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**Articles**

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# Regulatory Model of the Budgetary Discipline Enforcement*

## *Model regulacyjny przestrzegania dyscypliny finansów publicznych*

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ABSTRACT

The budgetary discipline is an important part of a proper public expenditure management. However, it is not a well-researched subject with a strong theoretical background, nor is it in many countries well-arranged and systematic in practice. This scientific article aims to contribute to the emerging jurisprudential theoretical background of the budgetary discipline area with a proposal of a regulatory model of the budgetary discipline enforcement, which would allow to address relevant issues identified in an empirical study in a consistent manner, maximising the enforceability of the desired outcomes, while remaining clear and understandable. The article is based on a normative method of research based on a survey of a related theoretical literature covering all aspects of the proposed model. The goal of the article is to lay down the first step in a broader research of this area. Based on the model proposed in the article, it will be possible to perform the empirical research of the actual legal instruments, which are currently in force, in the steps, which will follow afterwards. The proposed model is theoretical and not related to a specific country. However, it shall be usable as a normative benchmark in an empirical study of any country's budgetary discipline regulation to explain the causes of its problems.

**Keywords:** budgetary law; regulatory model; budgetary discipline; public expenditure management

## INTRODUCTION

The common problem of central European countries is badly arranged and non-systematic legal regulation of the budgetary discipline. This contributes to the fact, that the budgetary discipline is not effectively enforced. In fact, the budgetary discipline issues are not deeply analysed or discussed within the legal science (even in the subarea of financial or specific budgetary law[1]), which results in the lack of a proper jurisprudential theory of the budgetary discipline.

As a contribution to the foundation of this theory, this article aims to propose a regulatory model of the budgetary discipline enforcement. It is the first step in a broader research of this legal area. The proposed regulatory model is not based on a particular country and its budgetary law framework. On the contrary, in the future research, it will be compared with the actual legal instruments of the stud-

discipline in Central Europe", which is realized at the Faculty of Law of the Charles University, Prague, Czech Republic.

[1] For example, see J. Glumińska-Pawlic, *Specyficzne zasady rachunkowości, sprawozdawczości, nadzoru, kontroli oraz odpowiedzialności w sektorze finansów publicznych, w aspekcie charakterystyki specyfiki gospodarki finansowej jednostek sektora finansów publicznych*, [in:] *System Prawa Finansowego*, vol. 2: *Prawo finansowe sektora finansów publicznych*, ed. E. Ruśkowski, Warszawa 2010; P. Panfil, *Fiscal Rules and Fiscal Illusions – The Experience of Poland*, "Financial Law Review" 2021, vol. 4(24); M. Karfíková, M. Bakeš, R. Boháč [et al.], *Teorie finančního práva a finanční vědy*, Praha 2018; H. Marková, R. Boháč, *Rozpočtové právo*, Praha 2007.

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ied countries,[2] and the deviation of these instruments shall provide explanations for the detected cases of ineffectiveness of the budgetary discipline enforcement. Thus, the aim is to propose a universal benchmark, which will be used as a basis for evaluation of the data collected from the empirical study. In the near future, the authors will use this model as a benchmark in a comparative study of the budgetary discipline enforcement across the Visegrad Group countries.

The article is based on a normative method, and the model is proposed based on the generalization of the findings of the literature survey. However, since the area of budgetary discipline is not sufficiently covered in the jurisprudence literature, the survey is primarily performed in the related areas of science, especially economy, because the budgetary discipline relates closely to the public finance area. The works in this area are relevant to the goal of the article as economy studies the behaviour of rational agents (in this case it's in the area of public finance), whilst law and jurisprudence are studying effective measures on how to regulate this behaviour in order to achieve optimal results. Thus, by studying these results, we can derive facts relevant to the legal theory of the budgetary discipline.

## RESEARCH AND RESULTS

### 1. Basis for regulation of the public fund management system

The regulation of the budgetary system is one of the aspects of the public finance system.[3] The law of the budgetary system presents a formal representation of the rules governing the budgetary process and the process of public finance decision-making by the legislative and executive branches of government.[4] Within the budget system, its various fragments can be further identified, with the term public fund management system being immanently linked to the rules of budgetary discipline.[5] The existence of a good public fund management system is essential for the effective implementation of public policies, the improvement of budgetary discipline, the strategic allocation of resources, and the efficient provision of goods. In principle, the rules for such a system work so that an effective control

[2] In the current research project, we study in detail the budgetary discipline in central European countries. However, the model shall provide a fundamental basis for research of the budgetary discipline in any country.

[3] I. Lienert, *The Legal Framework for Public Finances and Budget Systems*, [in:] *The International Handbook of Public Financial Management*, eds. R. Allen, R. Hemming, B.H. Potter, London 2013, p. 63.

[4] *Ibidem*.

[5] PEFA, *Public Financial Management Performance Measurement Framework*, Washington 2011, https://europa.eu/capacity4dev/macro-eco_pub-fin/BS-PEFA (access: 28.2.2023), p. 1.

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over the management of public funds and associated risk management contribute to a greater overall budgetary discipline, that planning and management according to an approved budget in line with government priorities, or those of other public entities with their own public budgets, contribute to the achievement of enacted public policies, and that proper economic management contributes to the efficient delivery of goods and value for money.[6]

To assess how good a public fund management system is, the Public Expenditure and Financial Accountability program (PEFA)[7] has identified seven pillars that can be monitored within a public fund management system to assess its performance in achieving the above objectives. These are:

1. Budget reliability.
2. Transparency of public finances.
3. Management of assets and liabilities.
4. Policy-based fiscal strategy and budgeting.
5. Predictability and control in budget execution.
6. Accounting and reporting.
7. External scrutiny and audit.[8]

From a regulatory perspective, the interrelationship between these pillars can then be described as the "transparency of public finances" and "management of assets and liabilities" forming the core of the rules relating to budgetary discipline leading to the achievement of the set objectives. Around this core of, let us say, primary obligations to comply with budgetary discipline, PEFA then builds "policy-based fiscal strategy and budgeting", "predictability and control in budget execution", "accounting and reporting", and "external scrutiny and audit", i.e. pillars that aim rather at recording the state of compliance with the rules relating to the pillars forming the core of the rules of budgetary discipline. The final level of "budget reliability" is then primarily the result of the interaction of all the remaining PEFA-identified levels of a good public fund management system.[9]

Turning back to the issue of the regulation of budgetary discipline, it is essential to answer several sub-questions to define the object of this regulation.

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[6] *Ibidem*.

[7] It is a methodology for assessing public financial management performance settled within the program was initiated in 2001 by the European Commission, International Monetary Fund, World Bank, and the governments of France, Norway, Switzerland, and the United Kingdom.

[8] PEFA, *Framework for Assessing Public Financial Management: Improving Public Financial Management. Supporting Sustainable Development*, Washington 2019, https://www.pefa.org/sites/pefa/files/resources/downloads/PEFA%202016_latest%20version_with%20links%20%282%29.pdf (access: 28.2.2023), p. 2.

[9] *Ibidem*, p. 3.

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The first question is which budget process is important enough to be regulated.[10] This aspect of regulation therefore focuses on identifying the relevant budget processes that need to be regulated, since in some cases there may not be a public interest in having budget rules affect a particular area of public funds. This may be the case of parts of the public sector where the handling of public funds is fiscally neutral, e.g., because of a general prohibition of borrowing money or where this part of the sector is not politically manipulated.[11] It is clear from the above that this is a specific part of fiscal regulation consisting of fiscal responsibility. However, budgetary discipline rules should exist in this case as well. This question also identifies the sub-parameters of a regulation that can be described as a substantive scope of the legal norm. It is thus a question of what should be regulated by the budgetary rules. In this respect, there is a consensus among the expert community that the full-coverage principle is the goal of the development and evolution of setting the budgetary rules. In other words, budget rules should apply to all budgets that contain public funds. In the case of public budgets in their entirety, including extra-budgetary funds, and in the case of private budgets only to the extent the public funds are managed.[12] However, given that the public fund management system also includes rules on public procurement,[13] the budget rules may also apply to own (private) funds, e.g., of a grant recipient.

