levy is imposed for breaches of budgetary discipline. Nevertheless, in Czechia and Slovakia, it can be employed as a refund and a punitive measure, respectively. In all the Visegrád

[97] The chapter provides the quintessential comparative study on penalties. The full comparative analysis can be found at: TULÁČEK, Michal; BOHÁČ, Radim; KERNDLOVÁ, Petra; MÁLEK, Ondřej. Comparative Study on Penalties in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries.

[98] KELSEN, Hans. *General Theory of Norms*, pp. xxiv–xxv.

[99] HOSKINS Zachary; DUFF, Antony. Legal Punishment. In: ZALTA, Edward N.; NODELMAN, Uri (eds.). *The Stanford Encyclopedia of Philosophy*.

countries, criminal sanctions are imposed for the most serious breaches of budgetary discipline. Between these extremes, administrative punitive measures may be applied, including warnings, reprimands, fines, or bans. In Slovakia, a fine may be imposed for a breach of budgetary discipline. In Poland, a responsible authority may impose any of the aforementioned administrative measures. Finally, in Hungary, disciplinary proceedings may be initiated as a result of a breach of budgetary discipline.

T_{29}: In order to achieve the optimal outcome of a penalty, it is essential to adjust its parameters in accordance with the specific circumstances of the case and the characteristics of the breacher.[100] T_{29} examines the extent to which public authorities are permitted to modify the parameters of a penalty that has been imposed upon them, with a particular focus on their ability to select the specific type of penalty and its associated severity. In all the Visegrád countries, the discretion of a public body is generally limited to two options: the ability to choose from penalties explicitly stipulated by law or the ability to set a specific amount of a penalty. However, in Czechia and Slovakia, there are several instances where legislation permits the incorporation of sanction clauses into subsidy agreements, yet does not stipulate the specifics or limitations of such clauses.[101] Nevertheless, the Slovak respondent indicated that these sanction clauses are typically analogous to default interest rates.

T_{30}: In accordance with T_{29}, the responsible authority is afforded a degree of discretion in selecting an appropriate course of action from a range of potential measures. T_{30} is concerned with the obligation of public office holders to ensure consistency in the exercise of public authority. T_{29} also considers whether the public authority is obliged to adhere to a previous decision, regardless of whether it was its own or someone else's. This entails determining whether the authority must either adhere to previous decisions in factually identical cases or provide justification for its divergent approach. In all the Visegrád countries, only laws are formally binding. Consequently, the actions of administrative bodies do not establish legally binding precedents for future cases. Furthermore, as all these countries have a continental-based legal system, judicial case law is not a formal source of legislation. However, the legal certainty and legitimate expectation principles are significant elements of their legal system. Therefore, these authorities are generally required to adhere to a "comply or explain" policy.

T_{31}: In the case of non-criminal measures, it is of the utmost importance to ascertain which public authority is responsible for the imposition thereof. In each of the Visegrád countries, a supreme audit body is in operation.[102] However, a common

[100] GŘIVNA; Tomáš, SCHEINOST, Miroslav and ZOUBKOVÁ, Ivana et al. *Kriminologie [Criminology]*.

[101] In Czechia, it is for example paragraph 9(1)(r) of the Act No. 130/2002 Sb., on Support for Research and Development from Public Funds and on amendments to certain related acts (Act on Support for Research and Development). In Slovakia, it is for example paragraph 19(2)(m) of the Act No. 310/2019 Z. z., on the Sports Promotion Fund and on amending and supplementing certain acts.

[102] In the Czech Republic, Poland, and Slovakia, they are by constitution independent bodies. In Hungary, the State Audit Office is a control body of the Parliament performing its duties under the authority of the Parliament.

feature of these bodies is the absence of the power to impose sanctions. In Czechia, the tax authorities are responsible for imposing penalties for violations of budgetary discipline of state budget funds. In the event of a breach pertaining to local budgets, the levy is imposed by municipal or regional offices, contingent on the budget in question. In Slovakia, there is a more fragmented approach at the state level. Apart from the Supreme Audit Office, the body responsible for detecting breaches of budgetary discipline[103] has the authority to impose a sanction (levy or fine). In Hungary, the relevant body is the Hungarian Treasury. In Poland, the responsible bodies are multiple adjudicating commissions.

T_{32}: In the case of non-criminal penalties, it is also important to determine whether these can be imposed solely as a result of an audit or other supervisory procedure. According to the available reports, an audit or other supervisory procedure is always conducted in all the Visegrád countries prior to the imposition of penalties.

T_{33}: In theory, the penalties that may be imposed can vary according to the type of subject that has breached budgetary discipline (e.g., state, municipality, private person, etc.). In all the Visegrád countries, non-criminal penalties are universal and do not vary according to the type of subject.

T_{34}: It is typical of legal systems to be based on principles that are designed to either eliminate or, at the very least, minimise errors. One such principle is the right to appeal and to seek protection from an independent court. In all of the Visegrád countries, non-criminal penal measures are imposed in an administrative proceeding, and the participant in such a proceeding has the right to appeal to a higher authority.[104]

T_{35}: The ne bis in idem principle constitutes an essential component of a country's criminal justice system. The objective of this study is to ascertain whether the imposition of one penal measure precludes the possibility of imposing another penal measure for the same breach simultaneously. Furthermore, we examine whether the imposition of a penalty precludes the possibility of imposing additional penalties in the future for the same breach. In Czechia, it is possible to impose a duty to return budgetary funds on more than one occasion, up to the amount previously granted. This is not a possibility in other Visegrád countries. The other penalties follow the res administrata/res iudicata principle in all the Visegrád countries. In Czechia, Hungary, and Slovakia, a greater number of penal measures can be imposed simultaneously for one breach. However, in Poland, this is not the case.

[103] The Ministry of Finance, Government Audit Office or the Ministry of Labour, Social Affairs and Family.

[104] In Czechia, they can appeal to the Appellate Financial Directorate in the case of state budget funds. In Hungary, they can appeal to the central body of the State Treasury or to the minister, if the decision was issued by the regional body of the State Treasury. In Poland, they can appeal to the Main Adjudicating Commission. In Czechia (in the case of regional budgets funds) and in Slovakia, there are many appellate bodies, because there are many bodies that can impose a penalty.

T_n	Czechia	Hungary	Poland	Slovakia
28.	N	Partly	Y	N
29.	N	N	N	N
30.	Y	Y	Y	Y
31.	State level: Y Sub-state level: N	Y	N	N
32.	Y	Y	Y	Y
33.	N	N	N	N
34.	Y	Y	Y	Y
35.	Partly	Y	Y	Y

There are numerous methods by which an individual who has violated budgetary discipline may be penalized. Such penalties may take the form of measures specific to financial law, such as disciplinary proceedings or the revocation of eligibility for future financial grants. Alternatively, they may be administrative measures, including fines. Finally, they may be criminal measures, including imprisonment or pecuniary penalties.

As previously stated, the obligation to return budgetary funds is also included among the penalties, provided that the specified conditions are met. While the result of the obligation to return budgetary funds is identical regardless of whether the purpose is to refund or impose a penalty, the rationale for implementing such a measure differs. If the objective is corrective, namely to repair the damage, the measure is essentially a refund. Nevertheless, if the objective is to act as a deterrent or to impose retribution, the measure will be regarded as a penalty. It is evident that the rationale behind the implementation of the aforementioned measure can be multifaceted. Consequently, the duty to return budgetary funds can be regarded as both a refund and a penalty.

