

# The Legal Concept of Finance and The Modern System of Public Finance in Bulgaria

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## The Legal Concept of Finance and the Modern System of Public Finance in Bulgaria

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### SUMMARY

Bulgarian financial law theory follows the legal concept of finance. Milcho Kostov develops and substantiates this idea founding and constructing a legal theory of the contemporary system of public finances. Public finances form a system of revenues and expenditures' accounts, organised and balanced in an authoritative manner. At its centre – its integrative core – stands the state budget, It balances through inter-budgetary relations (non-repayable transfers and interest-free loans) the revenues and expenditures of other components of the public finance system: municipal budgets, budgets of social security funds, accounts for funds from the European Union, state-owned enterprises, state funds and others. In addition to inter-budgetary relations, the fiscal rules under the **Public Finance Act** also balance revenues and expenditures within the public finance system. Authoritative financial legal regulation plays a decisive role in the creation and functioning of the modern public finance system.

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KEYWORDS

Legal Concept of Finance; System of Public Finance; Financial Legal Regulation; Revenue – Expenditure Accounts; Fiscal Rules; Inter-budgetary Relations

§ 1. THE LEGAL CONCEPT OF FINANCE

Bulgarian legal theory in the field of financial law follows the so-called „legal concept of finance“. Milcho Kostov develops and substantiates with remarkable depth this idea during the 1970s and 1980s under the conditions of a socialist planned economy and its corresponding financial system.

The roots of the concept are in the ideas of the Russian financial theorist Voznesensky, who reasonably criticises the theory of finance as an „objective economic category“ and substantiates the constitutive role of legal regulation for the very existence and functioning of finance.<sup>2</sup> Building upon this foundation, M. Kostov develops the legal concept of finance not as a financial-economic theory but precisely as a branch-specific legal theory, from the perspective of legal science, employing the theoretical-methodological tools of legal categories.

According to this concept, finance is not an objective economic phenomenon (category) but rather authoritatively organized monetary relations that arise and evolve in forming and expending centralized and decentralized funds within the framework of the distribution and redistribution of social product and national income. The authoritative regulatory method and authoritative organization are essential and constitutive feature of finance, clearly distinguishing it from the other legal relations of monetary nature – such as civil or labour legal relationship – following the principle of legal equality of the parties.<sup>3</sup> M. Kostov constructs a coherent and logically complete theory of financial legal relations, making a successful attempt not only to clearly separate law from economics in the explanation of the phenomenon of „finance“ but also emancipating financial law from the guardianship of administrative law and affirming its status as an autonomous legal branch.

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<sup>2</sup> Е. Вознесенский. *Дискуссионные вопросы теории социалистических финансов*. Ленинград, ЛФЕИ, 1969, Е. Вознесенский. *Соотношение финансов и права. Правоведение*, 3 (1971).

<sup>3</sup> М. Костов. *Финансови правни отношения*. София, БАН, 1979, 90 – 91, 105.

Above all, M. Kostov, upon analysing a number of economic concepts of finance, offers a clear and precise diagnosis of the thesis that finance is an objective economic category. He concludes that finance is not an objectively determined economic phenomenon. In terms of its substantive content, it is not possible to describe or exhaustively define outside and independently of its organizational form and legal regulation. Financial relations do not have their own inherently and comprehensively determinable socio-economic content. However, the real necessity for the existence of finance, once concretised through specific economic preconditions, defines the boundaries of the scope social relations that may be organised into a system of financial relations. These boundaries, in turn, characterise the fields of financial law regulation in the most substantively meaningful way, the material part of financial legal relations. Another equally vital component is also necessary for their complete and exhaustive definition – the authoritative organisational form.<sup>4</sup>

Authoritative regulatory approach governs financial legal relations (primarily monetary, but also the ancillary organizational, non-monetary ones). The active subject in these relations is the state body, as the bearer of public authority (competence), regardless of whether it holds a monetary claim or obligation.<sup>5</sup> Passive subjects are the addressees of this authoritative competence – subordinate authorities, organisations and citizens participating in the legal relationship through their legal capacity.<sup>6</sup> According to M. Kostov, active legal personality – i.e., competence in financial legal relations – principally represents a bound competence, rather than discretionary power. Accordingly, all financial acts, expressing this competence have a declarative rather than a discretionary-constitutive nature. The author emphasizes that this is one of the essential characteristics of the authoritative regulatory method in financial law.<sup>7</sup>

In a subsequent study, continuing the development of the legal concept of finance and the theory of financial legal relations, the same author substantiates the congruence between the financial system and the system of legal regulation in the field of finance, stating that “the structural connections of the system (the financial system – author's note – V.D.) are introduced by law as a state regulator, through financial-legal regulation”.<sup>8</sup>

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<sup>4</sup> Костов (1979), 90 – 91.

<sup>5</sup> Костов (1979), 105.

<sup>6</sup> Костов (1979), 183 – 198.

<sup>7</sup> Костов (1979), 119 – 127.

<sup>8</sup> М. Костов. *Финансова система и система на финансовоправно регулиране*. София, БАН, 1986, с. 123.

His study further outlines the structure and scope of the socialist financial system. In its base there is a division of different elements of state monopolies in banking and insurance: (1) the state budget; (2) decentralized finances of economic organizations; (3) the banking system<sup>9</sup>; and (4) insurance. Within this system, the state budget functions as the hierarchical centre and integrative core.<sup>10</sup>

The author's approach to examine finance as a system also holds conceptual and methodological significance, particularly the placement of the revenue-expenditure account – or revenue-expenditure balance – at the core of the very notion of finance. „The simplest explanation of finance is, in fact, a systemic explanation. The system is clearly delineated by its two subsystems – revenue and expenditure... Equilibrium (stability), i.e., the state towards which every social system aspires, is, in the case of finance, expressed through the inherent tendency to balance revenue and expenditure...“<sup>11</sup> Furthermore, M. Kostov notes: „...as with all systemic wholes, the integrative properties of the financial system result from the interrelations among its components... If we accept that the revenue-expenditure account (budget, sources and directions of funds, etc.) is the basic cell of finance from a systemic perspective, then at the level of the ‘components of the financial system’ the relationships among these components are manifested in the fact that the expenditure of one component includes sources of revenue for another component. In such a configuration, we observe what Voznesensky aptly calls a ‘dual account,’ since the same financial relations are included in various components of the system“.<sup>12</sup> The conclusion is drawn that “the relations among the components of the financial system are significantly more complex, as they provide connections and interactions at different levels between distinct revenue-expenditure balances”.<sup>13</sup> According to Kostov, the relations between components of the financial system fall into the category of overlapping systems. It is precisely this “overlap,” expressed through the presence of a “dual

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<sup>9</sup> Under socialism, banking law was entirely part of financial law due to the existence of the state banking monopoly and the pervasive “control through the lev” exercised by banks, which gives the banking system a vehicle for state-planned monetary distribution. Under such conditions, there was no room for the development of the regulatory potential of civil law norms. Credit agreements merely concealed loan relationships which, by their nature, were coercive monetary relations—in other words, financial legal relations. (В. Димитров. *Въведение в банковото право. Търговската банкова дейност и нейната публичноправна уредба*. София, Нова звезда, 1996).

<sup>10</sup> Костов (1986), 89, 121.

<sup>11</sup> Костов (1986), 50 – 51.

<sup>12</sup> Костов (1986), с. 77.

<sup>13</sup> Костов (1986), с. 51.

account,” that enables the financial system to function as a management mechanism. The author further emphasizes: “As a part of the financial system (a minimal element of the system), there must be a certain degree of distinctiveness in monetary relations, within which a shared process of fund formation and use exists. This shared process is the necessary substrate of the minimal element (component) of the financial system... It is essential to reiterate that components of the financial system cannot be limited to revenues or individual types of revenues, nor to expenditures or specific categories thereof”.<sup>14</sup>

Ultimately, based on these analyses and theoretical constructs, M. Kostov perceives finance as an integrated whole – a system of authoritatively regulated by law revenue-expenditure accounts.

## § 2. THE MODERN SYSTEM OF PUBLIC FINANCES

**2.1.** The radical changes in the political and economic organization of society after 1989 require a critical analysis and reassessment of the concepts about the scope and content of the financial system and, respectively, of financial law regulation (financial law).

The starting assumption in this analysis is that, despite the official ideological ballast—inevitable for legal scholarship under the totalitarian socialist system—the rational core of the legal concept of finance and financial regulation keeps its theoretical and methodological value. Above all, this applies to the thesis that **finance exists wherever monetary relations are authoritatively organised. In other words, the scope of the financial system generally corresponds to the scope of authoritative financial regulation.**

**Equally important is the understanding of finance as a system of authoritatively regulated revenue-expenditure accounts (balances).**

Of course, we are now speaking of a fundamentally different content and boundaries of the financial system and its legal regulation, within a different socio-political and economic context.

