

Public Finance Law and Public Administrations

The Shaping Power of Public Finance
in the European Union

Elisa D'Alterio

First published 2026

ISBN: 978-1-032-74124-6 (hbk)

ISBN: 978-1-032-76713-0 (pbk)

ISBN: 978-1-003-47976-5 (ebk)

I Introduction to public finance law in the European Union

(CC-BY-NC-ND 4.0)

DOI: 10.4324/9781003479765-1



ROUTLEDGE

Routledge
Taylor & Francis Group

LONDON AND NEW YORK

I Introduction to public finance law in the European Union

1. “[Public] Finance is the problem of our time”

“Finance is the problem of our time”. Arthur J. Balfour (1848–1930) stated as much with reference to England, and was quoted by the Italian economist Federico Flora in his seminal handbook on public finance. Flora added that this “problem” was also widespread throughout “all European states, which, due to rising military costs, the extension of government interference, the development of social legislation, now spend beyond [what] taxes can provide”.¹

The balance between public expenditure and income has always been one of the main problems in the management of state budgets. In turn, this problem is connected to several others: the rise in public spending; the development of modern tax systems in relation to the fiscal deficit; management of public debt; adequate financing of public functions and services; the application of fiscal federalism in some countries, etc.² It would probably be more accurate to state that public finance is a set of problems that characterize the use of public resources in every State, and at all times.³

This statement prompts an important clarification: public finance is different from private finance. Public finance pertains to the state (and institutional subjects

1 F. Flora, *Manuale della scienza delle finanze*, 4th edition, Livorno: Raffaello Giusti Editore, 1912, p. VIII (author’s own translation), recalling how Balfour criticized the dizzying rise of British public spending and debt.

2 A simple definition is: “public finance deals with the financial and economic operations of individuals as parts of communities. It deals with the public part of what is called ‘economics’. . . . Public finance deals with the choices that groups, or communities, make as groups, and with the pursuit of collective interests that can be better satisfied by joint actions. . . . These collective choices may relate to defense against hostile foreign groups, to the provision of some public goods, including those related to individual protection and justice, and to others”. V. Tanzi, *Advanced introduction to public finance*, Cheltenham and Northampton: Edward Elgar Publishing, 2020, pp. 3 and 4.

3 There are many definitions for the term “finance”. Generally, it is “the management of large amounts of money, especially by governments or large companies” (*Compact Oxford English dictionary*, Oxford: Oxford University Press, 2003, p. 408), “the way in which large amounts of money are managed or organized, especially by a government, company or bank”. It differs from economics, which is the theory of how money works (*Oxford learner’s thesaurus. A dictionary of synonyms*, Oxford: Oxford University Press, 2008, p. 288).

2 *Public Finance Law and Public Administrations*

operating both at sub-state and supranational levels). Private finance concerns the behaviour of private actors (banks, businesses and economic operators) on financial markets.⁴ The two fields are connected to each other:

when the private financial system collapsed in 2007, the integration of public and private financial systems was starkly revealed. Ensuring the survival of private financial markets required the deployment of public resources on an enormous scale. Short – and long – term fixes came in the shape of vast subsidies to insolvent financial institutions, fiscal stimulus and unconventional monetary policies, most prominently the central bank asset-purchase programmes called “quantitative easing”.⁵

This book concerns public finance, and, in particular, its legal dimension.⁶ Public finance has a specific objective and purpose, and special tools and actors. More precisely, its objective is the use of public resources, defined as resources aimed at satisfying public interests. Its purpose is to manage public resources in the most appropriate way to satisfy public interests. Its tools are multifarious: the main tool is the (public) budget, the means that enable the state and other institutional bodies to plan and control the decision and management of public resources. The actors are public institutions, at various levels (local, state, European, global).

The use of public resources is subject to many rules. These comprise constitutional rules fixed in constitutional charters and are related to the financial power of national parliaments and executives. Supranational rules – that is, European Union (EU) rules – regulate the monetary union and oblige EU Member States to comply with specific parameters and procedures, especially regarding the level of public debt and deficit. Administrative rules relate to the management of public expenses in public institutions. Fiscal rules govern the assessment, collection and remittance of revenues. Technical rules affect the use of public funds. National and international rules regulate the functioning of central banks. There exist also rules that provide for financial audits, monitoring and reporting on the use of public resources. All of the aforementioned rules may be contained in norms, principles, orders, directives, recommendations, etc. Administrative acts and practices also play a fundamental role in this framework.