T_{28} demonstrated that there are significant differences in the penalty systems of the Visegrád countries. In all of these countries, the imposition of a duty to return budgetary funds is a possibility.[105] Furthermore, in all these countries, significant violations of budgetary discipline are regarded as criminal offenses. This is an unsurprising outcome, given the existence of a European directive that mandates the use of criminal law to combat fraud against the European Union's financial interests.[106] Nevertheless, only in Slovakia and Poland can a fine be imposed for a breach of budgetary discipline, and only in Hungary can disciplinary proceedings be initiated

[105] In Czechia, according to the Act No. 218/2000 Sb., on Budgetary Rules, and Act No. 250/2000 Sb., on Budgetary Rules of the Territorial Budgets. In Hungary, according to the Act No. CXCV of 2011, on Public Finances, and government decree No. 368/2011. (XII. 31.), on the Implementation of the Act on Public Finance. In Poland, the Act of 27th August 2009 on Public Finance. In Slovakia, according to the Act No. 523/2004 Z. z., on Budgetary Rules of Public Administration.

[106] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

specifically related to a breach of budgetary discipline.[107] Ultimately, Poland stands as the sole country in which other administrative measures may be imposed, including reprimands and bans on future grants from budgetary funds.

In order to identify the potential reasons for these observed differences across the Visegrád countries, the questionnaires were designed to elicit information on a range of factors. It is regrettable that the findings did not offer sufficient insight to explain this phenomenon. Accordingly, this topic remains open for further investigation.

In all the Visegrád countries, the standard legal principles pertaining to penalties are applicable. Therefore, in accordance with T_{29} and T_{30}, the public authorities are permitted to impose penalties that are prescribed by law. Their discretion is limited to selecting an appropriate penalty from the available options and to specifying a concrete amount for the penalty if it is scalable. This is an exemplification of the principle of legality. Furthermore, this discretion is constrained by the actions of public authorities in the past, as they are unable to deviate significantly from their previous decisions unless there is a specific rationale for doing so. This exemplifies the legal certainty principle. It is unsurprising that these principles are observed in these countries, given that they are all countries with a continental legal system based on the rule of law.

A further notable distinction between the Visegrád countries is the extent to which the penalty agenda is concentrated in the centre. In accordance with T_{31}, Czechia and Hungary adopt a centralized approach at the level of the state budget. In Czechia, the tax administration is structured around 15 territorially-based tax offices. However, we consider the Czech approach to be a form of centralization, given that these tax offices represent multiple instances of a single type of public authority. In contrast, at the regional level, Poland and Slovakia adopt a decentralized approach, whereby the public authority responsible for imposing penalties is not a single entity, but rather depends on the type of breacher of budgetary discipline. This differs from the Czech approach, where a single set of public authorities, or a single entity, is responsible for imposing penalties.

No significant differences are evident between T_{32} and T_{33}. In all the Visegrád countries, the imposition of penalties is contingent upon the completion of an audit or other supervisory procedure. Therefore, the imposition of penalties cannot be arbitrary or discretionary; it must be based on a thorough and objective assessment and is always an ancillary measure of the audit or other supervisory procedure. As previously discussed, there is a variation in the penalties that are available across the Visegrád countries. However, within a single legal system, there is typically no variation in the type of offender.

In all the Visegrád countries, non-criminal penalties are imposed in an administrative decision, which can be challenged in accordance with T_{34} by filing an appeal or, ultimately, by filing an administrative lawsuit.

[107] We do not consider here possible disciplinary proceeding arising for example from the state service legislation, since it is not specifically linked to budgetary discipline.

All the Visegrád countries adhere to the ne bis in idem principle. It is not permissible for more than one proceeding on the same subject to be held concurrently. Furthermore, in all countries except Czechia, the final decision is not subject to alteration. In contrast to the other Visegrád countries, Czechia has a different procedural basis for imposing penalties for budgetary violations. The relevant legislation is the Tax Procedure Code,[108] which allows for the amendment of a decision that has already been made if new information comes to light. However, the tax office cannot impose a higher penalty than the amount of budgetary funds that have been misused. Furthermore, the ne bis in idem principle applies to all sanctions in Czechia.

Summary

The comparative analysis reveals that the system of supervision in public fund management is strikingly similar across the Visegrád countries. Furthermore, it becomes evident that several analogous legal concepts are present in all of these jurisdictions.

First, the examined jurisdictions have incorporated supreme audit offices into their constitutional law as autonomous national audit bodies, devoid of any distinctive powers relating to corrective measures. Second, all the Visegrád countries have established a system of bodies with the authority to audit public fund management and to impose corrective measures, including the power to order refunds or impose penalties. The aforementioned two-pronged surveillance of public funds allows for the possibility of multiple and simultaneous supervisory procedures. However, as these bodies offer disparate perspectives, they are not in alignment. Third, the countries accept administrative practice as binding in order to meet the principles of legitimacy and legal certainty. Ultimately, all supervisory procedures culminate in a formalised report that may include an obligation to refund, the penalty itself, or may serve as the basis for determining the penalty. Consequently, the possibility of an appeal or an administrative lawsuit arises at some point during the enforcement of budgetary discipline.

Notwithstanding the aforementioned conclusion that the legal systems of the Visegrád countries are, for the most part, similar, it is important to note that there are of course several aspects in which the presented legal regulations differ. The first noteworthy distinction pertains to the fact that Hungary does not acknowledge the concept of breach of budgetary discipline. However, this absence has no implications for the supervisory procedure itself, but rather for the potential measures imposed for the unauthorised use of budgetary support. Second, the Czech legal system diverges from the aforementioned jurisdictions in that it applies the Administrative Code during the supervisory procedure and the Tax Code during the imposition of corrective measures. Such distinctions are largely a matter of legislative

[108] Act No. 280/2009 Sb., the Tax Procedure Code.

technique, and do not affect the fundamental aspects of the supervisory process in public budget management. Third, it should be noted that not all of the aforementioned countries apply the full-coverage principle with regard to supervisory procedures. Indeed, Poland makes certain exceptions with regard to the entities or public budgets that may be subject to a supervisory procedure in relation to the management of public funds.

The regulatory framework for refunds is similar across the Visegrád countries, as these jurisdictions share a considerable number of legal principles. The overarching principle that unifies these legal frameworks is the obligation to return funds in cases of misuse or improper retention. Each country has established a refund mechanism with the objective of addressing legal breaches in a corrective rather than a punitive manner. The amount to be refunded typically corresponds to the amount misused or withheld. Late refund penalties are imposed in various ways. In Czechia and Slovakia, they are imposed as penalties (in a narrow sense). In Hungary and Poland, they are imposed as interest.

Procedural similarities are also evident. In each country, the relevant authorities are required to mandate the refund when warranted and to uphold the principles of legal certainty and legitimate expectation when imposing these decisions. Furthermore, the means of defence are analogous, insofar as decisions on refunds can be appealed and challenged through administrative lawsuits for judicial review.