Critical analysis shows, metaphorically speaking, a „contraction“ or „withdrawal“ of the financial system (financial regulation) into the boundaries of „public, non-market finances“, correspondingly moving away from the sphere of the national economy. This is an inevitable consequence of the emergence and development of the private sector and a capitalist market economy based on constitutionally recognised private ownership of the means of production and private entrepreneurial initiative. Qualitative transformation

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<sup>14</sup> Костов (1986), с. 78, 81.

goes with the narrowing of the scope of the financial system, including the reduction and rearrangement of its components. It is clear that, with the abolition of state monopolies in banking and insurance and their conversion into commercial and entrepreneurial activities, there is no longer reason to consider them part of the financial system. The similar abolishment of state monopoly over economic activity leads to transforming of decentralised finances of economic organisations. With the introduction of commercial legislation legitimising private enterprise, there is no basis for the authoritative regulation of the monetary relations of such entities („private finances“) by financial law. The question of the application of financial law here arises only in relation to state enterprises and companies with state, municipal, or other public participation.

For example, the removal of the constitutionally enshrined state banking monopoly led to the separation of commercial banking, while establishing of a limit of the central bank functions within the focus on formulating and implementing state monetary policy and the sub-legislative regulation and supervision of commercial banks. Commercial banking legislation sets up a special regime of administrative regulation and supervision over commercial banks, based on the understanding that commercial banking is a high-risk business.

A similar situation exists in insurance law, which now regulates a private, non-state business that is governed by commercial law, but – due to its risk profile – is also subject to administrative regulation and supervision, carried out by a specialised state authority headed by a collective body – the Financial Supervision Commission.

**Ultimately, financial law has „ceded grounds“ to commercial law, as well as to regulatory and supervisory administrative law.<sup>15</sup>**

**As a result of these developments, the exceptionally broad scope of socialistic concept of the „financial system“, now, under the conditions of a market economy, coinciding with the notion of „public finances“, is narrower.** Outside this system remain „private finances“, i.e., the monetary revenues and expenditures of entities in the non-public, private economic and social sector (entrepreneurs and traders, non-profit legal entities, political and religious organizations).

Applying the principle that the scope of the financial system (public finances) as whole coincides with authoritative legal regulation, the analysis of

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<sup>15</sup> For a more detailed account of this process of the transformation of banking law from a branch of financial law into branches of commercial and administrative law, see Dimitrov (1996), pp. 14 – 16.

the new Public Finance Act (PFA) in force since 2014 leads to the following conclusions:

First, the principal part of public finances is **the state budget**. The state budget is regulated in several of its aspects – first, as a structure (Art. 42 – 44), then as a key party in budgetary relations with other budgets and components of the system (Art. 48 – 56), as well as in relations with the general budget of the European Union and other international programs and treaties (Art. 57 – 65). The law regulates comprehensively procedures for drafting, adoption, execution and reporting of the state budget (Art. 66 – 81, Art. 85 – 88, Art. 108 – 113, Art. 138 – 139).

Secondly, the next part are undoubtedly **municipal budgets**, which, under the recognition and regulation provided by the Constitution of local self-government and municipal property, remain distinct from the state budget. The PFA devotes significant attention to municipal budgets, regulating in detail the structure of municipal budgets (Art. 45 – 47), the budgetary relations involving municipal budgets (Art. 51 – 56), and the processes of their drafting, adoption, execution, and reporting (Art. 82 – 84, Art. 94–99, Art. 122 – 130, Art. 140).

Thirdly, **public finances also include the budgets of social security funds**. These include the budgets of the State social insurance funds, managed by the National Social Security Institute (NSSI), the Institute's own budget, and the budget of the National Health Insurance Fund. The PFA regulates, in principle, the budgetary relations with these funds by referring to the rules in the relevant special laws, namely the Social Insurance Code and the Health Insurance Act, Art. 48. The law also generally regulates the process of drafting, adopting, and implementing these budgets (Art. 89–91, Art. 114 – 119).

**2.2.** The principal issue for all the above-mentioned authoritatively organised revenue and expenditure accounts is their balance – the equilibrium between revenues and expenditures.

Each of the three identified components of public finance has its own financial, i.e. non-contractual and authority-based, revenues, which should generally guarantee financing of their respective expenditures. The most significant revenues under the state budget include state taxes, customs duties, and state fees, regulated by the Value Added Tax Act, the Excise Duties and Tax Warehouses Act, the Corporate Income Tax Act, the Personal Income Tax Act, the Customs Act, and the State Fees Act. For municipal budgets, these are the local taxes and fees regulated by the Local Taxes and Fees Act. The main financial revenue under the budget of the State Social Security is the mandatory social insurance contributions, and under the budget of the National Health Insurance Fund – the mandatory health insurance contributions.

The core problem for each revenue and expenditure account is the imbalance between revenues and expenditures, where there is a revenue shortfall (deficit). The practice of managing public finances in the decades following the collapse of the socialist financial system clearly proves that a considerable number of municipal budgets, as well as the budgets of the State Social Security and the National Health Insurance Fund, suffer from chronic deficits.

Under the PFA the **application and observance of the fiscal rules set forth in Chapter Two** (Articles 22 – 41) primarily ensures the balance between revenues and expenditures.

Fiscal rules are a system of requirements aimed precisely at ensuring the sustainable and long-term balance of public finances, both overall and at the level of individual components. This is achieved through regulation of the structural deficit (Articles 23 – 24), the residual balance of the „General Government“ sector (Article 25), the annual regulation of expenditures, revenues, the deficit, and residual balance (Articles 26 and 27), and by imposing limits on expenditures and consolidated debt of the „General Government“ sector (Article 28)<sup>16</sup>.

The logic of these rules is clear and categorical: an expenditures increase supports the balance by rising revenues; a decrease of revenues, limits expenditures. It may allow a deficit (an imbalance where expenditures exceed revenues) temporarily and within certain limits under exceptional circumstances (Article 24, paragraphs 1 and 4) or during the implementation of significant structural reforms (Article 24, paragraph 2). Debt, as a balancing instrument, must remain within reasonable, „healthy“ limits (Articles 29 and 32).

The PFA explicitly provides that fiscal rules are mandatory for the bodies administering the state budget, municipal budgets, and the budgets of social insurance funds (Article 22, paragraphs 2 – 4). In addition, the Act specifically regulates the revenues, expenditures, and residual balance of municipal budgets (Articles 30 and 31), and sets limits on municipal debt and payments thereon (Article 32). The Act also introduces special prohibitions and restrictions on the incurrence of debt by the social insurance funds (Article 33).

**In addition to applying fiscal rules, budgetary relations with the state budget support the balance between the revenues and expenditures of the**

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<sup>16</sup> The „General Government“ sector comprises the subsector „Central Government“, the subsector „Local Government“, and the subsector “Social Security Funds” per the European System of National and Regional Accounts (see items 25, 26, 32, and 34 of § 1 of the Supplementary Provisions of the PFA).

**financial system's listed components. These relations highlight the integrative role of the state budget and its function as a system-defining centre.**

According to the legal definition in §1, item 4 of the Supplementary Provisions of the PFA, budgetary relations take the form of **transfers and temporary interest-free loans**. Transfers are non-repayable allocations of financial resources, in contrast to temporary interest-free loans (see the legal definitions in items 39 and 8).

The State Budget Act decides annually the budgetary relations with municipal budgets and include transfers and temporary interest-free loans. The transfers include the general subsidy for state-delegated activities, transfers for local activities (including the general equalization subsidy), targeted subsidies for capital expenditures, transfers for other targeted expenditures, and financial compensation from the state (Articles 51 and 52, paragraph 1 of the PFA).

Similarly, for the budgets of the social insurance funds, the annual number of budgetary relations depend on the annual budget act. In case of revenue shortfalls, the Council of Ministers may approve added transfers to finance the approved expenditures (Article 48, paragraph 4 of the PFA). If excess expenditures beyond the planned amounts for pensions, allowances, and benefits paid from the budget of the State Social Security, the government may also approve more transfers (paragraph 5). Special legislation also includes such provisions. For instance, Article 23, paragraph 1, items 9 and 11 of the Health Insurance Act provide for targeted subsidies and transfers from the state budget in favour of the National Health Insurance Fund budget, and paragraph 2 regulates interest-free loans. Article 20, paragraph 1, item 11 of the Social Insurance Code similarly regulates transfers to the State Social Security budget.

These inter-budgetary relations are not simple financial transfers. Their regular and ongoing nature refers for a **systemic character**. Precisely these relations define the public finances as a complex system, including the listed budgets and funds.

