

NORMATIVE ANALYSIS OF THE BUDGETARY DISCIPLINE ENFORCEMENT IN THE VISEGRÁD COUNTRIES

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Abstract: *The article forms the final part of a three-year research in the area of proper public expenditures management. Based on a previously set theoretical model of budgetary discipline enforcement and comparative studies of supervisory procedures, refunds, and penalties in Visegrád countries, the article provides normative analysis of the budgetary discipline enforcement. It aims to assess the accordance of the regulatory framework in Czechia, Hungary, Poland, and Slovakia with the theoretical model. The article is based on normative, comparative, analytical, and synthetical method of research.*

Keywords: *budgetary discipline, budgetary law, penalties, sanctions, supervisory procedures, public budgets, financial law, Visegrád countries*

INTRODUCTION¹

In 2023, a team of researchers from Charles University in Prague, including Radim Boháč, Tomáš Sejkora, Petra Šmirausová, and Michal Tuláček, published an article titled “Regulatory Model of Budgetary Discipline Enforcement.”² In this article, the team proposed a regulatory model for enforcing budgetary discipline. Subsequently, researchers Ondřej Málek, Petra Kerndlová, Michal Tuláček, and Radim Boháč conducted three comparative studies.³ These studies compared the respective national regulations related to supervisory procedures, refunds, and penalties in Visegrád group countries. The primary objective of

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² BOHÁČ, Radim, SEJKORA, Tomáš, ŠMIRAUŠOVÁ, Petra, TULÁČEK, Michal. Regulatory Model of the Budgetary Discipline Enforcement. *Studia Iuridica Lublinensia*. 2023, No. 1, pp. 11-39.

³ MÁLEK, Ondřej, BOHÁČ, Radim, KERNDLOVÁ, Petra, TULÁČEK, Michal. Comparative Study on Supervisory Procedures in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries. *The Lawyer Quarterly*. 2024, Vol. 14, No. 2, pp. 145-156. KERNDLOVÁ, Petra, BOHÁČ, Radim, MÁLEK, Ondřej, TULÁČEK, Michal. Comparative Study on Refunds in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries. *The Lawyer Quarterly*. 2024, Vol. 14, No. 3, pp. 290-308. TULÁČEK, Michal, BOHÁČ, Radim, KERNDLOVÁ, Petra, MÁLEK, Ondřej. Comparative Study on Penalties in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries. *The Lawyer Quarterly*. 2024, Vol. 14, No. 4, pp. 425-432.

this article is to build upon previous work in this field and provide a normative analysis of how the respective national regulations align with the proposed regulatory model.

In general, the regulatory model of budgetary discipline aims to eliminate (or at least reduce) three categories of breaches: (1) self-enrichment, (2) political mistakes, and (3) operational inefficiencies. However, there is no universal way to handle them, as each category of budgetary discipline breaches requires a tailor-made solution. For instance, a political mistake leading to a poor policy decision that is subsequently implemented into law is hard to prevent solely by applying budgetary discipline rules.

The regulatory model comprises six components: political objectives, rules of the budgetary system, input from entities, evaluation of compliance with budgetary laws, input of the money, and the assignment and administrative practices, empirical data, and experience. Political objectives and empirical data influence the specific rules governing the budget system and input parameters, which involve both subjects and inputs for managing public funds. The core of the model lies in the budget system rules, combined with administrative practices, determining how budgetary discipline is enforced in individual cases.

As a presumption, the proposed regulatory model is considered an optimal theoretical framework for an ideal legal regulation. However, the real regulation more or less differs from the proposed optimal model. Thus, the objective of this article is to build upon the prior work in the field and provide a normative analysis of national regulations in the Visegrád countries in comparison to an optimal regulatory model. Therefore, the article seeks to evaluate the conformity of the budgetary discipline regulatory framework in Czechia, Hungary, Poland, and Slovakia with the proposed model.

I. METHODOLOGY

As stated hereinbefore in the previous articles, we formulated a regulatory model for the budgetary discipline enforcement. Afterwards, we conducted comparative studies focused on the existing regulatory frameworks in the Visegrád countries in the subareas of supervisory procedures, refunds, and penalties related to the enforcement of the budgetary discipline.