The second question is aimed at identifying the entity responsible for each step of the budget process. The answer to this question thus divides the various budgetary roles between the different entities, e.g., by assigning powers to specific legislative bodies or other public authorities or responsibilities to individual budget units.[14] It is therefore a matter of establishing the personal scope of the legal norm of budgetary law, i.e., determining who is obliged to comply with the budgetary rules. Therefore, to achieve the full-coverage principle, budgetary rules should principally not apply only to the state, but they should apply to the entire public sector as well. Indeed, the different areas of the public sector do not work and operate in isolation and, e.g., the inclusion of the lower levels of the public sector (regional and local) in the budget rules can contribute to a better coordination of government activities and even to the achievement of government policies.[15]

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[10] I. Lienert, *op. cit.*, p. 63.

[11] H. van Eden, P. Khemani, R.P. Emery Jr., *Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters*, [in:] *Public Financial Management and Its Emerging Architecture*, eds. M. Cangiano, T. Curristine, M. Lazare, Washington 2013, p. 89.

[12] For further remarks to the definition of public and private budgets, see M. Karfíková, M. Bakeš, R. Boháč [et al.], *op. cit.*, p. 128.

[13] OECD, *Using Country Public Financial Management Systems: A Practitioner's Guide*, Busan 2011, https://www.oecd.org/dac/effectiveness/49066168.pdf (access: 28.2.2023), p. 6.

[14] I. Lienert, *op. cit.*, p. 63.

[15] H. van Eden, P. Khemani, R.P. Emery Jr., *op. cit.*, p. 89.

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The next question also addresses the substantive aspect of the regulation but rather focuses on identifying of what the specific rules of budgetary law should look like and in which sources of law they should be contained. In this section we will not address individual rules, however, if we start from the individual pillars established by PEFA, it is obvious that the generic rules will not only concern the actual rules on how public funds can be handled (e.g., prohibition of lending by state entities or obligation to follow public procurement regulations) and how to enforce them, but also the transparency of public funds management, accounting, auditing and control of the budgetary process. According to J. Diamond, the basic prerequisite for achieving a high degree of budgetary discipline is the existence of an adequate control system and clear and transparent norms of financial law.[16]

Against this assumption, however, stands another conclusion, according to which a certain degree of flexibility is essential for the effective functioning of budgetary law.[17] In general, especially for less developed countries, it is necessary to start from simple rules in a more modest and flexible framework when setting budgetary rules, and then slowly and gradually consolidate the legislative anchoring of individual rules in generally binding legislation in an effort to achieve comprehensive coverage of public budgets.[18] It is thus clear that the system of rules governing the public fund management system will be the result of striking a balance between a sufficiently flexible regulatory framework and maintaining the highest possible degree of cohesion, clarity, predictability, and transparency of the applied standards. An illustrative example of flexibility can be the general definition of budgetary discipline in the opposite sense, i.e., by its violation. In this case, "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".[19] 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.[20]

In terms of sources of law, budgetary rules can be part of different parts of the legal framework. They may be contained in the legislation of local authorities or, conversely, they may be part of the constitutional order or an international treaty in its highest form.[21] A certain degree of rigidity in the legal framework of budgetary rules, guaranteed by their incorporation into the constitutional order or by their

[16] J. Diamond, *Background Paper 1: Sequencing PFM Reforms*, 2013, https://www.pefa.org/sites/pefa/files/resources/downloads/v13-Sequencing_PFM_Reforms_-_Background_Paper_1_%28Jack_Diamond__Jan__2013%29__1.pdf (access: 28.2.2023), p. 33.

[17] I. Lienert, *op. cit.*, p. 76.

[18] H. van Eden, P. Khemani, R.P. Emery Jr., *op. cit*.

[19] M. Karfíková, M. Bakeš, R. Boháč [et al.], *op. cit.*, p. 139.

[20] *Ibidem*.

[21] H. van Eden, P. Khemani, R.P. Emery Jr., *op. cit.*, p. 89.

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existence in the form of organic law, is appropriate[22] since then the enforcement of compliance with the legal framework of the budgetary process can have a strong controlling influence on the actions of politicians, in whose hands the setting and execution of policies are carried out.[23]

Thus, when we talk about sources of constitutional law or organic law, these generally binding legal rules should consider the fact 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 at defining the general responsibilities of the executive power and the legislature and the relations between these two branches, the legislative process, the relations between the central (or federal) government and the subnational governments (local governments), the overarching principles relating to the budgetary system and the establishment of an independent body responsible for external audit of the government (the Supreme Audit Institution, SAI) and other public sector bodies that play a role in the budgetary process, such as the central bank or independent commissions that determine the salaries of senior public officials.[24]

Regarding the statutory basis, it is in principle not necessary for a specific budgetary rule to be explicitly included in the law when it is introduced. However, a firm legal basis for the budgetary rule being introduced can significantly improve the prospects for effective compliance and transparency of the budgetary process.[25] Moreover, as already noted, achieving the existence of a robust legal framework is the goal of a public fund management system. On the other hand, however, in the case of stricter budget rules and a higher level of bindingness of budget rules, the existence of appropriately designed and transparent escape and revision clauses (statutory exceptions for *ad hoc* situations arising) becomes more critical to guarantee an adequate element of flexibility in budget law.[26] The effectiveness of the public fund management system will therefore depend on proper anchoring in generally binding regulation, suitably supported by sub-legislative legal norms as well as administrative practice.[27]

Experts also suggest that the number of laws and their legal force reflect the balance of power between the executive power and the legislature. The optimal situation is considered to be the implementation of the budget rules in a single piece

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[22] D. Tommasi, *Strengthening Public Expenditure Management in Developing Countries: Sequencing Issues*, 2009, https://europa.eu/capacity4dev/file/10164/download?token=-GU3HCXi (access: 28.2.2023), p. 50.

[23] H. van Eden, P. Khemani, R.P. Emery Jr., *op. cit.*, p. 86.

[24] I. Lienert, *op. cit.*, p. 65.

[25] A. Corbacho, T. Ter-Minassian, *Public Financial Management Requirements for Effective Implementation of Fiscal Rules*, [in:] *The International Handbook of Public Financial Management…*, p. 41.

[26] *Ibidem*.

[27] H. van Eden, P. Khemani, R.P. Emery Jr., *op. cit.*, p. 102.

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of legislation, taking into account the need for coherence in the budget system and the reduction of the risk of inconsistencies, incoherence, or ambiguity between the various pieces of legislation. The usual exception that should exist to this rule are budgetary law issues dealt with in the constitutional order. Examples include the regulation of the Supreme Audit Office regarding the requirement to guarantee its independence or the relationship between the state budget and the budgets of local self-government units, etc.[28]

In the case of sub-legislative sources of law, then, it is generally accepted that they regulate the detailed rules of the technical parts of budgetary law. Therefore, 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 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.[29] As an example, it is therefore advisable not to regulate at the level of the law subsidy programmes and their specific rules due to their temporary nature, as long as the parameters or indicators for their announcement envisaged by the law are maintained, or the various one-off benefits granted in connection to emergencies. For such benefits, it seems appropriate to leave it to the law to clearly establish a clause that, in the event of an emergency, will allow the executive to adopt an effective policy instrument to address the impact of the emergency, in line with the above-mentioned requirement for flexibility in the legal framework of the public fund management system and to keep it as clear as possible while maintaining the predictability of the budgetary rules.