These commonalities notwithstanding, there are notable differences in the specific legal frameworks. To illustrate, the obligation to return funds due to breaches of budgetary discipline is only applicable in Czechia and Slovakia. The Hungarian legal framework does not recognise the concept of budgetary discipline. In Poland, while breaches of budgetary discipline do not directly require fund repayment, the concept is nevertheless recognised. A further significant distinction pertains to the extent of adherence to the full-coverage principle. In Czechia and Slovakia, the levies for breaches cover almost all public budgets and entities, which is in alignment with the aforementioned principle. In Hungary and Poland, however, the refunds are applicable primarily to subsidies. Furthermore, there are discrepancies in the pertinent legal codes. While Czechia adheres to the Tax Procedural Code, which categorizes refunds as taxes, other countries rely on administrative or analogous codes. Poland, for instance, employs both the Administrative Code and the Tax Procedural Code.

In conclusion, the research findings support the hypothesis that, despite minor differences, the regulatory frameworks governing refunds in the Visegrád countries are **similar in principle**.

The procedure for imposing penalties is similar in all the Visegrád countries, with only minor discrepancies. However, the range of available penalties differs considerably. In all the Visegrád countries, the possibility exists of imposing a duty to return budgetary funds and imposing a penalty for a criminal offence. Nevertheless, only in Czechia is it possible to increase (or decrease) the amount that must be returned after the decision comes into force. Furthermore, additional penalties may

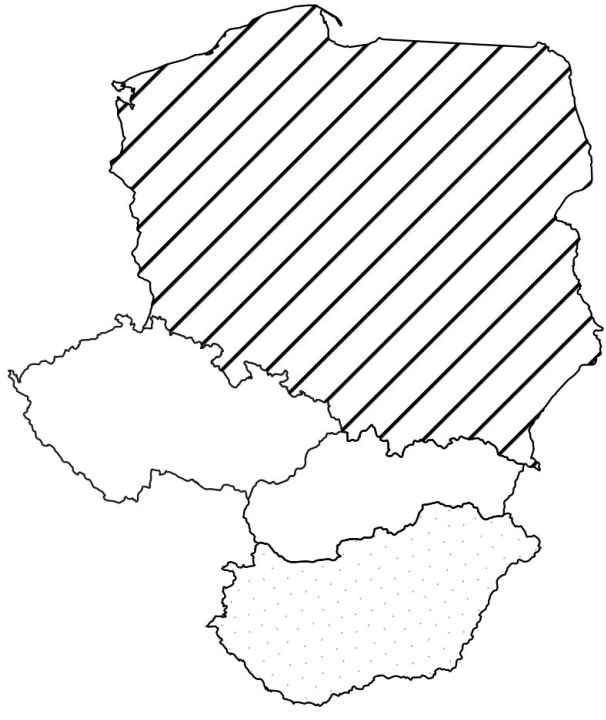
be imposed in Slovakia, including a fine, while in Hungary, disciplinary proceedings may be initiated against the individual responsible for the breach. In Poland, a diverse range of administrative measures is available.

The Visegrád countries also exhibit variation in the centralisation of authority to impose penalties. In Czechia and Hungary, a centralized approach is observed at the state budget level. Conversely, Poland and Slovakia, as well as Czechia (at the regional level), employ a decentralised model.

The research team has identified significant discrepancies between the penalties available and the authorities responsible for imposing penalties, which falsify the initial hypothesis. In light of these discrepancies, it becomes evident that there are **notable variations in the penalties** prescribed within the budgetary enforcement regulatory framework across the Visegrád countries.

Based on these variations, it is possible to categorise the Visegrád countries into distinct groups, each characterised by a shared approach to penalties within the aforementioned regulatory framework. These groups are as follows: (i) Czechia and Slovakia, (ii) Hungary, and (iii) Poland.

Figure 3: Groups based on similar approaches concerning penalties.



QUALITY OF THE CURRENT REGULATORY FRAMEWORK

As previously outlined in the methodology section of this article, the initial step is to identify the key comparable attributes of the optimal regulatory model. This allows us to subsequently analyse the budgetary discipline enforcement frameworks in the Visegrád countries.

The following key attributes were identified for the normative analysis:

A) The existence of rules on budgetary discipline;
B) The application of the full-coverage principle;
C) The binding nature of administrative practice;
D) The existence of supervisory procedures;
E) The independence of supervisory bodies;
F) The presence of corrective measures;
G) The ability of the refund to act as a corrective measure;
H) The primacy of sanctions as an ultima ratio measure; and
I) The preference of administrative sanctions over criminal ones.

Normative analysis of the aspects of budgetary discipline regulatory framework

Attribute A — The existence of rules on budgetary discipline: The first attribute to be considered is the existence of rules on budgetary discipline. A fundamental aspect of an optimal regulatory model is the existence of rules pertaining to budgetary discipline. Such rules must possess specific qualities in order to regulate the management of public funds effectively, in particular with regard to budgetary discipline. In accordance with the model, the regulatory framework is designed to reduce both the number of sources of law and the number of legal provisions governing budgetary discipline. The ideal scenario would be to consolidate the majority of budgeting activities into a single legislative instrument. Nevertheless, there are certain areas that may be subject to separate regulation, such as local government budgeting or external audit.[109] Furthermore, an effective framework must possess

[109] LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 67.

clarity and transparency, which are regarded as universal principles in public budgeting.[110] However, this clarity and transparency must be balanced by a degree of flexibility in the rules. The regulations must explicitly delineate the types of actions that constitute a breach of budgetary discipline or mismanagement of public funds. While some degree of rigidity is necessary for the timing of deadlines or periods for the establishment of a particular rule of the budgetary process, an excessively rigid deadline may result in inefficiency in the allocation of public resources. It is of particular importance to allow for flexibility in certain clauses when there is a higher level of budgetary legislation in place.[111]

With the exception of Hungary, all of the Visegrád countries have established regulations for budgetary discipline. The absence of such regulations in Hungary can be attributed to the country's lack of recognition of the concept of budgetary discipline. In light of the comparable regulatory framework governing the measures imposed for the mismanagement of public funds, this criterion was deemed to be moderately unsatisfied. It is noteworthy that the concept of budgetary discipline is interpreted in a distinct manner in the remaining Visegrád countries.

Each of the Visegrád countries has a comprehensive regulatory framework governing budgetary discipline. The issue is addressed by legislation at all levels, from constitutional law to decrees. All of these jurisdictions have a single principal legislation that governs the allocation and management of public funds.[112] With the exception of Hungary, the legal frameworks of the other Visegrád countries may be characterised as partially codified with regard to budgetary discipline. This represents a departure from the optimal model, which advocates for codification and a minimal number of legal provisions. As indicated in the questionnaire responses, the Hungarian legal framework is more fragmented and deviates further from the optimal model.

The principle of transparency in public finance[113] is enshrined in the constitutions of all the Visegrád countries. To illustrate, the first paragraph of Article N of the Hungarian Constitution states that "Hungary shall observe the principle of balanced, transparent, and sustainable budget management". In other Visegrád countries, transparency is achieved through the implementation of specific legislative rules governing state and local budgets. However, the concept of transparency does not extend to encompass all stages and aspects of the budgeting process. Rather, it is limited to certain information and processes relating to the budgetary process. It is notable that the level of transparency in public finances was not indicated in Hunga-

[110] PEFA. *Framework for Assessing Public Financial Management. Improving Public Financial Management. Supporting Sustainable Development*, p. 2.

[111] CORBACHO, Ana; TER-MINASSIAN, Teresa. Public Financial Management Requirements for Effective Implementation of Fiscal Rules. In: HEMMING, Richard; ALLEN, Richard; POTTER, Barry H. *The International Handbook of Public Financial Management*, p. 41.