In this final article, we perform a normative analysis⁴ of the Visegrád countries regulatory frameworks. The analysis is based on the presumption that the proposed regulatory model is an optimal model which can be used as a benchmark.⁵ We take this presumption as an axiom. We identify key comparable attributes of this model and compare the actual regulation in the Visegrád countries according to these attributes. For each attribute, we score each country regulation on a scale from 0 to 5, where 0 means “the particular attribute is not present in this country regulatory framework” and where 5 means “the country regulatory framework is in the perspective of this particular attribute fully identical to the model”. This range allows us to assign distinct scores for each country in case that each country fulfils the given attribute to a different degree. However, this score

⁴ BOBEK, Michal. Výzkum v právu: reklama na Nike anebo kvantová fyzika? [Research in law: a Nike ad or quantum physics?] *Jurisprudence*. 2016, No. 6, p. 5.

⁵ BOHÁČ, Radim, SEJKORA, Tomáš, ŠMIRAUŠOVÁ, Petra, TULÁČEK, Michal. *Regulatory Model of the Budgetary Discipline Enforcement*, p. 33.

is a qualitative quantity, and not a quantitative one. Thus, the results can be interpreted separately for each attribute as an ordered scale, but they cannot be interpreted using statistical methods such as mean, variance, or standard deviation.

Naturally, the given score is largely a result of a subjective evaluation of the research team. To increase reviewability, we base the information on country regulatory framework properties on the questionnaires filled-in by local scholars, that have been used and further discussed in the published comparative studies. Moreover, the questionnaires were further discussed with the local scholars and we also conducted our own research of the local regulatory framework despite the limitation of the local language knowledge. Simultaneously, the reason for the given score is discussed in detail in the discussion part of the article.

Regardless of the stated limitations of the scoring system, the results provide a useful insight into the regulatory frameworks of the Visegrád countries. By evaluating the degree of compliance with the theoretical optimal model, we actually evaluate the quality of these regulatory frameworks in an organised manner. Finally, the scores given to these regulatory frameworks are plotted into radar charts to visualise the similarities and differences between them.

II. RESEARCH AND RESULTS

As discussed in the methodology section of this article, first, we identify key comparable attributes of the optimal regulatory model, which allow us to analyse the budgetary discipline enforcement frameworks in the Visegrád countries.

We identify these key attributes for the normative analysis:

- a. existence of rules on budgetary discipline;
- b. application of the full-coverage principle;
- c. binding administrative practice;
- d. existence of supervisory procedures;
- e. independence of the supervisory bodies;
- f. presence of corrective measures;
- g. ability of the refund to act as a corrective measure;
- h. sanctions primarily as an ultima ratio measures; and
- i. preference of the administrative sanctions over the criminal ones.

a. Attribute A – Existence of rules on budgetary discipline

The very first attribute of the optimal regulatory model is the mere existence of rules on budgetary discipline. These rules shall meet certain criteria. Firstly, the requirement to minimise the number of legal provisions in which the legal norms of budgetary discipline are found. Consolidating (almost) all areas of budgeting into a single law is viewed as the ideal scenario. However, there are certain areas that may be regulated separately, such as the local government budgeting or external audit.⁶ Secondly, the requirement of

⁶ LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: Richard Allen – Richard Hemming - Barry H. Potter (eds.). *The International Handbook of Public Financial Management*. London: Palgrave Macmillan, 2013, p. 67.

transparency and clarity (as the universal principles in public budgeting)⁷ of the budgetary discipline regulation balanced by a sensible level of flexibility of the budgetary rules. Flexibility of certain clauses becomes particularly important with a higher level of budgetary legislation.⁸

In this attribute A, most of the Visegrád countries come very close (but are not identical) to the optimal regulatory model scoring them at 4. The biggest deviation is that the regulatory frameworks of the rules on budgetary discipline are considered as partially codified. Hungary comes a little short in some other the requirements for the rules on budgetary discipline, particularly with regards to the regulation of the concept of budgetary discipline (since it does not recognize the concept), fragmentation of the legal framework and the extent of transparency of the regulation on public budgets. This results in the score of 3, which means that this particular attribute is present in Hungary, but not as strongly as in the other countries.

b. Attribute B – Application of the full-coverage principle

One of the parameters of any regulation is its substantive scope.⁹ In case of the budgetary law, it is thus a question of what should be regulated by the budgetary rules. The full coverage principle calls for application of budgetary rules to all budgets that contain public funds, and to the entire public sector.¹⁰ There is consensus among the expert community that the full-coverage principle of the substantive scope of the budgetary law norms should apply as it is the goal of the development and evolution of setting the budgetary rules.¹¹

