

Regulation of Public Finances in Slovenia in Light of Financial Constitutionality

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ABSTRACT

The purpose and the objectives of this chapter is to present briefly some of the legal theory of finance, followed by information on recent developments and current challenges in financial law and to present relevant financial institutions in the Republic of Slovenia (RS). This chapter is comprised of four subchapters. The first subchapter deals with the legal theory of finance, presenting theoretical views on public finance and financial law, about legal nature of the public budget, further on the legal theory of finance and on theoretical views related to constitutional provisions and the performance of the economy. The second subchapter deals with the public finances developments and trends in Slovenia, followed by brief description of fiscal system in Slovenia and some facts on management of public property. The third subchapter presents financial institutions in Slovenia. Ministry of finance, constitutional (Court of Audit and the Central Bank) and other financial institutions are briefly presented as follows: the Financial Administration, Agency for public oversight of auditing, Securities market agency, Ljubljana stock exchange, Slovenian sovereign holding and public institutions and public funds in general. The fourth subchapter presents current and planned regulatory challenges; it presents resilience and recovery measures, current measures to mitigate the effects of the COVID-19 epidemic and information on some of the planned future legislative initiatives.

KEYWORDS

The legal theory of finance, public finance, financial law, public budget, management of public property, financial institutions in Slovenia, Court of audit, Central bank, Financial administration, Agency for public oversight of auditing, Securities market agency, Ljubljana stock exchange, Slovenian sovereign holding, public institutions, public funds in general, resilience and recovery measures.

1. Legal theory of finance, developments, institutions, and current challenges in financial law

1.1. Legal theory of finance

1.1.1. Public finance and financial law

Public finances perform an allocation (resource allocation), redistribution (market correction) and stabilization (realization of macroeconomic goals) function. Another

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word, public finances allocate, distribute and direct resources according to predetermined macroeconomic goals.¹

Through its regulatory function, the state provides institutions and processes for the functioning of the market and the realization of macroeconomic goals. The regulatory function of a state is a *condicio sine qua non* not only of the rule of law, but also of the functioning of the market and economic relations (property, contractual relations, and technical standards).

There are many different views on how to define and classify financial law. Some classify financial and budgetary law only as financial law; according to these opinions, financial law is public law only. Others consider the law of financial markets (capital credit, investment markets) to be financial law. i.e., financial industries, which include financial instrument law, banking and insurance law, and corporate finance. This means that financial law is both public and private (civil, corporate) law.

Vertesy elaborates four possibilities for classifying banking law: 1) financial law; 2) public administration law, or regulated industries; 3) civil or commercial law; 4) banking law, independently; and proposes, as final solution, 5) law for financial industries.²

Benjamin defines financial law as the law and regulation of the insurance, derivatives, commercial banking, capital markets and investment management sectors. However, this definition is too narrow, focusing on financial instruments and markets only.³

Šoltes I. et al, 2010, p. 93, recognizes financial law as an independent branch of law governing the relations of collection, distribution, and use of funds; a special part of financial law is tax, banking, and budgetary law.⁴

The definition that we accept and follow in this paper is that financial law consists of areas such as budgetary and tax law, banking, insurance and financial instruments law and corporate finance. We agree that financial law encompasses both the public (tax and budget) and private (corporate finance and financial industry) parts. We understand financial law in a broader sense, as a field of regulation and legal principles that cover financial operations of state bodies regarding the collection and distribution of taxes, customs duties, and contributions for the purpose of financing public activities, including payment transactions and control over such transactions. On the other hand, financial law also covers financial industries and instruments, and corporate finance including banking and insurance business.

1.1.2. *Legal nature of the public budget*

There are different views on the legal nature of the budget, namely whether the budget is a law or not. Cvikl and Korpič Horvat emphasize that, in the legal order of

1 Stanovnik, 1998, p. 1.

2 Vertesy, 2007, p. 321.

3 Benjamin, 2007, p. 2.

4 Šoltes et al., 2010, p. 93.

the RS, the budget is a *sui generis* legal act adopted by the National Assembly (NA) in accordance with the procedure applicable to the adoption of a law.⁵

As a financial plan of the country for a certain period, it has great political, developmental, and legal significance. The general part of the budget consists of the balance of revenues and expenditures, the account of financial receivables and investments and the financing account. The special part of the budget in the RS is the plan of development programs.

The budgetary principles in the RS are the principle of budgetary unity, the principle of completeness and the principle of budgetary transparency, as well as the principle of budgetary balance. Specific budgetary principles apply to the implementation of the budget.⁶

In the RS, there are four balances of public financing (state budget, municipal budgets, the Pension and Disability Insurance Institution (PDII) and the Health Insurance Institution (HII), all of which operate on the principle of cash flow. The same disclosure applies to direct budget users, while for indirect budget users (public agencies, public institutes), the statements are based on both principles (cash flow and accrual principle—the occurrence of business events).

The pro-budget process comprises the governmental and parliamentary phases, as well as the implementation and control process. The fundamental question to be solved in legal regulation is, who determines the starting points and objectives of the period and how powers and responsibilities are distributed between the executive and the judiciary.

1.1.3. *The legal theory of finance*

The issue of the institutional and procedural basis of public finance is challenged by various theories, which generally claim that legal rules are a generally binding legal framework for the transparent, orderly, and efficient functioning of public finances.

Pistor proposed the legal theory of finance as a foundation for a political economy of finance and argues that the legal construct of finance is of first-order significance in describing and forecasting the behaviour of financial markets globally.⁷

In proposing the legal theory of finance, Pistor argues that there is no financial system of substantial scale that is not backed by a formal legal system with the capacity to authoritatively vindicate the rights and obligations of contractual parties, or to lend its coercive powers to the enforcement of such claims.

However, this theory also seems to focus on an argument relating to the functioning of financial markets—that financial markets are legally constructed and as such occupy an essentially hybrid place between state and market, public and private.

5 Cvikel and Korpič Horvat, 2007, p. 36.

6 Ibid., p. 60.

7 Pistor, 2013, p. 2.

1.1.4. Constitutional Provisions and the Performance of the Economy

Vertesy researches the correlation between the constitutional provisions (or other relevant law sources) and the performance of the economy (GDP growth), sound and sustainable fiscal policy (budgeting, government debt, taxation, audit), furthermore monetary policy (price and exchange rate stability) and national assets.⁸

The conclusion is meaningful. According to the results of the analysed different dimensions of public finances, Vertesy finds, that the correlation is loose between the constitutional bases and the economic performances of the countries.

Yet, the conclusion, that usually the legislative, the executive and other state organs define and manage the fiscal and monetary policy, for which the constitutional backgrounds are very general, is not necessarily correct in all cases. The functioning of the rule of law should be additionally considered.

1.2. Public finances developments and trends in Slovenia

1.2.1. General information on public finance developments in Slovenia

The development of financial, banking, and corporate system after the Second World War in Slovenia was very different from today's, and not at all comparable with what is the banking system today. Today's financial, banking, and corporate system was established after 1990, i.e., after the independence of Slovenia. As Štiblar, explains, Slovenia is a country with a banking tradition. Between 1862 and 1889, the first Slovenian savings banks were established.⁹ However, financial market and capital corporate structures did not exist in the period from 1945 to 1990 in Slovenia.

After the independence of Slovenia (1991), especially after the accession to the EU (2004) and the adoption of the euro (2007), financial law has been developing strictly in accordance with the European *acquis* and the rules of the eurozone. The development of financial law has been very dynamic; this particularly applies to monetary (Monetary Union) and budgetary (European semester) law, and in particular to the EU banking and insurance law, financial instruments law and corporate finance, together with corporate and insolvency law.

A characteristic of the contemporary financial law of the RS is the high level of normativism, as well as normative dynamics (constant changes). The basic financial rules on the management of public funds and the fiscal rule rank the highest in the hierarchy of legal norms—the Constitution of the Slovak Republic (CS), and all areas of financial law (public and private), which are defined in many laws and by-laws.

It should be added that in most areas in the RS there is already rich case law, both regular (civil, criminal, and administrative), as well as the Constitutional Court.

Recently, in 2020 and 2021, significant shifts have been made in the area of public financial law, as well as deviations from the previously established fiscal rules, which were caused by measures to eliminate economic damage, strengthen resilience and

8 Vertesy, 2017, p. 21.

9 Štiblar, 2010, p. 25.

economic recovery during and after the epidemic. This also had a strong impact on fiscal and other financial rules in the RS (presented briefly below).

Public finances in Slovenia today are managed within an extensive regulatory framework following a set of macroeconomic objectives, known as financial (fiscal) policy, determined in annual and strategic national and EU documents.

Public finance, in addition to direct budget users (state administration bodies) cover also so called indirect budget users, performing public services on the fields as education, science, culture, health, social care, sport, etc., under state or/and municipal control (public institutions, like public schools, universities, hospitals, functioning in the legal form of public funds, public agencies and state-owned corporations).