The last question focuses on the temporal aspect of the legal norm. However, this is not about determining the temporal scope of the legal rule, but rather identifying the time when a rule of budgetary law should be applied.[30] Addressing this question of when the relevant budgetary rule is to be applied is also crucial. In the event that the legal framework of the public fund management system is rigid, it may not be possible to achieve its objectives in accordance with a policy that would otherwise lead to a strategic and efficient allocation of public resources.[31] The inappropriate timing of deadlines or periods for the establishment of a particular rule of the budgetary process may also produce inappropriate effects, but usually in relation to the clarity and predictability of the legal regulation of the public fund management system. This may be the case for setting a deadline for the preparation

[28] I. Lienert, *op. cit.*, p. 67.
[29] *Ibidem*, pp. 66–67.
[30] *Ibidem*, p. 63.
[31] PEFA, *Public Financial Management…*, p. 2.

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of the draft state budget, but also for the rules for determining the point in time at which the consequences for breaches of budgetary discipline are determined.

## 2. Causes of breaches of budgetary discipline

In addition to defining the regulatory framework, the next step necessary to formulate a model for enforcing budgetary discipline is to identify the basic situations in which entities managing public funds violate budgetary discipline and the facts that lead to such violations. Their identification plays a crucial role in particular in the choice of appropriate enforcement measures.

In general, the basic obligation of an entity managing public funds is to use those funds in the manner planned in the adopted budget, i.e., to provide for the public needs defined in the budget, and at most in the amount defined in the budget. Within the framework of this basic obligation, it is then essential for the purposes of budgetary discipline to use public funds efficiently, economically, and effectively,[32] or in accordance with other obligations laid down for their use by legislation or other formal sources of law (however, as a rule, these will be obligations which are a concretisation of, or in addition to, the above-mentioned overarching obligations).

For the purposes of this article, the causes that lead public fund managers to breach these obligations are divided into two groups depending on their nature, namely causes originating in the specific features of the public sector and causes originating in the form of the legal regulation of budgetary management as such. This division is important for the subsequent determination of the appropriate instruments for enforcing budgetary discipline, or for determining the appropriate measures to eliminate these causes or to counteract their negative consequences.

Much of the reason stems from 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 implementation of budgetary management is therefore the result of a public choice in which the general interest, i.e., a criterion with a normative content, is the basic evaluation criterion.[33] For this reason, the decisions taken may differ without any of them being considered *a priori* right or wrong.[34] In addition, there are other factors specific to public finance. The first of these is the fact that decision-making in these cases is largely the responsibility of public administration entities (i.e., public sector actors), namely the executive authorities or similar executive bodies at

[32] A. Goddard, *Are Three "E"s Enough? Assessing Value for Money in the Public Sector*, "OR Insight" 1989, vol. 2(3), pp. 16–19; W.B. Liu, Z.L. Cheng, J. Mingers, L. Qi, W. Meng, *The 3E Methodology for Developing Performance Indicators for Public Sector Organizations*, "Public Money and Management" 2010, vol. 30(5), pp. 305–312.

[33] D.C. Mueller, *Public Choice III*, Cambridge 2003, p. 1.

[34] A. Maaytová, F. Ochrana, J. Pavel, *Veřejné finance v teorii a praxis*, Praha 2015, p. 18.

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the level of the various federative units or local government units and institutions.[35] The second important particularity of the public sector is the relative certainty of resources and the level of funds raised (compared to the private sector).[36] Another particularity is the absence of market forces in some areas, and hence their pressure for efficient spending of public resources.[37]

Thus, it is mainly the executive bodies of public administration, which, as entities managing public funds, and therefore subjects of budgetary discipline, can be held responsible for the implementation of public expenditure and for the rational and economical, efficient, and effective use of public economic resources.[38] Examples 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 providing for other needs of society.[39] The above-mentioned 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.[40]

Depending on the form of the entity managing public funds and its position in relation to other stakeholders, and depending on which public budget is affected by the decision, different causes of negative consequences can be identified. At the same time, it should be noted that in each of the situations examined, the economically rational behaviour of the entity managing public funds is a prerequisite, i.e., behaviour aimed at maximising the benefit of that entity.[41]

The essential criteria for distinguishing individual situations to identify their riskiness in terms of possible breach of budgetary discipline are: (1) the form of the entity managing public funds in terms of the number of its members, i.e. whether it is an individual or a collective; (2) the form of voting where the entity managing public funds is collective in nature;[42] (3) the "distance" of the entity managing

[35] J. Diamond, B.H. Potter, *Guidelines for Public Expenditure Management*, Washington 1999, pp. 34–58.

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

[37] 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 *ibidem*, p. 84.

[38] J. Diamond, B.H. Potter, *op. cit.*, section 4.

[39] M. Karfíková, M. Bakeš, R. Boháč [et al.], *op. cit.*, chapter 1.1.4.

[40] *Ibidem*, chapter 1.3.

[41] R.W. Tresch, *Public Finance: A Normative Theory*, London 2015, p. 16.

[42] *Ibidem*.

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public funds from the voter;[43] and (4) the access by the public funds manager to information relating to the facts on which a decision is being taken and which may influence the decision.[44]

In terms of the size of the entity managing public funds, two situations are crucial. In the first one, the entity is an individual. This form of public finance manager entails the risk of abuse of position (or moral failure of the individual) and, at the same time, the risk of an insufficient professional capacity to assess the facts on which decisions are taken, i.e., professional failure of the entity.[45] In the second case, where the entity is collective in nature, the individual risks are additionally dependent on the form of voting chosen by the entity. If a consensus form of voting is chosen (i.e., unanimous consent of the members is required for a decision to be taken), there is a risk that one of the members will act as a stalling actor, imposing unacceptable conditions and ultimately not being interested in reaching an agreement, thus paralysing the whole decision-making process.[46] These risks can be avoided by some form of majority voting.[47] However, on the other side, this is balanced by the increased risk of sub-optimal use of available public resources, which can arise either in the form of a redistribution of resources exclusively in favour of the majority (i.e., the minority suffers a loss), or in the form of government failure, where the resulting situation (i.e., the situation after the vote and the implementation of the decision) is worse for all stakeholders.[48] There are several possible causes of these negative phenomena. Fundamentally, this is an inadequate cognisance of voters, either in terms of the quality or quantity of that information. It may be inadequate, erroneous, or completely absent forecasts of economic development, but it may also 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. Others are the incompetence of members of a body managing public funds to make a qualified decision, the preference for ideology at the expense of the professional side of the problem or individual, party or other group interests at the expense of the public interest. The extent to which these risks occur depends, among other things, on the

[43] M.A. Vachris, *Principal-Agent Relationships in the Theory of Bureaucracy*, [in:] *The Encyclopedia of Public Choice*, eds. C.K. Rowley, F. Schneider, vol. 2, New York 2004, p. 434.

[44] A. Altay, *The Efficiency of Bureaucracy on the Public Sector*, "Dokuz Eylül University Faculty of Economics and Administrative Sciences Journal" 1999, vol. 14(2), https://dergipark.org.tr/tr/download/article-file/211469 (access: 28.2.2023), pp. 41–42.

[45] R.W. Tresch, *op. cit.*, p. 16.

[46] R.A. Musgrave, P.B. Musgrave, *Public Finance in Theory and Practice*, New York 1989, p. 94; R.W. Tresch, *op. cit.*, p. 16.