The full-coverage principle applies to all public budgets and to all subjects managing public finance in Czechia, Slovakia, and Hungary. All three countries have introduced rules that cover all public budgets and also various types of managing entities. A different situation can be found in Poland where only some of the entities carrying out public tasks or managing public funds are covered by the public finance rules. As not all entities are considered a part of the public finance sector, there are budgets and entities that are not covered by the rules and also excluded from the supervisory procedures. These findings lead to the score of 5 in case of Czechia, Hungary, and Slovakia but only 3 in case of Poland.

c. Attribute C – Binding administrative practice

The key elements of the rule of law include the principles of legitimate expectations and legal certainty for parties involved in a specific administrative procedure.¹² If these prin-

⁷ Framework for Assessing Public Financial Management: Improving Public Financial Management. Supporting Sustainable Development, p. 2. In: PEFA [online]. [2024-06-25]. Available at: <https://www.pefa.org/sites/pefa/files/resources/downloads/PEFA%202016_latest%20version_with%20links%20%28%29.pdf>.

⁸ CORBACHO, Ana, TER-MINASSIAN, Teresa. Public Financial Management Requirements for Effective Implementation of Fiscal Rules. In: Richard Allen – Richard Hemming – Barry H. Potter (eds.). *The International Handbook of Public Financial Management*. London: Palgrave Macmillan, 2013, p. 41.

⁹ OGUS, Anthony. *Regulation: Legal Form and Economic Theory*. Oxford: Hart Publishing, 2004, pp. 4–5.

¹⁰ BOHÁČ, Radim, SEJKORA, Tomáš, ŠMIRAUSOVÁ, Petra, TULÁČEK, Michal. *Regulatory Model of the Budgetary Discipline Enforcement*, p. 15.

¹¹ KARFÍKOVÁ, Marie, et al. *Teorie finančního práva a finanční vědy. [Theory of Financial Law and Financial Science]*. Praha: Wolters Kluwer, 2018, p. 128.

¹² BRAITHWAITE, John. Rules and Principles: A Theory of Legal Certainty. *Australasian Journal of Legal Philosophy*. 2002, No. 27, pp. 47–82.

ciples are adhered to, the administrative practices of the authorities responsible for enforcing budgetary discipline should generally be binding.

In all of the Visegrád countries, the administrative practice is not a source of law. Thus, an action of administrative body cannot stipulate a new legal rule, only the laws are formally binding. However, legal systems of all of these countries contains the legal certainty and legitimate expectation principles. The authorities must follow “comply or explain” policy.¹³ Therefore, the score for all countries is 5.

d. Attribute D – Existence of supervisory procedures

The substantive rules of budgetary discipline enforcement themselves would not be sufficient if there was no supervisory procedure that could assess whether the substantive rules are met. Such supervisory procedure is at the beginning of the process of evaluating breaches of budgetary discipline and is necessary for subsequent evaluation and following legal consequences in case of a breach of the budgetary rules.

All the discussed countries have introduced supervisory procedures that can lead to consequences of the budgetary discipline breach. However, as previously mentioned, not all entities managing public funds are included in the public finance sector and therefore can be out of scope of the supervisory procedures in Poland. In spite of existence of a supreme audit office in all Visegrád countries, only Hungary has the authority to conduct audit in all the bodies managing public funds including the local governments. Therefore, Hungary was given the score of 5, whereas Czechia and Slovakia were given the score of 4 as their supreme audit offices have slightly limited scope of audit. Meanwhile Poland was given the score of 3 as the supreme audit office has limited powers as well and the scope of supervisory procedures is reduced in a consequence of non-applicability of full-coverage principle.

e. Attribute E – Independence of the supervisory bodies

The effectivity of the supervisory procedures is, besides others, ensured through independence of the supervisory bodies. Moreover, the independence of the supervisory body is crucial for the legitimacy and credibility of the supervisory process. To effectively fulfil its role, the supervisory authority must be independent from the subjects it oversees. The requirement of independence applies both to internal and external supervisory procedures.

The independence has two aspects. Firstly, there must be an independence on the supervised body, or at least on its effective management in case of internal supervisory body, to prevent the supervisory process from a bias and a conflict of interests. Secondly, there must be an independence on any superordinating body, so the supervising entity does not follow any specific orders. Since all three branches of government are subject to supervisory procedures, establishing a constitutionally independent body separate from the rest of the public administration would be the optimal approach to ensure effective supervision without external intervention.