4 Many studies have been conducted on private finance, that also includes private banking, private capital investments, personal finance, etc.

5 W. Bateman, *Public finance and parliamentary constitutionalism*, Cambridge: Cambridge University Press, 2022, p. 233. The author remarked that there exists a constitutional position of private finance and that “all economic behaviour is the product of ‘public law’ because it occurs within a framework of legal rules fashioned by public institutions. . . . Law and constitutional practice concerning public finance have played a decisive role in developing private financial markets”.

6 In this book, the expression “public finance law” includes all rules, measures and acts related to the power of the State to collect revenue and make expenditures, by pursuing general public interests. It is a broader expression of “tax law” or “fiscal law” (referring only to the rules on revenues), and “budget law” (referring to the specific regulation of the budget and public accounting).

Therefore, public finance is a “world of rules”.⁷ What is the reason for all these rules?

Rules set limits and constraints on the “free” use of public resources, in the interests of civil society. This concept echoes the origin of the “right of the budget” (budget law), understood as the regulation of parliamentary participation in the determination of the national budget, as theorized especially by the German school.⁸ This is linked to the birth of modern parliamentary systems, when the financial statements were modest in size and the financial rules consisted of only a few principles.

The “right of the budget” is how the people (in contemporary terms, civil society) represented in a parliament formally “legitimate” and keep in check the actions of those who govern, functioning as a barrier to the power of government (in the past, the power of the sovereign).⁹ From this perspective, the founding fathers of the Constitution of the United States of America stated that the

power over the purse may . . . be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.¹⁰

In this sense, public finance rules are characterized by a “democratic value”, which is closely associated with the need to (self-)limit governments’ power over the purse. At the same time, finance rules limit parliaments in exercising their power: consider the principle of financial coverage applied to spending laws, according to which every law that produces financial burdens must also specify the means to sustain them. This principle constitutes one of the most significant

7 The expression “world of rules” has been used, for example, by G.F. Schuppert (*The world of rules. A somewhat different measurement of the world*, Max Planck Institute, 2017, p. XIII) to describe the proliferation of legal sources: “the multitude of normative orders, the plurality of norm producers and norm enforcement regimes”. The realm of public finance is characterized by many types of rules, not only positive norms.

8 The classic approach to budget law in the liberal state focuses on the structure of the power of the purse. There is a longstanding debate on, primarily, the exercise of this power from a constitutional law perspective. This debate then extended to many other aspects: the relationship with the form of government, the nature of budget law, the relationship with other legal sources, etc. In this respect, the works of certain German scholars (Carl Friedrich von Gerber, Rudolf von Gneist, Georg Jellinek, Paul Laband, Carl Schmitt) are particularly renowned.

9 The origin of representative institutions in Europe is connected to sovereigns’ growing need for resources. The principle whereby taxation is conditional upon the approval and consent of those who must pay (*quod omnes tangit ab omnibus approbari debet*) was first codified under Emperor Justinian (527–565). The principle has been reiterated over time in many forms and in several sources, from the *Statutum de tallagio non concedendo* of 1297, granted by King Edward I of England, to “no taxation without representation” during the American Revolution, up to modern budget law. The taxing power was “one of the most jealously kept and exclusive sovereign rights”: L. Man-nori and B. Sordi, *Storia del diritto amministrativo*, 3rd edition, Rome-Bari: Laterza, 2004, p. 28 (author’s own translation).

10 The passage, attributed to James Madison, is drawn from Essay no. 58 of *The Federalist*.

4 *Public Finance Law and Public Administrations*

barriers to the spending power of both parliaments and governments in the adoption of normative acts.¹¹

In any case, public finance rules also have very practical finalities. Indeed, they serve to manage, organize and coordinate the use of public resources. All of these purposes will be explored in depth in the following sections and chapters.

In line with the initial reasoning, it can be stated that public finance has always constituted a problem, from both a management point of view, considering the difficulty of balancing revenues and public expenditure, and from a regulatory one, given the need to set constraints and limits on the conduct of public decision-makers and public administrations. From this perspective, the problem has two “souls”: one relating to management and the other regulatory.