Economic governance and public finance planning in Slovenia as an EU member state and as the country of the euro area, is to a large extent subject to EU rules in this field. Following the Stability and Growth Pact (SGP), Slovenia every year draws up a stability program (a multi-year macroeconomic and fiscal framework and key fiscal projections) and national reform program (planned work priorities and measures and key policies of the government for the next two years) and at the end of each year's budgetary plan.

SGP is a set of rules designed to ensure sound public finances and coordinated fiscal policies of the EU member states, legally based on Articles 121 and 126 of the Treaty on the Functioning of the EU (TFEU).¹⁰ Slovenia annually submit draft budgetary plan to the European Commission (EC) by 15 October at the latest prior to their adoption by the National Parliament, where main orientations and elements concerning fiscal objectives and measures for the coming year are presented.

1.2.2. General information on the fiscal system in Slovenia

With Slovenia's accession to the EU in May 2004, certain changes also took place in the field of taxation, but EU Member States retain fiscal sovereignty. The consent of all Member States is required for the adoption of tax directives. Nevertheless, in general, we can conclude that there are no significant deviations from the established solutions in the field of financial law from those in most EU countries.

Tax law in Slovenia, follows the principles, standards, and best practices of EU and OECD countries. However, there are important differences in proportions of direct and indirect taxes in GDP. Slovenia traditionally has a high share of indirect taxes in GDP and a rather low share of direct taxes in GDP. As Štemberger notes, the largest share of taxes, (in % of GDP) have taxes and social contributions on labour, followed by consumption taxes and finally capital taxes.¹¹

According to OECD, Revenue Statistics 2020, Slovenia ranked 13th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, Slovenia had a tax-to GDP

10 Protocol 12 of the Treaty gives further details on the excessive deficit procedure, including the reference values on deficit and debt. Article 136 of the TFEU provides for specific provisions to be adopted for the euro area. See also Council Regulations (EC): 1466/97, 1467/97, 479/2009, 1173/2011, 1174/2011, 1176/2011, directive 2011/85/EU and Regulations (EU): 473/2013, 472/2013.

11 Štemberger, 2011, p. 2.

ratio of 37.7% compared with the OECD average of 33.8%. Relative to the OECD average, the tax structure in Slovenia is characterized by lower proportion of revenues from taxes on personal income, profits and gains, taxes on corporate income and gains and property taxes and substantially higher revenues from social security contributions, and higher revenues from value-added taxes and goods and services taxes (excluding VAT/GST).

Taxes in Slovenia include taxes on income (personal and of legal entities), consumption and property, taxes on gaming (lotteries and raffles, games in casinos or gaming halls), environmental tax (on pollution by waste products and other harmful substances) customs excise duties (tax on consumption, imposed on alcohol, alcoholic beverages, tobacco, energy products and electricity). In addition, there are social security contributions (for pensions, healthcare services, and parental and unemployment benefits).

Personal income taxes include consumption taxes and social security contributions. Unlike taxes, in the case of contributions, the taxpayer is at the same time a direct beneficiary of part of the rights for which he pays contributions (pension, healthcare). These rights might also be changed unilaterally, as it is not a contractual relationship. Unlike taxes, contributions create implicit debt to the population.

In addition to tax revenues, Slovenia also knows non-tax budget revenues, which, however, fill the budget to a much lesser extent. The Financial Administration of the RS is responsible for the collection of these charges.

1.2.3. The management of public property

Management of public property has an important impact on fiscal stability. Financial assets of the RS include cash, receivables, debt securities, and shares and equity interests in companies and other investments in legal entities (public institutions, public trust funds and public agencies), while tangible assets consist of movable and immovable property.

Slovenian Sovereign Holding (SSH) manages the state's ownership interests in more than 50 companies, covering industries as energy, finance, traffic, transport and infrastructure, general economic sector and tourism.

Government guarantees are granted in particular for projects of general public interest (public infrastructure, energy, environmental protection, new technical and technological development projects, health, and education). government guarantees for private sector entities help businesses obtain funding for prospective programmes and assist companies in difficulty. Annual quotas for government guarantees are set each year.

Liabilities on the part of the RS only become effective when the primary debtor to whom the guarantor is the state fails to comply with its obligations within the agreed time limit.

A public entity may issue a guarantee to other legal entities; however, the prior approval of the Ministry of Finance and a prior positive opinion of the line ministry must be obtained before the guarantee is issued.

1.3. Regulatory and supervisory financial institutions

1.3.1. Ministry of Finance, and constitutional and other financial institutions

The Ministry of Finance of the RS plays a central role in the creation and implementation of the financial system and microeconomic policy in the RS. It performs tasks in the fields of treasury, public accounting, budget, public procurement, the tax and customs system, the public finance and financial system, financial assets, guarantees, public sector borrowing, public–private partnerships, the transparency of financial relations, gambling, the prevention and detection of money laundering, state aid and macroeconomic analysis, and forecasts.

Apart from the Ministry of Finance, the government and the parliament, various autonomous agencies (Bank of Slovenia, Securities Market Agency, the Insurance Supervision Agency, the Court of Audit, and the Office for Money Laundering Prevention) are regulators and supervisors in the field of public finance and of the financial markets (financial instruments, banking, and insurance) and of corporate finance and the functioning the financial system as a whole.

Two of the financial institutions are laid down in the CS: the Court of Audit and the central bank. However, there are numerous other institutions that are established under different pieces of legislation.

The law governing public agencies as legal forms of publicly owned entities is the Public Agencies Act, PAA.¹² The law stipulates that public agencies are established by law. If this enables a more efficient and rational implementation of regulatory, development, or professional tasks in the public interest, or if, depending on the nature or type of tasks, it is unnecessary or unsuitable for them to have permanent direct political control over the performance of their tasks. There are 18 different types of public agencies with 956 employees now in Slovenia.

Payment and other services for budget users are provided by the Public Payments Administration of the RS (PPA). To perform this task, it keeps the Register of Budget Users, in which users of the public budget are registered.

1.3.2. Court of Audit

According to the CS, the Court of Audit (CA) is the highest body for controlling state accounts, the state budget, and all public spending. The CA is independent in its work and bound by the CS and the law (Article 150, CS). The members of the CA are appointed by the NA (Article 151, CS).

The Auditing Act (AAU¹³) determines the powers of the CA.¹⁴ AA regulates auditing, professional areas related to auditing, supervision of auditing and valuation, and

12 Official Gazette of the RS, No. 52/02 of March 23 1991.

13 Official Gazette of the RS, No. 65/08, 63/13—ZS-K and 84/18.

14 AA transposes into the legal order of the RS directives 2006/43 / EC (statutory audits of annual accounts and consolidated accounts) and the implementation of the Regulation 537/2014 / EU (specific requirements regarding the statutory audit of public-interest entities).

the operation of the Slovenian Institute of Auditors (SIA) and the Agency for Public Oversight of Auditing, APOA.

1.3.3. *The central bank—the Bank of Slovenia*

CS stipulates, that RS has a central bank—the Bank of Slovenia (BS). In its operation, BS is independent and reports directly to the NA. The BS is established by law. The NA (CS, Article 152) appoints the governor of the CB. It is regulated by Bank of Slovenia Act (BSA).¹⁵

The BS is a legal person under public law that independently disposes of its own assets. BS is exclusively state-owned with financial and managerial autonomy. BS and the members of its decision-making bodies are independent and in performing their tasks are not bound by decisions, positions, and instructions of state or any other bodies, nor may they turn to them for instructions or guidelines.¹⁶

1.3.4. *Financial Administration*

The Financial Administration Act (FAA)¹⁷ establishes the Financial Administration (FA) of the RS. FAA regulates the principles of operation, organization, tasks, and powers of the FA. FAA also lays down rights and peculiarities of employment relations of civil servants of the FA.

The operation of the financial administration is based on principles of publicity of work, transparency and predictability, economy and efficiency and internal control.

The tasks of FA are in details stipulated in the FAA, Article 11 (e.g., assessment and calculation of mandatory duties, customs clearance of goods, financial control, financial investigation, control over the organization of games of chance, control over the declaration of cash entry and exit to or from the territory of the EU, control over the entry, exit, transit, and transfer of goods, execution, etc.

1.3.5. *Agency for Public Oversight of Auditing (POAA)*

According to the Article 18 of the AA, POAA is the autonomous and independent supervisory and regulatory body, founded by the RS in the field of auditing and the supervisory body in the field of valuation. The POAA is the competent authority for supervising the implementation of Reg. 537/2014 / EU.

The POAA cooperates with the Committee of European Auditors' Supervisors and the competent authorities referred to in Article 20 of Reg. 537/2014 / EU, or with related supervisory authorities at EU level and with the competent authorities of third countries.