[47] C.E. Miller, *Group Decision Making under Majority and Unanimity Decision Rules*, "Social Psychology Quarterly" 1985, vol. 48(1), p. 55.

[48] L.J. Volz, B.L. Welborn, M.S. Gobel, M.S. Gazzaniga, S.T. Grafton, *Harm to Self Outweighs Benefit to Others in Moral Decision Making*, "Proceedings of the National Academy of Sciences of the United States of America" 2017, vol. 114(30), p. 7963.

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majority voting rules chosen, or more precisely on the size of the majority whose consent allows the decision to be taken. A basic distinction can be made between relative, simple (supermajority), and qualified majorities.[49]

The relationship of the entity managing public funds to the electorate, or its distance from the electorate, is another fact that significantly influences the way public funds are managed. If this distance is small, as in the case of directly elected politicians or politicians deriving their office indirectly from that election, depending on political preferences and utility maximisation (i.e., seeking re-election), there is a risk that current and capital expenditure will be implemented in a sub-optimal proportion, where the preponderance in favour of current expenditure only leads to a further increase in current expenditure in the long run,[50] and the risk that the implementation of expenditure solely or indirectly for the purpose of achieving re-election inevitably entails, to a greater or lesser extent, a suppression of interest in the efficient allocation of resources.[51] If the entity managing public funds stands on the opposite side of the spectrum, or if such an entity does not make decisions itself, but has a major influence on the decision of the relevant entity making the decision (in particular the bureaucratic apparatus, i.e., the support apparatus of the executive), then there is a risk of so-called inefficiency of bureaucratic behaviour,[52] i.e., behaviour consisting in maximising the utility of one's organisation without regard to the criterion of efficient use of public resources.[53]

The 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, namely the access of the entity managing public funds to the information needed to make an informed decision.[54] It is generally the civil service apparatus that has a monopoly on access to information, which enables it to influence the decision-making of politicians and, consequently, to increase public expenditure spent for its own benefit.[55]

Another fact that affects the management of public funds by entities is the possibility of outsourcing the implementation of public projects and the form in which it is carried out. Among the institutes most used for this purpose are public

[49] A. Maaytová, F. Ochrana, J. Pavel, *op. cit.*, pp. 29–30.

[50] If there is an overweighting 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 *ibidem*, p. 49.

[51] E. Ocampo, *The Economic Analysis of Populism: A Selective Review of the Literature*, "Serie Documentos de Trabajo (Economía) Ucema" 2019, no. 694, p. 15.

[52] For a graphical representation of this model, see W.A. Niskanen, *Bureaucracy and Representative Government*, Chicago 1971, chapter 5.

[53] R.A. Musgrave, P.B. Musgrave, *op. cit.*, p. 101.

[54] A. Altay, *op. cit.*, pp. 41–42.

[55] W.A. Niskanen, *op. cit.*, chapter 5.

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procurement and longer-term forms of cooperation with the private sector in the form of concessions and quasi-concessions. Both of these instruments can substantially reduce the expenditure needed to provide essential goods and services (and thus make the entity's management more efficient), but they also carry a number of risks and may not achieve this positive effect.[56]

The administrative complexity of controlling the fulfilment of budgetary discipline obligations is another significant fact that negatively affects the management of public resources. In particular, the control of the implementation of economy, efficiency, and effectiveness requires a rather extensive analysis of several facts and their comparison with the desired situation in several different areas. The body carrying out the audit should therefore have a sufficiently large and qualified staff of persons competent to carry out an effective audit.

The reasons for this are also not negligible, and they are based on the level of (lack of) clarity, (lack of) systematicity, or duplication of obligations.[57] The consequence may be the unwillingness of the entity managing public funds to comply with the rules set out in this way and, at the same time, increased administrative costs on the part of both the entity managing and controlling public funds, resulting in inefficient use of public resources.

## 3. Model

The model of enforcing the budgetary discipline should be based on the above parameters for its legislative anchoring and at the same time it should be able to eliminate or at least reduce the above-mentioned common cases of breaches of budgetary discipline. These shortcomings can be generalised by dividing them into three categories: (1) self-enrichment; (2) a political mistake; or (3) operational inefficiencies.

This categorisation has major implications for the design of the model of rules for enforcing budgetary discipline. Indeed, in the case of a deficiency with the nature of a policy error, the regulatory framework can hardly subsequently be linked in any way to legal consequences, since it will generally 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 part, should aim at achieving this objective, not at reviewing

[56] For example, in the form of a debt trap, monopoly dependence on a supplier or bankruptcy. See A. Maaytová, F. Ochrana, J. Pavel, *op. cit.*, pp. 71–74.

[57] In this case, it is disregarded the legislation that embodies inappropriately set regulation of the area in question, which does not respond to problematic aspects in an effective way or does not take them into account at all. Such regulation may reinforce the tendency of entities to manage in contravention of the requirements of budgetary discipline, but the solution lies not in legislative and technical adjustments but in a different substantive solution.

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it. Prevention, including historical and empirical knowledge and familiarity with it on the part of the person or body setting the policy objective, is thus essential in the event of this shortcoming. The above grading will also influence what type of sanctions will be effective and capable of achieving long-term disciplined public management in individual cases or the way in which public management oversight procedures are exercised.

It is useful to describe the structure of the model of budgetary discipline enforcement starting from the diagram (Figure 1), where a short explanation and additional diagram will be provided for each of its components.

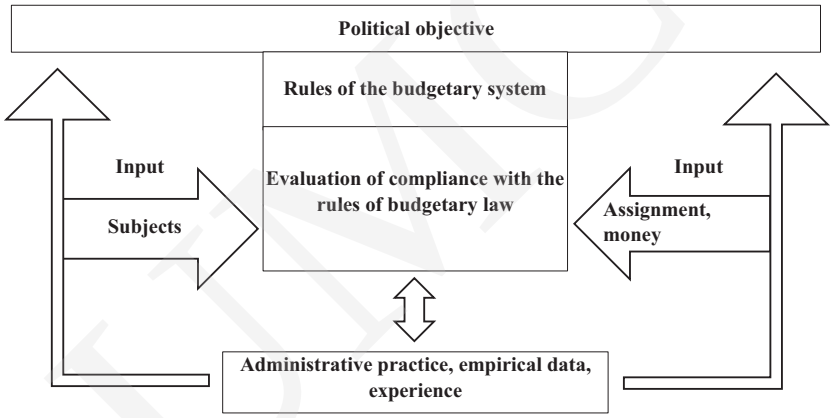



Figure 1. Diagram of the general structure of the model

Source: own elaboration.

The political objective is an attribute that neither defines nor influences the model of enforcing budgetary discipline. It is, however, an attribute that is mutable, and therefore the rules of budget law should contain a degree of flexibility, as the expert community agrees, so that budget law regulation does not constitute an obstacle to its achievement.[58] Yet, for example, an incorrectly stated policy objective, whether in view of its *de facto* impossibility of implementation through the rules of budgetary discipline or its inappropriate choice in terms of public choice theory, constitutes one of the shortcomings of compliance with budgetary discipline. This may be due to the already identified shortcoming of the regulation, which does not entrust the delegated entity with the tools to implement the policy to achieve the stated objective, or vice versa, the fact that the use of the entrusted tools leads to inefficient use of public funds. For this reason, the role of prevention is crucial, as an incorrect or inappropriate policy objective cannot usually be sanctioned by budgetary law. Prevention should be based on sufficient knowledge of the budgetary

[58] See section 1 "Basis for regulation of the public fund management system" above.

