

Zsolt Aradi

The new regulation on the legal status and financial management of budgetary organisations

The regulation and practical operation of the financial management of budgetary organisations – including, in accordance with the classic approach, planning, the modification of appropriations, financing and reporting – have come to a crossroad again. This statement is justified by the mere fact that the theoretical and technical principles that once yielded fundamental changes go back one and a half decades, and in many aspects as many as three decades.¹ The frequent modifications were usually not systemic in nature, and they also meant changes in orientation. Instead of the thorough examination of requirements, the need for and orientation of the new regulations can be more successfully determined if adaptation to the changing boundary conditions and compliance with the modern and long-term requirements are set as objectives.

In relation to the nature and manoeuvring room of this financial regulation it has been considered an as-is condition that public finances operate at macro-level and are administrative/arithmetical in nature. Further regulations that determine the processes and the implementation of public finances are assigned to other competences. *The Act on Public Finances*² is adjusted to this approach since the very beginning, and specifies – in conjunction with the enforcing government decree³ – the com-

petencies and procedures (the “operation”) of public finances. At the same time, the Act assumes that the policy acts and the annual budgets specify requirements, conditions and methods appropriate for the sustainable operation of public finances, and “take back” expenditures. (This is like a breakdown of the planning tasks assuming that budgetary fund users comply with the control limits by themselves, as if they were business partners.)

The comprehensive and reform-scale change launched in 2002⁴ – which was also administrative in nature and concentrated on a few important subject matters – again and again got stuck in the “drift-sand” of disinterest in, and hostility towards reforms due to the lack of a complex vision, as it happened to attempts and passing ideas from even earlier times. At other times the energy and time constraint of the current fiscal tasks represented an obstacle.

The recently adopted legal regulation that became known as the Public Debt Ceiling Act⁵ has also become part of the regulatory environment. This act can effectively and efficiently adjust public finance expenditures to the various macro-level processes relying on mezzo and micro regulations (i.e. not by causing spontaneous cutbacks, but through the

processes of the real economy, in a systemic manner). If the public tasks, as well as the operational and financing models of the institutions remain unchanged, it is impossible to properly enforce the – otherwise unavoidable – requirements and stipulations specified in this act.

■ *The tools used by the state and the institutions are insufficient and not expedient enough for keeping the financial impacts of public task performance under control.* The scope, size, quality requirements and conditions (personal and material resources, capacities, etc.), processes (the method of task performance) and the performance of the institutional system should be influenced in a manner that can ensure quality, yet financeable public services. Since these attributes are the fundamental causes (cost factors) that generate expenditures, and thus the need for support from public funds, and eventually these factors exercise pressure on the limited resources on the side of real processes. The comprehensive approach, the representation of public interests and efficiency are present in the public sector depending on subjective endowments, and not due to being extorted by the system. This is how the rights, techniques, approaches, regulatory mechanisms, risks and self-controls of the market sector could gain space in the budgetary sector, without any commitments towards the “general public”.

The regulation and control of the level of costs and performance are neither sufficiently conscious, nor cost sensitive. The regulations, decisions and techniques of leadership, management, organisation, task-solving technology, financing and financial management do not express markedly enough that public funds and public assets are being used. The public interest in the given tasks and cost levels must be proven, for which specific methods are available. The role, operation and appearance of market mechanisms are obviously different from those

in the competitive sector. Some of the requirements cannot even be directly interpreted by the micro-sector alone.

The employment relationships and the remuneration conditions are regulated in another approach despite the fact that they influence more than fifty percent of the current costs, and through live labour they also affect the quality of services.

This means that the fiscal, professional, employment and wage policy requirements are not unidirectional, the enforcement thereof is not coordinated by regulation.

Policy regulations – which yield direct benefits by allocating funds – are being worked out irrespective of the fact whether the required funds are available in the annual budgets, or not. Specific decisions are also made in the spirit of similar professional task performance. Therefore, the institutions struggle between the professional requirements and their own initiatives on one hand, and actual financial conditions specified for them concretely in the budget only – i.e. not directly from the professional point of view – on the other.

It is irrational to assume that self-regulation, i.e. efficient adjustment to the changing macro- and micro-financing conditions, will work in the management and operation of the institutions. Preference is given especially to schemes and automatisms counteracting such abilities, and distribution based on the declaration of the importance of the “goal”. On the other hand, the initiatives act against the regulation and measurement of the costs and performance. Therefore, profusion and scarcity necessarily exist side by side.⁶

This type of management of the institutional sector has contributed to the fact that the real processes, as well as the professional operation and maintenance of the institutions have

altogether become impossible to finance. At the same time, “underfinancing” seems to be evident. The recurring tensions are resolved on an ad hoc basis. The system cannot resist a greater trial, especially due to being too fragmented (and consequently, due to the high overhead costs, material supply needs and professional deficiencies) and due to its need for live labour. The quality of public services falls short of the potentials, and is also out of proportion to expenditures. The ambient conditions (economy, public finances) are becoming more and more stringent, however there are no organised and efficient adaptation mechanisms in place.

■ From another approach: the representation of the “general public” – i.e. the users of services – in the regulations and real processes is weak compared to the representation of institutions and the staff of such institutions. It seems that public institutions exist for the sake of the latter, and legislation and financing should also serve these interests. (This is reinforced by the often determining influence of people that are directly affected professionally, as employees, on the preparation of policy acts.)

The taxpayers' interest in the public institutional sector grows in times of necessary austerity measures in order to lay the foundations for tax cut moves. However, this is not accompanied by real, competent, systemic and long-term suggestions for the reduction of the evident profusion in financial management, and for the cancellation of professional and thus financial commitments requiring excessive means. (Astounding information circulates in professional circles, too, in relation to “over-financing”, i.e. the size of certain expenditure items.)

Professional and common knowledge about the micro-sector of the budget is much less abundant than that about macro finances, the participants of the competitive sector, non-profit organisations and local governments. Budgetary

institutions are tacitly regarded as underdeveloped enterprises, or as parts of the local governments, and the presumably modern direction of change is set either without giving any explanation, or under the pretext of emergency.

■ “Outsourcing” some of the public tasks financed from public resources to business associations and foundations has been going on for one and a half decades. This is a *dysfunctional solution, incompatible with the boundary conditions*. However, it can also be justified with the fact that the budgetary institutional form did not provide a simple and efficient framework for the operation and financial management of this well-definable group of institutions. The same was suggested by the liberal (global) method of the allocation of subsidies, and the minimalist nature of the related regulations. It must be added that this organisational status is accompanied by the civil service status of the employees, as well as systems of employment and remuneration that are not sufficiently performance oriented. These systems acknowledge excessively the abilities, skills and circumstances of the employee, and through this the assumed performance in those activities, too, where greater institutional independence would be required for the cost-efficiency and effectiveness of employment. Tools available for incentives and sanctioning in practice are limited (which is why several budgetary organisations opted for “outsourcing”).

■ Instead of the competent interpretation and “venturesome” management of these problems it is easier to quote the scarcity of funds as a pretext. As a result of the given – but not necessary – concrete requirements, conditions and task performance (when those are being translated into costs) this may even be true arithmetically. On the other hand, so far it has been neither welcome, nor proposed in a comprehensive manner to provide this sector with a bigger room for manoeuvre and tools with real,

adequate reforms in order to enable it to provide systemic and sustainable solutions in compliance with the lawfully set fiscal and professional requirements. The expectations and the tools are not in harmony.