[112] These main laws are the Act No. 218/2000 Sb., on Budgetary Rules in Czechia, the Act No. CXCV of 2011, on Public Finances in Hungary, the Act of 27th August 2009, on Public Finance in Poland and the Act No. 523/2004 Z. z., on Budgetary Rules of Public Administration in Slovakia.

[113] PEFA. *Framework for assessing public financial management. Improving public financial management. Supporting sustainable development*, p. 2.

ry. As the level of transparency is limited to specific information and processes, this criterion is aligned with the optimal model, although not entirely so.

With regard to a certain degree of flexibility that strikes a balance between the necessity for clarity and transparency in regulation, all the Visegrád countries permit a certain degree of discretion, in particular, with regard to the precise calculation of the amount to be refunded or any other measure imposed for a breach of budgetary discipline (corrective measures, penalties, etc.). Nevertheless, there is typically no discretion exercised in the enforcement of the measures imposed for a breach of budgetary discipline. This degree of flexibility is consistent with the optimal regulatory model. The timing of deadlines and periods for the establishment of a particular rule of the budgetary process is characterised by a degree of rigidity across these countries, which corresponds with the optimal model.

In Attribute A, the majority of Visegrád countries demonstrate a high degree of alignment with the optimal regulatory model, with a score of 4 out of 5. The primary deviation is that their regulatory frameworks for budgetary discipline are not fully codified. Hungary exhibits shortcomings in several domains, particularly in terms of acknowledging the concept of budgetary discipline, the fragmentation of its legal framework, and the limited transparency regarding public budget regulations. Consequently, Hungary is assigned a score of 3, indicating that while this attribute is present, it is not as robust as in the other countries.

Attribute B — Application of the full-coverage principle: One of the key aspects of any regulatory framework is the scope of its substantive application.[114] In the case of budgetary legislation, the question thus arises as to what should be subject to regulation by budgetary rules. The full coverage principle requires the application of budgetary rules to all budgets that contain public funds and to the entire public sector. There is a consensus among experts that the full-coverage principle should be applied with regard to the substantive scope of budgetary law norms, as this is the objective of the development and evolution of budgetary rules.[115]

The full-coverage principle is applicable to all public budgets and to all subjects engaged in the management of public finance in Czechia, Slovakia, and Hungary. All three countries have enacted regulations that encompass all public budgets and a range of entities engaged in the management of public finances. In Poland, however, a different situation prevails, with only some of the entities engaged in the performance of public tasks or the management of public funds being subject to the public finance rules. It should be noted that not all entities are considered to be part of the public finance sector. Consequently, there are budgets and entities that are not covered by the rules and are also excluded from the supervisory procedures. These findings result in a score of 5 for Czechia, Hungary, and Slovakia, but only 3 for Poland.

[114] OGUS, Anthony I. *Regulation: Legal Form and Economic Theory*, pp. 4–5.

[115] KARFÍKOVÁ, Marie; BAKEŠ, Milan; BOHÁČ, Radim et al. *Teorie finančního práva a finanční vědy [Theory of Financial Law and Financial Science]*, p. 128.

Attribute C — Binding administrative practice: With regard to the third criterion, namely the binding nature of administrative practice, the fundamental tenets of the rule of law encompass the notions of legitimate expectation and legal certainty for all parties engaged in a particular administrative process.[116] If these principles are adhered to, the administrative practices of the authorities responsible for enforcing budgetary discipline should generally be binding, as this ensures the predictability of legal outcomes.[117] In accordance with the principle of equality, the law must be applied consistently, regardless of personal preferences or dislikes. Therefore, in analogous instances, the legislation in question must be applied in a uniform manner, and the government in question is obliged to adhere to its previous administrative practice.

It can be observed that in all of the Visegrád countries, administrative practice does not constitute a source of law. Consequently, an administrative body is unable to establish a novel legal rule; only legislation is formally binding. Nevertheless, the legal systems of all these countries encompass the principles of legal certainty and legitimate expectation. It is incumbent upon the relevant authorities to adhere to the "comply or explain" policy. Consequently, the overall score for all countries is 5.

Attribute D — Existence of supervisory procedures: The mere existence of rules governing budgetary discipline is insufficient in the absence of a supervisory mechanism capable of assessing compliance with these rules. Such a supervisory procedure is the initial stage of the process of evaluating instances of non-compliance with budgetary discipline. It is a prerequisite for subsequent evaluation and the subsequent legal consequences that may ensue in the event of a breach of the budgetary rules. The presence of supervisory procedures is of paramount importance for the implementation of budgetary regulations. Such procedures serve to evaluate the management of public funds and identify discrepancies in public expenditure. It can be argued that the substantive rules of budgetary discipline enforcement are insufficient in themselves if there is no supervisory procedure in place to assess their compliance. The supervisory procedure may be conducted by an internal or external body, and it may be carried out ex ante or ex post. The aforementioned forms of supervisory procedures offer a diverse range of perspectives on public fund administration, and are mutually reinforcing. External supervisory authorities may lack the capacity to perform all the necessary processes to ensure budgetary discipline, particularly given their limited resources and the narrow scope of their mandate. In addition to these external authorities, internal supervisory bodies within important budgetary institutions play a crucial role in the oversight of processes, particularly in the context of ex ante supervision. It can thus be argued that internal supervisory bodies represent a crucial stage in the supervision of public funds, one that is not merely a supplement to external supervision but rather an integral component of the administration of public funds.

[116] BRAITHWAITE, John. *Rules and Principles: A Theory of Legal Certainty*.
[117] Ibid, pp. 68–69.

The Visegrád countries have implemented supervisory procedures that facilitate an understanding of the management of public funds at the outset of the process of evaluating instances of budgetary indiscipline. This understanding is a prerequisite for subsequent evaluation and the subsequent legal consequences that may ensue in the event of a breach of the budgetary rules.

The evaluation of the regulatory frameworks in question is affected by the application of the full-coverage principle in Poland. It should be noted that not all entities responsible for managing public funds are included in the public finance sector. Consequently, the supervisory procedures cannot be expected to cover all public spending.

The supreme audit office is present in all the Visegrád countries; however, only Hungary has the authority to conduct audits in all bodies managing public funds, including local governments. Nevertheless, alternative methods of auditing local governments have been established. Nevertheless, this is still taken into account when evaluating compliance with the model, as the supreme audit office's authority to audit local government funds could provide a more comprehensive and intricate perspective on public expenditure.

This results in a score of 5 for Hungary, while the supreme audit offices of Czechia and Slovakia were assigned a score of 4, reflecting a slightly more limited scope of audit. Meanwhile, Poland was assigned a score of 3, as the supreme audit office has limited powers and the scope of supervisory procedures is reduced as a consequence of the non-applicability of the full-coverage principle.

Attribute E — Independence of the supervisory bodies: The effectiveness of the supervisory procedures is contingent upon the independence of the supervisory bodies. Furthermore, the independence of the supervisory body is of paramount importance for the legitimacy and credibility of the supervisory process. In order to effectively fulfil its role, it is essential that the supervisory authority be independent from the subjects it oversees. The requirement of independence is applicable to both internal and external supervisory procedures.

The concept of independence is comprised of two distinct aspects. Firstly, the supervised body must be independent, or at the very least, the effective management thereof in the case of an internal supervisory body, in order to prevent the supervisory process from being biased or experiencing a conflict of interests. Secondly, the supervising entity must be independent of any superordinating body, in order to prevent the supervisory process from being influenced by specific orders. Given that all three branches of government are subject to supervisory procedures, it would be optimal to establish a constitutionally independent body separate from the rest of the public administration in order to ensure effective supervision without external intervention.