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rules on the part of the person or body setting the policy objective and an economic analysis of the behaviour of the actors whose behaviour is essential to the achievement of the policy objective, which can be greatly assisted by the 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 enforcing budgetary discipline. However, unlike the policy objective, it is an attribute that is essential for the application of the rules of the fiscal discipline enforcement model. It creates a frame of reference for its application. In other words, it is the establishment of the rules of budgetary law that defines what constitutes disciplined management of public funds. The definition of budgetary discipline is closely linked to these rules, since a violation of any rule for the management of public funds presents the violation of the discipline. Thus, any violation of a rule of budgetary law may result in the application of the measures included in the model for the enforcement of budgetary discipline. As mentioned above,[59] these should be rules that provide a sufficient degree of cohesion, clarity, predictability, and transparency, but at the same time leave sufficient flexibility for their specification for individual cases of management of public funds. As a rule, this will be the specification of a rule relating to ensuring the efficient, economic, and effective management of public funds (e.g., prohibition of loans, public procurement rules, etc.).

The input of the entities that will manage public funds, the input of the money that will be entrusted to each entity to manage to achieve the policy objective, or the input of the assignment specifying the procedures and sub-objectives to be undertaken or implemented to achieve the policy objective are other attributes with a fundamental role for the model of enforcing budgetary discipline. In the case of entity input, the way in which their input into the management of public funds is implemented is crucial to the model. This can happen in two ways, but for both of them, the role of prevention is important in terms of considering empirical data, experience, and sufficient knowledge of the behaviour of the actors that will be involved in achieving the policy objective. The first way is the authoritative establishment of a public institution (public authority or public law person) or the conferral of powers to exercise public authority on 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 where input is given. Thus, in this case, prevention plays a role in the actual decision whether to establish the entity or to confer the power to exercise public authority on the entity. The second way is the entry of an existing entity into the management of public funds on the basis of a legal fact different from the instrument of incorporation or the law establishing it (the way of this entry is hereinafter referred to as "as a result of a legal fact").

[59] *Ibidem*.

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The most typical case in which this can happen is the granting of public support, usually at the request of the entering entity. In this situation, entry depends on success in a certain type of competition, and the parameters of the competition may vary (speed, qualification, economic situation, etc.). However, from a theoretical point of view, entry may also be the result of an involuntary legal event. Since in this type of entry of an entity into the budgetary process of managing public funds, the entry depends on the will of the entering entity and, as a rule, on the entity providing the public funds, prevention plays a role in the decision whether to grant public funds to the entering entity. For this, the model of enforcing budgetary discipline may provide for different legal instruments. In principle, however, the rules will constitute a filter for persons or transactions financed by public budgets to provide public funds. This will include, e.g., the implementation of an *ex ante* supervisory procedure to assess whether the entering entity meets the conditions for public funds to be granted/trusted with it, or the setting of specific parameters for the competition for entry (e.g., setting subsidy conditions).

To describe the evaluation of compliance with the rules of budgetary law, it seems useful to use another diagram to describe how this evaluation takes place and what the internal links are between the different processes. However, it is true that the process of evaluating compliance with the rules of budgetary law applies both at the stage of fulfilling the input assignment and at the stage of evaluating the publicly funded output.

The systematic process of evaluating compliance with the rules of budgetary law then leads to the emergence of administrative practice, empirical data, and experience, which on one side represent a degree of binding for the public authorities carrying out this evaluation,[60] and on the other also a source of information for the prevention of deficiencies in budgetary discipline. As already mentioned, this knowledge is then capable of influencing the setting of policy objectives and entry requirements for allowing the entry of entities and assignments into the management of public funds. The empirical data and experience also provide the necessary feedback to identify the correct setting of the specific individual rules of the budget discipline enforcement model as well as the rules of the budget system itself. Administrative practice, as already mentioned, shapes the rules of the budgetary system under certain conditions.

To summarise, a political objective should not be part of the model for enforcing budgetary discipline. However, the policy objective, together 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 funds management. The rules of the budget system and administrative practice then form a kind of wrapper of the model of budget discipline enforcement within which

[60] D. Hendrych [et al.], *Správní právo: Obecná část*, Praha 2012, pp. 81–82.

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the individual rules of the model will be applied. The actual core of the model for enforcing budgetary discipline is therefore primarily constituted by the rules and procedures for assessing compliance with the rules of budgetary law, and in some cases also by the procedures for the entry of entities and assignments into the management of public funds.

Focusing then on the main point, which is the assessment of compliance with the rules of budgetary law, it is again useful to outline this in the diagram (Figure 2).

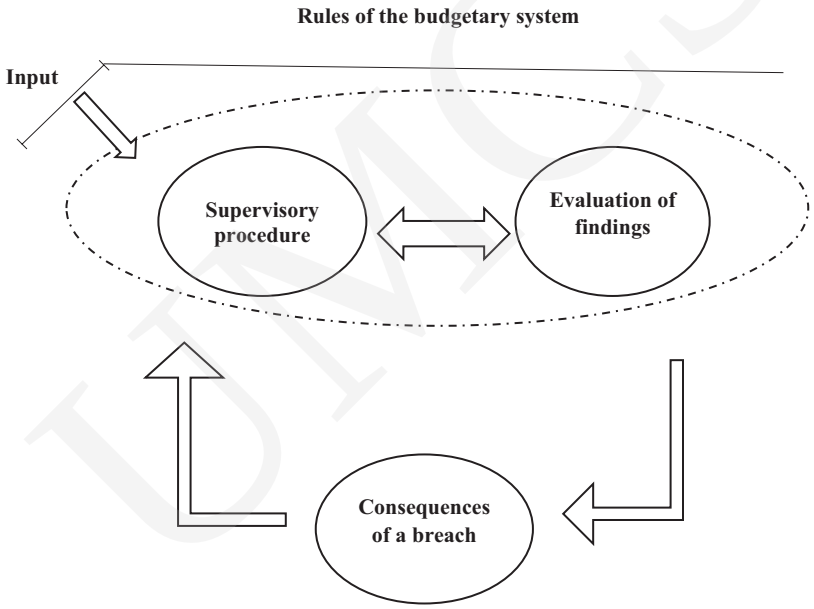



Figure 2. Diagram of assessment of compliance with the rules of budgetary law

Source: own elaboration.

It is clear from the Figure 2 that the input and rules of the budget system delimit the actual procedure and rules for evaluating compliance with the rules of budget law. Therefore, we will not deal with the input and rules of the budget system at this point and refer to the above. However, entry may be the first stage at which the rules for enforcing budgetary discipline are applied. The next phases are then the input enforcement phase and the output enforcement phase.

The appropriate set-up of supervisory procedures is crucial for enforcing budgetary discipline within the model. The general requirements for the regulation of the budgetary system, i.e., clarity and transparency of the relevant standards, can be applied to the regulation of the supervisory procedures. Another of the theoretical requirements for the set-up of supervisory procedures in the budget discipline enforcement model is the existence of a body responsible for external

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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).[61] Thus, the Supreme Audit Office or a similar institution will normally perform this role. Importantly, the requirement for independence of the supervisory procedure carried out is an immanent criterion of any supervisory procedure. However, this independence need not be absolute, as the central role responsible for the scrutiny of the management of public funds by the executive is usually taken by the Ministry of Finance.[62] In addition, the authors consider that in the case of the deficiencies in a budgetary discipline identified above, which are typologically based on self-enrichment or operational inefficiency, the internal audit, i.e. the component carrying out supervisory procedures within the entity managing public funds, plays a pivotal role. From this point of view, it is difficult to overcome a certain tripartite nature of the supervisory procedures carried out in relation to a single supervised entity. However, if the general requirements of clarity, predictability, and transparency of the law, i.e. also of the regulation of the exercise of supervisory procedures and their results, are to be taken into account, it is appropriate to set certain boundaries for their exercise in relation to non-subordinate entities, i.e. in particular 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 has sanctioning powers will play a crucial role.[63] If this institution were based on the Latin model of sanctioning breaches of budgetary discipline, it would seem inappropriate for another public authority to carry out the supervisory procedure in respect of the entities subject to supervision. Alternatively, it could be envisaged that a supervisory procedure by a superior supervisory authority or a supreme audit institution would preclude the latter from carrying out a supervisory procedure. However, in the case where the supreme audit institution could not impose sanctions, it is entirely understandable and appropriate that there should be another public authority with sanctioning powers. From this point of view, it is therefore appropriate that this other public authority should also have the power to carry out the supervisory procedure, but the supervisory conclusion of the supreme audit institution could be binding on it, e.g., as an assessment of a preliminary question.