Finally: *the practice and regulatory approach of the financial management of the institutions are outdated*. What is more, they have become non-transparent as a result of the multi-directional and ad hoc attempts to resolve the various tensions described above. The individual attempts and solutions to break out are based much more on the local institutional and consultative knowledge and interests than on compliance with the attributes and expectations of the field. The unsustainability of the situation is evident at this point, too.

■ The scope of the required regulation is characterised by the fact that there are 560 central budgetary organisations and there are around 12,700 institutions supervised by the local governments. Employees total around 280 thousand, and 470 thousand, respectively. The expenditures of the central and local governmental organisations totalled HUF 2.4 thousand billion and HUF 2.9 thousand billion, respectively, in 2008. The regulation influences around one third of public finance expenditures (public spending equalling one fifth of the GDP), and affects nearly 20 per cent of all employees.

However, based on the spirit of the new regulation, as well as its system of tools that strongly support financeability and efficiency it can be stated that the scope of the regulation in fact extends to taxpayers and the users of public services, too.

■ Several attempts have been made to develop new regulations in the past years.

The Act on Public Finances has been regularly amended in support of/under the pressure of the convergence programme (and its predecessors) as well as the sectoral reforms managing

the real processes. However, as I mentioned it above, the act is not suitable to implement these objectives due to its original aspect.

The policy acts are not sensitive enough to the requirements of public finances: they are often counterproductive, they generate unidentifiable budgetary burdens, and occasionally neglect the requirements and rules of public finances.

The annual budgets, the ad hoc interventions serving the restoration of the balance can evidently be one-sided fiscal techniques. They cannot permanently influence the operation and cost needs of the public sector, and are especially insensitive to the quality and efficiency of services.

The spontaneity of processes, the ad hoc and merely fiscal management of the accumulated liabilities have led to the fact that the public institutional sector is no longer able to fulfil the performance expectations, while the dimensions of public finances have also exceeded the reasonable and tolerable level.

In 2006 the Government increasingly focused on the restoration of the sustainability of fiscal processes, and on enhancing the efficiency of public services. The possibilities to harmonise the funding needs of the institutional sector with the available funds with the help of fiscal techniques – without the deterioration of public services – have been depleted. A system enforcing both approaches in a coordinated manner needs to be developed. In this sector cost generating real processes, operational modes and performances cannot come into being merely through adjustment to the market conditions. Therefore, differentiated, task and cost sensitive regulations are needed.

This task is undertaken not because of the “reform rage” of the government or the staff of public institutions. The streamlining of the functions of public services, as well the guaranteed, sustainable and efficient performance and financing of public tasks are in the public interest.

Otherwise – without a reform – the interests of the taxpayers can be manifested on an ad hoc basis, one-sidedly, by confining to the financial possibilities, cost saving, restrictions and operative interventions. In the meantime these techniques trigger criticism (and are labelled as “fiscal terror”, “across-the-board cuts”). There is no doubt that these techniques require less extensive preparation, and imply more easily manageable tensions in the short run than the understanding and assumption of systemic reforms.

Unchanged system inputs, processes and “software” regularly yield the same results. These elements make public services unfinanceable, and prevent the enhancement of performance.

The legal foundation for the reform of financial management was created by the so called Status Act II, i.e. the proposal prepared by government commissioner professor *Tamás Sárközy* by early 2005 (published in 2006). This proposal contained an extremely rational and clear standpoint in relation to financial management, too. The clarification of the legal status of the budgetary organisations relying on this proposal also required the amendment of the provisions of the Act on Public Finances and its enforcing decree on the financial management of institutions. In addition, the proposal of the government commissioner was used as a basis for the widely publicised “Theses on the regulation of public finances” issued by the State Audit Office of Hungary (SAO) in 2007, as well as the study titled State reform, public finance reform.

The documents also encouraged that the reconsideration of the rules of the financial management of budgetary organisations should be taken out from the efforts that were launched for the formulation of the financial requirements pertaining to the operation of public finances. Later on the results of the background

work – both the above documents and the proposals formulated in a series of reports – were forwarded to the public administration organisations, and the SAO, i.e. one of the creators of the regulations.

These systemic approaches and experiences unanimously pointed to the fact that corrections – that may be significant in solving day-to-day problems and tasks, yet only in the short run – should be replaced with a comprehensive, reform-scale re-regulation, i.e. instead of changing a series of rules, the system itself should be changed. The act⁷ was prepared relying basically on the draft of “Status Act II”, however some elements were changed (due to financial regulatory requirements, among other things), and the requirements were formulated in a more detailed manner, as the proposer found it necessary. The specifically financial management related parts of the act are connected to, but naturally show well beyond these elements.

Finally, among the “foundations” of the act I must mention the government decision⁸ on the restructuring of the system of the central budgetary institutions, which was started in 2006. The main part of the transformation schemes specified in that decision concretely assumed that organisational and financial management models would come into being to directly support the evolution of the impact of administrative saving-like measures that would also trigger the enhancement of efficiency. The adoption of the act has on one hand made it possible – albeit with delay – to internally “fine-tune” and organisationally further develop restructuring at the level of organisations (e.g. through the establishment of an organisational unit vested with a legal personality), and on the other hand to implement decisions that were postponed for the lack of an adequate model (e.g. “reversed outsourcing”).

THE LOGIC OF THE ACT

The current situation

The former regulation of the financial management and accounting of budgetary organisations specified in acts and government decrees has become obsolete.

► The substantiation of budgetary planning and reporting by the definition of tasks and performances, as well as by organisation, and the derivation thereof from the set of contentual (professional) requirements and conditions is usually very much indirect. Consequently, transparency and traceability are limited. The allocation of appropriations focuses on the direct distribution of resources and mechanically checkable aggregate figures (revenues-expenditures-staff). (Professional substantiation is independent from the set of figures of the budget, while arithmetic justification is nothing but a document of “counting”.) On the other hand, the regulation of financial management aims at the administrative “enforcement” of the limits (the mere enforcement of the budget) throughout the year, and at best specifies the related responsibilities.

► In the meantime sufficient guarantees exist for the completion of neither the original fiscal, nor the professional requirements. The execution of budgets that are not substantiated and organised professionally (on the activity side) typically relies on professionally oriented management. The function of distribution, and then in the execution phase the operative management is disproportionate in the activity of supervisory bodies.

► In terms of authorised business activities and approaches budgetary institutions are too homogeneous. The system is neither structured, nor transparent, regulation is not sufficiently stringent, where this could be possible under the given conditions, and is not flexible where such regulation would be more effi-

cient; a registration-type and institution-level (not activity based) information system is in place.

► For the lack of mandatory orientation it is uncertain whether the different public tasks are performed by budgetary or business organisations. (Tangible local benefits and the lack of control give preference to the latter in contrast with public interests.) There is no registration system relying on effective decision-making and operative procedures that would ensure sufficient transparency and legal certainty.