As for the regulatory dimension, it has been noted that in the past, “the focus was on which taxes to use, and who should pay them. Today, a great deal of what we still call public finance deals with issues on the expenditure side, and with regulations”.¹² Nevertheless,

given the importance that regulations have acquired in the modern world, it is surprising how little attention they have continued to attract in public finance books that no longer focus exclusively on finance but deal with the full economic activities of governments.¹³

Scholarship on public finance has usually focused on the economic dimension and, especially, the process of managing funds. Indeed, many finance studies examine “public financial management”, providing an overview of public financial management systems from an economics and accounting perspective.¹⁴ Conversely, few studies consider public finance from a legal point of view, and there are virtually none on the role of the public administration and the impact of public finance rules on administrative systems.¹⁵

11 This budgetary principle applies both to the public budget and to spending laws adopted during the year.

12 Tanzi, *Advanced introduction to public finance*, p. 5.

13 Tanzi, *Advanced introduction to public finance*, p. 113.

14 On public financial management, A. Premchand (ed), *Government financial management. Issues and country studies*, Washington, DC: International Monetary Fund, 1990; A. Premchand, *Public expenditure management*, Washington, DC: International Monetary Fund, 1993, p. 41; more recently, M.F. Sicilia and I. Steccolini, *Public budgeting in search for an identity: State of the art and future challenges*, London and New York: Routledge, 2020; J.K. Kristensen, M. Bowen, U. Zrinski, C. Long and S. Mustapha, *Public financial management and good governance*, World Bank Group, 2019.

15 The main legal studies on public finance concern constitutional aspects. There are many examples: recently, E.S. Tanasescu and E. Oliva, *Constitutional law and the EU balanced budget principle*, London and New York: Routledge, 2022; M. Adams, F. Fabbrini and P. Larouche, *The constitutionalization of European budgetary constraints*, Oxford: Oxford University Press, 2014; P. Craig, The financial crisis, the EU institutional order and constitutional responsibility, in F. Fabbrini, E. Hirsch Ballin and H. Somsen (eds), *What form of government for the European Union in the Eurozone?* Oxford and Portland: Hart Publishing, 2015, p. 17; J. Wehner, Assessing the power of the purse:

The expansion of public finance rules affects the “lower” part of the legal system that could be called the “administrative machine”. This phenomenon affects not only the very definition of “public administration”, shaping its scope of application – consider the relevance of the notion of “institutional unit”, defined by the European System of Accounts (ESA 2010)¹⁶ – but also the system’s main components: its organization, personnel, administrative procedures, public services, etc. In this context, the finance rules adopted in the aftermath of the crisis provoked by the COVID-19 pandemic at both European and national levels will have, and are already beginning to have, significant impact on all components of the administrative machine.

The impact of finance rules on the main components of public administration is a little explored yet highly relevant field. It requires analysis of the complex relationship between the public apparatus and financial instruments, which is increasingly important given the significance of recent reforms and public resource investment programmes, and their current and prospective impact on EU Member States’ public administrations.

In other terms, this book “turns the telescope” to observe public administrations.

2. Public finance and public administrations: the engine and the machine

There is a close relationship between public finance and public administrations: the former is the engine that drives the administrative machine. This relationship can be considered from at least three different perspectives.

First, the state, and, especially, the administrative apparatus, is expensive. Historically, in the Roman Empire, the *fisco* (which replaced the *aerarium*) and other public coffers were used to cover public expenses.¹⁷ Later, in the Middle Ages, the

An index of legislative budget institutions, in *Political Studies*, vol. 54, no. 4, 2006, pp. 767–785; or A. Wildavsky, *Budgeting: A comparative theory of budgetary processes*, Boston: Little Brown, 1975. See also M. Postula, *Public financial management in the European Union public finance and global crises*, London and New York: Routledge, 2022, who offered a combined technocratic and humanist perspective on the discussion of public financial management in relation to public goods. However, the aforementioned works do not consider the relationship between public finance law and public administration.

See also the contributions on the EU’s financial legislation, for example: U. Radice, *The European Union after the crises*, London and New York: Routledge, 2017; J.M. Sarmento, *Public finance and national accounts in the European context*, Berlin: Springer, 2018; M. Chang, G. Menz and M.P. Smith (eds), *Redefining European economic governance*, London and New York: Routledge, 2016; P. Stephenson, M.-L. Sanchez-Barrueco and H. Aden (eds), *Financial accountability in the European Union. Institutions, policy and practice*, London and New York: Routledge, 2021. These works focus only on the EU system and do not consider in depth the effects of public finance rules on national (Member State) public administrations.