As far as the audit is concerned, the establishment of an internal audit should be left to the will of the specific supervised non-subordinate. However, for those that would meet the predetermined criteria, there may be a requirement for an external audit, in order to allow for a more orderly evaluation of the findings by the supervised entity.

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[61] I. Lienert, *op. cit.*, p. 65.

[62] *Ibidem*, p. 70.

[63] M. Karfíková, M. Bakeš, R. Boháč [et al.], *op. cit.*, p. 99.

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As regards the breakdown of surveillance procedures, these can be divided into *ex ante*, ongoing, or random, *ex post*.[64] Supervisory procedures carried out *ex ante* can play an important role in cases where it is appropriate to carry out a supervisory procedure to assess whether it is appropriate for an entity to enter into the management of public funds, i.e., according to the first diagram (Figure 1), when entities enter. A continuous or random supervisory procedure will then logically be carried out at the stage of implementation of the entry assignment. Both of these types of random surveillance procedures can be implemented *in situ* or *ex situ*, with the random surveillance procedure always present at the *ad 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 take place at intervals specified in the budgetary rules, where the formal initiation of the supervision procedure by the supervising public authority may not be required. The *ex post* supervisory procedure will normally find its use at the last stage of the assessment of compliance with budgetary discipline, i.e. at the stage of the assessment of the output of the assignment. This type of supervisory procedure may be repeated randomly *in situ* or *ex situ*, or it may be carried out obligatorily whenever the rules are met (achievement of an objective, expiry of a time limit, etc.).

The second essential component of the model for enforcing budgetary discipline is the evaluation of the evidence obtained from the surveillance process. The implementation of the procedures under this component of the model is strongly dependent on two aspects. The first is the availability of sufficient information and evidence on the management of public funds. It is only on the basis of comprehensive information and evidence on the supervised activity that the supervising public authority can correctly assess whether or not there has been a breach of budgetary discipline. However, a second aspect is also crucial for a correct assessment, namely the quality of the assessment carried out. The supervising public authority must still be able to evaluate the information and supporting documents in a true and complete manner. Thus, in the case of supervisory procedures, it depends on the appropriate/correct setting of the algorithm and the way in which the information is transmitted (setting up machine-readable information via specific forms or exporting the data in the required format). In the case of manual evaluation, the outcome of the evaluation depends on the human factor. Indeed, as mentioned above, this factor may be sensitive to various failures (moral failure of the individual, capacity failure of the public authority, professional failure of the individual, etc.).

[64] D. Hendrych [et al.], *op. cit.*, p. 287.

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The outcome of the knowledge assessment process is a finding as to whether or not the assessed use of public funds complies with the rules of the budgetary system and is therefore disciplined. This result should normally be recorded, e.g., in the form of an audit report with which the supervised entity should be made aware. If no breach of budgetary discipline has been found, the supervisory authority receives information on this which will then be used in the final assessment of the achievement of the policy objective. However, if there has been a breach of budgetary discipline in the management of public funds, this component may be followed by the final component of the model for enforcing budgetary discipline, namely the consequence of the breach of budgetary discipline.

First of all, it should be noted 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. The legislation may approach breaches of budgetary discipline in such a way that it only provides for legal consequences for breaches of budgetary discipline that reach a certain level of seriousness. Thus, if a marginal breach is merely noted by the supervising public authority in an audit report without further ado, the consequence of the breach will not be present in such a case. However, although there may be no immediate consequence of the breach, with this finding, the rules of the budgetary system may set consequences for the future, e.g., when setting the parameters for further input into the management of public funds. The consequence of a breach of budgetary discipline may then be, e.g., the rejection of a grant application in a subsequent case. Their setting should also reflect the political will of the state to enforce procedural and political rules.[65] Again, the general requirements for the regulation of the budgetary system, i.e. clarity and transparency of the relevant norms, can be applied to the regulation of the consequences of breaches.

The actual consequences of the breach can then be divided into the following categories: (1) corrective measures; (2) exclusionary measures (including termination of already financed activity); (3) budgetary measures; and (4) penal measures.

The corrective measure of a breach of budgetary discipline will normally be set for the stage of implementation of the input assignment or the stage of evaluation of the publicly funded output, but its specific form may vary for each stage. In the case of the implementation phase, this consequence should primarily be aimed at eliminating a remediable breach of budgetary discipline which, when eliminated, will not affect the form or quality of the public budget output. This could be, e.g., the abandonment of an infringement. In the case of output, however, it is difficult to imagine a situation where a breach of budgetary rules could be remedied without further delay by the removal of the breach of budgetary discipline. In such a case, the remedy will therefore normally be to restore compliance in a way that is unaffected

[65] H. van Eden, P. Khemani, R.P. Emery Jr., *op. cit.*, p. 92.

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by the breach of budgetary discipline, where such compliance will no longer be financed from public budgets. The remedy may also aim at returning public funds to their intended purpose, i.e., withdrawing them from the entity and returning them to the public budget or to the administrator of its distribution. In such a case, the entity managing the public funds may be subject to a levy for breach of budgetary discipline, which requires it to return the funds in the amount of the public funds concerned to the competent/designated public authority. The repayment of the funds appears to be an appropriate measure where the lack of compliance with budgetary discipline consists in self-enrichment. However, even for operational inefficiencies, corrective measures can be considered, usually comprehensive, e.g. in the form of reorganisation of processes, procedures or assets of the supervised entity. A less invasive corrective consequence is the so-called managerial action, which is determined by the managing person within the supervised entity.

The exclusion of an entity from the management of public funds or the termination of an activity financed from public budgets may be an option at the entry or execution stage. As already mentioned above, a breach of budgetary discipline may mean that the entity will not pass the entry criteria for public funding in the future, which indirectly results in the legal consequence of the breach being the exclusion of the entity from the management of public funds. However, this consequence of a breach of budgetary discipline plays a greater role in the implementation phase. In the event of a timely and serious breach of budgetary discipline in the implementation phase, it may make more sense, from the point of view of achieving the policy objective, to proceed directly to the cancellation of the public financing of the activity in question. This consequence will thus be linked to situations where there has been a substantial breach of the budgetary rules and, at the same time, where public budget resources have not already been provided or have been provided only partially. If public funds were returned as a result of a breach of budgetary law, this would be a remedial consequence. Exclusion or termination as a consequence of a breach of budgetary discipline would then seem appropriate where the lack of budgetary discipline consists of self-enrichment or greater operational inefficiency, but where it is only an entity whose entry into the management of public funds is due to a legal fact. It is not usually applicable in case, that the concerned entity manages public funds due to its nature such as the budgetary units like public offices or ministries, which are funded solely from public budgets and are responsible to enact essential public policies falling into their competence. However, this type of measures is still applicable to this type of budgetary units, when the selection procedure for the funding is competition-based.