15 Official Gazette of the RS, No. 72/06—official consolidated text, 59/11 and 55/17.

16 The following EU Regulations are relevant to macro-prudential oversight of the financial system and European Systemic Risk Board: 1092/2010, 1096/2010, 468/2014 (SSM Framework Regulation) (ECB/2014/17).

17 Official Gazette of the RS, No. 25/14.

1.3.6. *Securities Market Agency (SMA)*

The rules of operation of the SMA in the exercise of powers are imposed by MFIA, Market in Financial Instruments Act.¹⁸ The SMA is a legal entity of public law. It is independent in performing its tasks. Its basic mission is to maintain a safe, transparent, and efficient market in financial instruments.

The SMA exercises control over the brokerage companies, banks engaged in investment transactions and services, management companies, investment funds, mutual pension funds, public companies, and public-limited companies.

The SMA performs regulatory tasks for efficient operation of market in financial instruments. The SMA reports to the NA of the RS on the situation and conditions on the market in financial instruments. The funds for the work of the SMA are provided by taxes charged for issuing decisions in individual matters and fees for exercising control. SMA is supervised by the CA.

1.3.7. *Ljubljana Stock Exchange (LSE)*

According to MFIA, the LSE is organized in the legal form of a joint stock company. The LSE manages the stock market with financial instruments, performs services of publishing and processing information and services for the electronic notification and storage system and other services and transactions which, regarding the manner of performance and the risks to which the stock exchange is exposed in their performance.

Only stock exchange members may trade on the stock exchange market. The SMA is responsible for supervising the stock exchange regarding all services and transactions performed by the stock exchange. The only shareholder of the LSE is Zagreb Stock Exchange. It was established 26 December 1989.

1.3.8. *Slovenian Sovereign Holding (SSH)*

SSH was founded under Slovenian Sovereign Holding Act (SSHA)¹⁹ regulating the status and operation of the SSH, the management of investments owned by SSH, and investments of the RS, managed by SSH.

The objectives of investment management are to increase the value of investments, to ensure the highest possible return for Slovenia as owner and to achieve other possible strategic objectives in investments, which are defined in the investment management strategy.²⁰

18 Official Gazette of the RS, No. 77/18, 17/19—amended and 66/19, ZTFI-1, See also: Regulation (EU) No 1095/2010 (European Securities and Markets Authority), consolidated version of the revised ESMA Regulation (December 2019).

19 Official Gazette of the RS, No. 25/14.

20 See also Act on the Transformation of the Capital Company of Pension and Disability Insurance and on the Investment Policy of the Capital Company of Pension and Disability Insurance and the Slovenian Compensation Company (Official Gazette of the RS, nos. 79/10, 26/11 and 105/12—ZSDH).

SSH is a fully state-owned holding company, which has the largest portfolio of state capital assets in more than 50 Slovenian companies. A general objective of state-owned enterprises being managed by SSH is pursuing a profitable, effective, and efficient operation of companies, In SSH held companies, performing public services, the objective is also to implement efficiently tasks related to public interest.

1.3.9. Public institutions

In Slovenia there are many publicly financed and held institutions (1,444 with 120,951 employees in 2020), rendering public services in the field of education, sports, health, culture, research and social care under state or municipality control and financing. The number of private-law providers of these services is relatively small.

Publicly owned public bodies in the RS are the most-used generic/universal form of a public institution (with several specific features), through which public services in different fields are delivered.

Public institutions are regulated by the Law on Institutions (LI),²¹ which is repeatedly delisted by sectoral legislation. In Slovenia, the state has an extremely important role in the field of education (at all levels), health, culture, research, social security, employment, pension, disability, and health insurance.

1.3.10. Public funds

The Public Funds Law (PFL)²² stipulates that the purpose of the public fund as a special legal entity, is the implementation of the policy of the public (state, municipality) founder in a certain field, e.g., promotion of development in a certain field, implementation of policies (social, cultural, environmental, housing etc.) of the founder; the law does not apply to mutual funds, pension funds and legal entities of private law which have the word ‘fund’ in their name and which are established by legal entities of private law.

The purpose of a public fund can be promoting development in a given field, implementation of the social, cultural, environmental, housing, spatial, agricultural, nature conservation, mining or other policies of the founder. The purpose can also be settlement of long-term liabilities of the founder, promoting creativity in science, culture, and education through the awarding of prizes, scholarships, tuition fees, project funding and other forms of incentives, etc. There are 13 public funds (with 475 employees) now in Slovenia.

1.4. Current and planned regulatory challenges

1.4.1. Resilience and recovery measures

The Stability Programme of the RS, 2021 is adapted to the needs stemming mainly from the COVID-19 epidemic and the recovery. The COVID-19 mitigation packages

21 Official Gazette of the RS, No. 12/91 of March 22 1991.

22 Official Gazette of the RS, No. 77/2008, 8/2010.

based on Recovery and Resilience Plan²³ have had a significant impact on economic growth in 2020.²⁴ According to the adopted Regulation (EU) 2021/241,²⁵ Slovenia is eligible to receive EUR 1,777,322.00 of non-reimbursable grant. Additionally, the EC may assume debt on behalf of the RS for a further EUR 3.6 billion.

The economic and financial consequences of the epidemic in the RS are significant. In 2020, general government revenue equalled EUR 20,195 million, i.e., 4.6% or EUR 966 million less than in 2019, while the growth of general government expenditure amounted to 14.8. As a consequence of that, the general government consolidated debt at the end of 2020 stood at EUR 37,429 million or 80.8% of GDP, which is EUR 5,684 million higher than the previous year, when it stood at EUR 31,744 million or 65.6% of GDP.

The debt of central government units increased the most, amounting to EUR 36,766 million or 79.4% of GDP at the end of 2020, while it equalled EUR 31,123 million or 64.3% of GDP the previous year.²⁶ Slovenia recorded a government budget deficit equal to 8.40% of the country's GDP in 2020.²⁷

1.4.2. Current measures to mitigate the effects of the COVID-19 epidemic

Due to the consequences of the epidemic of the infectious disease SARS-CoV-2 (COVID-19) (the epidemic), several acts lay down measures. Measures relate to tax collection procedures that provide taxpayers easier fulfilment of tax obligations and determine measures in the field of budget execution and deadlines for the submission of asset balance sheets, annual accounts, and annual reports and to mitigate the consequences for citizens and the economy (unemployment risks, wages, and contributions, postponing the payment of borrowers' obligations).

These acts are, as follows: Public Finance Intervention Measures Act (PFIMA),²⁸ Intervention measure postponing the payment of borrowers' obligations (IMPP),²⁹ Intervention Measures in the Field of Wages and Contributions Act (IMWCA),³⁰ Intervention Measures to Contain the COVID-19 Epidemic Act and Mitigate its Consequences for Citizens and the Economy (IMECE),³¹ Act to provide additional liquidity to the economy to mitigate the consequences of the COVID-19 epidemic (AALE),³²

23 On the 1 July 2021, the EC has adopted a positive assessment of Slovenia's recovery and resilience plan, a key step paving the way for the EU to disburse €1.8 billion in grants and €705 million in loans under the Recovery and Resilience Facility (RRF).

24 Slovenia's plan devotes 42% of its total allocation to measures that support climate objectives and 21% of its total allocation to measures that support the digital transition. The plan includes important reforms on long-term care, healthcare, pensions and labour market, education and skills, Rand D and innovation, business environment and public procurement.

25 Regulation 2021/241 of 12 February 2021, establishing the RRF.

26 Government of Slovenia, Stability Programme 2021, April 2021.

27 Slovenia's GDP for 2019: EUR 48,393 million, per capita: EUR 23,165.

28 Official Gazette of the RS, No. 36/20.

29 Official Gazette of the RS, No. 36/2, 49/20—ZIUZEOP and 203/20—ZIUPOPĐVE.

30 Official Gazette of the RS, No. 36/20, 49/20—ZIUZEOP, 61/20—ZIUZEOP-A and 80/20—ZIUOOPE.

31 Official Gazette of the RS, Nos. 49/20, 61/20, 152/20—ZZUOOP, 175/20—and 15/21.

32 Official Gazette of the RS, no. 61/20, 152/20—ZZUOOP and 175/20—ZIUOPĐVE.

Guarantee of the RS in the European Instrument for Temporary Support for the Mitigation of Unemployment Risks in Emergencies (SURE) after the outbreak of COVID-19 (GURE),³³ Intervention Measures Act for Preparation for the Second Wave COVID-19 (IMSW),³⁴ Intervention measures to mitigate the consequences of the second wave of the COVID-19 epidemic (IMMCSW),³⁵ and Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of the COVID-19 Epidemic Act (IMAMCSW).³⁶

1.4.3. Some future legislative initiatives

According to government plan, the amendments to the Tax Procedure Act and the Value Added Tax Act will be prepared towards a higher degree of digitalization.

In the area of corporate taxation, improved or new forms of tax relief to enable companies to increase their investments, contributing to reducing environmental pollution and increasing the degree of digitalization will be proposed.