**Undoubtedly, the aim of the legal regulation of inter-budgetary relations under the PFA is to ensure the balance of revenues and expenditures of individual budgets and of the entire system through the active, integrative role of the hierarchical centre, the state budget.**<sup>17</sup>

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<sup>17</sup> Inter-budgetary relations are a typical expression of the management principle of the "dual account" and the "overlapping" of units within the financial system, as set up by Voznesensky and Kostov and mentioned above.

The application and enforcement of fiscal rules and the exercise of balancing power through inter-budgetary relations are **the two main factors that, according to the PFA, should ensure the sustainability and effective functioning of public finances as a system**. Analysis and comparison of these two factors clearly reveal a substantive and systemic interrelation. Fiscal rules should ensure a successful revenue-expenditure balance primarily within the state budget, so that it, in turn, can effectively exercise its balancing impact on all other components of the financial system. The balancing role of fiscal rules on the state budget gets exceptional significance in the context of the prohibition on the central bank granting credit to the state – a prohibition forming part of the currency board arrangement.<sup>18</sup>

**Ultimately, the effective fiscal rules are essential as prerequisite for effective balancing through inter-budgetary relations.**

**2.3. Financial legal relationships emerge and develop during collection revenue and making expenditure across all the above-listed budgets, and in inter-budgetary system linkages, as well. The method of authoritative regulation organises these monetary legal relations.** So, the bodies involved in managing these budgets exercise public authority powers (competence). They issue and implement financial and administrative acts through which they collect funds, distribute and spend them, and plan and control the management and disposition of those funds. In this sense, they are the active, i.e., empowered subjects in financial legal relations.

The existence of authoritative financial competence is, first and foremost, indisputable for the authorities responsible for generating revenue. These include the bodies of the National Revenue Agency and the Customs Agency, which, exercising their authoritative powers, collect financial revenues for the state budget (taxes, customs duties, fees). The National Revenue Agency also forcibly collects the specific financial revenues for the social security funds – namely, the social insurance contributions to the budget and funds of the National Social Security Institute, the health insurance contributions to the budget of the National Health Insurance Fund, as well as the specific revenues for municipal budgets – namely, local taxes and fees.<sup>19</sup>

Secondly, during management of budgets and funds on the expenditure side different bodies exercise authoritative competence. In the case of the state budget, this is the Council of Ministers, the Minister of Finance, ministers, and other heads of institutions and agencies **with powers as budget spending administrator, when they allocate, plan, and control financial**

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<sup>18</sup> See Article 45 of the Law on the Bulgarian National Bank.

<sup>19</sup> See the list of public receivables pursuant to Article 162, paragraph 3 of the Tax and Social Insurance Procedure Code.

**resources „vertically“ through authoritative, non-contractual acts.** Typical examples of such authoritative financial acts include those by which primary budget spending administrators define and approve the budgets of secondary spending administrators, which in turn do the same for lower-level units (see Art. 100, paras. 2 and 3 of the PFA). Once the budgets approved through such financial acts, the authorities may activate the contractual mechanism for the disbursement of budget funds (e.g., through civil or employment contracts)<sup>20</sup>.

Municipal bodies (municipal councils and mayors), as well as the management bodies of the National Social Security Institute and National Health Insurance Fund (managers, deputy managers, supervisory boards), also hold similar authoritative financial powers in administering their respective budgets.

**2.4.** In summary, and based on the foregoing, it could outline a criterion for delineating the financial system.

The financial system is a set of budgets and funds functioning as revenue-expenditure accounts, characterised primarily by the fact that bodies vested with authoritative financial competence (powers) carry out the revenues and expenditures of these budgets and funds are through the mechanism of financial legal relations. Secondly, fiscal rules and budgetary relationships should apply, with the state budget acting as the revenue-expenditure balancing center of the system.

Since the law plays a decisive, constitutive role in the financial system, the criterion for its delineation may be formulated as follows: **the existence and operation of a legally regulated mechanism (1) of authoritative financial legal relations for revenue collection and expenditure, and (2) of the application of fiscal rules and interrelations with the state budget aimed at revenue-expenditure balance.**

**This is the cumulative criterion, deciding whether certain budgets and monetary funds, as revenue-expenditure accounts, belong to the financial system.**

**Fiscal rules and budgetary relationships are the two factors that ensure the balance and overall integrity and system coherence of public finances.**

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<sup>20</sup> Within the framework of already approved budgets, for certain expenditures carried out “horizontally” through contracts, additional authoritative acts may be required before conclusion of contracts. The Public Procurement Act classifies as administrative acts the acts of selecting of contractors, appealable before the Commission for Protection of Competition and subsequently before the Supreme Administrative Court (see Articles 196 to 220).

Ensuring the revenue-expenditure balance of the financial system and its components by the central integrative element – the state budget – legally means that the competent state authorities managing the overall operation of this budget **have balancing responsibilities, which are also powers. It is indisputable that the Council of Ministers and the Minister of Finance are the balancing authorities with decisive competence. The authorities exercise these balancing powers by issuing and implementing authoritative financial acts, rather than using contractual mechanisms.**

**2.5.** In view of the criterion thus constructed for defining the financial system, the question arises whether the above-mentioned components exhaust its content. Primarily, this question concerns other revenue-expenditure accounts regulated by the PFA.

The PFA separately defines and regulates a **group of budgets of autonomous organizations. According to Art. 13, para. 3, these include the budgets of the Bulgarian Academy of Sciences, public higher education institutions (universities), the Bulgarian News Agency, Bulgarian National Television, and Bulgarian National Radio.** Like municipal budgets and the budgets of social security funds, the autonomous budgets are not part of the state budget but represent a distinct part in budgetary relationships (see Art. 42, para. 2 in conjunction with Art. 11, para. 9, Art. 42, para. 2, and Art. 49).

Unlike the state budget, municipal budgets, and the budgets of social security funds, the budgets of the autonomous organizations under Art. 13, para. 3 of the PFA do not have their own specific revenues. Budgetary relationships with the state budget provide the revenues needed to cover their expenditures. For these budgets, the relevant primary budget spending administrators (e.g., the Ministry of Education and Science for universities) or the central budget (Art. 49, para. 2) provide the funds allocated under the annual budget law<sup>21</sup>. In this case, the governing bodies of the autonomous organisations do not exercise financial competence; the balancing bodies, which provide transfers from the state budget, exercise that authority. In this regard, these organisations do not differ from regular budgetary organisations (ministries, commissions, agencies, executive agencies, etc.) whose budgets are part of the general framework of the state budget. This is why their autonomy is relative. However, the absence of specific, independent financial revenues – outside those secured via budgetary relationships – does not disqualify them from being components of the financial system. Their integration into the financial system could be justified, first, because their heads serve as budget spending

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<sup>21</sup> The Central Budget is a part of the State Budget; Minister of Finance administers directly them (Articles 42 and 43 in conjunction with Article 12 of the PFA).

administrators, and second, because the balancing mechanism of budgetary relationships as well as the fiscal rules under Art. 34, paras. 1 – 3, related to debt limitations, apply to them. Therefore, the budgets of autonomous organisations must be characterised as the fourth part of the financial system.

The law also provides a regime for accounts handling funds from the European Union, as well as for foreign funds accounts. Article 1 mentions both types of accounts, as do Arts. 8 and 9 of the General Provisions of the Act, as well as Chapters Eleven (Arts. 141 – 144) and Twelve (Arts. 145 – 150).

**EU funds accounts should be a part of the financial system for the following reasons.** Art. 14, para. 1 of the PFA explicitly lists budgetary relationships as a key indicator for these accounts. In other words, they are integral element of the system through revenue-expenditure balancing via the state budget. According to Art. 144, their financial plans' draft, approval, and update, have indicative in nature and include data on the key indicators specified in Art. 14, para. 1.<sup>22</sup> These indicators – along with the stated budgetary relationships – include revenues, grants and donations, expenditures, budget balance, and the financing of the budget balance. Additionally, individuals authorised to act as budget spending administrators manage both the financial plans and the expenditures from these accounts (see Art. 141, paras. 4 and 5).

Such integration into the financial system, however, is not present in relation to foreign funds accounts. These accounts have deposits and guarantees temporarily held by budgetary organizations on behalf of third parties.<sup>23</sup> Undoubtedly, officials acting as budget spending administrators administer authoritatively revenues and expenditures on these accounts. However, Art. 146 of the PFA does not provide for approval of budgets or financial plans for these accounts, i.e., there are no budgetary relationships aimed at revenue-expenditure balancing. In this case, each revenue directly matches a targeted expenditure, and the source is outside the public finance system (i.e., from physical and legal entities). There is no legally established obligation for the Council of Ministers or the Minister of Finance to balance revenues and expenditures – neither regularly nor occasionally.