In case of a breach of budgetary discipline, a budgetary measure may also be imposed. This consequence will thus normally consist in the imposition of an obligation by the supervisory public authority on the supervised entity. This obligation will not, however, consist in the return of funds to the public budget or to

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the administrator of a chapter of the public budget, but may still be of a pecuniary nature, e.g., it could consist of an obligation to provide a security deposit or to cut some of the non-essential expenditures (e.g., on bonuses to salaries). Budgetary measures may be considered appropriate where there are operational inefficiencies that can be enforced or ensured by imposing an additional obligation on the supervised entity.

The last type of consequences of a breach of budgetary discipline are penal measures, which represent punishment of the addressee of budgetary law for failure to fulfil the primary obligation imposed by budgetary law.[66] A distinction can be made between criminal, administrative, and civil sanctions. In general, the public tends to take the view that sanctions should be as painful as possible, but they should also remain credible, given the special status of public budgets.[67] The possibility of their reciprocal imposition, taking into account the principle of *non bis in idem*, also plays a major role. As far as civil sanctions are concerned, their use in budget law is very limited, if not excluded. As a rule, such sanctions are interest on late payment or an obligation to compensate for damage. Also, given their private law status, their enforcement would fall within the competence of the civil courts, which is why it seems more appropriate to deal with the consequences of a breach of budgetary discipline through other payment sanctions, e.g. with the nature of the corrective consequence referred to the above. The imposition of these other payment penalties can then be entrusted to the executive public authorities, thereby guaranteeing their more effective imposition and enforcement. However, their judicial review should also be guaranteed. As regards criminal sanctions, their existence in the legal order is appropriate, but they should reflect the specific position of criminal law as a means of *ultima ratio*. The anchoring of criminal penalties also seems appropriate in view of the personal scope of criminal law rules, which are primarily based on the fact that it is the natural persons who commit the crime who are primarily punished. The previous types of consequences for breaches of budgetary discipline are generally directed against the subject as such, which can be, and very often is, a legal person. It is therefore primarily criminal sanctions that act as a deterrent to natural persons involved in the management of public funds.

Thus, administrative sanctions play a crucial role in terms of sanctions for breaches of budgetary discipline. These can then be divided into monetary and non-monetary sanctions. In the case of monetary sanctions, the impact of monetary sanctions has been questioned by the professional community, which claims that the success of actual monetary sanctions has been limited. In many cases those bearing the burden would not be the ones breaching the fiscal rules (often the previous

[66] M. Karfíková, M. Bakeš, R. Boháč [et al.], *op. cit.*, p. 108.
[67] H. van Eden, P. Khemani, R.P. Emery Jr., *op. cit.*, p. 92.

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government), making the instrument politically unattractive.[68] Importantly, this conclusion only applies where the monetary sanction is imposed within the public administration organisation. If the financial sanction is imposed on an entity entering into the management of public funds as a result of a legal fact, the financial sanction will conversely fall on the entity breaking the budgetary rule. However, it is still the case that their determination should be clear and transparent, and their design should reflect this. In the case of non-monetary sanctions, reputational sanctions play an inherent role. Indeed, this is the only type of sanction that we believe can be imposed even in relation to a lack of budgetary discipline consisting of a political error. This type of non-monetary sanction consists in the publication of the breach of budgetary discipline, usually with a justification of what the breach of budgetary discipline consists of. A typical example is the reports of supreme audit institutions addressed to the public and the legislature.

## CONCLUSIONS

In this article, the authors define a basic theoretical model of budget discipline enforcement, which provides a basis for assessing the effectiveness and impact of specific budget discipline regulation. The model is defined without reference to a specific legal order or the specifics of the budgetary system of a particular country or the European Union. However, in its development, the model was based on the general attributes of the budgetary system and the legal instruments for enforcing budgetary discipline, which form the common denominator of budgetary regulation across countries and the European Union. Only in this way can it serve as a normative benchmark for comparing and assessing the regulatory frameworks of budgetary discipline in different countries. This comparison and assessment is the subject of the authors' follow-up work, which aims to expand the knowledge in the area of budgetary discipline enforcement, a comprehensive study of which is so far lacking in theory, and to assess the effectiveness of budgetary discipline regulatory frameworks using the example of the Visegrad Group countries.

The starting point for defining the model was the existing knowledge on the regulation of budgetary discipline and its economic aspects. From a regulatory point of view, the requirement for clarity and transparency in the nature of regulation, balanced by a degree of flexibility on the other side, can be seen as an essential aspect, together with the scope of the substantive and personal scope of the legal rules governing budgetary discipline. Flexibility allows for the temporary or *ad hoc* nature of certain budgetary processes, e.g., to be taken into account, while of course maintaining a basic framework of rules that provide a sufficient level of legal

[68] *Ibidem*, p. 91.

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certainty and predictability. This entails, firstly, the requirement to minimise the number of legal provisions (sources of law) in which the legal norms of budgetary discipline regulation are found, and secondly, the requirement to respect 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 point of view, it can be considered essential that the management of public funds is a matter of public choice, that the resources for such management and their amount are relatively certain and that market forces are not present in many cases. These facts increase the risk of uneconomic, inefficient or ineffective use of public funds, which is further supported by the high administrative and staffing requirements placed on the body exercising control over the management of public funds.

The authors' goal was to set up the model in such a way that it would allow the identified relevant issues to be addressed in a consistent manner, maximising the enforceability of the desired outcomes, while remaining clear and understandable. As the model represents a part of the public funds management issue, the first step was to identify the attributes of this area that are relevant for the enforcement of budgetary discipline. These attributes can therefore be referred to as the attributes of budgetary discipline enforcement. The second step was to define the basic features of the model within these attributes. These attributes include, firstly, the rules of the budgetary system, which form the frame of reference for the application of the model of budgetary discipline enforcement. These rules, in other words, clearly define how far the obligation to manage public funds in accordance with budgetary discipline extends. It is also a set of sub-attributes that enter into the budget management process in the form of the entities managing public funds, in the form of the public funds themselves, and finally the terms of reference that specify how the stated policy objective is to be achieved using public funds. Precautionary measures based on knowledge of 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 assessing the capacity of the entity to manage public funds in accordance with the rules laid down. Another attribute is administrative practice, together with empirical data and experience, which is built up through the gradual and repeated evaluation of the rules of budgetary law. Administrative practice thus becomes to some extent binding on the public authorities carrying out the evaluation and, together with empirical data and experience, provides an informative basis for preventive measures and feedback to assess whether the rules for enforcing budgetary discipline and the rules of the overall budgetary system are appropriately set. The last attribute, which is absolutely crucial and at the heart of the enforcement of budgetary discipline, is the process of assessing compliance with the rules of budgetary law. The area of evaluation is bounded, on one hand, by the scope of the rules of the budgetary system and, on the other hand, by the

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individual inputs in the form of public funds, the entities managing these funds and the purpose for which these funds are to be used. This process of evaluating breaches of budgetary discipline can be defined in terms of two sub-activities, the first of which is the supervisory procedure and the second of which consists the subsequent evaluation of the findings of the supervisory procedure. If the evaluation of the findings leads to the conclusion that budgetary discipline has been breached, then, in addition, the legal consequence of the breach may follow.