A constitutionally based supervisory body exists in all the Visegrád countries. The aforementioned bodies are responsible for the external supervision of the management of public funds. Furthermore, there is an obligation to implement an internal audit mechanism in all the Visegrád countries that fulfils the requisite criteria

of independence. All of the countries under comparison have a system of financial control in place. Consequently, all countries were assigned a score of 5.

Attribute F — The existence of corrective measures: In the event of the discovery of instances of misappropriation of public funds during the supervisory process, it becomes imperative to implement corrective measures. The measures imposed for a breach of budgetary law can range from corrective measures to the exclusion of the entity managing public funds from further management of public funds or punitive measures. In an optimal regulatory model, the primary objective of corrective measures should be the elimination of remediable breaches of budgetary discipline (without compromising the quality of public finances) or, secondarily, the completion of the assignment without the use of public funds or the return of public funds to their intended purpose.

Each Visegrád country has some form of corrective measure in place. In particular, all jurisdictions acknowledge the necessity for the return of public funds if said funds were mismanaged. In Czechia, the provider of the public funds is permitted to request that the beneficiary implement specific corrective measures (in a narrow sense). The implementation of corrective measures may be demanded if all of the following conditions are met: (i) the provider must reasonably believe that the beneficiary has breached one of the conditions of the subsidy, (ii) the breach must result in a refund that is less than the subsidy and (iii) the breach must be remediable. Such corrective measures (in a narrow sense) may include, for instance, a request for the submission of a monitoring report in the event that the beneficiary has failed to submit the requisite report in a timely manner, or a call for the correction of an administrative error in the event that minor discrepancies are identified in the subsidy documentation. The questionnaire revealed that other Visegrád countries do not include corrective measures targeting the elimination of remediable breaches of budgetary discipline.

As the majority of Visegrád countries only acknowledge refunds as a corrective measure, this attribute is regarded as being moderately similar to the optimal regulatory model, with a score of 3. However, the Czech regulatory framework is considered to be more advanced, as it not only recognises refunds, but also corrective measures in the narrow sense. This results in a higher score of 4. However, as the Czech framework does not address the re-completion of the assignment without the use of public funds, it does not achieve the highest possible score of 5.

Attribute G — The capacity of a refund to function as a corrective measure: In the majority of countries, refunds were identified as the sole corrective measure, thereby establishing them as a pivotal component of the budgetary enforcement framework. Nevertheless, the efficacy of refunds as corrective measures is contingent upon the circumstances under which they are imposed.[118] The principal objective of a refund is to return public funds so that they can be used for their original

[118] BOHÁČ, Radim. *Daňové příjmy veřejných rozpočtů v České republice [Tax Revenues of the Public Budgets in the Czech Republic]*, pp. 260–263.

purpose within the public budget or to the administrator of the budget chapter. The triggering of refunds is typically associated with breaches of budgetary discipline, particularly instances of unauthorised use or retention of funds. The proportionality of the refund to the breach is a crucial factor in determining its capacity to act as a corrective measure. This implies that in the event of a less significant breach of the budgetary discipline, the entity (beneficiary of the public funds) is not obliged to return the full amount of public funds received.

In the Visegrád countries, refunds are typically initiated due to an unauthorised use or retention of funds. Although determining the precise amount of the refund can be a challenging process, the questionnaires suggest that the amount of the returned public funds should be equivalent to the amount of the improperly used or withheld funds. This indicates that refunds can be regarded as commensurate with the breach of budgetary discipline, thereby classifying them as corrective in nature. Consequently, the regulatory framework of all the Visegrád countries is in accordance with this attribute of the model, thus receiving the highest score of 5.

The difficulty lies in evaluating the extent of the budgetary infraction. While the theoretical aspect may appear relatively straightforward, the practical implications are more complex. To illustrate this problem, we will consider two examples.

1. A beneficiary receives financial assistance from a public entity with the objective of constructing a community centre that will serve as a gallery for the exhibition of local artworks. In the event that the beneficiary utilises the entirety of the subsidy funds to construct the community centre, but does not proceed with the construction of the gallery, the beneficiary would be obliged to refund the total amount allocated for the gallery's construction to the public entity that provided the subsidy.
2. Despite previous requests, the beneficiary in question failed to submit a monitoring report, which is a document that describes the implementation process and the progress of the subsidy project, to the supervisory entity. The infringement of the obligation to submit such a report is not readily quantifiable. This can result in three scenarios:
   a) The full amount of the public funds provided is refunded.
   b) A rule in the subsidy documentation specifies the amount to be refunded, which may be a percentage of the public funds provided.

In order for a refund to be classified as a purely corrective measure, the scenario outlined in letter c. must be followed. In the initial two scenarios, particularly the one outlined in letter a., the amount to be refunded need not be commensurate with the breach of budgetary discipline. This could result in a punitive outcome. It is regrettable that the questionnaires did not provide further insight into how the respective Visegrád countries address this issue. As a result, this aspect of the refunds was not included in the normative analysis, indicating a potential area for further research in this field.

Attribute H — Sanctions primarily as an ultima ratio measures: In accordance with the optimal regulatory model, sanctions should be incorporated into the

regulatory framework as a last-resort measure. This indicates that alternative measures should be available in the event of a breach of budgetary discipline. Furthermore, this implies that, where feasible, alternative measures should be employed in preference to sanctions, provided that this is an effective means of achieving the desired outcome.

The assumption that sanctions should be primarily an ultima ratio measure is valid only if there are other measures available that are not punitive and if there is a clear hierarchy of these measures in the respective legal framework or other system of applicability order among them. This hierarchy or applicability order may be set forth explicitly or, alternatively, it may be implicit, as when a rule requires that other measures be tried first. Both approaches would result in the desired outcome, whereby sanctions would not be the initial (and potentially) sole measure imposed by the authorities.

In all of the Visegrád countries, the aforementioned condition is met, as there are other measures that may be applied in conjunction with the punitive measures. However, apart from a weak binding administrative practice, there are no guidelines that would limit the selection of an appropriate measure in each case. As a result, in Czechia and Slovakia the obligation to return misappropriated funds can serve both corrective and punitive purposes. Not only is there no hierarchy among the measures, but one measure can also be a combination of different types. Sanctions, which fall under Article 6 of the European Convention on Human Rights, are however typically employed as a last resort.[119] In conjunction with other punitive measures, such as the punitive return of funds, there is no evident preference for non-punitive measures over them. Consequently, all countries are assigned a score of 4.

Attribute I — Preference for administrative sanctions over criminal ones: The penal measures shall be primarily ultima ratio measures when compared with the non-penal measures. In comparison to non-penal measures, penal measures are to be regarded as the ultimate means of enforcement. Furthermore, in an optimal regulatory model, there shall be an internal hierarchy within the category of penal measures, with administrative sanctions being preferred over criminal ones if it is possible to achieve the desired outcome with them.

Penal measures can be classified into two principal categories: administrative sanctions, which are subject to the provisions of administrative law and are not imposed by criminal courts, and criminal sanctions, which are governed by criminal law and are imposed by criminal courts. Administrative sanctions may also be distinguished by their nature.[120] As previously discussed in relation to attribute G, there are instances when the obligation to return funds may be regarded as a punitive measure. It is possible that the impact of other sanctions, such as fines, could be

[119] MELANDER, Sakari. Ultima Ratio in European Criminal Law, p. 58.