This regulation, and the even more obsolete practice are not competitive with the regulation and practice of the business sector. (In the meantime some of the public tasks are performed by non budgetary organisations.) At the same time, this system does not profoundly enforce the specific features of public task performance from public funds either. These specific features include in brief:

- the difference between demand and liquidity,
- the community nature of some services,
- the forced nature of task performance,
- general professional requirements and guarantees,
- system operation, plannability, measurability and protocol of tasks,
- calculable and prescribable costs, cost elements and wage policy,
- evaluability of results and expenditures,
- need for transparency,
- specific way of resource acquisition by the state.

The aspect

In the past decade standpoints managing fiscal problems directly, through administrative techniques and standpoints representing the principles of competition and individual (group) benefits have been equally formulated in relation to the development of the new regulation.

A comprehensive model or regulation has been elaborated for neither of them. However, it must be noted that all of the disclosed conceptual ideas were based on a differentiated system. The difference presumably existed in the institutional extension of the different system elements (regulators linked to the individual groups of institutions), in the application of the market model, as well as in the fact that the pronounced specific rules are detailed to varying extents.

During the elaboration of the bill various starting points were kept in mind: on one hand, the general fiscal requirements related to the operation of public finances, on the other hand, the identity and natural endowments and functions of the budgetary institutional sector. Greater incorporation of the management of the real processes and activities into the environment of financial requirements naturally goes beyond the direct regulation of spending money, and the schemes thereof based on administrative restrictions. What is more, the proposed solutions are differentiated, too. However, putting professional services and performance in the foreground does not lead to the full-scale application of the market model or the elements thereof; tools and techniques are adopted and a range of transitional schemes is introduced. This means that the multilevel regulatory model that acknowledges the specific characteristic features of the real sector – i.e. here the public sector – can be found between two approaches and concepts.

The system of public finances must implement three basic objectives. These are the following:

- creation and maintenance of fiscal discipline (keeping the gross sums of the budget under control in order to facilitate the reduction of public dues and to improve the competitiveness of the economy),
- allocation deficiency, distribution of the funds according to the priorities (due to prioritisation the funds are regrouped from

former priorities, determinations, actual and possible issues to the new priorities, from the less successful programs to the more successful ones),

- promotion of the cost-efficient performance of public functions (reduction of costs required for the effective completion of tasks to the minimum, putting performances in the focus).

The interdependence of these three objectives can be formulated as follows: “If we cannot count the money, we cannot distribute it, and if we cannot distribute it, we cannot use it.” The act builds on the correlations of this statement, and focuses on the very last from among the above written.

The act supports the reinforcement of fiscal discipline not by the description of the directly related techniques. (That happens in other rules of law.) This objective (too) is served by a content oriented set of tools, i.e. by the wide-ranging regulation of the need for public funds and the reduction of such need, the mitigation of the inherent risks, as well as by the regulation of performance.

The regulation contained in the act is also compatible with the Act on Business Associations⁹, it applies the approach and techniques of the competitive sector in relation to interpretable subjects and in an interpretable manner. At the same time, it is in general of a markedly budgetary nature, supporting order, discipline and public task performance, ensures management/supervisory control and executive responsibility, and gives preference to the legal status and financial management solution developed for budgetary institutions for the performance of public tasks.

Furthermore, the regulation in general calls for the extended interpretation of the financial culture: a complex (financial and professional) system of objectives, systemic nature, trans-

parency, being of public interest, performance oriented management and financial management (managing organisation, institution).

The new approach

After considering the situation that had evolved, and the characteristic features of the public sector, a new system came into being – with reform-scale changes. This means the introduction of significant new schemes, as well as the supplementation of the existing schemes with elements of similar orientation.

On one hand, fiscal and professional guarantees have become stronger in the planning and execution of the budgets. First of all, planning takes its proper place in the operation of the institutions. Specific budget planning is a determining link between the budgets distributing the given resources and regulated task performance, which also has a definite professional content. This type of planning is represented on one hand by the budget document proper, which contains the figures, and on the other by professional, organisational and performance plans that lay the foundations for the contents, and also support the execution thereof. This is also the basis for accountability. This means that regulation must be sufficiently sophisticated for the joint management of professional activities and financial management in institutions that perform public tasks from public funds: a thoroughly elaborated, organised solution must be provided for that case too, when funding must be cut back in the public interest, and additional resources may also be granted in the same manner. (I.e. not by the “distribution” of funds, which serves daily, partial successes not necessarily through prioritisation.) This is in fact about the further development of the classic budgetary logic on a broader approach.

On the other hand, a differentiated system has come into being from the homogeneous group of budgetary organisations, which is a significant novelty. Within this, bureaucratic rules based on traditional and more stringent planning remain characteristic, what's more, at certain significant points they become even stronger in the “classic” institutions that represent a determining proportion within budgetary organisations as a whole. These institutions include public power organisations (e.g. organisations of public and justice administration, as well as the armed forces), and public institutions (e.g. public education and social institutions, public collections). At the same time, for efficiency considerations “more market-like” rules that take into account working capital costs, too, may be enforced at certain types of service providing organisations. Here the requirement of adjustment to the demand and the situation, as well as the enforceability of the principle of performance require flexibility in planning and financial management alike, as well as independence without the curtailment of responsibilities. These are the public institutions (e.g. research, healthcare, higher education and arts institutions), entrepreneurial public institutions (institutions selected from the former group of institutions through legal regulation and case-by-case decisions), public utilities (e.g. settlement management by the local governments).

The 'entrepreneurial public institution' is not an “original” category. It rather means that certain institutions representing certain professions and selected on a case by case basis may be governed by separate rules based on different acts. This structure is competitive with the structure of similar business organisations, but enforces the requirements arising from the use of public funds and public assets, and keeps the institutions within budgetary organisations.

The duality and connection of the financial and real processes are different in the various types of budgetary institutions, and differ from the market sector due to the very nature of such processes.

However, this dual approach implies risks, too. Due to being different and due to the restricted competencies of the financial regulation, structures and rules that are directly related to the performance of special tasks cannot appear concretely enough in the act, and they cannot fully implement the above approach. So the question is whether those concerned are willing to undertake sectoral and institutional regulations and decisions, the extra work and struggles inherent in the transition for the sake of long-term efficiency and fiancability benefits, or want to try to mitigate the increasing tensions and achieve results in an ad hoc manner, with the usual daily techniques of conflict management, by passing on responsibilities, by acquiring additional resources, and by passing costly policy acts and decisions “lined” with these extra funds.

The theoretical aspects of regulation

The theoretical and economic basics

The specific characteristics of the public sector that are taken into account in this respect are the following.

▶ Public functions are usually fulfilled from resources to be planned by the state in the budget, mostly from public funds, relying on the provisions of the sectoral regulations. The tasks – as public services – are determined in terms of content, and shall be performed in the public interest. Therefore, the professional and economic requirements and conditions, as well as the costs and revenues can be regulated directly in an interrelated manner, and unique management interventions are also possible in a broad range. (In practice it cannot be predicted

which attempt will yield success at the expense of the other under the given circumstances.) Therefore, in theory not only allocated resources (resources that were available from the budget) are available for financial management. Cost generating processes and performances can be predictably managed and checked based on the specific characteristics of the given activities and expectations. In case these elements are managed in a conscious and responsible manner, funds that are “due” as resources are in fact available. This procedure of planning and use, as well as this content are mandatory in institution models that spend public funds, and that basically lack market mechanisms and are based on bureaucratic control.