Proposed new legislation will also transpose the provisions of the European directive against tax avoidance practices, addressing harmful tax measures and partly contributing to fair taxation.

To further relieve taxes away from labour, measures will be prepared in amendments to the Personal Income Tax Act. This will gradually relieve of income from work (through a gradual increase in the general allowance, a reduction in the personal income tax rate in the last, fifth tax bracket, the introduction of the so-called seniority relief for taxpayers over 70 years of age). Also revenues from the capital and renting a property are planned to reduce (reduction of the capital income tax rate to 25%, in the case of income from renting a property a reduction to 15%, at the same time reducing the flat rate costs to 10%).

Modernization is needed also in the field of public law entities, financed, and controlled by the government. Slovenia must update legislation in the field of public service delivery. The legislation on public agencies and public funds is also obsolete and lags behind modern achievements in this field.

The fundamental problem of the legal arrangement of public institutions (30 years old, pre-constitutional LI), public agencies and public funds is their diversity, which is a consequence of the casuistic solution of sectoral systemic issues and has led to the application of general legal organizational forms to a very limited extent. So that they are mainly governed by sectoral legislation-imposed exceptions.

Legal inconsistency leads to the lack of transparency and inefficiency of corporate governance and, consequently, several weaknesses in the performance of public services and sectoral regulation.

The PAA was adopted in 2002, i.e., before Slovenia joined the EU and before the implementation of the EU concept of liberalizing public utilities. This is important

33 Official Gazette of the RS, No. 80/20.

34 Official Gazette of the RS, No. 98/20 and 152/20—ZZUOOP.

35 Official Gazette of the RS, no. 175/20, 203/20—ZIUPOPĐVE, 15/21—ZDUOP, 51/21—ZZVZZ-O and 57/21—CC.

36 Official Gazette of the RS, No. 203/20, 15/21—ZDUOP and 82/21—ZNB-C.

because the basic system law governing public agencies is only valid for a limited number of those agencies that are key in terms of EU law and in the light of the process of liberalizing public utilities, i.e., agencies as independent regulatory bodies.

Regardless of the extreme diversity of public funds activities, the law prescribes a relatively uniform normative framework for the functioning of public funds, which greatly restricts the flexibility in choosing the organizational structure that would optimally fit to the specifics and functioning of a particular public fund. On the other hand, the relations between the state or the municipality, as the founder, and the bodies of the public fund are too casuistic.

2. Financial constitutionality, areas of regulation, and current regulatory issues

This chapter, comprised of five subchapters, deals with public finance law. The purpose and the objectives is to briefly present, using short descriptions with references to the relevant pieces of legislation, the current constitutional regulation and legislation in the field of public finance. The first subchapter presents constitutional regulation of public finances, fiscal rule, the process of preparation and execution of the budget and issues related to municipal financing. The second subchapter is on tax law; it lists and shortly presents all relevant Slovene tax legislation, starting by constitutional and procedural provisions on taxes, followed by reference on regulation of corporate income tax, value added tax, personal income tax, social security contributions and listing numerous special types of taxes. The third subchapter talks about the management of state real and financial property, presenting management of investments owned by the RS and regulation related to guarantees of the RS. The fourth subchapter presents current regulation on financial markets, banking, insurance law and corporate finance, including corporate financial operations, insolvency, and dissolution. The fifth subchapter presents legislation on prevention of money laundering and terrorist financing.

2.1. Public finance law

2.1.1. Constitutional regulation of public finances in the RS

There are constitutional provisions (Chapter VI of the CS) and several laws and sub-laws regulating public finances, state and municipalities funding, taxes, and the budget.

There is a general constitutional rule, that all revenues and expenditures for financing public spending must be included in the state budgets. In addition, a so-called golden rule is constitutionally stipulated, namely, that revenues and expenditures of general government budgets must be balanced in the medium term without borrowing, or revenues must exceed expenditures.

This principle may be temporarily waived only in exceptional circumstances for the state. The CS stipulates, that the law adopted by the NA by a two-thirds majority of all deputies shall determine the manner and timeframe for implementing the principle of golden rule (balance of revenues and expenditures of budget), the criteria for determining exceptional circumstances and the manner of acting upon their appearance. Such a law is FRA.

2.1.2. Fiscal rule

Fiscal Rule Act (FRA)³⁷ determines the manner and timeframe for the implementation of the principle of medium-term balance of revenues and expenditures of general government budgets without borrowing, criteria for determining exceptional circumstances in which medium-term balance may be deviated from. FRA also regulates the operation of the Fiscal Council as an independent and autonomous state body.

According to Article 3 FRA, revenues and expenditures of general government budgets are balanced (in the medium term without borrowing), if the structural balance of the general government sector in a given year is not lower than the minimum value set in a ratified international (EU) treaty governing stability, coordination, and governance in economic and monetary union.

The medium-term balance is ensured by limiting the projected volume of general government expenditure upwards to the level that ensures such a compliance.

2.1.3. Preparation and execution of the budget

The preparation and execution of the budget of the RS and the municipal budgets, management of state and municipal property, state or municipal borrowing and guarantees, management of their debts, accounting and internal control of public finances and budget inspection is laid down by the Public Finance Act (PFA).³⁸ PFA also lays down the rules applicable to the Health Insurance Institute of Slovenia and the Pension and Disability Insurance Institute of Slovenia, both in the compulsory part of insurance. Also rules are laid down for public funds, public institutes and agencies in drawing up and submitting financial plans, managing cash, borrowing, guaranteeing, accounting, submitting annual reports and internal control of public finances, and budgetary inspections.

PFA also regulates borrowing and the granting of guarantees by public economic institutes, public companies, and other legal entities in which the state or municipality has a decisive influence on management. PFA also regulates the medium-term planning of fiscal policy and measures to ensure fiscal discipline and rules for the use of surpluses of institutional units of the general government sector.

37 Official Gazette of the RS, No. 55/15 and 177/20—amended.

38 Official Gazette of RS, Nos. 11/11—official consolidated text, 14/13—corr. 101/13; the law partially transposes directive 2011/85 (on requirements relating to the budgetary frameworks of the MS).

Budget composition, peculiarities of their implementation, use of cohesion policy funds, assigned revenues and state revenues, volume of borrowing and guarantees of the state and public sector, the amount of the lump sum, the assumption of obligations and other issues related to the implementation of the budget, determines the Act on the Execution of the Budgets (AEB).³⁹ If the budget is not adopted by the first day on which it is to be implemented, the beneficiaries financed from the budget are, according to CS provisionally financed under the previous budget (Article 148 of the CS).

Keeping of business books and the preparation of annual reports for the budget and budget users and for legal entities under public law and legal entities under private law that do not keep business books based on the CA, is regulated by Accounting Act (AA).⁴⁰

The transparency of financial relations between state bodies and bodies of self-governing local communities and public undertakings and legal entities, sole proprietors, and private individuals, who carry out activities in the general interest based on an exclusive or special right or public authority is specially regulated by Transparency of Financial Relations and Separate Registration of Various Activities Act (TFRSRVA).⁴¹

2.1.4. Municipal financing

The financing of tasks within municipal competence is set in Municipal Financing Act.⁴² Article 6 of the MFA lays down own tax sources of a municipality (revenues of the municipal budget as real estate tax, tax on watercraft, real estate transfer tax, inheritance and gift tax, tax on winnings from classic games of chance and other tax. The municipality is entitled to revenues from taxes in accordance with the law governing individual taxes.

In addition, revenues from self-contribution, fees, fines, concession fees, payments for local public services, environmental charges, and others are the sources of financing of a municipality. Revenues of the municipality are also revenues from the real and financial assets of the municipality, received donations and transfer revenues from the state budget and funds of the EU.

Borrowing of the municipality, municipal budget debt management, municipal guarantees and determination and financing of eligible consumption of municipalities is further precisely laid down by MFA.

39 For the budget of the RS for 2020 and for 2021: Official Gazette of the RS, No. 75/19, 61/20—ZDL-GPE, 133/20 and 174/20—ZIPRS2122.

40 Official Gazette of the RS, No. 23/99, 30/02—ZJF-C and 114/06—ZUE.

41 Official Gazette of the RS, No. 33/11.

42 Official Gazette of the RS, No. 123/06, 57/08, 36/11, 14/15—ZUUJFO, 71/17, 21/18—amended, 80/20—ZIUOOPE and 189/20—ZFRO.

2.2. Tax law

2.2.1. Constitutional and procedural provisions on taxes

State and local community funding is regulated in the Article 146 of the CS. It is stipulated that the state and local communities obtain funds for the implementation of their tasks through taxes and other obligatory duties, as well as from revenues from their own property.

It is also stated in the CS, that the state and local communities show the value of their property with property balance sheets.

Taxes are regulated in the Article 147 of the CS. It is stipulated, that the state prescribes taxes, customs duties, and other duties by law.