[120] TULÁČEK, Michal; BOHÁČ, Radim; KERNDLOVÁ, Petra; MÁLEK, Ondřej. Comparative Study on Penalties in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries, pp. 425–432.

comparable with that of a criminal sanction. These sanctions satisfy the criteria set forth in the Engel doctrine[121] and, as a result, fall under the purview of Article 6 of the European Convention on Human Rights.

It is imperative that punitive sanctions are never the sole preferred measure, and criminal sanctions must never be preferred over administrative ones. This does not imply that criminal sanctions can only be imposed in cases where non-criminal sanctions have been unsuccessful. In the most severe instances, it may be appropriate to directly impose a criminal sanction. However, the imposing body must always consider whether the desired outcome can be achieved with a less severe measure.

This criterion is fully met in all of the Visegrád countries, and their regulatory frameworks are entirely compliant with the optimal regulatory model. Consequently, all countries were awarded the highest score of 5.

Summary

The regulatory frameworks of the Visegrád countries are not fully aligned with the optimal regulatory framework. Nevertheless, the scores provided indicate that the discrepancies are not substantial, and none of the countries exhibit significant shortcomings in their regulatory framework with regard to budgetary discipline in alignment with the model.

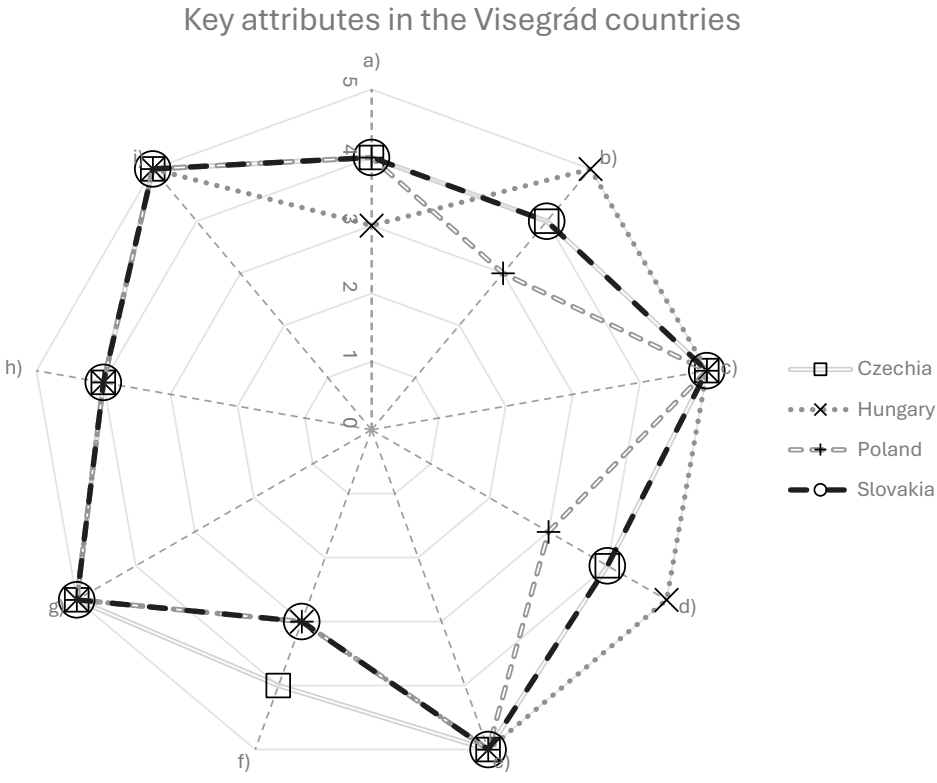
It is notable that Hungary has the most compliant regulatory framework, despite the absence of a clearly defined concept of budgetary discipline. The regulatory frameworks of Czechia and Slovakia exhibit similarities, with the exception of key attribute F, which pertains to the presence of corrective measures. This is an unsurprising outcome, given that these two countries were previously federated, resulting in their regulatory frameworks being based on the same laws and including similar legal concepts. Ultimately, the normative analysis indicates that Poland exhibits the least compliance with the optimal regulatory framework.

From an alternative standpoint, there are only three key attributes in which no Visegrád country is fully compliant. A — the existence of rules on budgetary discipline, F — the presence of corrective measures and H — sanctions, which are primarily ultima ratio measures. It can be assumed that this is due to the fact that budgetary law in the Visegrád countries has similar foundations and reflects legal principles that are shared by these countries, as it forms a core part of financial law in these countries. Another reason, particularly in the case of attribute A (existence of rules on budgetary discipline), may be that the optimal model sets high standards for the regulatory framework on budgetary rules, and in practice, it is difficult to fully meet these standards.

[121] ECtHR, *Engel and Others v. Netherlands*, ECtHR Judgment (8 June 1976) App. No. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 CE:ECHR:1976:0608JUD000510071, para. 82.

Attribute	Czechia	Hungary	Poland	Slovakia
A	4	3	4	4
B	4	5	3	4
C	5	5	5	5
D	4	5	3	4
E	5	5	5	5
F	4	3	3	3
G	5	5	5	5
H	4	4	4	4
I	5	5	5	5

Figure 4: Radar chart of the similarity of key attributes in the Visegrád countries to the optimal regulatory model.



CONCLUSION

In conclusion, this book aimed to address the absence of a comprehensive theoretical investigation into the legal aspects of budgetary discipline. It sought to provide a unified and coherent legal regulatory model for the enforcement of budgetary discipline. In order to achieve this objective, the study identified three research questions:

The first research question (Q1) is as follows: **What is the optimal theoretical model of regulation for the enforcement of budgetary discipline to maximise compliance with an adopted public budget?**

The initial research question was addressed in the first chapter with the presentation of a theoretical model of budgetary discipline enforcement. This model has been developed without reference to a specific legal system or to the particularities of the budgetary framework of individual countries or the European Union. The model functions as a normative benchmark for the comparison and assessment of regulatory frameworks pertaining to budgetary discipline in disparate countries.

The model is based on an existing foundation that draws on established knowledge of the regulation of budgetary discipline, including economic aspects thereof. From a regulatory perspective, clarity and transparency – balanced by a degree of flexibility – are essential requirements for this model, together with the substantive and personal scope of the legal rules governing budgetary discipline. The capacity for flexibility permits the incorporation of the transient or ad hoc characteristics inherent to specific budgetary procedures, while simultaneously ensuring the maintenance of a fundamental framework of regulations that provide a sufficient level of legal certainty and predictability. The flexibility of the model allows for the accommodation of temporary or ad hoc budgetary processes while maintaining a fundamental framework of rules that ensure legal certainty and predictability. In order to achieve this balance, it is necessary first to minimise the number of legal provisions (sources of law) in which the legal norms of budgetary discipline regulation are found. Secondly, it is essential to recognise the legal force and the resulting rigidity or flexibility of the individual sources of law in the development of budgetary discipline regulation. From a substantive standpoint, it is crucial to acknowledge that the administration of public finances is a matter of public policy. The resources allocated for this purpose and their quantity are, for the most part, relatively predictable, and market forces do not always play a role. These factors heighten the risk of the uneconomic, inefficient, or ineffective use of public funds. Furthermore, the considerable administrative and staffing demands placed on the entity responsible for overseeing the management of public funds exacerbate this risk.