16 Sarmento, *Public finance and national accounts*, p. 105: under EU financial law, “an institutional unit is an elementary centre of economic decision”, such as the various types of public administration.

17 E.R. Khazzam, *The rise and fall of the Aerarium: Lessons in public finance from the Roman Empire*, International Federation of Accountants, 22 July 2014, <https://www.ifac.org/knowledge-gateway/discussion/rise-and-fall-aerarium-lessons-public-finance-roman-empire>.

power to tax became one of the most jealously guarded and exclusive sovereign rights. Therefore, the first reason for the relationship between public finance and public administrations is the maintenance of public power and its apparatus in the service of the emperor or the sovereign. Only later were public finances considered to be in the service of the people represented by parliaments, becoming the “instrument of liberalism and of the rule of law, safeguarding individual freedoms”.¹⁸

Second, the state, or, specifically, the contemporary state, provides public services in a market context.¹⁹ Historically, this emerged with the transition from the model of mere “guarantee administration” to “performance administration”, as defined by Ernst Forsthoff (*Leistungsverwaltung – Daseinsvorsorge*).²⁰

The function of the state was to secure the provision of public services, which Duguit defined widely to include “any activity that has to be governmentally regulated and controlled because it is indispensable to the realisation and development of social solidarity”.²¹

From this perspective, public resources are necessary to finance the provision of services for the community (healthcare, education, social assistance, transport, etc.). The dimensions of public finance have consequently grown, with the affirmation of the “welfare state” and the increasing development of collective interests: “public finance deals with the choices that groups, or communities, make as groups, and with the pursuit of collective interests that can be better satisfied by joint actions”.²²

Third, public finance is a means of administrative action considered as a whole. After all, without the engine, the machine cannot move. Financial instruments are not only closely connected to public administrative action but also constitute its essence. Through financial decision-making and management, it is possible to provide goods and essential services to the community. In this sense, public finance is the set of instruments through which public authorities carry out their allocative or distributive functions. This function has an “external” or social declination, tied to the provision of public services, and an “internal” or administrative one, aimed at distributing financial resources among component offices.

The public budget is the means that enables planning and controlling the decisions over and management of public resources. Historically, the budget was much simpler than it typically is today, and was established as a means through which the parliament authorized the government to impose taxes. This explains why in some

18 P. Amselek, *Peut-il y avoir un État sans finances?* in *Revue du droit public et de la science politique en France et à l'étranger*, vol. 2, April 1983, p. 267 (author's own translation).

19 A well-known study on the economic power of the state was written by R.A. Musgrave, *The theory of public finance*, New York: McGraw-Hill, 1959, Chapter I, which distinguished the functions of allocation, redistribution and stabilization.

20 E. Forsthoff, *Der totale Staat*, Hamburg: Hanseatische Verlagsanstalt, 1933.

21 C. Harlow and R. Rawlings, *Law and administration*, 4th edition, Cambridge: Cambridge University Press, 2022, p. 33, who also elaborate a “green light theory” (p. 32).

22 Tanzi, *Advanced introduction to public finance*, p. 4.

legal systems the budget took the form of a law.²³ Today, the budget, together with overall economic–financial documentation, is more complex. In Massimo Severo Giannini’s definition, it is “at once an act of determination of the political direction, an applicative financial program of political direction, an accounting precept for the state administration apparatus”.²⁴

However, the public budget remains the primary act with which expenditure is authorized. More generally, the budget is functional to the definition and implementation of public choices. Decisions on the allocation of revenues and expenses for one purpose or another and, therefore, the implementation or not of certain public policies are the result of the action of political decision-makers, who generally operate under pressure exercised by interest groups: this is the natural dynamic that characterizes the formation of choices in a democratic system.²⁵ In the past, this dynamic unfurled easily, due to the absence of limitations in determining the state budget. Later, the changes brought about by the process of EU integration and, more precisely, by the entry and permanence of certain EU Member States in the monetary union gave rise to some developments, starting with the parameters set in the Treaty of Maastricht and the Stability and Growth Pact (SGP), in the 1990s.²⁶

Analyzing the relationship between public finance and the public administration requires two clarifications.