According to CS, local communities prescribe taxes and other duties under the conditions set by the constitution and the law. State and municipalities are therefore constitutionally authorised to impose taxes, however by the law only.

The tax procedure (the collection of taxes, calculation, assessment, payment, refund, control, and enforcement of taxes) and the rights and obligations of taxpayers, the rights of state and other bodies to collect taxes are regulated by Tax Procedure Act (TPA).⁴³

The obligation to carry out the procedure of certification of invoices for tax purposes in cash operations is additionally stipulated in Tax Certification of Invoices Act (CIA).⁴⁴

2.2.2. Corporate income tax

The system and the obligation to pay corporate income tax, whose taxpayer is a legal person of domestic and foreign law is regulated by Corporate Income Tax Act (CIT).⁴⁵ Also taxation on assets transfer, capital exchanges, mergers, and divisions, exit

43 Official Gazette of the RS, No. 13/11—official consolidated text, 32/12, 94/12, 101/13, 111/13, 22/14—CC decision, 25/14—ZFU, 40/14—ZIN-B, 90/14, 91/15, 63/16, 69/17, 13/18—ZJF-H, 36/19, 66/19, 145/20—ex. CC in 203 / 20.

44 Official Gazette of the RS, No. 57/15 and 69/17. CIA transposes into the legal order of the RS the following directives: 2010/24 (on mutual assistance for the recovery of claims relating to taxes, duties and other measures), 2016/881 (as regards access by tax authorities to information on the prevention of money laundering), 2016/2258, 2011/16 (as regards compulsory automatic exchange information in the field of taxation), 2015/2060 (on taxation of savings income in the form of interest), 2003/49 (on the common system of taxation applicable to interest and royalty payments made between associated companies), 2004/76 (as regards the possibility for certain Member States (MS) to apply transitional periods for the introduction of a common system of taxation), 2017/1852 (on mechanisms for the settlement of tax disputes) and 2016/1164 (rules against tax avoidance practices).

45 Official Gazette of the RS, no. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09—ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16, 69/17, 79/18 and 66/19). It transposes the following directives into the legal order of the RS: 90/434 (on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares), 2005/19 (on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges), 2011/96 (on the common system of taxation applicable in the case of parent companies and subsidiaries), 2003/49 (on the common system of taxation applicable to interest and royalty payments), 2016/1164 (rules against tax avoidance practices), last amended by 2017/952, 2016/1164 (hybrid incompatibilities with third countries).

taxation, tax reductions and elimination of double taxation of resident's income from sources outside RS are in details set out by CIT.

The subject of taxation is profit (surplus of revenues over expenses, determined by CIT), which is achieved by performing activities or transactions in a business unit or through a business unit located in Slovenia.

Income and expenses are determined in the income statement or annual report and shows income, expenses and profit or loss, based on the corporate law (LCC) and established accounting standards. The tax is paid at the rate of 19% of the tax base. There are special rules for determining the tax base, considering normed expenditure.

2.2.3. Value added tax

The Value Added Tax Act (VATA) introduces the obligation to pay value added tax (VAT) on the territory of the RS.⁴⁶ The following transactions are subject to VAT: supplies, import and acquisitions of goods and the provision of services made by a taxable person while performing their economic activity in the territory of the RS.

'Taxable person' is any person who independently carries out any economic activity, regardless of the purpose or result of the activity.

VATA in details regulates taxpayers and taxable transactions, place of taxable transactions, taxable event and VAT liability, tax base, vat rate and exemptions, deduction, and vat refund. Also liabilities of taxpayers and certain non-taxable persons, special arrangements for small taxable persons, for farmers, for travel agencies, for taxable dealers, for sale by public auction, for investment gold and for telecommunications, broadcasting or electronic services are precisely laid down in the VATA.

Currently, in Slovenia, VAT is charged and paid at the general rate of 22 % of the tax base and is the same for the supply of goods and services. However, VAT is calculated and paid at a lower rate of 9.5% of the tax base for supplies of goods and services listed in Annexes I –IV of VATA and at a special lower rate of 5% of the tax base for supplies of goods and services Annex IV. Occasionally the tax rates change.

2.2.4. Personal income tax

Personal income tax is a tax on the income of natural persons. It is regulated by Personal Income Tax Act (PITA).⁴⁷ Income under PITA is income from employment, income from activities, income from basic agricultural and basic forestry activities,

46 Official Gazette of the RS, No. 13/11—official consolidated text, 18/11, 78/11, 38/12, 83/12, 86/14, 90/15, 77/18, 59 / 19 and 72/19) introduces the following directives: 2006/112 (on the common system of value added tax, as last amended by 2019 / 475, amending directives 2006/112 / EC and 2008/118), 2008/9 (rules for the refund of value added tax, laid down in directive 2006/112 to taxable persons not established in the MS and 86/560 (on turnover taxes—procedures for refunding).

47 Official Gazette of the RS, No. 13/11—official consolidated text, 9/12—US decision, 24/12, 30/12, 40/12—ZUJF, 75/12, 94/12, 52 / 13—dec. US, 96/13, 29/14—dec. US, 50/14, 23/15, 55/15, 63/16, 69/17, 21/19, 28/19 and 66/19.

income from the letting of property and from the transfer of property rights, income from capital, other income (Article 18). Personal income tax rates for the tax year are:

If the net annual basis is in euros		Income tax in euros				
over	to					
0	8,500.00			16%		
8,500.00	25,000.00	1,360.00	+	26%	over	8,500.00
25,000.00	50,000.00	5,650.00	+	33%	over	25,000.00
50,000.00	72,000.00	13,900.00	+	39%	over	50,000.00
72,000.00	+	22,480.00	+	50%	over	72,000.00

2.2.5. Social security contributions

The calculation and payment and rates of contributions for compulsory pension and disability insurance, compulsory health insurance, parental care, and employment (social security contributions) in accordance with the laws based on which contributions are introduced is determined by Social Security Contributions Act (SSC).⁴⁸

Social security contributions are paid by employees, insured persons, employers (taxpayers) in the RS, to the PDII, the HII, and to other social security institutions, in accordance with the relevant social security laws.⁴⁹

2.2.6. Special types of taxes

There are several laws imposing special types of taxes. Insurance Sales Tax Act (ISTA)⁵⁰ introduces the obligation to calculate and pay sales tax on insurance transactions in the territory of the RS. Financial Services Tax Act (FSTA)⁵¹ regulates the system and introduces the obligation to pay tax on financial services (for ex: granting loans, issuing credit guarantees, transactions, including brokerage, relating to deposits and to currency, services of insurance, etc.).

The Special Tax on Certain Receipts Act (SCTRA)⁵² introduces the obligation to pay a special tax on certain benefits paid to a natural person. The basis for the calculation

48 Official Gazette of the RS, No. 5/96, 18/96—ZDavP, 34/96, 87/97—ZDavP-A, 3/98, 7/98—US decision, 106/99—ZPIZ-1, 81/00—ZPSV-C, 97/01—ZSDP, 97/01, 62/10—decision US, 40/12—ZUJF, 96/12—ZPIZ-2, 91/13—ZZVZZ -M, 99/13—ZSVarPre-C and 26/14—ZSDP-1.

49 Official Gazette of the RS, No. 106/99 and 72/00), with the Health Care and Health Insurance Act (HCIA, Official Gazette of the RS, No. 9/92, 13/93, 9/96, 29/98 and 6 / 99), the Family Benefits Act (FBA, Official Gazette of the RS, Nos. 65/93, 71/94, 73/95 and 26/99) and the Employment and Unemployment Insurance Act (EUIA, Official Gazette of the RS, No. 5 / 91, 17/91—corr., 12/92, 71/93, 2/94—corr., 38/94 and 69/98.

50 Official Gazette of the RS, No. 96/05—official consolidated text and 90/14.

51 Official Gazette of the RS, No. 94/12 and 90/14.

52 Official Gazette of the RS, Nos. 72/93, 22/94, 45/95 and 12/96.

and payment of tax is each individual gross payment to a natural person for a service provided based on an employment contract. The tax is paid at the rate of 25%.

The Tonnage Tax Act (TTATTA)⁵³ introduces a system of tonnage tax on income from the operation of ships in international navigation as an alternative form of determining the tax base for the payment of corporate income tax.

The Profit Tax on the Disposal of Derivative Financial Instruments Act (PTDDFIA)⁵⁴ regulates the system and introduces the obligation to pay personal income tax on the disposal of derivative financial instruments. The taxpayer is liable to pay tax on profits from the disposal of derivative financial instruments that have their source in the RS and from profits from the disposal of financial instruments that have their source outside the RS (Article 4). The tax is not paid on the profit obtained from the disposal of a derivative financial instrument after 20 years of ownership or after 20 years from the conclusion of the transaction (Article 10).

The Cadastral Income Determination Act (CIDA)⁵⁵ regulates the system of determining cadastral income and flat-rate assessment of income per beehive. Cadastral income is calculated as the difference between the market value of possible production and costs (Article 6).