The model identified the attributes of public fund management that are pertinent to the enforcement of budgetary discipline. These attributes may therefore be

referred to as the attributes of budgetary discipline enforcement. One of the principal attributes is the set of rules that constitute the budgetary system, which serve as a framework for the application of the model of budgetary discipline enforcement. In other words, these rules delineate the extent to which the obligation to manage public funds in accordance with budgetary discipline is applicable. Furthermore, additional sub-attributes emerge during the budget management process. These include the entities responsible for managing public funds, the public funds themselves, and the terms of reference that specify how the stated policy objective is to be achieved using public funds.

Precautionary measures based on empirical data, experience, and knowledge of the entity in question, whether it is an entity set up authoritatively or an entity managing public funds on the basis of another legal reality (e.g., if it is a recipient of public aid), play a crucial role in the assessment of the entity's capacity to manage public funds in accordance with the rules set out. Another significant attribute is administrative practice, which, in conjunction with empirical data and experience, gradually evolves through the ongoing evaluation of budgetary legislation. Consequently, administrative practice becomes, to some extent, binding on the public authorities responsible for the evaluation. In conjunction with empirical data and experience, this practice provides an informative basis for preventive measures and feedback, enabling the assessment of the efficacy of the rules governing budgetary discipline and the overall budgetary system.

The final, and most crucial, attribute is the process of assessing compliance with the rules of budget law. The domain of evaluation is circumscribed by three factors: the scope of the budgetary system's rules and the individual inputs in the form of public funds, the entities managing these funds, and the intended purpose for which these funds are to be used. The evaluation of breaches of budgetary discipline can be defined in terms of two sub-activities: the supervisory procedure and the subsequent evaluation of the findings of the supervisory procedure. Should the evaluation of the findings conclude that budgetary discipline has been breached, the legal consequence of such a breach may ensue.

The supervisory procedure can be defined as an active process conducted by the supervising body with the objective of obtaining and subsequently evaluating knowledge regarding the management of public funds, with the aim of determining whether such management is occurring in a fiscally disciplined manner. The model identifies the key aspects of the supervisory procedures that are essential for achieving this goal, beginning with the clarity and transparency of the relevant standards. The independence of such procedures is also essential, but is not sufficient on its own. However, the authors see the establishment of an autonomous entity with the authority to conduct external audits of the government as a crucial element in fulfilling this requirement.

Furthermore, the authors posit that the specific circumstances surrounding breaches of budgetary discipline can vary considerably, encompassing a spectrum of factors from inadvertent political missteps to instances of self-aggrandizement

and operational inefficiency. Given these discrepancies, it is unlikely that a single, uniform set of supervisory procedures will prove effective in addressing all causes of breaches. Accordingly, the authors conclude that internal auditing is the most suitable instrument for addressing non-political factors within the context of supervisory procedures. Furthermore, the central government body, such as the Ministry of Finance, would also be responsible for carrying out supervisory activities.

In order to guarantee effective supervision, the model proposes a triangular approach involving a number of different supervisory bodies. Nevertheless, it is of the utmost importance that a clear and adequate division of powers be established, particularly given that the entities subject to supervision may not be directly subordinate to the supervising authority. The capacity to impose penalties is a case in point. The role of the entity in question is indispensable to the defined model; however, it should not be given the power to impose penalties on several entities in a duplicative manner.

Furthermore, the timing and frequency of supervisory procedures are also of key importance. It would be optimal for supervisory procedures to be conducted at each stage of budgetary management, given that each stage gives rise to the potential for breaches of budgetary discipline. Concurrently, it would be prudent to diversify the supervisory procedures, in accordance with current practice, into ex ante, ongoing, or random procedures and ex post procedures. This approach would facilitate the consideration of the particularities of each phase, the specifics of the anticipated breach of budgetary discipline, or the relationship between the entity managing public funds and those funds.

The authors posit that the success of the evaluation process hinges on two fundamental pillars. The first foundation is the availability of a comprehensive information base, encompassing both quantitative and qualitative data. The second fundamental pillar is the quality of the assessment of the information in question. It is therefore essential that the algorithm and method of information transfer be correctly set up, and that a sufficiently large and qualified team be in place to assess the situation correctly.

The consequences of a breach of budgetary law are the final aspect in the process of assessing compliance with budgetary law. These consequences form a system of secondary obligations that arise following the finding of a breach of the rules of the budgetary system in the evaluation of the findings obtained by the supervision. Such obligations may include the enforcement of the primary obligation by the public authority or the creation of an obligation of a corrective, punitive, or preventive nature. [122] Furthermore, the system is supported by the processes through which these obligations are created or imposed and the processes through which they are subsequently enforced by public authorities. The structure of this system has a significant impact on the enforceability of the primary budgetary rules.

[122] KNAPP, Viktor. *Teorie práva [Theory of Law]*, p. 152.

The legal regulation of the procedure for imposing and enforcing secondary obligations may be subject to the requirements typically imposed on any procedure in which public administration is exercised. In addition to the aforementioned requirements of clarity and transparency pertaining to the relevant standards, which are common to the legal regulation of the entire area of the management of public funds, these requirements encompass generally accepted principles of public administration, including the guarantee of judicial review. [123] The range of actual consequences of breaches of budgetary discipline is considerable, encompassing corrective consequences, the exclusion of the entity managing public funds from further management of those funds, the cancellation of activities financed from public budgets or budgetary measures, and consequences of a punitive nature.

Corrective consequences are primarily designed to eliminate the breach of budgetary discipline, provided that eliminating the breach will not affect the form or quality of the output financed from public funds. In instances where this is not feasible, the corrective measure may entail the completion of the assignment without the utilisation of public funds. An additional corrective measure could entail returning the public funds to the source so that they can be used for their intended purpose. Given their nature, these tools for addressing an undesirable situation that has already arisen are most applicable at the stage of implementation of the initial assignment or at the stage of evaluation of the publicly funded output.

In the event of non-compliance, the entity in question may be excluded from any further involvement in the management of the funds in question, or the funded activity may be cancelled. These measures may be applied, particularly before or at the beginning of the implementation phase of the task, although each of them is slightly different in nature. The cancellation of financing for an activity is an appropriate response to breaches of budgetary discipline that occur during the implementation phase of a publicly financed assignment. Nevertheless, using this type of sanction is contingent upon the public funds having been made available to the managing authority or the total amount pledged. The exclusion of an entity, after a breach of budgetary discipline, from accessing public funds in the future is primarily a preventive measure.

It is important to note that budgetary measures differ from corrective or punitive actions. Conversely, these measures impose additional obligations on the entity responsible for managing public funds. These may include the requirement to utilise the funds for a specific purpose or to provide them as a security. It is crucial to emphasise that these measures are intended to guarantee the appropriate administration of public funds (for instance, to ensure that a specified amount of public funds is allocated for a particular purpose or to provide them as a security). They are not designed to impose penalties or rectify past violations.