The supervisory procedure can be summarised as an active activity of the supervising body, the aim of which is to obtain and subsequently evaluate knowledge on the management of public funds, which will enable the body to conclude whether or not public funds are being managed in a fiscally disciplined manner. The model identifies aspects of the supervisory procedures that are more or less a prerequisite for achieving this objective. Again, this is about clarity and transparency of the relevant standards. Another is the requirement for the independence of such a procedure, although it may not be absolute. However, the existence of an independent body with the power to carry out external audits of the government is considered by the authors to be one of the conditions for achieving this requirement. At the same time, the authors consider that the individual facts leading to breaches of budgetary discipline are of such a different nature (notably political error vs self-enrichment and operational inefficiency) that they cannot be effectively addressed through one completely unified set of supervisory procedures. Therefore, the authors consider internal auditing to be the most appropriate tool for dealing with non-political causes in the context of supervisory procedures, in addition to the supervisory activities covered by the central government body in the form of the Ministry of Finance. A certain triangularity is thus essentially necessary for the exercise of effective supervision, but it is all the more important that there is an adequate and clear division of powers in its exercise, especially in view of the fact that the supervised entities may also be entities not subordinate to the supervising entity. The power to impose sanctions is an example. It plays an indispensable role in the defined model, but it should not resort to this power being conferred to several entities in a duplicative manner. In addition to the above, the timing and frequency of supervisory procedures are also important. It is desirable to allow for the exercise of supervisory procedures at all stages of budgetary management, as each of these stages gives rise to risks of breaches of budgetary discipline. At the same time, it would seem appropriate to diversify the supervisory procedures, in line with current practice, into procedures carried out *ex ante*, on an ongoing or random basis, and *ex post*, which will make it possible to take account of the specifics of each phase, the specifics of the expected breach of budgetary discipline or the relationship of the entity managing public funds to those funds.

According to the authors, the success of the process of evaluating the findings of the surveillance procedure rests on two basic pillars. The first is a sufficient

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information base, both quantitative and qualitative, and the second is the quality of the assessment of that information. The appropriate setting of the algorithm and method of information transfer and the existence of a proportionally large apparatus of sufficiently qualified personnel can thus be considered as requirements whose fulfilment is a necessity for a correct assessment of the situation.

The consequences of a breach of budgetary law are the last of the trio of aspects that define the process of assessing compliance with budgetary law. It is 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, and which may lie in the obligation to tolerate the enforcement of the primary obligation by the public authority, or in the creation of an obligation of a corrective, punitive or, in the future, preventive nature.[69] This system is complemented by the processes by which these obligations are created or imposed and the processes by which they are subsequently enforced by the public authorities. The set-up of this system thus also has a significant impact on the enforceability of the primary budgetary rules.

The legal regulation of the procedure for imposing and enforcing secondary obligations can be subject to the requirements generally imposed on the legal regulation of any procedure in which public administration is exercised. In addition to the requirement for clarity and transparency of the relevant standards, which is common to the legal regulation of the entire area of the management of public funds, these are generally accepted principles of public administration, including the guarantee of judicial review.[70] The range of actual consequences of breaches of budgetary discipline is quite wide, ranging from corrective consequences to measures such as the exclusion of the entity managing public funds from further management of those funds, to measures such as the cancellation of activities financed from public budgets or budgetary measures, to consequences of a punitive nature. Corrective consequences should consist primarily in the elimination of the breach of budgetary discipline, in situations where the breach, once eliminated, will not affect the form or quality of the output financed from public funds. In cases where this cannot be achieved, the corrective measure of re-completing the assignment, but no longer financed by public funds, may be used. The remedy may also aim at returning public funds to their intended purpose. Given the nature of these tools for remedying an undesirable situation that has already arisen, there will be scope for their use, in particular, at the stage of implementation of the initial assignment or at the stage of evaluation of the publicly funded output. Measures in the form of exclusion of the entity from further possibility of managing these funds or cancellation of the funded activity can be applied in particular before

[69] V. Knapp, *Teorie práva*, Praha 1995, p. 152.
[70] V. Sládeček, *Obecné správní právo*, Praha 2013, pp. 31, 115, 146–149.

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the start or at the beginning of the implementation phase of the task, but each of them is slightly different in nature. In particular, the cancellation of the financing of an activity allows for a response to an actual breach of budgetary discipline during the implementation phase of a publicly financed assignment. However, its use is only possible until the public funds have been made available to the managing authority or the full amount promised. The exclusion of the entity is then primarily a preventive measure in relation to the future use of public funds by the same entity that has breached budgetary discipline. Budgetary measures, on the other hand, are a type of measure which makes it possible to achieve the objectives set by imposing an additional obligation on the entity managing public funds. Importantly, these measures are neither corrective nor punitive in nature, but consist an obligation to manage the funds entrusted to it in a specific way (e.g., to spend a certain amount of public funds for a specific purpose, to provide them as security, etc.).

In the model, penalties represent the last consequence of a breach of a primary legal obligation, which is also the *ultima ratio* instrument in relation to the previously mentioned consequences. Criminal sanctions play an indispensable role in the enforcement of budgetary discipline, in particular because they make it possible to attribute liability for breaches of obligations not only to legal persons, which will usually 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. However, the focus of sanctioning measures for breaches of budgetary discipline lies in the area of administrative law. In particular, non-monetary sanctions of a reputational nature play an important role. Given that their application usually lies in the publication of a specific breach of budgetary discipline, usually with a justification of what the breach of budgetary discipline consists, these sanctions are also of considerable importance in terms of preventing similar breaches in the future. They therefore also have a preventive and deterrent effect. Moreover, the authors consider that this type of measure is the only one that can also be applied to breaches of budgetary discipline that are the result of political misconduct. Monetary sanctions are also an option, but their use seems more appropriate in situations where they are imposed on a body outside the public administration. In many cases, their use within the public administration might not penalise the persons whose actions caused the breach of budgetary discipline, especially since, as a result of the breach of budgetary discipline or other misconduct, particularly of a political nature, political responsibility has already been incurred towards these persons (e.g., in the context of elections) and they are therefore not part of the entity being penalised after the end of the phase of evaluation of the findings obtained in the supervisory procedure, i.e. at the time when the penalty is imposed.

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ABSTRAKT

Dyscyplina finansów publicznych stanowi ważny element właściwego zarządzania środkami publicznymi. Nie jest to jednak temat dobrze zbadany i teoretycznie podbudowany, a w wielu krajach nie jest nawet dobrze zorganizowany i usystematyzowany w praktyce. Celem niniejszego artykułu jest wkład do tworzonych teoretycznoprawnych podstaw w dziedzinie dyscypliny finansów publicznych wraz z propozycją modelu regulacyjnego wymuszania dyscypliny budżetowej, co pozwoli w spójny sposób rozwiązać istotne problemy stwierdzone w badaniu empirycznym, maksymalizując wykonalność pożądanych wyników przy zachowaniu przejrzystości i zrozumiałości. Artykuł opiera się na dogmatycznej metodzie badawczej, a także na metodzie krytyki literatury przedmiotu wykorzystującej przegląd odpowiedniej literatury teoretycznej, obejmującej wszystkie aspekty proponowanego modelu. Artykuł jest pierwszym krokiem w kierunku dalszych badań w tej dziedzinie. Na podstawie zaproponowanego modelu w kolejnych etapach będzie można przeprowadzić badania empiryczne rzeczywistych, obecnie obowiązujących środków prawnych. Proponowany model jest teoretyczny i nie dotyczy konkretnego porządku prawnego. Będzie jednak przydatny jako normatywny punkt odniesienia w badaniach empirycznych regulacji wybranych państw w zakresie dyscypliny finansów publicznych do wyjaśniania przyczyn ich problemów.

**Słowa kluczowe:** prawo finansów publicznych; model regulacyjny; dyscyplina finansów publicznych; zarządzanie środkami publicznymi