The Gambling Act (GA)⁵⁶ regulates the system of organizing games of chance in such a way that games of chance take place in an orderly and controlled environment, to prevent money laundering, fraud and other criminal offences or acts contrary to public order. The law also protects minors and other vulnerable people from the harmful effects of excessive gambling. Lottery Tax Act (LTA)⁵⁷ introduces the obligation to calculate and pay tax on lottery tickets. The tax liability arises when the taxpayer receives payment for the lottery ticket. The tax is paid at the rate of 10% of the tax base (Articles 5 and 7). Earnings Tax on Classic Gambling Act (ETCGA)⁵⁸ regulates the tax on winnings in classic games of chance (15% of obtained profit).

The Excise Duties Act (EDA) regulates the system and introduces the obligation to pay excise duty on alcohol and alcoholic beverages, tobacco products and energy products and electricity, which are released on the territory of the RS.⁵⁹ Excise tax-

53 Official Gazette of the RS, No. 97/09—official consolidated text.

54 Official Gazette of the RS, No. 65/08, 40/12—ZUJF and 66/19.

55 Official Gazette of the RS, No. 63/16.

56 Official Gazette of the RS, No. 14/11—official consolidated text, 108/12, 11/14—amended and 40/14—ZIN-B).

57 Official Gazette of the RS, No. 63/13.

58 Official Gazette of the RS, No. 24/08.

59 Official Gazette of the RS, Nos. 47/16 and 92/21) in accordance with the following directives: 92/83 (on structures of excise duties on alcohol and alcoholic beverages, 92/84 (on the rates of excise duty on alcohol and alcoholic beverages), 95/60 (on the tax marking of gas oil), 2003/96 (taxation of energy products and electricity (as last amended by 2018/552), 2003/96 / EC (Combined Nomenclature codes for certain products), 2006/79 (on the exemption from taxes of imports of small consignments of a non-commercial character), 2007/74 (on the exemption from value added tax and excise duty of imports of goods travelling from third countries), 2008/118 (on the general arrangements for excise duty), 2011/64 (on the structure and rates of excise duty applicable to tobacco products), 2020/262 (general arrangements for excise duty (recast). This

payer is a person who manufactures, imports or imports excise goods or dispatches excise goods from the deferral regime for consumption or supplies or acquires excise goods from the network (Article 5).

The Motor Vehicle Tax Act (MVTA)⁶⁰ introduces the obligation to pay motor vehicle sales tax. A taxable person is a manufacturer or a person who acquires a motor vehicle in another Member State of the EU or an importer of motor vehicles (Article 4). Water Vessel Tax Act (WVTA)⁶¹ introduces tax on vessels of more than five metres in length, which are entered in records.

The Real Estate Sales Tax Act (RESTA)⁶² imposes the real estate transfer tax that belong to the budget of the municipality where the property is located. The tax is paid on the transfer of real estate and of a building right under the law governing property relations.

Inheritance and Gift Tax Act (IGTA)⁶³ imposes taxation property which a natural person receives from a natural or legal person as an inheritance or a gift and is not considered income (belong to the municipality where the real estate is located).

The implementation of the customs legislation of the EU and international treaties⁶⁴ governs the Act on the Implementation of EU Customs Legislation (AIEUCL, Official Gazette of the RS, No. 32/16)

2.3. Management of state property

2.3.1. Management of investments owned by the RS

The management of investments owned by the RS is governed by SSHA. SSH follows the objectives to increase the value of investments, to ensure the highest possible return for Slovenia as owner and to achieve other possible strategic objectives in public interest.

The purpose is to concentrate management of investments of the RS and to achieve separation of the function of the state as the owner of capital investments from other (regulatory) functions of the state, thus preventing conflicts of interest, distortion of competition in the markets and unequal treatment of companies.

Act implements the following regulations of the EU: 3649/92 (on a simplified accompanying document for the excise goods), 684/2009 (as regards computerized procedures for the movement of excise goods), 76/2014, 684/2009 (information to be provided in the context of the computerized procedure for the movement of excise goods) 952/2013 of the (on the Union Customs Code).

60 Official Gazette of the RS, No. 72/06—official consolidated text, 9/10, 40/12—ZUJF and 200/20—ZDMV-1

61 Official Gazette of the RS, No. 117/06 and 40/12—ZUJF .

62 Official Gazette of the RS, No. 117/06 and 25/16—US decision.

63 Official Gazette of the RS, No. 117/06 and 36/16—US decision.

64 Official Gazette of the RS, No. 32/16; it governs the implementation of the customs legislation of the EU and international treaties.

2.3.2. *Guarantees of the RS*

CS stipulates, that loans debited by the state and a state guarantee for loans are allowed only by law (Article 149 of the CS).

There are numerous laws regulating state loans and guarantees. Types and purpose of loans, the beneficiaries and authorized institutions are determined in the Guarantees of the RS for Financing Investments of Companies Act (GRSFIC).⁶⁵ The law prescribes in details the procedures for issuing guarantees of the RS for liabilities of companies arising from loans from first-class commercial banks and savings banks licensed by the BS to finance banking services.

The total amount of all guarantees of the RS issued under the GRSFIC for the obligations of companies for loans granted by beneficiaries to finance investments within development projects shall not exceed EUR 750,000,000 (for loans for financing working capital EUR 250,000,000).

The guarantees of the RS to banks and savings banks, as defined in the BA, for borrowing by natural persons, intended to mitigate the consequences of the economic and financial crisis that have arisen for certain groups of natural persons is regulated by Guarantee Scheme of the RS for Natural Persons Act (G SNP).⁶⁶

The Guarantee of the RS for Ensuring Financial Stability in the Euro Area Act (GEFSEUA)⁶⁷ regulates the capital participation of the RS in a joint stock company established for the purpose of ensuring financial stability in the euro area in accordance with the decisions of the Council of the EU (ECOFIN) of 10 May 2010 (hereinafter: the company). Slovenia for the company's liabilities.

The Deposit Guarantee Scheme Act (DGSA)⁶⁸ regulates the establishment and operation of a deposit guarantee scheme with banks and competencies and tasks of the BS in performing the tasks and powers of the Deposit Guarantee Authority. In addition, it regulates monitoring compliance with the obligations under the Deposit Guarantee Scheme. The act does not apply to Slovenian Export and Development Bank, d. d., Ljubljana, which was established as an authorized specialized Slovenian promotional export and development bank based on the law governing the Slovenian Export and Development Bank (Article 1).

2.4. *Financial markets, banking, insurance law, and corporate finance*

2.4.1. *Market in financial instruments*

Conditions for the offer of securities to the public and for the admission of securities to trading on the regulated market of financial instruments and obligations to disclose information relating to listed securities are laid down in the MFIA.

65 Official Gazette of the RS, Nos. 43/10, 87/11, 55/12 and 82/15.

66 Official Gazette of the RS, No. 59/09).

67 Official Gazette of the RS, Nos. 59/10 and 79/11.

68 Official Gazette of the RS, No. 27/16

MFIA further regulates conditions for the establishment, operation, supervision and termination of investment companies, trading venue managers, data reporting service providers and settlement systems with their registered office in the RS.

It also lays down the rules on trading on regulated markets, prohibited market abuse practices and rules on the settlement of transactions concluded on regulated markets, as well as rules for a multilateral trading facility (MTF) and an organized trading facility (OTF).⁶⁹

The procedure for imposing supervisory measures, the competent authorities and infringements by implementing the provisions of Regulation (EU) 2015/2365 is regulated by the Act Implementing the Regulation (EU) on the Transparency of Securities Financing and Reuse Transactions (AIRT).⁷⁰ Act Implementing the Regulation (EU) on documents with key information on packaged investment products for retail investors and insurance investment products (AIRD)⁷¹ determines the competent authorities and misdemeanours and the procedure for imposing supervisory measures and misdemeanours in the implementation of the provisions of Regulation (EU) no. 1286/2014 (on key information documents relating to retail investment products and insurance investment products).

The Takeovers Act (TA)⁷² is the law governing takeovers. The TA regulates the manner, conditions and procedure regarding the takeover bid (Article 1); it applies if the target company is a public company and if its voting shares are traded on a regulated market. The takeover threshold in the target company (the takeover threshold) is one-third of the share of voting rights in this company.⁷³

The Mortgage and Municipal Bond Act (MMB)⁷⁴ regulates the mortgage and utility bonds, the conditions for their issuance and the requirements regarding the guarantee for them.

The Dematerialized Securities Act (DSA)⁷⁵ regulates dematerialized securities, encumbrances on them, their transfer, fulfilment of obligations contained in them, the central register and access to data kept in the central register.