In the model, penalties are the ultimate consequence of a breach of a primary legal obligation and serve as an instrument of last resort, to be applied only after other

[123] SLÁDEČEK, Vladimír. *Obecné správní právo [General Administrative Law]*, pp. 31, 115, 146–149.

measures have been exhausted. Criminal penalties are an indispensable component of the enforcement of budgetary discipline. They allow for liability for breaches of obligations to be attributed not only to legal persons, which will typically be entities managing public funds, but also to natural persons who are in an employment or other similar relationship with the entity managing public funds and who have contributed to the breach of obligations through their activities. Nevertheless, the primary focus of penal measures for breaches of budgetary discipline is within the domain of administrative law. It is also important to consider the role of non-monetary penalties, particularly those related to reputation. As a consequence of their typical application in the form of public disclosure of the breach in question, accompanied by an explanation of the nature of the breach, these penalties are of considerable importance in the prevention of similar breaches in the future. Such measures thus have the effect of both prevention and deterrence. Furthermore, the authors contend that this particular measure is the sole one applicable to instances of budgetary misconduct resulting from political malfeasance. Monetary penalties are an alternative option, but their application appears more suitable when directed towards entities outside the public administration domain. In many instances, the implementation of such penalties within the public administration may not effectively penalise the individuals whose actions resulted in the breach of budgetary discipline, particularly in cases where political misconduct is involved. It is possible that political responsibility has already been incurred towards these individuals (for example, in the context of elections). Consequently, they are not considered part of the entity being penalised after the conclusion of the evaluation phase of the supervisory procedure, which occurs at the time when the penalty is imposed. This illustrates a potential discrepancy between the timing of the penalty and the individuals held accountable for the breach following the conclusion of the evaluation phase.

Secondly, this study seeks to ascertain the second research question (Q2): **What is the existing regulatory framework for the enforcement of budgetary discipline in the Visegrád Group countries.**

A comparative analysis of the supervisory and regulatory frameworks for the enforcement of budgetary discipline in public fund management across the Visegrád countries reveals a high degree of similarity in the legal concepts and structures employed.

First, the examined jurisdictions have incorporated supreme audit offices into their constitutional law as autonomous national audit bodies, devoid of any distinctive authority pertaining to corrective measures. Second, all the Visegrád countries have established a system of bodies with the mandate of auditing public fund management; these bodies are empowered to impose corrective measures (e.g., refunds, penalties). The two-pronged surveillance of public funds gives rise to the possibility of multiple and simultaneous supervisory procedures. However, as the bodies offer disparate perspectives, they are not in alignment. Third, the countries accept administrative practice as binding in order to meet the principles of legitimacy and legal certainty. Ultimately, all supervisory procedures culminate in a formalised report

that may include an obligation to refund, the penalty itself, or that may serve as the basis for determining the penalty. Consequently, the possibility of an appeal or an administrative lawsuit arises at some point during the enforcement of budgetary discipline.

Notwithstanding the aforementioned conclusion that the legal systems of the Visegrád countries are, for the most part, similar, it is important to note that there are, of course, several aspects in which the presented legal regulations differ. The first noteworthy distinction pertains to the fact that Hungary does not acknowledge the concept of breach of budgetary discipline. However, this absence has no implications for the supervisory procedure itself, but rather for the potential consequences of the unauthorised use of budgetary support. Second, the Czech legal system diverges from the aforementioned jurisdictions in that it applies the Administrative Code during the supervisory procedure and the Tax Code during the imposition of corrective measures. Such distinctions are largely a matter of legislative technique, and do not affect the fundamental aspects of the supervisory process in public budget management. Third, it should be noted that not all of the aforementioned countries apply the full-coverage principle with regard to supervisory procedures. Indeed, Poland makes certain exceptions with regard to the entities or public budgets that may be subject to a supervisory procedure in relation to the management of public funds.

The regulatory framework for refunds is similar across the Visegrád countries, as these jurisdictions share a considerable number of legal principles. The overarching principle that unifies these legal frameworks is the obligation to return funds in cases of misuse or improper retention. Each country has established a refund mechanism with the objective of addressing legal breaches in a corrective manner, rather than in a punitive fashion. The amount refunded typically corresponds to the amount misused or withheld. Late refund penalties are imposed in various ways. In Czechia and Slovakia, they are imposed as penalties (in a narrow sense). In Hungary and Poland, they are imposed as interest.

Furthermore, procedural similarities are evident. In each country, the relevant authorities are required to mandate the refund when warranted and to uphold the principles of legal certainty and legitimate expectations while imposing these decisions. Furthermore, the means of defence are analogous, insofar as decisions on refunds can be appealed and challenged through administrative lawsuits for judicial review.

These commonalities notwithstanding, there are notable differences in the specific legal frameworks. To illustrate, the obligation to return funds due to breaches of budgetary discipline is only applicable in Czechia and Slovakia. The Hungarian legal framework does not recognise the concept of budgetary discipline. In Poland, while budgetary discipline breaches do not directly require fund repayment, the concept is nevertheless recognised. A further significant distinction pertains to the extent of adherence to the full-coverage principle. In Czechia and Slovakia, the levies for breaches cover almost all public budgets and entities, which is in alignment

with the aforementioned principle. In Hungary and Poland, however, the refunds are applicable primarily to subsidies. Furthermore, there are discrepancies in the pertinent legal codes. While Czechia adheres to the Tax Procedural Code, treating refunds as taxes, the other countries rely on administrative or analogous codes. Poland, for instance, employs both the Administrative Code and the Tax Procedural Code.

The procedure for imposing penalties is similar in all Visegrád countries, with only minor discrepancies. However, the range of available penalties differs considerably. In all Visegrád countries, the possibility exists of imposing a duty to return budgetary funds and criminal offences. Nevertheless, only in Czechia is it possible to increase (or decrease) the amount that must be returned after the decision comes into force. Furthermore, in Slovakia, the imposition of a fine is a possible consequence, while in Hungary, disciplinary proceedings may be initiated against the individual deemed responsible for the infraction. In Poland, a diverse range of administrative measures is available.

Furthermore, the Visegrád countries exhibit variation in the centralisation of authority to impose penalties. In Czechia and Hungary, a centralized approach is observed at the state budget level. Conversely, in Czechia, Poland, and Slovakia, a decentralised model is in place at the regional level.

The aforementioned comparison thus serves to reinforce the hypothesis that there are no significant differences in the regulatory framework of budgetary discipline in the Visegrád countries.

The third research question (Q3) is as follows: **What is the quality of the national budgetary discipline enforcement regulatory framework in the Visegrád Group countries based on adherence to the optimal regulatory model?**

In order to assess the regulatory frameworks of the Visegrád countries, an optimal model (Q1) was formulated and a comparison of the regulatory frameworks was provided (Q2). The regulatory frameworks were then assessed using the model.

It is notable that Hungary, which lacks a clearly defined concept of budgetary discipline, has the most compliant regulatory framework. The regulatory frameworks of Czechia and Slovakia are comparable, with the primary distinction being the presence or absence of corrective measures. The Czech regulatory framework recognizes two types of corrective measures: refund and corrective measure in a narrow sense. In contrast, the Slovak regulatory framework recognizes only refunds. This is an unsurprising outcome, given that these two countries were previously federated, resulting in their regulatory frameworks being based on the same laws and including similar legal concepts. Ultimately, the normative analysis indicates that Poland has the least compliant regulatory framework.

From an alternative standpoint, there are only three key attributes in which no Visegrád country is fully compliant: the existence of rules on budgetary discipline, the presence of corrective measures, and sanctions functioning as an ultima ratio measure. It can be assumed that this is due to the fact that budgetary law in the Visegrád countries is based on similar foundations and reflects legal principles that

are shared by these countries, as it constitutes a fundamental part of financial law in these countries. Another reason, particularly in the case of the attribute of the existence of rules on budgetary discipline, may be that the optimal model sets high standards for the regulatory framework on budgetary rules, and in practice, it is challenging to fully meet these standards.

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