▶ Withdrawals by the state from the primary sources of income and from income owners by virtue of power require – just like the rate of withdrawal – convincing and detailed explanations, and specific measurability both towards the entities hit by the withdrawals and the beneficiaries (as well as towards those entities that were not allocated resources). The explanation must specify the objectives, legal titles and extent of use, and all this must be accounted for. Consequently, measurement in this field cannot be reduced to the measurement of profits, growth in assets and markets, etc.

▶ When applying for subsidies, the beneficiaries and their background entities name a certain social need [requiring significant state (public) financing] as a reason.

▶ The budgetary institutional sector is not a part of public finances seen as a set of mere figures and calibrated to a much smaller scale, which in this manner can be arbitrarily and directly changed merely on the resource side. The processes are necessarily determined by the multitude of sectoral rules related to public tasks, professional and economic aspects, the institutional system, and decentralised decisions made at several points of the institutional system and the management/supervisory

organisations. Therefore, the strong fiscal constraints can be really enforced through these elements.

Processes that are deemed to be as-is elements during budgetary decision-making, and that can be re-regulated only in the longer run have already been extensively used.

It is basic requirement that macro-economic aspects should be taken into account when deciding on the size and structure of public finances. However, this is not an end in itself, and it shall not serve other partial interests. Its designations and fundamental functions include the cost-efficient financing of the system of budgetary institutions. Public finances is not a sack the opening of which should be held so that the least possible amount could go into it (the smaller the loss or the possibility of loss), but it is also a guaranteed system of conditions for public task performance by the institutions.

▶ As a result of the aforementioned, the operation and financial management of public finances and its organisational system are regulated by detailed legal, financial management and accounting principles with specific content.

▶ At the same time, there is rightful demand for the proven market type, rational and performance proportionate resource acquisition and use, as well as solutions for planning and accounting based on the working capital costs. This means that market control also appears in part of the budgetary institutional sector.

Public funds are expected to be used efficiently, cost-efficiently and effectively. However, according to the above written, the regulation of the public sector operating under non-market boundary conditions, i.e. not relying on the actions of the “invisible hand”, cannot be business-like in nature. Yet, the completion of the requirements cannot be fully trusted to the knowledge, versatility, mentality and bona fide sacrifice of the individuals working in

the public sector – that must be achieved through the operation of the system. Administrative, absolute financial limits are one-sided. They are justified to be used extensively in this sector, but by no means everywhere. At the proper points the relevant, authentically interpretable elements of the rational economic approach and tools must be built into the institutions' “own” system (that manages and controls the characteristic features in a special way). This means the application of the performance and responsibility principles, the financial management and working capital cost centred approach, as well as the planning, reporting and accounting techniques of the market sector, where such can be interpreted. The “separation” of the institutional sector and its financial management rules represents this approach.

Transparency

Transparency is a fundamental precondition for the operation of the public sector. The act specifically refers to the enforcement and supervision of the existing rules (e.g. the “glass pocket” act). However, it is especially the new rules of the act that formulate several elements in support of transparency expected by the “general public”. The comprehensive nature of the regulation itself serves this objective by systemising the wide-ranging institutions. These elements include:

- budgetary and financial management organisational criteria and organisational expediency,
- varied division of the institutional system into subsystems,
- related relevant and differentiated financial management rules (from planning to reporting), and the related documents,
- economics-based revenue system (from those that are related to public power in nature to those designated to carry out different tasks),

- the role of management organisations in system operation, structured functions and responsibilities of institution management (from single-person management to collegiate management),
- detailed rules for the establishment, liquidation and registration of organisations, procedural and responsibility rules, standard content of documents,
- creation of cause and effect relations in general among the various processes and regulatory elements.

Systemic nature

Relying on a new approach and decades-old experiences *the subject matter of the new regulation is much more comprehensive and wide-ranging, and is systemic, too.*

The act does not endeavour to solve unique and day-to-day issues. It expects that the rules and the system would provide efficient solutions complying with the fiscal requirements and the public interest. It provides comprehensive and highly differentiated regulations for state and local governmental institutions providing public services, as well as the internal structure, professional operation and financial management of such institutions, with regard to the various functions. It manages the multitude of interrelated regulatory points in a uniform process. With regard to the emerging security issues of the users of public services and suppliers – while the act takes this into account, too – the comprehensiveness and significance of the new system are even more evident.

The act creates *a new mode of operation and new responsibility systems* keeping in mind the performance of public tasks and the interest of the general public, the citizens and the users of services. In other words: the regulation was not prepared in the interest of certain interest groups, institutions or persons.

The following description of the framework-

like nature of the system presents the further aspects of the systemic structure.

The framework-like nature

Despite the above written, the act does not directly regulate the policy actions. However, it calls for and authorises the reconsideration and modernisation of their requirements and conditions. Without questioning the so called *lex specialis* doctrine, the act makes it possible to manage activities and other legal regulations in a systemic manner, and points to the cause and effect correlations derived therefrom (correlations that generate costs or performance oriented correlations). Naturally, the commitments of public finances, and indirectly those of taxpayers are generated not only by financial management and spending taken in the narrow sense of the word.

In the act this appears in that several references are made to the provisions of special acts or legal regulations. This is not an indication of the uncertainty of regulation. Rather, it comes from the fact that the *area to be regulated*: the system of public task performance, the dual, professional and economic objectives thereof, as well as the management of the sector are heterogeneous. *Therefore, despite the “legal beauty” uniform regulation thereof within a single legal regulation is impossible.* All this would only result in the prescription of meaningless elastic rules or the tacit acceptance of the fact that different regulations may be adopted in other fields.

However, reference to the special acts (usually to policy acts) is not merely “authorisation” for different regulation. On the contrary: it calls attention to the fact that by taking on the general requirements enforcing the sectoral specialties policy acts must provide regulation (for example when determining the various requirements pertaining to public tasks and the operation of budgetary organisations, in certain issues of legal status, in relation to employment by and management of the organisa-

tions). It must be apperceived that the direct financial and administrative rules of public finances by themselves do not provide a relevant framework for the operation and financing of the public sector. The latter very much depends on the compliance of policy acts with the financeability and efficiency requirements.

Organisational expediency in public task performance

The original subject matter of the initiative for the elaboration of the act was the restructuring of the legal status, operation and financial management of the budgetary organisations. However in the meantime it became necessary that by the formulation of more comprehensive and general regulatory elements pertaining to the conditions of public task performance it should provide momentum for actions that were launched independently during the preparation of the act, but which have not yet yielded mature results. *Therefore, the comprehensive, detailed and differentiated regulation of budgetary institutions is supplemented to the required and possible extent with rules pertaining to the other forms of public task performance.*

The decades long efforts that aimed to define public and market financing partially on the basis of insufficient knowledge, and which resulted in the large-scale “outsourcing” of public task performance had to be readjusted. The efficiency of the public sector is not a business requirement (as it would be assumed from the market conditions), but the expectation of the general public in relation to the use of public funds. This can manifest itself through specific, non-market mechanisms. There is no doubt: the former regulatory system did not offer sufficiently high-quality and versatile solutions for the operation and financial management of the budgetary organisations. Therefore, from time to time the performance of public tasks from public funds and public assets by business organisations was given pref-

erence, while the 'budgetary organisation' form is available for especially this purpose.