**2.6.** An important question arises as to whether the revenues and expenditures of companies with state and municipal participation, and of state-owned enterprises, are part of the financial system. In this regard, Art. 4 and 171 of the PFA concerning the so-called “Consolidated Fiscal Programme” (CFP) deserve special attention.

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<sup>22</sup> See the legal definitions of these indicators in the Supplementary Provisions of the PFA, § 1, items 29, 28, 31, 7, and 40, respectively.

<sup>23</sup> See the legal definition of “foreign funds” in § 1, item 42 of the Supplementary Provisions of the Public Finance Act.

According to Art. 4 of the PFA, the CFP is a system of aggregated indicators for the central budget and the budgets, accounts for funds from the European Union, and accounts for foreign funds of budget organizations. Despite the imprecise legal definition of the programme from a legal-technical standpoint, systematic interpretation leads to the conclusion that this concept principally encompasses the components of public finances outlined thus far. For example, the Report on the Cash Execution of the CFP for the first half of 2022<sup>24</sup> includes in its scope the state budget, the municipal budgets, the social security funds, state higher education institutions including the Agricultural Academy, the Bulgarian National Radio, Bulgarian National Television, Bulgarian Telegraph Agency, the EU funds account of the National Fund at the Ministry of Finance, and accounts for EU funds administered by the Paying Agency of the State Fund “Agriculture.”

**Article 171(4) of the PFA explicitly excludes from the scope of the CFP operations and funds of commercial companies and their structural units.** Although this provision appears in the section of the PFA, dealing exclusively with budget accounting, it holds principal importance and must be interpreted and applied broadly. The provision clearly shows that the legislator does not treat commercial companies, regardless of the level of public participation in them, as part of public finances. In this sense, public enterprises with legal-organisational form of commercial companies, within the meaning of Article 2(1) (1) and (2) of the Public Enterprises Act, fall outside the scope of public finances.

At the same time the Minister of Finance has power to include revenues, receipts, and payments of other persons or their structural units when they are subject to inclusion in the “General Government” sector (Article 171(1)). It is precisely these special entities included in the CFP that Article 13(4) refers to when it provides that their budgetary parameters are adopted by their governing bodies, under the law regulating their status, ensuring their fiscal relations with the state budget. I believe these provisions of the PFA refer specifically to certain state-owned enterprises. In the cited report on the execution of the Programme for 2022, several state-owned enterprises appear as entities with budgets under the meaning of Article 13(4) of the PFA. These include: the Enterprise for Management of Environmental Protection Activities, the State Enterprise “Scientific and Production Centre“, the State Enterprise

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<sup>24</sup> The report is available on the website of the Ministry of Finance.

“Management and Maintenance of Dams“, and the State Enterprise “State Petroleum Company“<sup>25</sup>.

According to the Public Enterprises Act, public enterprises include not only incorporated commercial companies with public (state and/or municipal) participation but also not incorporated state-owned enterprises, created by special laws, as under Article 62(3) of the Commercial Act. The enterprises listed in the report fall into this category. In addition to these, other special acts regulate state-owned enterprises, which do not appear in the 2022 CFP report. However, this fact alone cannot serve as an argument for excluding state-owned enterprises, as under special acts, from the scope of public finances. The real question is whether their budgets, as revenue-expenditure accounts, meet the legal criterion for inclusion in the public finance system, as outlined above. **This criterion is legal in nature – it is based on legal, not economic, characteristics.** The legal and economic features of the concept of “public finance” may overlap or coincide partially, but they can never be fully identical. This follows from the differences in the conceptual tools of law and economics. The legislation also reflects these differences. It is clear that the legal definition of the Programme in Art. 4 of the PFA is entirely economic in nature, lacking legal features. **Due to the lack of identity – i.e. complete conceptual overlap – between legal and economic terms in the field of public finance, legal norms based solely on economic characteristics cannot serve as legal criteria for constructing legal definitions.** For this reason, from the perspective of the legal concept of finance, the contents of the CFP as a financial-economic document should not be absolutized and cannot serve as a legal argument for including or excluding certain revenue-expenditure accounts from the public finance system.

#### **A brief review of special laws governing state-owned enterprises**

Under the Railway Transport Act, the **National Railway Infrastructure Company** should carry out the management of the railway infrastructure, which is a state-owned enterprise under Article 62(3) of the Commercial Act (Art. 9 (1)). The company holds a *de facto* monopoly, as it is the main infrastructure manager (para. 3). Its governing bodies are the Minister of Transport, Information Technology and Communications, a management board, and a general director (Art. 11). The Minister appoints the board and the general director (Art. 13 (1) and 19 (1)). The company funds its activities for infrastructure maintenance and operation not only through revenues from

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<sup>25</sup> An amendment of the State Reserves and Wartime Stocks Act (2020) establishes the State Enterprise „State Oil Company“; subsequently, in 2023, dissolved, having repeal the governing provisions, Chapter Two „a“.

commercial activities but also via funds from the state budget and infrastructure fees paid by infrastructure users (Articles 26 (1) – (2) and 35). The company sets the fees under methods approved by the Council of Ministers upon the Minister's proposal (Article 35(2)) and earmarks the respective revenues only for infrastructure maintenance and company's expenses (Art. 35(5)).

The Maritime Spaces, Inland Waterways and Ports of the Republic of Bulgaria Act of 2000 regulates another similar enterprise: the **State Enterprise "Port Infrastructure"**. Under Art. 115l (3) and 115m (1) (1 – 19), the enterprise manages port infrastructure. It is also a state-owned under Art. 62(3) of the Commercial Act and is not subject to insolvency proceedings (Art. 115l (1) and (5)). Its governing bodies are the Minister of Transport and Communications, a management board, and a general director (Art. 115n). The state budget provides funding for its core activities (Art. 115s (1) (5)), and port fees should finance the enterprise (Art. 115s (1) (1)).

Based on the same model is the *State Enterprise "Air Traffic Services Authority"*. Established in 2001, it derives its mandate from the Civil Aviation Act of 1972 and has the status of an enterprise under Article 62(3) of the Commercial Act. The Act explicitly stipulates that the enterprise performs state functions, providing of aeronautical services in Bulgaria's controlled airspace (Art. 53(1)), protecting its assets, and it is not subject to insolvency (Art. 53(6) and (7)). Like the other enterprises, the governing bodies include the Minister of Transport, a management board, and a general director (Art. 53a (1)). The enterprise collects fees for air navigation services and the use of its facilities, as well as en-route fees for overflights in Bulgarian airspace (Art. 120 (2) (1) – (2)). Again the fees are the main source of funding for its operations (Art. 122a (2) (1)).

Amendment to the Water Act of 2018 sets up **State Enterprise „Management and Maintenance of Dams“**. It is not a commercial company and does not generate or distribute profits (Art. 139a (2)). Its core activity is the integrated management of dams – both public and private state property (para. 3), and its funds come from: revenues from its operations, transfers from the state budget, other sources as legal acts may decide (Art. 139a (8)(1) – (3)).

Seven-member management board chaired by the Minister of Economy or a designated Deputy Minister manage the enterprise. Other members include representatives from the Ministries of Environment and Water, Regional Development and Public Works, Agriculture, Energy, the National Association of Municipalities, and an Executive Director (Art. 139v (4) (1) – (7)).

This group of enterprises also includes two other major state enterprises: the State Enterprise „Radioactive Waste“ and Enterprise for Management of Environmental Protection Activities.

**The State Enterprise „Radioactive Waste“** functions as under the Safe Use of Nuclear Energy Act (Art. 78–98) and its internal rules. Its exclusive function is the management of radioactive waste, including construction, operation, rehabilitation, reconstruction, and decommissioning of nuclear facilities, as well as transport of radioactive waste (Art. 79 (1)). The management bodies are the Minister of Energy and a board and executive director appointed by the Minister (Art. 82). Two state-budget-funded sources fund the enterprise: the “Radioactive Waste“ Fund and the „Decommissioning of Nuclear Facilities“ Fund, both under the Minister’s control (Art. 93 (1) (1); Art. 6 of the internal rules).

The Environmental Protection Act (Art. 60 – 64) regulates **the Enterprise for Management of Environmental Protection Activities**. Its core activity is the implementation of environmental projects and activities as part of national and municipal strategies and programmes in the field of environmental protection (Art. 61 (1)). According to Art. 61 (5), its revenues include fees under special environmental laws (point 1), targeted funds from the state budget for environmental programmes, and fines and financial penalties for administrative violations under a broad range of environmental legislation (point 5). The Minister of Environment appoints the governing bodies – management board (which he chairs) and executive director (Art. 63 (5)). Notably, the enterprise keeps its accounts under the rules for budgetary organizations (Art. 62(6)).