¹³ TULÁČEK, Michal, BOHÁČ, Radim, KERNDLOVÁ, Petra, MÁLEK, Ondřej. *Comparative Study on Penalties in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries.*

There is a constitutionally based supervisory body in all Visegrád countries. Those bodies carry out external supervision in management of public funds. Moreover, there is a duty to establish an internal audit mechanism in all Visegrád countries that meets the requirement of independence. All the compared countries have a system of financial control. Therefore, all the countries were given the score of 5.

f. Attribute F – Presence of corrective measures

Corrective measures are one of the types of consequences of a breach of budgetary discipline.¹⁴ Corrective measures form an essential part of the optimal regulatory model since they aim at the elimination of the breach of budgetary discipline or return the public funds to their intended purpose. In all of the Visegrád countries, some kind of corrective measures are present in their regulatory framework. Hungary, Poland, and Slovakia recognize only the refund as a corrective measure; hence this attribute is considered as moderately similar to the optimal regulatory model, scoring at 3. Since not only refunds but also corrective measures (in a narrow sense) are recognized in the regulatory framework of Czechia, the country was given a score of 4. These corrective measures (in a narrow sense) may include the call for submission of a monitoring report in case the beneficiary of the subsidy did not submit such report in due time or the call for a correction of an administrative error in case there are minor discrepancies in the subsidy documentation.

g. Attribute G – Ability of the refund to act as a corrective measure

Refunds are one of the key elements of the budgetary enforcement framework. The nature of the refund is to return the mismanaged public funds back to their intended purpose (which is one of the aims of corrective measures in general).¹⁵ Determined by the conditions under which the refunds are imposed, they may or may not serve as a corrective measure but as a sanction in a narrow sense.¹⁶ Since in all of the Visegrád countries the amount of the refund shall equal to the amount of the improperly used or withheld funds, all of the Visegrád countries were given the highest score of 5, because this demonstrates the ability of the refunds to act as a corrective measure.

h. Attribute H – Sanctions primarily as an ultima ratio measures

According to the optimal regulatory model, sanctions shall be present in the regulatory framework, but only as a last-resort measure. This means that there should be other measures applicable in case of a breach of the budgetary discipline. Moreover, this means that these other measures shall be preferred over sanctions, if it possible to achieve the desired outcome with the non-sanction measure.

¹⁴ BOHÁČ, Radim, SEJKORA, Tomáš, ŠMIRAUŠOVÁ, Petra, TULÁČEK, Michal. *Regulatory Model of the Budgetary Discipline Enforcement*, p. 30.

¹⁵ BOHÁČ, Radim, SEJKORA, Tomáš, ŠMIRAUŠOVÁ, Petra, TULÁČEK, Michal. *Regulatory Model of the Budgetary Discipline Enforcement*, p. 31.

¹⁶ BOHÁČ, Radim. *Daňové příjmy veřejných rozpočtů v České republice. [Tax Revenues of the Public Budgets in the Czech Republic]*. Praha: Wolters Kluwer, 2013, pp. 260–263.

In all of the Visegrád countries, there are penal as well as non-penal measures reacting to the budgetary discipline breach. Sanctions, which falls under article 6 of the European Convention on Human Rights, are usually ultima ratio measures.¹⁷ However, in connection with other measures with punitive aspect, such as punitive return of funds, there is no clear preference of non-punitive measures over them. Therefore, all countries are scored with the score 4.

i. Attribute I – Preference of the administrative sanctions over the criminal ones

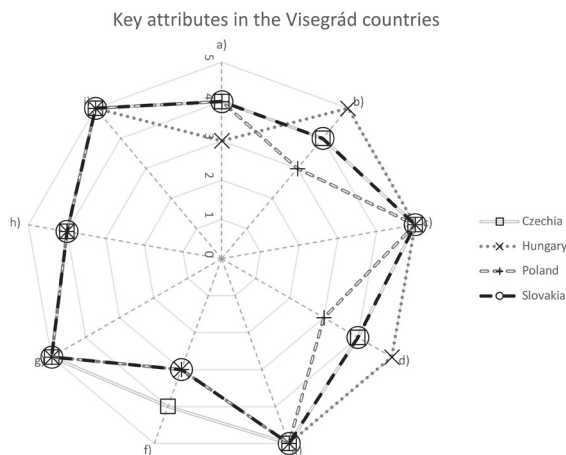
The penal measures shall be primarily ultima ratio measures when compared with the non-penal measures. Moreover, according to an optimal regulatory model, there shall be internal hierarchy within the category of penal measures and the administrative sanctions shall be preferred over the criminal ones, if it is possible to achieve the desired outcome with them.