Foreign exchange operations are regulated by Foreign Exchange Operations Act (FEO).⁷⁶

69 MFIA transposes 10 of the relevant EU directives and seven related Regulations into the legal order of the RS.

70 Official Gazette of the RS, No. 55/17

71 Official Gazette of the RS, No. 30/18.

72 Official Gazette of the RS, no. 79/06, 67/07—ZTFI, 1/08, 68/08, 35/11—ORZPre75, 105/11—US decision, 10/12, 38/12, 56/13, 63/13—ZS-K, 25/14 and 75/15 ZPre-1.

73 The TA transposes into the legal order of the RS directive 2004/25 on takeover bids.

74 Official Gazette of the RS, No. 10/12 and 47/12.

75 Official Gazette of the RS, No. 75/15, 74/16—ORZNVP48, 5/17, 15/18—US decisions and 43/19); the law transposes into the legal order of the RS the following directives: 98/26 (on settlement finality in payment and securities settlement systems), 909/2014 (on improving the securities settlement arrangements in the EU), 2009/44 (on settlement finality in payment and securities settlement systems) and 2002/47 (on financial collateral arrangements as regards related schemes and bank loans).

76 Official Gazette of the RS, Nos. 16/08, 85/09 and 109/12); it implements the Regulation 1889/2005 (on controls of cash entering or leaving the Community).

2.4.2. Banking

The law governing banks is the Banking Act (BA).⁷⁷ It regulates conditions for the establishment, operation and regular termination of credit institutions with their registered office in and outside the RS. ZBan-2 further regulates competent bodies, measures and authorizations for the supervision of the operations of credit institutions and other persons who provide services for accepting deposits from the public. BA lays down also measures and powers for macro-prudential or systemic risk management in relation to credit institutions domiciled in the RS.

There are several acts referring to measures for stability of banking system in the RS. For ex. Bank Resolution and Compulsory Dissolution Act (BRCD) ⁷⁸ regulates competencies and procedures managed by the BS in performing the tasks and powers of the bank resolution authority, bank resolution planning, the resolution process, and powers regarding the application of resolution measures and compulsory winding-up proceedings of the bank.

In addition, Bank Resolution Authority and Fund Act (BRAFA) ⁷⁹ regulates the bank resolution authority and the bank resolution fund.

In addition, there is also Act Implementing the Regulation (EU) on Determining the General Framework for Securitization and Establishing a Special Framework for Simple, Transparent and Standardized Securitization (AIRDSS, Official Gazette of the RS, No. 22/19).

The Act on Measures of the RS to Strengthen the Stability of Banks (AMSSB) ⁸⁰ regulates the Bank Receivables Management Company and the Bank Stability Fund and measures to strengthen the stability of banks in the RS.

The Central Credit Register Act (CRA, Official Gazette of the RS, No. 77/16) enables the implementation of EU regulations on prudential requirements for credit institutions and investment firms.⁸¹

The Financial Conglomerates Act (FCA) ⁸² is the law governing financial conglomerates. FCA provides for the supplementary supervision of supervised entities that are part of a financial conglomerate in accordance with the requirements of the EU

77 Official Gazette of the RS, no. 25/15, 44/16—ZRPPB, 77/16—ZCKR, 41/17, 77/18—ZTFI-1, 22/19—ZIUJSOL, 44/19—odl. US in 92/21—ZBan-3), ZBan-2.

78 Official Gazette of the RS, No. 44/16, 71/16—US Decision, 9/19, 72/19—ZPSVIKOB and 92/21—ZRPPB-1); the law transposes into the Slovenian legal order the following directives: 2001/24 (on the reorganization and winding-up of credit institutions, as last amended by directive 2014/59 (establishing a framework for the resolution of credit institutions and investment firms) and 2014/59 (concerning the classification of unsecured debt instruments in the event of insolvency). This Act regulates in more detail the implementation of the Regulation 806/2014 / EU.

79 Official Gazette of the RS, Nos. 97/14, 91/15, 44/16—ZRPPB and 27/17.

80 Official Gazette of the RS, No. 105/12, 63/13—ZS-K, 23/14—ZDIJZ-C, 104/15, 26/17—ORZUKSB33, 27/17—corr. and 174/20—ZIPRS2122

81 Official Gazette of the RS, No. 77/16); it implements Regulations: 575/2013 (on prudential requirements for credit institutions and investment firms), 648/2012 (as regards exemptions for traders in goods) and 1024/2013 (delegating to the ECB).

82 The Financial Conglomerates Act (FCA, Official Gazette of the RS, No. 43/06, 87/11 and 56/13).

directives.⁸³ The objectives of supplementary supervision are in particular to ensure the management of risks associated with the operations of supervised entities in the financial conglomerate and thus ensure greater stability of the financial sector. The objective of this law is also to increase the effectiveness of the supervision of supervised entities when they are part of a financial conglomerate and to increase the transparency and security of the financial market.

2.4.3. Insurance

Conditions for the establishment, operation and supervision of insurance and reinsurance undertakings, for the supervision of insurance and reinsurance groups and for reorganization and winding-up of insurance and reinsurance undertakings regulates the Insurance Act (IA).⁸⁴ Insurance transactions are the contracts on non-life and life insurance or reinsurance, except for compulsory social insurance.

Insurance includes services as advising, proposing, or carrying out other preparatory tasks before concluding insurance contracts, concluding insurance contracts, assistance in the management and implementation of insurance contracts, particularly in claims for compensation or insurance benefits and providing information on the insurance contract.

The Insurance and Financing of International Business Transactions Act (IFIBTA)⁸⁵ regulates the foundations of the system of insurance and financing of international economic transactions as instruments of trade policy of the RS and the role of the state in these activities,

2.4.4. Investment funds and management companies

The Investment Funds and Management Companies Act (IFMC)⁸⁶ is the law governing investment funds and management companies. It provides the conditions for setting

83 Directive 2002/87 (on the supplementary supervision of credit institutions, insurance undertakings and investment firms) and 2002/87 (as regards the supplementary supervision of financial entities in a financial conglomerate).

84 Official Gazette of the RS, Nos. 93/15, 9/19 and 102/20); IA transposes into the legal order of the RS several directives, as follows: 91/371 (on the implementation of the Agreement between the EEC and the Swiss Confederation on direct insurance other than life assurance), 91/674 / EEC (on the annual accounts and consolidated accounts of insurance undertakings), 2016/97 (on the distribution of insurance products (recast), 2004/113 (implementing the principle of equal treatment between men and women), 2009/138 (relating to the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II), 2013/14 (on the activities and supervision of institutions for occupational retirement provision), 2009/65 (relating to collective bargaining investment firms for investments in transferable securities (UCITS), 2011/61 (on alternative investment fund managers with regard to over-reliance on credit ratings), 2014/51 (as regards the competences of the European Supervisory Authority), 2019/2177 (relating to the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II), 2014/65 (on markets in financial instruments and 2015/849 (on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing).

85 Official Gazette of the RS, Nos 2/04, 56/08 and 82/15.

86 Official Gazette of the RS, Nos. 31/15, 81/15, 77/16 and 77/18, ZISDU-3.

up management companies and providing investment fund management services that publicly raise assets.

The law also provides conditions for the marketing of units of investment funds that publicly raise assets in the RS and in a Member State or a third country.

IFMC provides for the types of investment funds that publicly collect assets, conditions for their formation and the manner of their operation and sets control over the provision of investment fund management services and control over their operations (Article 1).⁸⁷

The law governing the managers of alternative investment funds is the Alternative Investment Fund Managers Act (AIFMA).⁸⁸

It provides the conditions and manner of management and operation of alternative investment funds (AIF) and investment funds with the status of a special investment fund (SIS). The law also lays down conditions of marketing of AIF units in the RS and conditions of marketing of AIF units established in the RS in another Member State or a third country. It regulates also control over the management of the AIF and the operation of the SIS (Article 1).⁸⁹

2.4.5. Corporate finance

The Companies Act (CA)⁹⁰ is the law governing companies. CA lays down the basic corporate rules for the establishment, governance and operation of companies, sole

87 IFMC transposes into the legal order of the RS the following directives: 2009/65 (relating to undertakings for collective investment in transferable securities (UCITS), as last amended by Regulation (EU) 2017/2402 (framework for simple, transparent and standardized securitization), 2010/44 (on fund mergers, central power supply structures and the notification procedure), 2010/43 (on the agreement between the depository and the management company), 2013/14 (on institutions for occupational retirement provision), 2009/65 (relating to collective bargaining investment firms for investments in transferable securities (UCITS), 2011/61 (on alternative investment fund managers with regard to over-reliance on credit ratings), 2011/61 (on alternative investment fund managers).

IFMC in more details implements the following Regulations (EU): 583/2010 (implementing directive 2009/65) as regards the conditions to be met when providing key investor information, 584/2010 (as regards the form and content of standard UCITS notification and certification, the use of electronic communications between competent authorities), 345/2013 (on European venture capital funds) and 346/2013 (on European Social Entrepreneurship Funds), 346/2013 (on European Social Entrepreneurship Funds) and 2016/438 (as regards depository obligations).