First, the relationship concerns all types of public administration: central governments, local governments, municipalities, states and provinces, etc. The EU’s administrative apparatus can also be considered. It is also true that “only central governments have final responsibility for coordinating the interrelated activities of financial management, monetary authority and practical access to sovereign debt markets. Responsibility for the national economy is thereby concentrated in central governments”.²⁷ For this reason, state financial administration usually has a key role.

However, as will be seen throughout this book, analyzing the impact of financial rules on the public administration requires considering the latter as a whole, in both the passive sense (the rules that shape specific elements of public administration) and the active sense (the rules that strengthen the role of public administrations). This is done through case studies examining the various categories of administrations in different countries.²⁸

23 The theory of budget law as a formal body of law dates back mainly to Paul Laband (*Das Budgetrecht nach den Bestimmungen der Preußischen Verfassungs-Urkunde unter Berücksichtigung der Verfassung des Norddeutschen Bundes*, Berlin: Verlag von Guttentag, 1871).

24 M.S. Giannini, *Diritto amministrativo*, 3rd edition, Milan: Giuffrè, 1993, p. 420, which defined public finance as a tool of public administration (author’s own translation).

25 The budget as a “political thing” is analysed in the well-known book by A. Wildavsky, *The politics of the budgetary process*, Boston: Little Brown, 1964.

26 See Chapter II.

27 Bateman, *Public finance*, pp. 13 and 14.

28 See Chapter IV.

The second clarification can be summed up with one question: if the public administration is the machine and public finance is the engine, what role do the other public powers play?

According to the classical approach, in parliamentary systems, the parliament should be the driver of the entire machine:

it is quite clear that some security is needed to prevent misappropriation or irregular expenditure of the funds granted by Parliament, and the question to determine is what is the machinery by which this end is attained. This security is provided by an elaborated system of control and audit, under which not a penny of public money can be expended by the Ministry without the authority or sanction of persons (many of them quite independent of Ministers) who are responsible for the due application of the revenue. The centre of this system of Parliamentary control is the Comptroller and Auditor General.²⁹

It follows that

the general result of this system of control and audit is that in England we possess accounts of the national expenditure of an accuracy which cannot be rivalled by the public accounts of other countries, and that every penny of the national income is expended under the authority and in accordance with the provisions of some Act of Parliament.³⁰

Nevertheless, this description – defined as “Dicey’s legacies”³¹ – has never corresponded to reality, much less so today. Various provisions have strengthened the role of the financial administration to the detriment of parliamentary control over public expenditure, already in Dicey’s time. For example, in the United Kingdom, the *Exchequer and Audit Departments Act 1866* assigned numerous powers to the Treasury: how departmental accounts would be prepared, the direction of the Comptroller and Auditor-General to carry out audits and controls, etc.³²

In Italy, examples are Laws No. 94 and No. 174 of 1861. The former established, among other things, guarantees for state creditors and exemptions for state-issued bonds. The latter recognized as debts of the (superseded) Kingdom of Italy all debts of the pre-Unification states, listed in the law, and provided for their exchange with the new bonds. These laws profoundly shaped the evolution of the administrative

29 A.V. Dicey, *The law of the constitution*, edited by J.W.F. Allison, Oxford: Oxford University Press, 2019, p. 175. Dicey carried out various studies on the control and audit of public receipts and expenditure, dating back to 1885.

30 Dicey, *The law of the constitution*, p. 177.

31 Bateman, *Public Finance*, p. 4.

32 Historically, the British Parliament eventually assumed a weak role in the financial field, although Great Britain is generally considered the “cradle” of modern parliamentary systems. J. Binney, *British public finance and administration 1774–92*, Oxford: Clarendon Press, 1958.

system in those years. First, they compelled creation of a strong central administrative apparatus for debt management and the collection and distribution of financial resources. Second, they provided for a close dependence of the periphery, where the offices actually managed the financial resources, on the central state, which was the only level empowered to collect revenue.

These examples highlight three important aspects. First, in Italy, the Parliament has never had a truly central role in financial matters. Second, financial power has always been mainly in the hands of the executive branch. Third, within the executive branch, it is necessary to distinguish between the government, understood as the political body (prime minister, ministers, political bodies at the head of the states, municipalities and provinces), and the public administration, or civil service, which is the technical–professional body.³³ In both the Anglo-Saxon and the Italian systems, this distinction is expressed by the “principle of separation between politics and administration”.³⁴ Therefore, the government and the public administration are different and separate actors, especially in the field of public finance, in which the public administration tends to prevail in the direction and management of financial choices.³⁵ As will be seen later, expansion of the public administration’s role in many EU Member States (including the United Kingdom, for some time) is a possible effect of the development of the rules on public finance.³⁶

Finally, to answer the initial question with reference to the full framework of public powers, the judicial branch must be considered. The role of the judiciary in public finance differs widely in different legal traditions (civil law or common law).