This criterion is completely met in all of the Visegrád countries. Therefore, all countries were given the highest score of 5.

h. Summary

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



¹⁷ MELANDER, Sakari. Ultima Ratio in European Criminal Law. *Oñati Socio-Legal Series*. 2013, No. 1, p. 58.

III. DISCUSSION

Attribute A – Existence of rules on budgetary discipline

One of the main attributes of the optimal regulatory model are the rules on budgetary discipline. Such rules shall have certain qualities to effectively regulate the management of public funds, in particular the budgetary discipline. According to the model, there is a requirement to minimise the number of sources of law, as well as number of legal provisions in which the legal norms of budgetary discipline regulation are found. Other necessary qualities of the budgetary discipline regulatory framework are clarity and transparency of the regulation balanced by a degree of flexibility of the rules on the other side. The rules shall clearly define what kind of behaviour constitutes a breach of the budgetary discipline or mismanagement of the public funds. Though a certain level of rigidity is required when it comes to the timing of deadlines or periods for the establishment of a particular rule of the budgetary process; a completely rigid timing of a deadline may result in an inefficiency in the allocation of public resources.

In all of the Visegrád countries, except Hungary, there are rules on budgetary discipline. The reason why no such rules exist in Hungary is because they do not recognize the concept of budgetary discipline. But since they have similar regulation regarding the consequences of mismanagement of the public funds, this criterion was assessed as moderately unfulfilled. Nevertheless, it is important to note that the concept of budgetary discipline is viewed differently in the rest of the Visegrád countries.

All of the Visegrád countries have quite a robust regulatory framework of the rules on budgetary discipline. It is covered by legislation on all levels from the constitutional level to the levels of decrees. All of these jurisdictions have one main law that regulates the allocation and management of public funds.¹⁸ Apart from the Hungarian legal framework, the rest of the Visegrád countries' frameworks could be defined as partially codified with regards to the budgetary discipline. This is a difference from the optimal model which prefers codification and minimal number of legal provisions. According to the information provided in the questionnaire, the Hungarian legal framework is regarded as rather fragmented, so it differs even more from the optimal model.

The principal of transparency of public finances¹⁹ is recognized in all of the countries on the constitutional level. First paragraph of article N of the Hungarian Constitution explicitly states that “*Hungary shall observe the principle of balanced, transparent, and sustainable budget management.*”. In the other Visegrád countries, transparency is ensured through the implementation of specific legislative rules governing state and local budgets. However, transparency cannot be recognized in all stages and aspects of the budgeting process, but only with regards to the information and processes relating to the budgetary process (the level of transparency in public finances was not indicated in Hungary). Since the trans-

¹⁸ 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.

¹⁹ Framework for Assessing Public Financial Management: Improving Public Financial Management. Supporting Sustainable Development, p. 2. In: PEFA [online]. [2024-06-25]. Available at: <https://www.pefa.org/sites/pefa/files/resources/downloads/PEFA%202016_latest%20version_with%20links%20%282%29.pdf>.

parency is limited only to certain information and processes, this criterion does not follow the optimal regulatory model but comes really close to it. With regards to the aspect of a certain level of flexibility that balances out the requirement for clarity and transparency of regulation in all Visegrád countries, there is a room for discretion. Especially when it comes to the determination of the exact amount of the refund or any other consequence of the breach of the budgetary discipline (corrective measure, penal measures, etc.). However, there is usually no discretion when it comes to the imposition of the consequence of the breach of the budgetary discipline itself. This level of flexibility of the rules is in line with the optimal regulatory model. The timing of deadlines and periods for the establishment of a particular rule of the budgetary process can be described as rather rigid in all of the countries, but that corresponds with the optimal model.

Attribute B – Application of the full-coverage principle

The full coverage principle calls for application of budgetary rules to all budgets that contain public funds and to the entire public sector.²⁰ Therefore, it consists of two criteria.