There are specific aspects to the funding of State Enterprise “Radioactive Waste” (through specialized public funds rather than direct budget transfers), and to the revenue structure of Enterprise for Management of Environmental Protection Activities, which includes fines and penalties under various environmental laws. Despite these specifics, there is no doubt that both enterprises are authoritatively organized revenue-expenditure accounts which are budget-balanced. In this sense, they belong to the financial system, even if in the case of State Enterprise “Radioactive Waste” the budget balancing is indirect – through state-funded special-purpose funds.

**2.7.** The brief overview of the regulation concerning status and activities of the aforementioned state enterprises leads the following conclusions.

Under this model of establishment and operation of a state enterprise, its primary characteristic is not its commercial nature. Other public-law features come to the forefront. The enterprise exercises an exclusive scope of activity or state functions. Fees, which clearly are not prices for contractually provided services but have the inherent characteristics of state fees as typical

budget revenues, regulated in an authoritative manner, finance its activities.<sup>26</sup> Another source of financing is funds distributed from the state budget. The governing body of the enterprise is the sectoral minister, as a body of the central executive authority.

**Article 612, Para. 1 of the Commercial Act, and other enactments prohibit the declaration of bankruptcy of state enterprise.** According to this provision, insolvency proceedings may not start against a trader – a public enterprise exercising a state monopoly or set up by a special law. This clearly implies that the **state enterprise is not a genuine commercial entity, as it is not subject to market pressures.**

The balance between income and expenditure is supported through public, budgetary funds. It is clear, firstly, that **these enterprises generate income in an authoritative manner (through fees), not through contracts, and secondly, they are parties to budgetary relations aiming at revenue-expenditure equilibrium. In this sense, they are authoritatively organised and budgetarily balanced revenue-expenditure accounts, meeting the above-mentioned criterion and thus their classification should be as a distinct part (unit) within the financial system.**

**2.8.** The cited provision of Art. 171, Para. 4 of PFA excludes commercial companies, regardless of the size of state or municipal participation, from the consolidated fiscal programme.

This is a key normative decision in the context of the special legal framework considered here and allows to draw conclusions about the fundamentally different treatment of state enterprises, on the one hand, and commercial companies with state participation, on the other.

Both state enterprises and commercial companies with state participation have commercial status. However, this similarity is not essential for their inclusion in the financial system. More significant here are the differences since the state enterprise is not a market entity and, despite formally having commercial status, is not a genuine trader. The trader, the business enterprise, considered in a broader sense, is also a revenue-expenditure account. The balance and deficit-free nature of this account depend on market risks and, more broadly, on success or failure in market participation. Persistent, systemic imbalance between income and expenses – where expenses prevail – inevitably leads to insolvency, followed by bankruptcy, and ultimately, loss of commercial status and exit from the market. Commercial insolvency and market exit is the penalty for a trader's systemic deficits and inability to keep revenue-

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<sup>26</sup> For the legal characterization of the fee as a budget revenue, see E. Златарев, В. Христофоров. *Финансово право на НР България*. София, Стопанство, 1983, с. 311 – 317.

expenditure balance and corresponding profit as excess income over expenses. This certainly applies to commercial companies with state or municipal participation as well. Obviously, this is the logic of the PFA to exclude them from the financial system. However, for **the state enterprise, the revenue-expenditure balance is not market-based but ensured through authoritatively organized revenue – fees and budgetary transfers. There is budgetary, not market, provision of revenue-expenditure balance. In fact, this „public trader“ is a quasi-trader. The commercial status does not define the essence of the state enterprise, which is much closer to the regime of an ordinary budgetary organisation. In its essence, the described type of state enterprise is an off-budget revenue-expenditure account excluded from market pressure, whose essential characteristic is budgetary balancing.** To the extent the Consolidated Fiscal Program includes such state enterprises, fiscal rules under Art. 34, Para. 1 – 3 relating to borrowing also apply to them (see Art. 34, Para. 5).

An open question arises whether the managers of the described and analysed state enterprises should have explicitly granted public-law status as budget spending administrators in the PFA and whether the formal absence of such status disqualifies these enterprises as parts of the financial system. Moreover, their expenditures are clearly made not through authoritative acts but through contracts (commercial, civil, labour). I believe, the status of budget administrator can derive logically from the interpretation of the above-cited Art. 13, Para. 4 of PFA, which covers state enterprises. Furthermore, it is important to note that even the formal absence of the status of budget spending administrator of their managers is not decisive. The crucial criterion is that they are within the scope of budget-balancing authority of bodies with financial competence. Also, budget-balanced state enterprises are hardly different from budget organisations whose managers are budget spending administrators, as they also make expenditures from the budget through contracts (civil and labour). For example, the lowest-level budget spending administrators vertically, such as heads of schools, theatres, hospitals, social homes, etc., similarly to managers of state enterprises, make expenditures only through contracts, without issuing authoritative financial acts for allocating money down the “vertical” to subordinate spending administrators. However, this does not justify depriving them of their public-law status as administrators of budgetary resources. In this sense, finally managers of budget-balanced state enterprises have the status of budget spending administrators.

The provisions of Para. 2 of the Transitional and Final Provisions of the Public Enterprises Act fundamentally influences the financial-legal status of state enterprises and their clear distinction from commercial companies with

public participation. Paragraph 1 prohibits establishment of state enterprises with commercial status (enterprises under Art. 62, Para. 3 of the Commercial Act). When they should carry out predominantly economic activity, than they could perform as a private operator-for-profit. The cited provision clearly aims at a precise distinction between the activity of an ordinary trader, carried out on a competitive basis for profit, and the public-law nature of the state enterprise, performing a special scope of activities in the public interest.

In addition to this logic, Para. 3 provides that existing state enterprises under special enactments, who predominantly carry out economic activity, should transform into single-member commercial companies under Articles 264 264n of the Commercial Act (transformation by change of legal form). For this purpose, the Council of Ministers commissions the Agency for Public Enterprises and Control to prepare an analysis of state enterprises under special acts, pursuant to Art. 62, Para. 3 of the Commercial Act to clarify whether their activity, functions, and policies, are predominantly commercial or public (Para. 2). The obvious meaning of this regulation is that **the legal-organisational form of the state enterprise, regardless of its commercial status, is intended for the performance of predominantly public functions and policies, whereas the corporate form – joint stock company and limited liability company with state and/or municipal participation – is reserved for predominantly economic activities aimed at profit.** In this sense, the cited provisions of the Public Enterprises Act fully correspond to the spirit and logic of the principal normative rule contained in Article 171, paragraph 4 of the PFA, which excludes commercial companies with public participation from public finances.

**2.9.** As budget-balanced revenue-expenditure accounts, the aforementioned state enterprises essentially do not differ from the specialised state funds cited above: **the Radioactive Waste Fund and the Fund for Decommissioning of Nuclear Facilities.** The Safe Use of Nuclear Energy Act regulates these funds, like the enterprise State Enterprise “Radioactive Waste”. The Fund for Decommissioning of Nuclear Facilities forms its revenues mainly from contributions of entities using nuclear facilities and the budget act annually determines its budget funds (Art. 49, Para. 1, items 1 and 2). The other fund, the Radioactive Waste Fund forms its revenues similarly, from contributions by legal and natural persons, generating nuclear waste through their activities, as well as funds that the annual budget act determines (Art. 92, Para. 1, items 1 and 2). The contributions to both funds are public, state receivables, collected according to the procedure of the Tax and Social Security Procedure Code (Art. 49, Para. 4 and Art. 94, Para. 3). It is clear that the described mechanism, ensuring regular revenues of the two funds, is identical to that of the state enterprises. Ultimately, it is also clear that the annually

distributed budget funds are the mechanism balancing the revenues and expenditures of the two state funds. Therefore, both funds undoubtedly belong to the financial system.

**Part of the financial system is also the Security of the Electricity System Fund, regulated in the Energy Act.** A five-member management board manages the fund, chaired by the Minister of Energy, with two members appointed by the Ministers of Finance and Environment and Water respectively, and the remaining two members being representatives of electricity producers (Art. 36v, Para. 2). The fund collects monthly contributions by electricity producers, traders, operators of electricity transmission networks, gas transmission networks, and natural gas storage facilities (Art. 36e, Para. 1). The fund also receives targeted funds from the state budget through the Ministry of Energy's budget (Art. 36d, Para. 1, item 8). Contributions to the Fund are public state receivables subject to enforced collection by a public bailiff under the Tax and Social Security Procedure Code (Art. 36z, Para. 1). The funds and operations of the Security of the Electricity System Fund enter in the CFP as funds and operations of other economically separate entities under Article 13, paragraph 4 of the PFA and are not part of the state budget (Para. 2).