The act resists the excessive and fashionable marketisation and outsourcing of public task performance, as well as the association of the concepts of cost-effectiveness, efficiency and performance exclusively with the competitive sector. In relation to the performance of public tasks from public funds the act gives preference to fundamentally modernised budgetary institutions.

In this sense the two types of financial management converge, and that of the budgetary organisations becomes competitive. The above mentioned duality – i.e. that the objective of operation cannot be simplified to a few business indicators that would provide a comprehensive evaluation – does not only remain, but becomes stronger. Policy activities and financial management together provide the system of requirements. This also requires that the tasks, performance and responsibility of the managing organisation and the management of the institution should be interpreted, regulated and called to account in a dual system.

By interpreting its subject matter in the broader sense, the act also aims to resolve the situation in which public tasks are also performed by non-budgetary organisations, and are also funded from non-public financial resources. Therefore, in a separate work process the characteristic features and conditions of operation as a non-profit business organisation were specified, and the operational conditions, rules of business organisations, as well as rules of “transformation” were also incorporated into the act.

Hence, the budgetary institutional model is supported from three sides. On one hand, on a case by case basis and pursuant to specific legal regulations budgetary organisations that in part function under market conditions may transform into budgetary organisations of a specific structure (these are the so called entrepreneur-

ial public institutions). A “strange” result of this transformation is when an organisational unit (or organisations units) of a budgetary organisation that structurally remains to be public institution is/are vested with a legal personality and is/are transformed into an entrepreneurial public institution. On the other hand, the “transformation” of budgetary organisations that are engaged in a significant amount of business activities into state or local government owned business organisations, and the continued performance of public services are supported by further procedural rules. Finally: the “re-transformation” of business organisations and (public) foundations that currently perform public tasks practically from public funds into an adequate form of operation becomes regulated. All this means the requirement of “organisational expediency” in public task performance, for which the act stipulates various standpoints. It is not difficult to discover the directions of the above mentioned government decision on “restructuring” in the central budgetary organisations.

Another aspect of organisational expediency is functional task organisation within the individual institutions, the development of a structure corresponding to the organisational units. This means that some of the organisations maintain separate organisational units for the performance of the professional basic functions, and the related intellectual and physical supporting tasks. However, in other institutions it is sufficient to employ persons directly engaged in the professional activities, and other persons shall by no means be employed in a separate organisational unit. In this manner the concentration, cost-efficiency and professional standards of the fragmented institutional structure can be – at least in part – enhanced. This means that the new model goes beyond the widely used consolidation of the financial apparatuses, and offers a new scheme for the enhancement of efficiency.

Finally, there is another solution: the primary, activity-based categorisation of the institutions and the related regulation of financial management should not be handled rigidly. Deviation from the former determination is possible in two directions, too. This means that financial management rules pertaining to either more stringent or flexible types of activities can also be applied if the actual characteristics (especially the resources) of the institution significantly differ from the characteristics of its own type. This is what we call “reclassification” in terms of financial management.

Rules of employment and remuneration

Before going into the details let me refer to another boundary condition that the act does not deal with for the lack of competence. The regulation of personal conditions generates actual costs, which cannot simply be regarded as determination. On the other hand, live labour (task performance by the employed persons) is mostly identical with the provision of public services, in relation to which professional and performance requirements can be set.

Some of the problems of these regulations are wage policy problems. However, efficiency, expenditures, performances and the related financial regulations need to be harmonised (not to mention the eternal pressure related to the resolution of the tension among the beneficiaries of the different wage systems through the use of additional resources). Tension between the employment and remuneration system on one side and the various financial management systems on the other have existed even before, since the former systems think in terms of “persons”, while the latter think in terms of institutions and/or normative units and wage bill management. The aim of the act to make the result and efficiency of service provision an objective of institutional operation makes the management of differences important.

The task is to make techniques that are more sensitive to the characteristic features of the activities (continuity or task-based nature, daily, etc. time requirements, measurability and financing), and to quantitative and qualitative performances appear in the (mostly career path principle based) employment and remuneration systems, similar to and supporting capacity financing and resource allocation. The room for manoeuvre, which – no doubt – is present in the rules even today, must be made more visible and reference-like. Therefore, the solution is not the total and mechanical adoption of the system applied in the business sector under market conditions – but, similarly to the financial regulation – the incorporation of “custom-made” (various), performance oriented public service rules (elements) adjusted to the specific requirements and differentiated conditions of the sector. This is all the more possible, since there is no comprehensive “public service remuneration system”.

III. THE STRUCTURE OF THE ACT – THREE DISTINCT PARTS

The first part (the further development of Status Act II) contains *sui generis* regulation about the status of the budgetary organisations. It fills a void in the regulation of the legal status and characteristic features of budgetary organisations; as well as in the modernisation and systemisation of the powers of the managing and supervisory organisations. After the adoption of the act this part of the legal regulation will function as a separate act, it will be incorporated neither into the Act on Public Finances, nor into other existing acts.

This regulation stipulates

- the definition, characteristic features and general legal status of budgetary organisations;
- the procedure and content elements of

establishment, transformation and liquidation, as well as registration,

- the general requirements and conditions of establishment, operation and categorisation (in the Act on Public Finances), and mostly the specific requirements and conditions of regulation (in the form of policy acts and government decrees),
- the content of the management and supervisory functions,
- the requirement of the institutional internal regulation of task performance and the conditions of task performance,
- the emerging institution of the organisational unit vested with a legal personality,
- the major types of budgetary organisations and the types of tasks to be performed depending on the nature of the activities and the functional structure of the organisation.

The second part modifies the Act on Public Finances. This is in part carried out by the complete replacement of one chapter (Chapter VII) of the Act on Public Finances. It includes the fundamental and systemic modification of the regulation of the operation and financial management of budgetary organisations along standard principles, and mostly with standard general rules, however in a differentiated manner with consideration to the different types of institutions. On the other hand, in general in connection with this, several requirements contained in other chapters are modified or transferred into other chapters.

The regulation extends to

- the general principles of the operation and financial management of the budgetary organisation,
- the resources of the budgetary organisation and the management thereof,
- the head of the budgetary organisation (typically financial management related requirements), the specific solutions of internal management,

- the general and specific types and subtypes of financial management, including
- the need for making planning more substantiated and task-based; for making revenues cost-proportionate, and for the differentiated management thereof,
- other important elements of financial management (modification of appropriations, financing, staff and wage bill management, reserve management, etc.).

Finally, the new Chapter VII/A contains the framework rules pertaining to the requirements and conditions of public task performance by state-owned business organisations, and of the transformation of budgetary organisations into business organisations (and vice versa). (One of the conditions of public task performance by public foundations is regulated in another rule of law.)

EVALUATION OF THE FORMER REGULATION, THE NEW CONTENT AND IMPACT OF THE ACT¹⁰

PERFORMANCE OF PUBLIC TASKS

▶ The definition of the requirements and conditions is fragmented and deficient. A comprehensive system of tools designed to specifically manage and replace the lack or partial lack of market conditions in the institutional system is non-existent.

▶ Tasks are formulated for the development of requirements and criteria for each type of institution. On this basis, the professional, financial and cost-efficiency requirements set for the establishment and operation of institutions, and the individual public services can appear in a systemic, coordinated manner, and in this case such requirements will be set by the state.