In civil law systems, especially where courts of auditors have been established, the role of judges is crucial – albeit indirectly – in defining the rules on public finance. This is the case in France, Germany and Italy. The case law of such courts contributes to the development of legal interpretations that often turn into effective rules, with significant impacts on public administrations.³⁷

33 S. Cassese, *Le basi costituzionali*, in *Trattato di diritto amministrativo, general part*, vol. II, Milan: Giuffrè, 2003, pp. 175 ff. The main relevant passages are recalled: “as a reflection of the imbalance between parliament and government, the law ends up prevailing over the executive power and the principle of legality is affirmed. This will produce two consequences: the split between government and administration and the submission of the administration to parliament”; “initially . . . there was only the executive power that united government and administration. Today there is the government and the administration, one separate from the other” (author’s own translation).

34 See F.J. Goodnow, *Politics and administration. A study in government (1900)*, introduction by J.A. Rohr, London and New York: Routledge, 2003, especially Chapter V.

35 E. D’Alterio, *Dietro le quinte di un potere. Pubblica amministrazione e governo dei mezzi finanziari*, Bologna: Il Mulino, 2021, p. 145.

36 A similar trend may be seen in the United States of America: B.J. Reed and J.W. Swain, *Public finance administration*, New York: Sage, 1997, which focused on the management of public funds, with particular attention to the role of the US public finance administration.

37 “Without a direct role in the budget process, courts have but one point of entry into the fray. Typically, aggrieved subnational governments and individuals file suit in the courts and argue that some budget decisions and programs deprive them of rights guaranteed by constitutions and budget laws. They look to the courts to overturn or modify the objectionable policies. In adjudicating these issues,

On the contrary, common-law countries generally do not have courts of auditors. Financial audits are entrusted to technical offices, and ordinary judges assess the cases of harm to the treasury. Therefore, the role of the judiciary in the financial sector is limited and marginal.³⁸

3. Notions and questions in the study of public finance law

Public finance law is defined in multifarious ways. Some scholars start with defining the financial law system as a branch of law, considering it as “the emergence of a new profiling branch of law” that

has its own specific system, [comprising] namely budget law, tax law, banking law, insurance law, currency law, investment law, securities law, the law on protecting competition on the market financial services, legislation on securities market legislation on financial control and auditing, [and] legislation on laundering of proceeds of crime.³⁹

Other studies connect public finance law with market intervention by the state as an economic operator, market control (authorizations, monopolies, exclusive rights, market regulation, etc.), protection of market competition (competition law), market support (State aid) and collaboration with the market (public procurement).⁴⁰

Tax law studies focus on the controversial relationship between public treasury law and tax law, by questioning the autonomy of the former with respect to the latter.⁴¹

Other studies affirm that the notion of public finance law is generic: it is an “umbrella term, which describes the collection of ‘legal practices’ that govern the financial activities of central governments”.⁴² Moreover,

the courts are called upon to interpret a formidable body of constitutional provisions and budget laws governing the budget process”: D. Axelrod, The judicial power of the purse: How the courts interpret budget laws, in A. Premchand (ed), *Government financial management. Issues and country studies*, Washington, DC: International Monetary Fund, 1990, p. 177.

38 In common-law systems, courts have a limited role in the field of public finance, as there is no established jurisdiction over disputes regarding legislation on appropriations or sovereign debt. Courts even lack the power to define their own funding except for certain cases of “inherent power”, such power pertaining to the government and parliament: “growing pressure upon court services, inadequate appropriations, and slow and expensive litigation have combined to spur judicial demands for the independent control of internal fiscal management as well as of appropriations to the judiciary”. W. Scott Ferguson, Judicial financial autonomy and inherent power, in *Cornell Law Review*, vol. 57, no. 6, 1972, p. 975.

39 M.A. Tsindeliani, Estructura institucional del derecho de finanzas públicas, in *Utopía y Praxis Latinoamericana*, vol. 24, Special no. 6, 2019, pp. 370–377 (author’s own translation). Tsindeliani reported the views described in certain financial law studies.