**Another fund under a special act, which belongs to public finances, is the Social Protection Fund, pursuant to the Social Assistance Act.** This Fund is a separate legal entity under the Minister of Labor and Social Policy, with the task to finance activities and events related to social aid policies (Art. 25 of the Social Assistance Act). The main revenue source of the Fund is an annually targeted subsidy from the state budget within the state budget law (Art. 26).

Another fund, regulated by a special law – **the Environmental Protection Act – also belongs to public finances, the National Trust Eco Fund.** Its scope includes managing money from debt-for-environment and debt-for-nature swap deals, international trade with prescribed emission units for greenhouse gases, sale of emission quotas for greenhouse gases for aviation activities, as well as funds received from governments, international financial institutions, and other donors, intended for environmental protection in Bulgaria (Art. 66, Para. 1 of the Environmental Protection Act). The sources of income for the Fund also include targeted budget funds, including in connection with agreements under the debt-for-environment and debt-for-nature deals (Art. 68, Para. 1, item 1). The money of the National Trust Eco Fund target at environmental projects and activities according to donor conditions and national environmental strategies and priorities, as well as the goals and priorities of the National Green Investment Scheme (Para. 2).

**The Research Promotion Act sets up the Research Fund under the Minister of Education and Science** (Art. 13, Para. 1). The Fund aims to financially support projects and activities to promote and develop scientific research in line with the European framework for state aid for research, development, and innovation, the National Research Strategy, the National Reform Program, framework programs for certain EU priorities, other European and international initiatives, and the European and national roadmap for research infrastructure (Para. 2). The Fund's revenues come from the state budget (Art. 21, Para. 1, item 1), own revenues from intellectual property rights over scientific products and protected patents, donations and aid from national and international financial institutions and organizations, funds under international agreements, donations from natural and legal persons, and interest on the Fund's money (items 2 – 5). The Fund finances scientific research, programs, and projects (see Art. 22 and 23), granting targeted financial aid based on a competition held according to the Research Promotion Act (Art. 24).

**2.10.** The list of enterprises and funds analysed is not here, and the analysis neither should consider them exhaustively. The dynamics of setting up and dissolving, as well as transforming state-owned enterprises and funds – particularly over the past two decades – are clear and, at least for now, show no signs of slowing down. Nevertheless, the current list is sufficiently representative to serve as an empirical basis for drawing conclusions about the authoritative structuring and balancing model of state-owned enterprises and funds as revenue-expenditure accounts. The common and essential characteristics of these funds lie in the establishment, through special laws, of authoritatively organised, non-contractual revenues such as fees and contributions, and, ultimately, in the balancing of revenues and expenditures through transfers from the state budget.

**2.11.** The review of legislation reveals other special laws relevant to the financial system. One such act is the State Fund for Guaranteeing the Sustainability of the State Pension System Act (SFGSSPS Act), adopted in 2009. According to Art. 1 (2) of the Act, the Fund aims to achieve and ensure the sustainability of the state pension system by accumulating, investing, and transferring added resources to the Social Security Fund budget for the “Pensions” Fund. The Fund's resources are an autonomous part of the central budget and it manages and structures them into investment portfolios (Art. 1(3)). Its sources of revenue include proceeds from privatisation, concession payments, 25% of the state budget surplus for the respective fiscal year, and other sources defined by law or by a decision of the Council of Ministers (Art. 11 (1), items 1 – 4). The regime of transferring amounts follows the transfers between accounts of the central budget and the Fund (Art. 11 (3)).

The Fund may use its resources solely for investment purposes and for transferring funds to the Social Security Fund budget to cover pension expenditures under the “Pensions” Fund and the “Pensions under Article 69 of the Social Security Code” Fund (for military personnel, Ministry of Interior employees, and prison staff). The fund may also finance transfers between the fund pension money and individual pension accounts due to changes in insurance arrangements (see Social Security Code, Art. 129(12), (13), and (14)). Transfers to and from the fund must go through the central budget, Art. 22 (3) – (4) prohibit direct transfers. For the purposes of best management and re-balancing of the Fund’s investment portfolios, the Minister of Finance may order monthly transfers of added funds from the central budget exceeding the legally established revenues. The central budget reimburses these funds no later than May, 31 of the following year (Art. 22 (6)). This mechanism for balancing the revenues and expenditures of the fund through central budget transfers confirms that the fund is undoubtedly part of public finances. However, it does not have the status of a distinct part within this system. Following the SFGSSPS Act, the fund is a part of the central budget, i.e., the state budget. It does not generate direct revenues, as the central budget secures its funding. It has limits in independent operation and financial balancing, and for this reason, the PFA does not explicitly regulate it as a separate part of public finances alongside municipal budgets, the budgets of social security funds, the budgets of autonomous entities under Art. 13(3) PFA. The balancing of the fund’s revenues and expenditures through the central budget does not constitute budgetary relations in the sense regulated by the PFA. Thus, despite its relative autonomy within the central budget, classification of the fund may only be as a subcomponent of the state budget.

**2.12. The budget and funds of the Bulgarian National Bank (BNB), as under the Bulgarian National Bank Act (BNBA), also constitute elements of the financial system.** As a revenue-expenditure account, the Governing Council and the Governor administer the budget of the central bank and its funds authoritatively and are not excluded from relations with the state budget. By BNBA, if the BNB’s liabilities and core capital exceed its assets, the Minister of Finance shall restore the core capital to the amount of the shortfall (Art. 9).<sup>27</sup> The rebalancing of the BNB’s assets and liabilities using state budget funds indirectly implies balancing of its budget. This obligation

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<sup>27</sup> The capital of the Bulgarian National Bank, amounting to BGN 20 million pursuant to Article 7 of the Law, is a notional amount, as the Bulgarian central bank does not have the legal and organizational form of a commercial company, unlike, for example, the central banks of Austria and Italy, which are incorporated as joint-stock companies.

of the Minister of Finance incorporates the BNB's budget into the public finance system.

**2.13.** A more complex and debatable issue is the classification within the financial system of funds and resources collected and spent for the purpose of protecting social groups that have provided funds to commercial entities to engage in certain types of high-risk business.

These include the Bank Deposit Guarantee Fund, regulated by the Bank Deposit Guarantee Act, and the Investor Compensation Fund, governed by the Public Offering of Securities Act. What brings these funds closer to the financial system is the fact that their funding, collected from entities conducting business with „other people's money“ (e.g. banks and investment intermediaries), is mandatory under explicit legal provisions.<sup>28</sup> Failure to make contributions is sanctioned with public-law penalties in the form of compulsory administrative measures.<sup>29</sup> The expenditure regime is also strictly regulated through mandatory legal provisions. The group of protected persons is sufficiently broad to infer the existence of public interest and public services. The fact that both the Bank Deposit Guarantee Fund and the Investor Compensation Fund are subject to financial audit by the National Audit Office supports this conclusion.<sup>30</sup> It is indisputable that these funds are not part of the state budget, and the taxpayers do not supply their resources. Nevertheless, they show characteristics of “public funds.” Ultimately, this raises the question do these funds fall within the scope of public finances.

The situation is clearer in the case of the Investor Compensation Fund. Applying the criteria outlined above for inclusion in the financial system excludes the fund. Although it involves authoritative relations for collecting and spending resources, it lacks balancing budgetary relations that connect to the core of the financial system – the state budget. This absence shows that the legislator does not treat its resources as part of public finances.

Ultimately, these resources, while allocated to a relatively broad segment of the public – retail investors – do not constitute taxpayer funds employed to deliver public services. Instead, they are tied to corporate goals and the protection of clients of private businesses. Therefore, the legal relations arising from the formation and use of this protective fund, despite their authoritative nature, do not constitute financial legal relations in the strict sense.

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<sup>28</sup> It is no coincidence that financial experts refer to the contributions to these funds as „quasi-taxes“.

<sup>29</sup> See, respectively, Art. 19 of the Bank Deposit Guarantee Act and Art. 77o of the Public Offering of Securities Act.

<sup>30</sup> See Art. 7, Para. 4 of the Bank Deposit Guarantee Act, and Art. 77z, Para. 1, items 5 and 6 of the Public Offering of Securities Act.

„Quasi-financial relations“ may be a more exact term for their description. The purpose of the authoritative regime and its enforcement mechanisms is to ensure investor protection, but that alone does not eliminate the fundamental distinction between public finances and funds earmarked for safeguarding the interests of specific communities of business service users.