▶ Financeability and the quality of services will improve on a permanent and well-founded basis, since the different public services need to

meet quantitative and qualitative expectations, and systemic (non mechanical) relationship is established between the budget constraint and the performance of public tasks. The principle of performance also appears, however this is not identical with the application of the different corporate forms. The level of “fundedness” becomes manageable on this basis.

THE DEFINITION, CHARACTERISTICS AND REGISTRATION OF BUDGETARY ORGANISATIONS

▶ The definition is deficient, and not completely adequate for the expression of the legal (e.g. sectoral) background and the characteristic features – specific compared to other types of organisations. Registration is neither transparent, nor measurable, and it does not provide legal certainty.

▶ The regulation is to be supplemented with the term “public interest nature”, the clarification of management/supervision, the formulation of state requirements and conditions related to task performance, as well as with the condition of comments with a specific content. Consequently, the characteristic features are separated at several points from entrepreneurial and private law schemes (in terms of activity, interest and management). Registration is based on the criteria, through a clear-cut procedure, with expanded and expandable data content.

▶ The requirement for the management and organisational expediency of public task performance appears. The content and differentiated nature of the criteria and the legal status lay the foundations for the regulation of financial management. The organisational forms and the related financial management rules support efficiency. Registration is fair, reviewed and authentic.

TYPES OF ACTIVITIES

▶ In the regulation, and especially in practice the types of activities are not completely separated, and the consequences are not clear.

▶ Marked criteria are formulated. The related financial rules are differentiated (resources, calculation: cost and profit content, price, planning and financial management requirements).

▶ The basic functions are protected, the ability to pay the overhead costs improves.

TYPES OF BUDGETARY ORGANISATIONS

▶ Categorisation of the activities is designed to support operative financial functions, however in practice it serves a somewhat different function.

▶ The new system is broken down by professional task types (subtypes) and functions (in accordance with the organisational solution of task performance within the institution). This latter classification is based on the fact whether the institution includes all the supporting intellectual and physical organisational units, or just the first one.

▶ The new system lays the foundations for custom-made regulation for a great variety of activities, the level of management, the resource structure, the internal organisational structure and the elements of the financial management process, and is efficiency oriented. Regulation, which has so far been homogeneous, and therefore did not follow reality, and regulation, which was developed individually for the different professional activities will be replaced by heterogeneous, yet systemic and transparent regulation able to adjust to the conditions of the market economy and a great variety of public tasks. The differentiation of the internal organisational solutions will also influence the structure and streamlining of the entire institutional system.

THE MANAGING/SUPERVISORY ORGANISATIONS

▶ The current managing and supervisory organisations are not sufficiently regulated, They focus more on the enforcement and representation of individual rights and interests than on the liabilities arising from (public)

orders, as well as governmental and social interests taken as a whole.

▶ Management and supervision will be differentiated and supplemented – with regard to other rules of law as well. A new element – in connection with the provided rights – is liability for the debts of the institutions. The institutional categorisation of the middle-level management organisation is specified in the act in order to support the network-like operation of institutions.

▶ The operation of the system is reinforced: it will become a more responsible and active function ensuring the definition of tasks, requirements and conditions, financing, control, evaluation and publicity, in line with the (unique) legal status of the task performer.

METHOD OF PUBLIC TASK PERFORMANCE

▶ There is no direct provision in the comprehensive financial regulations.

▶ The managing organisations are mandated to enforce and regularly review organisational expediency; continuous monitoring to ensure operation complying with the foundation deed and the by-laws; laying the foundations for budgetary planning with various professional techniques. (The exact definition of public tasks is yet to come).

▶ The act ensures guaranteed, transparent and financeable public task performance in efficiently functioning budgetary organisations and adequate types of organisations.

THE LEGAL PERSONALITY ORGANISATIONAL UNIT OF THE BUDGETARY ORGANISATION

▶ Exceptional, legally unique solution.

▶ Its new structure ensures (without a separate act, within the scope of the founder) control by the founder, and institution-level solution with specific internal and external links, while maintaining the financial management unit.

▶ It provides a solution for the rational, centralised, yet professionally independent opera-

tion of a priori complex institutions and networks; in addition, simple (consolidated or independent) institutions may also acquire a legal form, without the operation of small-scale institution. The applicability of business licences within institutions that are categorised as public institutions provides further possibilities to ensure that although the state and market relations of the institution and its organisational unit are at different levels, the partially common professional and financial base can be utilised efficiently, serving common interests.

THE BASIC REQUIREMENTS OF OPERATION (COST-EFFECTIVENESS, EFFICIENCY, EFFECTIVENESS)

- ▶ The so far theoretical phrases have been clearly defined in the act.
- ▶ The basis for the use of public funds for public purposes, yet by certain institutional independence is the definition of requirements that pertain both to the professional activities and financial management.

THE REVENUE STRUCTURE

- ▶ The revenue structure is merely for registration purposes, and is technically coordinated at the level of implementing regulations.
- ▶ Revenues are categorised into distinct groups that provide evaluable data both at macro and micro levels. (In fact, the system, which came into being a few years ago, is reinforced at statutory level). The different types of revenues are linked to economically grounded, differentiated financial management licences and liabilities (usability, payment) and calculation requirements (cost and profit content), since the revenues concerned are rather varied (and only part of them are market revenues).
- ▶ Revenue planning and calculation become substantiated, transparent and adjusted to the expenditures; financial management becomes more flexible, accumulation (i.e. the appearance of the same revenue and expenditure

items in several phases in the institutional system) and the restructuring of funds become traceable. In the case of identical activities it can be ensured that the cost structure is identical with that of the enterprises, too.

MANAGEMENT OF THE BUDGETARY ORGANISATIONS

- ▶ The requirements and expectations rely on policy acts, and in general they are unrealistically too broad, covering anything from professional activities to statistical and financial management knowledge and responsibility (and therefore they exercise no impact). Altogether they do not sufficiently support the protection of public funds and public assets.
- ▶ The regulation reflects real life, through solutions realising the specific professional and economic function of the institution and its management it also includes the possibility for the division of functions and responsibilities in a differentiated manner, separately for each type of institutions. For this purpose single-person or collegiate decision-making and consultation models have been defined.
- ▶ It gives competence guarantees alongside the complexity, professional and economic independence, and various personal endowments of the institutions. It serves as a foundation for the actual scope and responsibility from the aspect of public finances, too.

THE BUDGET

- ▶ It contains a large amount of (arithmetic) data, and although being fiscal in nature, it does not manage unsubstantiated allocations. Its structure does not reflect goods-producing industries, it has no links with professional tasks and task organisation.
- ▶ The approval procedure that complies with the requirements of “order” or “commissioning” is restored (reconciliation, mutual liability). It focuses on those appropriations that are of major importance in terms of economics

and the regulatory consequences (constraints) (this is where administration becomes smaller). Preparation and reconciliation are adequate for the nature of task performance; the budget is substantiated in terms of tasks, organisation and performance. The documents that can be evaluated and checked include the protocol, the performance plan and the task performance agreement.

Planning must take into account the resources and costs of activities performed with institutional capacity.

The annual fiscal limits are to be loosened in institutions that are not run on a calendar year to calendar year basis.