40 G. Poynter, *The political economy of state intervention conserving capital over the West’s long Depression*, London and New York: Routledge, 2021.

41 M.A. Plazas Vega, The autonomy of public finance law and tax law, in *International Tax Law Review*, no. 2, 2011, pp. 45 ff.

42 The text continues: “public finance law lives almost exclusively in statutes, none of which are well known outside the *cognoscenti* who advise treasury and finance ministries on their legal rights and obligations. No textbooks in Australia, Canada, New Zealand or the UK explains the form or

terms as “financial law” or “public finance” are used promiscuously, just as terms like “money” or “finance”. In fact, it does not matter which conception of public finance (or rather financial law) we are interested in, because these conceptions have these mentioned terms in common.⁴³

From this perspective, “the uniqueness of each concept of public finance depends on the historical and political evolution of the country or region, in connection with culture, economy and social situation”.⁴⁴

Last, an analytical definition distinguishes three branches of public finance law: “fiscal law, public accounting, budget law”, in any case highlighting that “the boundary between these disciplines is, by all accounts, not watertight. In this regard, public finance is truly a pivotal and intersectional discipline”.⁴⁵ From this perspective, public finance law includes the theoretical and normative questions related to both taxes and accounting principles. Moreover, it embraces all notions related to public budgets and controls over the use of public resources.

Therefore, to summarize, public finance law is the set of rules on: (i) ownership of the public financial power; (ii) taxes and public spending, including the use of public funds; and (iii) management and controls over public resources.

In the study of public finance law, in addition to the problematic definition of the field, there are at least four main issues to take into consideration. These are: the uncertain configuration of financial power in the public sector; the growing “juridification” of public finance; the “primacy” of financial rules and instruments; and the ever-stronger relationship between public finance rules and administrative law. A specific trend may be seen in each of these aspects.

3.1. The power of the purse

Parliamentary control of the budget has always been a traditional mark of western parliamentary democracy, from the very beginning. In British constitutional history, the “founding phase” of this power was characterized by the struggle between

function of the masses of annual and standing appropriation legislation in each jurisdiction, or the statutes under which sovereign borrowing occurs, or the legislation governing the public finance activities of central banks”. Bateman, *Public finance*, pp. 14–15.

43 R. Bartes, Evolution of public finance in selected countries, in *Financial Law Review*, vol. 23, no. 3, 2021, p. 164.

44 Bartes, Evolution of public finance in selected countries, p. 164. Bartes analyzed the evolution of public finance law in France and Germany, concluding that “while the history of the public finance discipline in France dates back at least to the 14th century, in Germany a gradual evolution of this discipline can be observed with certainty only from the 19th century. In France, there are four main historical stages, in which it could be found out by observation of crucial milestones. . . . In the case of Germany, the situation was more complicated. . . . Public finance evolution in each state was different, which ended with the unification of Germany in 1871” (p. 182).

45 F. Waserman, *Les finances publiques*, Paris: La documentation Française, 2016, p. 9 (author’s own translation). On public finance law as a “*science de carrefour*” see P.-M. Gaudemet and J. Molinier, *Finances publiques*, 7th edition, tome 1, Paris: Montchrestien/LGDJ, 1996, p. 20. More recently, H. Rabault, *La constitution financière de la France. Sources fondamentales du droit des finances publiques*, 2nd edition, Paris: L’Harmattan, 2024.

the executive power (the Crown) and the parliament. It also played a central part in the American and French revolutions, and in the early nineteenth-century history of Belgium and Netherlands.⁴⁶ Nevertheless, the framework has significantly changed over time. Who truly exercises the power of the purse, today?

In anglophone systems, some scholarship highlights a specific trend. Parliaments should have full “dominion” over the power of the purse, which theoretically signifies the authority of the legislative body over controlling and distributing public funds;⁴⁷ however, they do not exercise it.⁴⁸ Power is exercised mainly by the government, which influences the entire governance of public finance.⁴⁹ In particular, with regard to the United Kingdom,

throughout the XIX century, the Cabinet of Ministers continued to strengthen its position until its powers in the Parliament were not very different from those of the Tudor and early Stuart Kings. And Ministers consolidated their powers by means of the party system which has tended to become progressively more and more rigid. The consequence of these developments has been that Parliament has lost its capacity to exercise a control over the Government.⁵⁰

In other countries, such as France and Italy, the power of the purse is formally exercised by the parliament and the government (the president and ministers). However, in practice, public financial administrations have acquired an increasingly incisive role in the governance of public finances. Therefore, a peculiar trend emerges in these national contexts too.