Initially, this logic applied equally to **the Bank Deposit Guarantee Fund**, as created and running under the 1998 Bank Deposit Guarantee Act. However, with the adoption of the new Bank Deposit Guarantee Act in 2015, this logic changed. A balancing mechanism introduced allows to cover the shortfall in the Fund’s resources through loans from the state budget by decision of the Council of Ministers (Art. 18 (2) (3)), and through a state guarantee issued by the government for loans from other sources (Art. 18(3)). Notably, the act does not impose an obligation on the Council of Ministers to grant a loan – it merely grants the discretionary power to do so. **Even so, the existence of a statutory regulated balancing mechanism – rather than an *ad hoc* arrangement – justifies the classification of the Fund, as a revenue-expenditure account, as part of public finances, unlike the Investor Compensation Fund.**<sup>31</sup>

The integration of the Bank Deposit Guarantee Fund into the financial system raises further questions. Firstly, about the rationale for differentiating its legal regime from that of the Investor Compensation Fund. The collapse of Corporate Commercial Bank in 2014, provoking mass payouts of guaranteed deposits from the Fund and a resulting need for support through a state budget loan to balance revenues and expenditures, clearly prompts this differentiation.

No such situation occurred with the Investor Compensation Fund. It is also clear that the insolvency of an investment intermediary does not carry the same economic and socio-political consequences as the bankruptcy of a major bank. This objective difference partly explains the legislator’s differing approach to the two funds.

However, the more significant issue is the inherent and inevitable imbalance in the Bank Deposit Guarantee Fund revenues and expenditures if events triggering mass guaranteed deposit payouts. It is clear that in case of a major bank failure, the state must intervene as the lender of last resort and, if no

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<sup>31</sup> The term „loan“ in this context should not be misleading. It does not refer to a simple contract for a monetary loan, but rather to an individual financial act of the government, by which a decision made is to provide budgetary funds on a loan-like basis, and only thereafter it may conclude a contract. In this mixed factual composition, the decisive role has the financial act, which decides all the essential clauses of the later contract. This is a typical factual composition in financial law.

other options are available, provide the funds necessary to fulfil the legally guaranteed deposit obligations. Ultimately, the balancing of the Fund through the state budget becomes logically unavoidable once the state has committed, by law, to making such guaranteed payouts upon occurrence of the relevant legal conditions. Yet the law does not provide such necessary balancing for almost two decades. In this sense, until 2015, the fund stays formally outside the financial system, and the monetary relations concerning the collection and use of its resources had merely quasi-financial character – due to a lack of legislative completeness.

The Investor Compensation Fund is still outside the financial system to this day. But the legislative logic is identical. The law provides for payouts of up to BGN 40,000 in client assets if an investment intermediary's failure. Despite the significantly lower risk compared to a bank, there could still arise a need to balance its accounts with a state loan. Therefore, the absence of a statutory budgetary balancing mechanism for the Fund is unjustified and results in a legal regime different from that of the Bank Deposit Guarantee Fund. However, the risks of imbalance and the logic of the regulatory response are the same.<sup>32</sup> It would be reasonable for the quasi-financial monetary relations in the Fund to transform into genuine financial legal relations by introducing a statutory balancing mechanism through the state budget.

**2.14.** A fund with similar purpose to the Bank Deposit Guarantee Fund and Investor Compensation Fund exists under insurance legislation. Title Three of the Insurance Code (Chapters Fifty-One to Fifty-Three) regulates the status and functions of the Guarantee Fund; a separate legal entity headquartered in Sofia (Art. 518 (1)). The Fund manages two separate accounts:

1. A Fund for claims of injured parties from uninsured and unidentified motor vehicles, known as the „Uninsured Vehicles Fund“.
2. A Fund for claims in case of insurer insolvency, referred to as the „Security Fund“ (Art. 521(1)).

The Guarantee Fund collects contributions from insurers offering compulsory motor third party liability insurance, passenger accident insurance, and life insurance products (Art. 520 (1), in connection with Annex 1, Section I of the Code).

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<sup>32</sup> Unlike the regular revenue and expenditure accounts of public finances, where both revenues and expenditures are regular, and thus the issue of balancing them is raised, resolved, and reported on the basis of each fiscal year, the Deposit Insurance Fund and the Investor Compensation Fund experience regularity in revenues but incidental and unpredictable expenditures related to depositor guarantees and investor compensation. Therefore, the issue of balancing arises acutely at the time of incurring expenditures.

The mechanism for covering funding shortfalls, set out in Art. 523, does not provide for any financial support from the state budget, whether in the form of grants or loans. This leads to the conclusion that the Guarantee Fund is not integral part of the public finance system. Thus, although the legal relations governing the collection and use of the Fund's resources have a quasi-financial character, the lack of any balancing relationship with the state budget prevents the Fund from to be part of public finances.

**2.15. Another fund with functions like those of the Bulgarian Deposit Insurance Fund, the Investor Compensation Fund, and the Guarantee Fund runs under Bulgarian law since 2004.** This is the "Fund for Guaranteed Claims of Workers and Employees", under the Law on Guaranteed Receivables of Workers and Employees in Case of Employer Insolvency. Regular monthly contributions by employers finance the fund (Art. 14, item 3). It pays out guaranteed amounts to workers and employees in case of employer insolvency (Arts. 3 and 25 – 27). Upon payment, the Fund should subrogate into the rights of the workers and employees against the employer in the insolvency proceedings (Art. 28). According to Art. 18 of the same law, effective since 2014, in case of a temporary shortfall of funds for urgent payments, the Minister of Finance may authorize short-term interest-free loans from the state budget. This provision clearly shows that the state budget balances the Fund as a revenue and expenditure account. However, as with the Bulgarian Deposit Insurance Fund, the Minister of Finance exercises discretionary authority to provide credit, without a statutory obligation to do so. Furthermore, item 29 of the Supplementary Provisions to the Tax and Social Security Procedure Code explicitly classifies the Fund as a fund administered by the National Social Security Institute, falling within the scope of the term "social insurance funds."<sup>33</sup> All of the above provides sufficient grounds to conclude that **the Fund for Guaranteed Claims of Workers and Employees, as an autonomous component, belongs to the system of public finance.**

**2.16.** There are three more special statutes having provisions relevant to public finance.

**Under the Political Parties Act, political parties that meet certain requirements have right to receive annual state subsidies** (Arts. 25 – 28). Parties participated in parliamentary elections with elected Members of Parliament, as well as parties without representation in Parliament that have at least one percent of all valid votes cast, have the right to annual state subsidies (Art. 25(1), Art. 26, and Art. 27(1)).

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<sup>33</sup> Although this concept targets at the purposes of applying specific provisions of the Tax and Social Insurance Procedure Code (Art. 169, para. 4 and Art. 179, para. 1), it is evident that the legislator treats the Deposit Insurance Fund as part of the social insurance system.

It is clear that the finances of such entities, organised as revenue and expenditure accounts, serve a public purpose tied to the political process, which justifies their regular balancing by the state budget. The leaders of such parties effectively act in a capacity comparable to that of the managers of state-owned enterprises balanced by the budget, effectively exercising the powers of budget spending administrators. Consequently, the subsidized revenue and expenditure accounts of political parties fall within the scope of the public finance system.

**According to the Religious Denominations Act, the state provides a subsidy to the Bulgarian Orthodox Church – the Bulgarian Patriarchate, as well as to other registered religious denominations,** based on the number of individuals self-identifying with a given denomination in the most recent population census, as reported by the National Statistical Institute. The State Budget Act annually approves the allocation of the state subsidy in proportion to the number of self-identified adherents (Art. 28 (1) and (2)). The law also provides for discretionary added funding beyond the regular subsidy in cases of public interest related to the religious values of the Bulgarian people (Art. 28 (5)).

**The state budget balances through this legal framework the finances of the Bulgarian Orthodox Church and other registered religious communities and thus makes them an integral part of the public finance system.**

Furthermore, under the Bulgarian Red Cross Act 1995, the Bulgarian Red Cross is the sole national Red Cross organisation on the territory of the country and a member of the International Red Cross and Red Crescent Movement (Art. 1 (1)). The Bulgarian state supports the Bulgarian Red Cross, including through the provision of a state budget subsidy for its activities (see Arts. 5 (1) and 6 (1)).

**Thus, the public finance system also integrates the finances of the Bulgarian Red Cross.**

**2.17.** The Non-Profit Legal Entities Act provides that the state may support and encourage non-profit legal entities designated for public benefit activities through tax and other financial or economic incentives, as well as through funding under conditions and procedures set out in the relevant special legislation, and in compliance with the rules on state aid (Art. 4 (1)). Paragraph 8 of the same article stipulates that funds shall be annually distributed and spent from the state budget for the encouragement and financial support of public benefit projects implemented by non-profit legal entities.

This raises the question of whether these provisions justify classifying the finances of such entities as part of the public finance system. Based on the cited legal provisions, the conclusion is negative. The norms do not name

specific not-for-profit organisations where the state budget should balance the finances. The granted funds are project-based, aiming to support specific initiatives of public importance, rather than to balance the finances of the organizations as revenue and expenditure accounts. This legal framework does not set up a budgetary balancing mechanism, as is the case with political parties and religious denominations. Therefore, there is no basis to classify these project-funded entities as subjects within the public finance system.