88 Official Gazette of the RS, No. 32/15 and 77/18 AIFA.

89 AIFA transposes into the legal order of the RS directives 2011/61 (on alternative investment fund managers) and 2013/14 (institutions for occupational retirement provision) and Regulations (EU) 2017/2402 (general and specific framework for securitization), 231/2013 (as regards exemptions, general terms and conditions, depositaries, leverage, transparency and control), 447/2013 (instituting proceedings for AIFM which choose to comply with directive 2011/61), 448/2013 (establishing a procedure for determining the reference MS of AIFM outside the Union), 345/2013 (on European venture capital funds), 346/2013 (on the European Social Entrepreneurship Funds), 694/2014 (types of managers of alternative investment funds), 2015/760 (on European long-term investment funds).

90 Official Gazette of RS, Nos. 65/09—official consolidated text, 33/11, 91/11, 32/12, 57/12, 44/13-US, 82/13, 55/15, 15/17, 22/19, 158/20 and 18/21, ZGD-1.

proprietors, economic interest associations, branches of foreign companies and their status transformation.

According to CA, companies and entrepreneurs must keep business books and close them once a year in accordance with CA and Slovenian accounting standards or international financial reporting standards. A business year may differ from a calendar year. Based on the closed accounts, an annual report must be drawn up for each financial year within three months of the end of that financial year (Article 54).

The annual report of companies consists of balance sheets, income statement, cash flow statement, statement of changes in equity, a statement of other comprehensive income, notes to the financial statements, and the business report referred to in Article 70 of the CA.

The financial statements and the annex with notes to the financial statements as a whole constitute the financial report. Further the law has detailed provision on business books and annual report, general accounting rules, public announcement, the financial report, further on the breakdown of account, balance sheet breakdown, income statement, valuation of items in the financial statements, annex to the statements and business report (Articles 54 to 70).

2.4.6. Financial operations, insolvency, and dissolution

The Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (FOIPCDA)⁹¹ regulates financial operations of legal entities, insolvency proceedings against legal and natural persons and proceedings for compulsory winding up of legal entities.⁹²

According to article 5, insolvency proceedings are compulsory settlement procedure, the procedure for simplifying compulsory settlement; and bankruptcy proceedings. Bankruptcy proceedings are bankruptcy proceedings against a legal entity, personal bankruptcy proceedings and bankruptcy proceedings of the estate. The compulsory termination proceedings are deletion from the court register without liquidation and compulsory liquidation (Article 6).

The law further defines short-term and long-term solvency, capital adequacy, long-term sources of financing and financial restructuring and sets rules on financial management. FOIPCDA lays down special rules on compulsory settlement of obligations, preliminary preventive restructuring procedure and preventive restructuring process.

91 Official Gazette of the RS, No. 13/14—official consolidated text, 10/15—amended.

92 FOIPCDA transposes into the legal order of the RS directives: 2001/17 (on the reorganization and winding-up of insurance undertakings) and 2001/24 (on the reorganization and winding-up of credit institutions) and implements the Regulation 1346/2000 (on insolvency proceedings).

2.5. Prevention of money laundering and terrorist financing

2.5.1. Money laundering

Slovenia adopted the Prevention of Money Laundering and Terrorist Financing Act (PMLTFA).⁹³ This is the law that regulates the prevention of money laundering and terrorist financing.

PMLTF lays down measures, competent authorities and procedures for the detection and prevention of money laundering and terrorist financing and regulates inspection supervision over the implementation of its provisions.⁹⁴

Money laundering under PMLTF is any handling of money or property acquired through a criminal offence, which includes the exchange or any transfer of money or other property resulting from a criminal offence; it also includes concealment of the true nature, origin, location, movement, disposition, ownership, or rights in respect of money or other property derived from a criminal offence.

2.5.2. Terrorist financing

The financing of terrorism under PMLTF is the provision, collection, or attempt to provide or collect money or other property of legal or illegal origin. The criminal offence can be made directly or indirectly, however always with the intention or knowing, that it will be used in whole or in part to commit a terrorist act or other act related to terrorism or to be used by a terrorist or a terrorist organization.

A terrorist act under PMLTF is a criminal offence specified in Article 2 of the International Convention for the Suppression of the Financing of Terrorism⁹⁵ and a criminal offence of terrorism and terrorism-related offences set out in a chapter of the Penal Code that sets out crimes against humanity.

2.5.3. Conclusions

Financial law in a broader sense is the law of public finance (budgetary and tax law) and the law on corporate finance (financial instrument law, banking and insurance law and corporate finance). *The Legal Theory of Finance* (Pistor, 2013) claims that legal rules are a binding legal framework for the transparent, orderly, and efficient functioning of public finances. Despite the great importance of financial law is the correlation between the high-quality constitutional bases (financial law) and the economic performance of a country, according to theory (Vertesy, 2017); the functioning of the rule of law should be additionally considered.

93 Official Gazette of the RS, No. 68/16, 81/19, 91/20 and 2/21.

94 PMLTF implements directive 2015/849 (on the prevention of the use of the financial system for money laundering or terrorist financing) and Regulation 648/2012, repealing directives 2005/60 and 2006/70). PMLTF also transposes into the legal order of the RS directive 2018/843 amending directive 2015/849 and amending directives 2009/138 and 2013/36.

95 Official Gazette RS-MP, No. 21/04.

Slovenia has adopted comprehensive and modern legislation in both fiscal and tax law, as well as in the field of banking and insurance law and the law of financial instruments.

The RS has its financial law harmonized with the EU law; so in the part covered by the *acquis communautaire*, it does not differ significantly from the financial law in force in other Member States. Slovenia has adopted extensive and modern legislation, both in the field of fiscal and tax law, as well as in the field of banking and insurance law and the law of financial instruments.

Public finance planning in the RS, as an EU member state (MS) and as the country of the euro area is subject to EU rules designed to ensure sound public finances and coordinated fiscal policies of the EU MS, based on Articles 121 and 126 of the TFEU rules. Each year each MS draws up budgetary plan at the end of each year prior to the adoption by the NA. In the budgetary plan, main orientations and elements concerning fiscal objectives and measures for the coming year shall be presented.

Provisions on taxes are laid down in CS. The CS stipulates that the state and local communities obtain funds for the implementation of their tasks through taxes and other obligatory duties, as well as from revenues from their own property. The state prescribes taxes, customs duties and other duties by law. The state and local communities show the value of their property with property balance sheets.

Tax structure in Slovenia is characterized by (relative to the OECD average) substantially higher revenues from social security contributions and higher revenues from value-added taxes and goods and services taxes (excluding VAT/GST). With contributions, the taxpayer in the RS, is at the same time a direct beneficiary of part of the rights for which he or she pays contributions, as for ex. pension, healthcare (unlike with taxes). These rights might also be changed unilaterally, as it is not a contractual relationship.

The Public Finance Act of the RS is the crucial piece of legislation in the field of fiscal law; it lays down the rules on the preparation and execution of the budget of the RS and the municipal budgets, management of state and municipal property, state or municipal borrowing and guarantees, management of their debts, accounting and internal control of public finances and budget inspection. PFA also regulates drawing up and submitting financial plans, managing cash, borrowing, guaranteeing, accounting, submitting annual reports for public funds, public institutes, and agencies.

MFIA of the RS regulates conditions for the offer of securities to the public and for the admission of securities to trading on the regulated market of financial instruments and obligations to disclose information relating to listed securities. MFIA also regulates the rules on trading on regulated markets, prohibited market abuse practices and rules on the settlement of transactions concluded on regulated markets, as well as rules for a multilateral trading facility (MTF) and an organized trading facility (OTF). BA of the RS regulates competent bodies, measures, and authorizations for the supervision of the operations of credit institutions and other persons who provide services for accepting deposits from the public. BA regulates conditions for

the establishment, operation, and regular termination of credit institutions with their registered office in and outside the RS. CA of the RS is the law governing corporate finance, as keeping business books in accordance with CA and Slovenian accounting standards or international financial reporting standards.

The constitutional or 'golden' fiscal rule in the RS declares that revenues and expenditures of general government budgets must be balanced in the medium term without borrowing, or revenues must exceed expenditures. The fiscal rule may be temporarily waived if the structural balance of the general government sector in a given year is not lower than the minimum value set in a ratified international (EU) treaty governing stability, coordination and governance in economic and monetary union.

As an exemption to fiscal rule, due to the consequences of the epidemic of the infectious disease SARS-CoV-2 (COVID-19), several acts in the RS lay down numerous measures; financial measures are related to additional liquidity to the economy, to mitigate the consequences of the COVID-19 epidemic for citizens and the economy (unemployment risks, wages and contributions, postponing the payment of borrowers' obligations).

There are numerous financial institutions in the RS; however, two of them only are laid down in the Constitution of Slovenia: the Bank of Slovenia and the Court of Audit.

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