▶ Major restructuring in procedures and content is taking place in order to reinforce the fundamental role of the budget in part with enforceability, and in part with professional, supply and performance guarantees (in addition to the avoidance of debt generation). The budget, taken in the broader sense of the word, can play its role, if supported by proper tools.

PRICE REGULATION

▶ It systemises the calculation of various activities, usually starting out from the principle of cost levels. It defines the cost content and regulatory levels in a differentiated manner.

▶ In the different activities the level of cost bearing can be based on measurements, and can be linked to interests. Own revenues from non-core activities must cover the costs even beyond the variable element. This makes it possible to avoid cross-financing from the budgetary subsidies. The calculation of price revenues also supports the principle of non-competition (for example by the accounting of depreciation in the case of certain activities).

EXECUTION OF THE ANNUAL BUDGET,

MODIFICATION OF THE APPROPRIATIONS

▶ The regulation of the amendment and regrouping of the appropriations is still complex.

▶ It strengthens the role of planning, and the necessary guarantee of operation and service supply by restricting the possibilities for amendments, where the planning conditions (tasks, resources, etc.) are known in due time; it also fosters flexibility where this is justified so by the dynamism and market dependence of the resources. (The categorisation of the institutions appears at this point, too.) The rules also address wage policy issues and the security of funds for renovations (with a longer-term interest) by restricting in general deviations from the originally planned expenditures. Special features and restrictions are enforced in the use of revenues of the organs of public power (i.e. these revenues can be used on the basis of separate regulations and depending on the conditions, through the proportionate enforcement of interests and disinterests).

THE FINANCING METHOD

▶ The solutions mostly express time proportionateness.

▶ Practice is increasingly adjusted to the nature and endowments of the activities through the guarantees of differentiated, task-based financing. Global institution financing and normative financing can be time proportionate, however when financing costs proportionate to the tasks, it is necessary to make different scheduling possible.

▶ Financing supports fiscal discipline, liquidity and task performance.

REPORTING

▶ Reporting is formal and arithmetic in nature.

▶ Its dual, professional (tasks, performance) and financial content becomes stronger and interrelated. Interest and publicity are based on this.

▶ It becomes crucial in the preparation of planning and in the reinforcement of the principle of performance. Its significance increases

especially in institutions that prepare performance plans.

RULES PERTAINING TO THE ACCOUNTING OF RESERVES

▶ The regulation continues to sanction the commitment of resources without a cause: resources committed due to delayed task performance shall be withdrawn entirely, resources that are not burdened by commitments can be withdrawn or used on the basis of differentiated regulations.

▶ In order to prevent squandering and to support savings the regulation acknowledges rational and standard reserve formation, and the efficiencies of institutions that function more like market organisations.

PRESENTATION OF THE PUBLIC POWER AND PUBLIC SERVICE ACTIVITY IN FINANCIAL MANAGEMENT

▶ The general legal regulations hardly contain provisions that would fit this differentiation. Even upon authorisation, in certain fields rules that are law unto themselves and are incompatible with the otherwise standard fiscal and efficiency requirements have come into being.

▶ In relation to the legal status, the regulation is “drawn apart” from the theoretical aspect: at the organs of public power activities and financial management are mostly separated, while in public service organisations the relationship between activities and financial management becomes differentiated (also by subtypes). Pursuant to the regulation, institutional independence becomes more pronounced in certain types of institutions depending on the emergence of market relations and the principle of performance, and on the different management of the various revenues.

Different elements in the financial management of the different types of budgetary organisations: scope of activities, governance and

management, definition of the financial frameworks (resources), protocol, performance plan, task performance agreement, personal remuneration, staff planning and management, performance incentives, regrouping of appropriations, scheduling of financing, reserve management, treasury loans and utilisation of savings (same place), accounting, auditor, “reclassification” in terms of financial management versus activities.

▶ A major, differentiated, but theoretically structured and transparent system of tools will come into being for the improvement of the fiscal discipline and efficiency of operation and financial management.

MANAGEMENT OF STAFF AND PERSONAL REMUNERATION

▶ Wage bill management will be fully or partially strengthened and made clear-cut. Staffing levels will also be determined at the central organisations of public power and at public institutions.

▶ At public power organisations well-founded and direct planning of staffing levels and remunerations will get into the focus, while at the more business-like subtypes of public service organisations (public institutions, entrepreneurial public institutions, publicly owned companies performing public services) the employment and remuneration conditions foster services and performance (with unchanged public service pay structures).

BOOK-KEEPING

▶ In addition to the (former), modified cash-based book-keeping in more business-like subtypes it is necessary to collect, or make it possible to collect expenditures and revenues on an accrual basis (supporting task based planning and financial management that take into account working capital costs), and independent audits (to compensate the limited management functions).

PERFORMANCE OF PUBLIC TASKS

BY STATE-OWNED BUSINESS ORGANISATIONS

▶ The conditions are not regulated: what basic requirements must be met when public tasks are performed by business organisations; what requirements must be set, and what procedure must be followed when “outsourcing” a budgetary organisation as a business organisation, as well as in the case of restructuring in the other direction. In practice, organisations are established and public funds are used without principles and conditions, concrete decisions are made on an ad hoc basis.

▶ The detailed description of the criteria, conditions and procedures (including requirements for restructuring in both directions) will follow in a suppletory manner. It is specified in detail when (in the coexistence of which conditions) public tasks can be performed by state/local government owned business organisations:

- the performance of public tasks and public services is ensured, there is no state liability for reorganisation,
- the fairness and freedom of economic competition is ensured, the number/type of service providers is not restricted, information is available,
- cost-effectiveness, efficiency and transparency are ensured,
- market resources play a dominant role, budgetary support can be won by competitive bidding, manager control is in place,
- the professional background for cost- and task-based planning is available, and the value of performance is defined,
- beneficial in terms of financing from public funds.

It is specified unanimously that no background institution can operate as a business organisation.

▶ Organisational expediency is developed in the performance of public tasks, with real market control. Business organisations concentrate

on the area yielding real benefits, under managerial responsibility, and aspects that provide orientation (alternative solutions) mostly to local governments.

ESTABLISHMENT OF BUSINESS ORGANISATIONS

▶ In the reinforced, new regulation the criteria are formulated in the following area (progress is evident primarily in the local governmental sector): limited liability, majority influence, ban on further restructuring, legal regulation, licensing (necessity, cost-effectiveness, content), resource proportions (that reflect the actual manifestation of the market nature of the activity), supervisory committee, auditor.

▶ Regulation protects public funds and public assets.

OTHER ASPECTS, IMPORTANT ISSUES

PARTICIPANTS, EXPECTED IMPACTS

▶ Citizens as taxpayers will benefit financially, since the field and organisational expediency, and method of public task performance, as well as the rules for financial management will keep public funding obligations, and consequently, public dues within reasonable limits.

▶ The state acquires tools for the adjustment of the cost and resource needs of the institutional system to the budgetary macro limits, and to the provision of extra services from the resources.

▶ The tasks imposed on/undertaken by the budgetary organisation, as well as the public and other resources are coordinated in a systemic and predictable manner.

▶ The head/management of the budgetary organisation is competent, efficient and responsible; it supports the enforcement of public and organisational interests.