**2.18.** In summary, the financial system encompasses the following authoritatively organized and budget-balanced revenue and expenditure accounts as distinct components (units):

1. the state budget – as the central unit and integrative core of the system.
2. Municipal budgets.
3. the budgets of the social insurance funds.
4. the autonomous budgets of organizations under Art. 13(3) of the PFA – the Bulgarian Academy of Sciences, public higher education institutions, the Bulgarian News Agency, Bulgarian National Television, and Bulgarian National Radio.
5. the accounts for funds from the European Union.
6. the finances (“budgets”) of state-owned enterprises and state funds, where special laws provide for authoritative, non-contractual revenues such as fees and contributions, along with balancing of revenues and expenditures via state budget funds.
7. the budget and funds of the Bulgarian National Bank.
8. the revenues and expenditures (finances) of the Bank Deposit Guarantee Fund and the Fund for Guaranteed Claims of Workers and Employees.
9. the finances of political parties, which are revenue and expenditure accounts balanced through a legally set up and annually provided state subsidy.
10. the finances of the Bulgarian Orthodox Church and registered religious denominations, also revenue and expenditure accounts balanced through a legally established state subsidy.<sup>34</sup>
11. the finances of the Bulgarian Red Cross.

The PFA does not govern formally the budgets of the Bulgarian National Bank and the finances of the Bank Deposit Guarantee Fund and the Fund for

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<sup>34</sup> These components of the financial system, excluding the finances of religious communities – incorporated into the public finances by the latest amendments to the Religious Denominations Act at the end of 2018 – that I substantiate in 2016. В. Димитров. Публични финанси, финансова система и финансово право. *Икономически и социални алтернативи*, 3 (2016), 5 – 22.

Guaranteed Claims of Workers and Employees, the Consolidated Fiscal Programme does not include them, and they are not subject to the fiscal rules established therein. Events resulting in a shortfall in funds for lawful expenditures could trigger the mechanism for balancing the revenues and expenditures of these institutions is exceptional rather than regular or annual. However, this does not disqualify them as components of the financial system. **The decisive factor is the presence of statutorily regulated balancing relationships with the state budget.**

**The structural elements of the public finance system – fiscal rules and budgetary relations – apply with varying intensity to different components. Fiscal rules are mandatory and apply to the core of public finances as defined in the PFA: the state budget, municipal budgets, budgets of social insurance funds, budgets of the organizations listed in Art. 13 (3) of the PFA, and the EU funds accounts. For all other components regulated as revenue and expenditure accounts in special laws, budgetary relations are decisive. These budgetary relations are what integrate these different revenue and expenditure accounts into the public finance system.**

An added argument in support of this structure of the financial system is in the Court of Audit Act. Article 6 of the Act outlines the scope of the audit activities of the National Audit Office. It explicitly counts the state budget, the budget of the State Social Security, the budget of the National Health Insurance Fund, and the municipal budgets (Para. 1, items 1 – 4). It also includes the budgets of budgetary organisations under Art. 13, Para. 3 and 4 of the PFA (Para. 2, item 28), the accounts for EU funds (item 4), the formation of the annual surplus of revenues over expenditures of the Bulgarian National Bank, which is due to the state budget, and other financial relations of the Bank with the state budget (item 6). State-owned enterprises also fall within the scope of audit control (Para. 3, item 1). The National Audit Office also exercises audit control over the Bulgarian Deposit Insurance Fund (Art. 2, Para. 3 of the Bank Deposit Guarantee Act). Political parties subsidised by the budget are subject to audit control (Art. 33 – 37 of the Political Parties Act).

It should be noted that the audit control performed by the National Audit Office, as a typical form of financial control, extends beyond the scope of the financial system.<sup>35</sup> It has a broader scope of application and, in view of its

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<sup>35</sup> The thesis that financial control extends beyond the boundaries of the financial system, that Kostov substantiates, Костов (1979), 141 – 143. I further elaborate this thesis, noting that even today financial control, in its various forms, does not confine solely the financial system but also encompasses significant segments of the private, non-public sector (see B.

objectives, includes the management of resources that do not belong to the financial system, as they fall outside the scope of budgetary relations. This applies, for example, to companies with state participation of 50% or more, audited under Art. 6, Para. 3, item 1 of the Court of Audit Act, but explicitly excluded from the CFP under the cited Art. 171 of the PFA. It also applies to foreign funds accounts (Art. 6, Para. 6), as well as to the Investor Compensation Fund.<sup>36</sup> The same applies to election participants – political parties, coalitions, and initiative committees. According to the Electoral Code, the National Audit Office examines their reports concerning revenues, expenditures, and incurred obligations related to the election campaign (Art. 159). In this case, the justification for subjecting these funds and assets to audit control by the National Audit Office lies in their public purpose connected to the political process, rather than in their inclusion in the financial system.

The components of the financial system outlined above – which together define the scope of financial-law regulation – share common characteristics. They involve funds from budgets and public funds allocated for public purposes, serving the interests of society as a whole (e.g., the state budget and the Bulgarian National Bank or of broad public groups identified by territorial criteria (as in the case of municipal budgets) or by functional criteria (such as in the case of the social security systems, the Deposit Insurance Fund, and the Fund for Guaranteed Claims of Workers and Employees. Society at large, along with the specified social groups, benefits from public services financed by these resources. The public nature of the revenues and expenditures of state-owned enterprises and political parties is also undeniable.

This public character justifies the application of authoritative regulatory mechanisms for the formation, allocation, and balancing (through the state budget) of all such revenue-expenditure accounts. It is precisely this characteristic that gives them the quality of public finances.

**In this sense, a general conclusion can be drawn that confirms the principal thesis of the legal concept of finance: the term “public finances,” or “public finance system“, carries a meaning that is identical to and fully overlaps with the terms “financial system” and “financial-law regulation.”**

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Димитров. Финансовият контрол като институт на българското финансово право. *Правна мисъл* 1 (2013), 46 – 47).

<sup>36</sup> The precise provision of Article 6, paragraph 6 of the Audit Office Act sets up that the Audit Office “may also audit the accounts for third-party funds of budgetary organizations.” In other words, discretionary authority granted to the auditing institution to decide whether to include the accounts for third-party funds within the scope of its control powers, without being directly bound to audit them as it is with funds and assets belonging to public finances.

**2.19.** The legal category of public finances, as constructed here, partially coincides with the notion of public finances as used in financial-economic science. The most significant and clear overlap lies in the concepts of public revenues and public expenditures. Economic authors extensively analyse public revenues and expenditures, particularly in terms of their interrelation. Ultimately, the revenue-expenditure account appears here as well as the fundamental unit of public finances.

For example, a textbook on public finances<sup>37</sup> devotes a key part to the exposition of public expenditures and the public revenues necessary for their financing.

There are similar examples in international literature on public finances. The respected public finance scholar Vito Tanzi offers detailed analyses of taxation as the primary form of public revenue, as well as of public expenditures.<sup>38</sup>

Naturally, **due to the fundamentally different conceptual apparatus of financial science, economists typically do not find or analyse a constitutive factor in the formation of public finances such as authoritative legal regulation, nor the specific features of such regulation.** These authors merely note the connection between state regulation and public finances, without examining the specificity of the state's regulatory role in this domain of social relations. Thus, they overlook entirely the distinctions between authoritative regulatory intervention, which is inherent to public (financial and administrative) law, on the one hand, and contractual regulation characteristic of private (commercial and civil) law, on the other. Yet this distinction lies at the heart of the scholarly endeavour of financial-law researchers who analyse the legal dimensions of public finance.<sup>39</sup>

In this regard, **despite the similarities between the doctrines of finance and financial law – based on the shared object of study, public finances – the differences between them are significant. For this reason, legal science must avoid uncritical borrowing and „legalisation“ of purely economic concepts. It is necessary to adopt and integrate these concepts into legal theory only as legal terms, grounded in legal characteristics that**

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<sup>37</sup> Ц. Стоенчева. *Публични финанси*. София, ИК – УНСС, 2013, pp. 29 – 133.

<sup>38</sup> V. Tanzi, *Advanced Introduction to Public Finance*. Cheltenham, Edward Edgar Publishing, 2020.

<sup>39</sup> This fundamental difference in the approaches of financial science and financial law science is clearly illustrated in the analyses of the phenomenon of "finance" conducted by the two eminent scholars, founders of the legal concept of finance — the economist E. Voznesensky and the jurist M. Kostov. Voznesensky emphasizes the decisive role of state legal regulation but does not clearly distinguish authoritative regulation from the regulatory impact of civil law and labour law (see Костов (1979), 85 – 86).

**reflect the specificities of legal regulatory impact on public financial-economic relations.**

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