The first one provides substantive scope of the budgetary rules as it determines answers to the question of what should be regulated by the budgetary rules. The goal of this criterion is to cover public budgets in their entirety, including extra-budgetary funds, and privates budgets only to the extent the public funds are managed.²¹

The second one aims to identify the entities responsible for particular steps of the budgetary process. It is therefore a matter of establishing the personal scope of the budgetary rules. Therefore, to achieve the full-coverage principle, the budgetary rules should not apply to the state only but to the entire public sector.²²

The full-coverage principle applies to all Visegrád countries. However, the quality of its application differs. It applies to all public budgets and to all subjects managing public finance in Czechia, Hungary, and Slovakia as those countries have introduced rules that cover all public budgets and also various types of managing entities.

However, not all entities carrying out public tasks or managing public funds are covered by the public finance rules in Poland. Such exclusion leads to a partial inapplicability of full-coverage principle and an exclusion of such entities from the budgetary discipline enforcement regulatory framework (from application of the budgetary rules and also from the supervisory procedures). Such approach leads to the risk to the proper public expenditures management.

Attribute C – Binding administrative practice

The outcomes of law shall be foreseeable.²³ Moreover, according to the equality principle, the law shall be applied constantly without regards to personal preferences or dis-

²⁰ BOHÁČ, Radim, SEJKORA, Tomáš, ŠMIRAUSOVÁ, Petra, TULÁČEK, Michal. *Regulatory Model of the Budgetary Discipline Enforcement*, p. 15.

²¹ For further remarks to the definition of public and private budgets see KARFÍKOVÁ, Marie, et al. *Teorie finančního práva a finanční vědy. [Theory of Financial Law and Financial Science]*. p. 128.

²² LIENERT, Ian. The Legal Framework for Public Finances and Budget Systems. In: Richard Allen – Richard Hemming – Barry H. Potter (eds.). *The International Handbook of Public Financial Management*. p. 63.

²³ BRAITHWAITE, John. *Rules and Principles: A Theory of Legal Certainty*. pp. 68–69.

likes. Thus, in similar cases, the law shall be applied consistently, and the government shall be bound by its previous administrative practice.

However, the administrative practice shall not be the source of law within the legal systems in the area of Visegrád countries. The administrative practice must be always executed within the limits of existing law; no unlawful action (no matter if harmful or not) shall ever bind the government in the future.

These principles do not mean that the administrative body cannot ever diverge from previous actions and choose a different path. However, in such case, it must clearly and persuasively explain the reasons for that practice.

In all the Visegrád countries, the legal system is construed on these principles. However, they are not explicitly stated in the statutes which create the budgetary law as they are included in the essence of the legal systems. Nonetheless, an actual presence of these principles is more important than their explicit stipulation in the law.

Attribute D – Existence of supervisory procedures

The existence of supervisory procedures is crucial for the application of the budgetary rules. They form a way to assess the public funds management and to discover errors in the public spendings. Therefore, the substantive rules of budgetary discipline enforcement themselves would not be sufficient if there was no supervisory procedure that could assess whether the substantive rules are met.

The supervisory procedure can be conducted by an internal or external body, and it can be carried out *ex ante* or *ex post*. All those forms of supervisory procedures provide different perspective of public funds administration and are complementary to each other. External supervisory authorities may not be able to perform all the necessary processes to ensure budgetary discipline, especially due to capacity limitations and their general focus. In addition to these external authorities, internal supervisory bodies within important budgetary institutions play a crucial role in overseeing processes especially in *ex ante* supervision. Therefore, internal supervisory bodies provide a necessary stage of public funds supervision that is not just a supplement to external supervision but forms an important element of public funds administration.

The Visegrád countries have introduced supervisory procedures that can provide insight view into public funds management that is at the beginning of the process of evaluating breaches of budgetary discipline and is necessary for subsequent evaluation and following legal consequence in case of breach of the budgetary rules.

The evaluation of the regulatory frameworks with the model is affected by the application of full-coverage principle in Poland. As not all entities managing public funds are included in the public finance sector, and therefore can be out of scope of the supervisory procedures, the supervisory procedures cannot cover all public spendings.

The supreme audit office exists in all Visegrád countries but only Hungary has the authority to conduct audits in all the bodies managing public funds including the local governments. Despite that, the countries have implemented other ways of auditing the local governments. However, it is still taken into consideration when assessing the compliance with the model, as the supreme audit office's authority to audit local government funds could provide a broader and more complex view of public spending.

Attribute E – Independence of the supervisory bodies

The key element of efficiency, legitimacy, and credibility of the supervisory procedures is the independence of the supervisory bodies. Therefore, the supervisory body must be independent from the subjects it oversees and also from any superordinating body that could set specific orders and affect the independence of the supervision. The requirement of independence applies both to internal and external supervisory procedures.