▶ The operational and employment requirements and conditions are predictable and

encouraging for the employees of budgetary organisations (with the limitations indicated above), the users of public services receive higher quality services in a more transparent manner.

▶ The guaranteed terms and conditions of the supplier increase security.

THE EFFECTIVE DATE is 1 January 2009 with the following conditions:

▶ Certain provisions of the act (practically the legal status and organisational elements) can/shall be implemented by the middle of the year.

▶ With regard to the labour intensity of preparation, as well as to the given topicality of the regulated economic events, it is justified to apply the provisions on financial management for the first time during budgeting for and financial management in 2010. It was a distinguished aspect that entities engaged in the operation of law and further legislators should be given sufficient time to understand the provisions of the act and to make preparations. Legislation first of all focuses on sectoral laws, as well as on the government decree enforcing the act.

An important element is the “three-year” rule for the different “modifications”. This means that the form of organisation and financial management can and must be changed either immediately, or only in the third year after the conditions exist for two years, both in case the type of the budgetary organisation is changed, and in case budgetary organisations are transformed into business associations or public foundations.

▶ The preparation of the act protracted – mostly due to the fact that new subjects were included in the regulation – and the fate of the bill was uncertain until the very end. The reasonable extent and form of the preparation of enforcement were developed with regard to these circumstances, as well as the scheduled application of the rules.

Tasks that arise directly from the text of the act, as well as other related tasks are stipulated in a government decree.¹¹ “Task plans” are also given by the authorising provisions. All these are summarised by the central guidelines (issued by the Ministry of Finance independently for the ministries and local governments) in order to ensure compliance with all items of the act, and to keep “introduction” under control, coordinated and balanced. On this basis a management action plan shall be prepared, and a similar plan shall be drawn up at institutional level, too. The standard interpretation of law is also supported by centrally organised education and consultation series.

MODERNISATION OF THE SYSTEM OF SPECIAL TASKS TO BE PERFORMED AT THE LEVEL OF PUBLIC FINANCES

The modernisation of the system of special tasks to be performed at the level of public finances (and also institutions) is connected – through a government decree – to the task and performance orientation of the act, to planning based on measurability and reporting. Its objective is to lay the foundations for financial regulation, planning, funding and financial management, performance evaluation, as well as information supply and the generation of real data. On this basis one can determine, describe and define the relationship of the state and other financing entities with the activities, the expenditure and revenue legal tiles of individual tasks (task groups), the resource structure of the tasks: the burden to be borne by the state and other players, the expenditure (and support) needs and the possible revenues (professional and maintenance requirements, conditions, performances). The system supports the improvement of the relationship between task performance and financing by modifying the quantitative or qualitative parameters (supply); by withdrawal or progress; by the amendment of legal regulations, by changing the organisational frameworks or improving efficiency.

CLOSING ARGUMENT

The framework rules have been created for the establishment, operation and financial management of an efficient, transparent, measurable state/local governmental organisational system, which ensures legal certainty and has been functionally adjusted by the act. On one hand, budgetary organisations that mainly perform mandatory public tasks by using public funds and public assets, and are basically considered as non-market players undergo major modernisation together with the related support and financial management system that provides supply, financeability and efficiency guarantees. In the case of the given, above described boundary conditions this form of task performance and financial management is clearly given priority in the organisation. On the other hand, the requirements and conditions of the separate model of financial management organisations are also stipulated in detailed regulations, in order to avoid ad hoc solutions lacking any concept. As a consequence of “organisational expediency” it was reasonable to regulate “transfers” between the above forms.

The act intends to lay the foundations for the sustainability and transparency of the budget at the macro level, too by ensuring the same at mezzo and micro level. This objective is served by several major elements of the regulation. At the same time, the act does not address the question of public tasks as such, however, the issue is naturally being touched upon in several requirements from the organisational aspect. Assets and employment related issues appear in the text only as reference to other acts, without their own regulatory function.

The implementation of the provisions specified in the act requires corresponding government decrees on financing and accounting, as well as a series of mostly sectoral rules of law (amendments, supplements).

Naturally, the transition may sometimes take months or even years in practice. However, inefficient task performance, organisational, financial management and responsibility systems and the financing constraints (in terms of capacities and processes between and within the organisations) that are incompatible with public interests can no longer be sustained. Legislation must also prevent and reverse the introduction of solutions that contradict public interests.

The requirements and tools of financial regulation have come closer to the nature and processes of the real sector. It becomes clear what conditions, decisions are in fact missing and necessary for the efficient performance of public tasks. This will make it possible to attain the impacts described above. However, for the same reason the number of factors on which the renewal of the practice depends has also grown. In order to avoid conflicts, the introduction and application of the new schemes can be avoided and postponed with decisions made along other interests and ad hoc solutions. [For example by the forced implementation of the *lex specialis* doctrine, the formal completion of planning/accounting/reporting commitments, and managerial requirements; by neglecting more developed requirements and opportunities (which of course contain greater expectations)] The “introduction” of the act outlined above is designed to confine the predominance of these and other disturbing factors.

Obviously, some entities having direct control over the institutions and this system will initially continue with the old practice even under the new rules, and will not use the possibilities provided by the long-awaited up-to-date model. (It is common knowledge that the entities engaged in the operation of law always come to support the otherwise continuously criticised and neglected regulations once they experience an incentive for change.) In this case the current situation will remain in place,

however fiscal aspects must continue to be enforced separately.

However, from now on references to unconcerning, unifacial, technical type financial regulations and decisions, as well as references to the absence of general requirements, guidelines and instructions for professional fields, institutional systems and managing organisations will lose credit. The representation of public interests, the accomplishment of the reforms will sooner or later, hopefully, receive more favourable judgement than day-to-day decisions serving local interests only, or than inac-

tion, either because of sound judgement, or favourable interests. The question is not about the amount of extra thoughts and work required for the transition, but about how long the ad hoc practice legalised by the former regulations can prevail over a rational model that is strictly based on principles. This means that in terms of the operation and financial management of budgetary institutions the country must make a choice between splashing or pulling at the public service and executive level, and between rowing or navigating at governance level.

NOTES

¹ The regulation was elaborated by Pál Tucsni, a staff member of the Ministry of Finance. His proposal was enforced by Decree 19/1980. (IX. 27.) issued by the Minister of Finance.

² Act XXXVIII of 1992 on public finances

³ Government Decree 217/1998. (XII. 30) on the rules of operation of public finances

⁴ Government Decree 280/2001. (XII. 26), see Zsolt Aradi: Modernisation of the financial management of budgetary organisations, *Public Finance Quarterly*, 6/2002, pp. 587–606

⁵ Act LXXV of 2008 on cost-efficient public financial management and fiscal responsibility

⁶ A recurrent finding in the SAO reports.

⁷ Act CV of 2008 on the legal status and financial management of budgetary organisations (hereinafter: Act)

⁸ Government Decree 2118/2006. (VI. 30) on the restructuring of public administration in order to improve effective operation of public finances

⁹ Act CXLIV of 1997 on business associations

¹⁰ The text is usually subdivided in accordance with these three subjects: situation before the adoption of the act, situation after the adoption of the act, and finally the impact of the act.

¹¹ Government Decree 1013/2009. (II. 10) on tasks related to the application of Act CV on the legal status and financial management of budgetary institutions