The independence has two aspects. Firstly, there must be independence on the supervised body, or at least its effective management in case of internal supervisory body, to prevent the supervisory process from bias and conflict of interests. Secondly, there must be independence on any superordinating body, so the supervising entity does not follow any specific orders. Since all three branches of government are subject to supervisory procedures, establishing a constitutionally independent body separate from the rest of the public administration would be the optimal approach to ensure effective supervision without external intervention.

All Visegrád countries introduced a constitution-based supervisory body – a supreme audit office. Such supervisory body carries out external supervision in the management of public funds. Moreover, its role is supported by other supervisory mechanisms such as specialized committees, system of financial control, internal audit, or duty of annual statutory audit. All the compared countries fully comply with the model.

Attribute F – Presence of corrective measures

If a situation arises where mismanagement of public funds is identified during a supervisory procedure, it becomes essential to implement some measures. These consequences of a breach of budgetary law can range from corrective ones to the exclusion of the entity managing public funds from further management of the public funds or punitive consequences. According to the optimal regulatory model, the corrective measures should primarily aim at the elimination of the remediable breach of budgetary discipline (if it won't affect the quality of output finances from the public funds) or secondarily, re-complete the assignment without the public funds or to return the public funds to their intended purpose.

In all the Visegrád countries, some type of corrective measure is present. Specifically, the return of the public funds due to their mismanagement is recognized in all of the jurisdictions. In Czechia, it is possible for the provider of the public funds to call the beneficiary to implement certain corrective measures (in a narrow sense). This call for implementation of corrective measure can be made, if all of the following conditions are met: (i) the provider reasonably believes that the beneficiary breached one of the conditions of a subsidy, (ii) such breach shall result in a refund that is less than the subsidy and (iii) the breach is remediable. An example of such a corrective measure (in a narrow sense) is the call for submission of a monitoring report in case the beneficiary did not submit such report in due time or the call for a correction of an administrative error in case there are minor discrepancies in the subsidy documentation. According to the questionnaire, no corrective measure that would aim at the elimination of the remediable breach of budgetary discipline was identified in the rest of the Visegrád countries.

Since only the refund was recognized as a corrective measure in most of the Visegrád countries, this particular attribute is considered as moderately similar to the optimal regulatory model. However, Czechia was given a higher score, because the regulatory framework recognizes not only refunds, but also corrective measures in the narrow sense. Nevertheless, since it does not recognize any measure that ensures the re-completion of the assignment without the use of public funds, Czechia was not given the highest score of 5.

Attribute G – Ability of the refund to act as a corrective measure

In most countries, refunds were identified as the only corrective measure. Thus, they are a key part of the budgetary enforcement framework. However, depending on the conditions under which the refunds are imposed, the refund may or may not act as a corrective measure. The main purpose of the refund is to return public funds back to their intended purpose to the public budget or to the administrator of the budget chapter. The reason for the refund shall be the breach of the budgetary discipline, particularly an unauthorised use or retention of funds. The main element that determines whether refund may have the ability to act as corrective measure is if the returned funds are proportional to the breach. Meaning that in case of a less significant breach of the budgetary discipline, the entity (beneficiary of the public funds) is not obligated to return the public funds in their full amount.

Across the Visegrád countries, the refunds have one thing in common: an unauthorised use or retention of funds as a reason for a refund. Although the issue of determining the exact amount of the refund is quite complex, according to the questionnaires, the amount of the returned public funds shall be in the amount of the improperly used or withheld funds. This means that refunds can be considered as proportionate to the breach of the budgetary discipline, hence they can be described as corrective in their nature. This means that the regulatory framework of all of the Visegrád countries is in the perspective of this particular attribute identical to the model.

However, the problem is how to determine the extent of the breach of the budgetary discipline. It may sound quite simple in theory, but it is not simple in practise. Let's illustrate this problem on two examples. First example: A beneficiary obtains a subsidy from a public entity to build a community centre with a gallery to exhibit local art works. However, the beneficiary uses all of the money from the subsidy to only built the community centre without any gallery. In this case the beneficiary would have to refund all of the funds that were allocated for the construction of the gallery back the public entity that provided the subsidy. Second example: The beneficiary does not submit a monitoring report (a report describing the implementation process and the progress of the subsidy project) to the supervisory entity even after previous calls for its submission. The infringement of the obligation to submit such report cannot be easily quantified. This can result in three basic scenarios: 1) the refund is imposed in the full amount of the provided public funds; 2) there is a rule in the subsidy documentation based on which the amount of the refund can be determined (for example certain percentage from the provided public funds); 3) there is not a specific rule in the subsidy documentation but the entity deciding on the refund tries to determine the amount of the refund proportionally to the

breach. For a refund to be considered a purely corrective measure, the deciding entity must follow the third scenario. In the other two scenarios, especially in the first one, the amount of the refund may not be proportional to the breach of the budgetary discipline, hence the refund may have a punitive nature. Unfortunately, the questionnaires did not elaborate on how all of the respective Visegrád countries approach this issue. Because of this, this particular aspect of the refunds was not considered for the purpose of this normative analysis which leaves some space for further research in this field.

Attribute H – Sanctions primarily as an ultima ratio measures

The assumption that sanctions shall be primarily an ultima ratio measure can be valid if, and only if, there (i) are other than punitive measures available and (ii) there is clear hierarchy of these measures in the respective legal framework or other system of applicability order among them. This hierarchy or applicability order could be prescribed explicitly, but it could also be stipulated implicitly, for instance as a rule, which mandates to try other measures first. Both approaches would lead to the desired outcome, where sanctions would not be the first (and maybe) only measure imposed by authorities.

In all of the Visegrád countries, the first condition is met, since there are other measures applicable next to the punitive ones. However, apart from a weak binding administrative practice, there are no incentives which would limit the selection of a measure appropriate to the respective case. Moreover, in Czechia and Slovakia, the duty to return provided funds can be a measure both corrective and punitive. Thus, not only there is no hierarchy among the measures, but one measure can be hybrid in its nature.

Attribute I – Preference of the administrative sanctions over the criminal ones

The penal measures can be divided to two basic groups – administrative sanctions, which are governed by the administrative law and which are not imposed by criminal courts, and criminal sanctions, which are governed by the criminal law and are imposed by criminal courts. The administrative sanctions can vary in their nature as well. As discussed in previous article and in the section concerning with attribute G of this article, the duty to return funds can be sometimes punitive in its nature.²⁴ The impact of other sections, such as fines, could be comparable with a criminal sanction. These sanctions meet the so-called “Engel criteria”²⁵ and thus fall under the article 6 of the European Convention on Human Rights.

Punitive sanctions shall never be the only preferred measure. Additionally, criminal sanctions shall never be preferred over the administrative ones. This does not mean, that criminal sanction can be imposed only if the non-criminal sanction fails. In the most severe cases, it may be appropriate to directly impose a criminal sanction. However, the imposing body shall always consider if the desired outcome can be achieved with a less severe measure.

²⁴ TULÁČEK, Michal, BOHÁČ, Radim, KERNDLOVÁ, Petra, MÁLEK, Ondřej. *Comparative Study on Penalties in the Budgetary Discipline Enforcement Regulatory Framework in Visegrád Countries*.

²⁵ 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.

These principles are universal across the Visegrád countries and their regulatory frameworks are fully compliant with the optimal regulatory model.

CONCLUSION

The regulatory frameworks of the Visegrád countries are not fully compliant with the optimal regulatory framework. However, the given scores show that the differences are not significant and none of the countries show major deficiencies in their regulatory framework on budgetary discipline in respect to the model.

The most compliant regulatory framework is in Hungary, which is interesting, since they lack the clearly defined concept of budgetary discipline. The regulatory frameworks of Czechia and Slovakia are quite similar (the only difference is in the key attribute F – presence of the corrective measures). This fact is unsurprising since these two countries were previously federated, which causes their regulatory frameworks to be based on the same laws and include similar legal concepts. Finally, according to the normative analysis, the least compliant regulatory framework is in Poland.

From a different perspective, there are only three key attributes where no Visegrád country is fully compliant: A – existence of rules on budgetary discipline, F – presence of corrective measures and H – sanctions primarily as an ultima ratio measures. We assume that this can be explained by the fact that budgetary law in Visegrád countries comes from similar foundations and mirrors legal principles shared by these countries, as it is a core part of the financial law in these countries. Another reason, especially in case of attribute A – existence of rules on budgetary discipline, may be the fact that the optimal model sets high standards for the regulatory framework on budgetary rules and in practice these standards are difficult to be fully met.