In particular, the French Minister of Finance (more precisely, the *Ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique*) has a key role, a “*suprématie*”.⁵¹ In the past, this Minister’s intervention took incisive

46 From a historical perspective, H.E. Fisk, *English public finance. From the Revolution of 1688. With chapters on the Bank of England*, New York: Bankers Trust Company Publications, 1920, Kessinger Publishing reprints, 2010, especially pp. 1–163.

47 In Edmund Burke’s theory of parliamentary politics, the power of the purse is the exercise of control over government on the behalf of the people. It is further explained by W. Selinger, *Parliamentarism. From Burke to Weber*, Cambridge: Cambridge University Press, 2019, p. 59.

48 D. Coombes (ed), *The power of the purse: The role of European parliaments in budgetary decisions*, London: Allen and Unwin, 1976. The book, after analyzing the origins of the power of the purse, demonstrates how, in various western European nations, the parliaments’ power over the purse is in decline.

49 In relation to the system in the United States of America, E. James Ferguson examined the financial history of the American Revolution and the Confederation, and its connection to the country’s constitutional development: E.J. Ferguson, *The power of the purse. A history of American public finance, 1776–1790*, NC: University of North Carolina Press, 1968. See also R.F. Fenno Jr, *The power of the purse. Appropriations politics in congress*, University of Rochester: Little Brown and Company, 1966.

50 F.A. Bland, Parliamentary control of the purse, in *The Australian Quarterly*, vol. 25, no. 2, June 1953, pp. 43–52.

51 “The supremacy of the Minister of Finance is a reality attributed to the particular characteristics of the role in the realm of public spending. This supremacy logically leads, at the level of administrative apparatuses, to the finance administration’s control over the flow of public funds”, S. Kott, *Le contrôle*

forms, such as monthly orders for the distribution of funds and a visa prior to making any expenditure order.⁵² René Stourm asked whether “in France, will the authority of the Minister of Finance ever expand beyond its current limits? Will the other ministers tolerate his excessively intimate intrusion into their affairs?”⁵³ Today, the power of public finance administrative bodies has transformed: it has been shown “how the drive to control ‘commitment’ gave rise to the function of ‘financial expertise’ and led to the concentration of financial information within the public finance administration (Ministry of Finance)”.⁵⁴

In Italy, the growth of the role of the national financial administration in the decisions on and management of financial resources is linked to political bodies’ progressive loss of direction and control in this area. There is undoubtedly a correlation between the two phenomena. In fact, “the inability of the political power and parliamentary forces to tame the growth of the bureaucracy, starting with the financial one, which, to the contrary, took on an increasingly corporate mentality as a ‘separate body’ of the State” contributed to the strengthening of the powers of the financial–budget administration.⁵⁵

In brief, in many countries, the power of the purse migrated from one institution to another, highlighting the loss of control on the part of parliaments.⁵⁶

3.2. *The juridification of public finance*

In relation to the second aspect, the question is: what fuels the juridification of public finance?

With the term “juridification”, we mean “the proliferation of law” or “the tendency towards an increase in formal (or positive, written) law”, per Jürgen Habermas.⁵⁷ In the field of public finance, a trend towards juridification has become increasingly established. At least three main factors have contributed to this process.

des dépenses engages, Paris: Institut de la gestion publique et du développement économique, Comité pour l’histoire économique et financière de la France, 2004, p. 71 (author’s own translation).

52 Orders to distribute funds gave the Minister of Finance an efficiency and “a power of constraint over spenders that many finance officials of the Ancien Régime had claimed”, M. Bottin, Villèle et le contrôle des dépenses publiques, in *La comptabilité publique continuité et modernité, actes du colloque de novembre 1993*, Paris: Comité pour l’histoire économique et financière de la France, 1995, p. 23 (author’s own translation). On the visa power, “the Minister of Finance has extremely broad powers in terms of spending control. . . . In addition to the general supervision of accountants, the Minister of Finance exercised control over all orders that were payable only after the General Movement of Funds had affixed a visa”, G. Palthey, *The prior control of public finances*, Paris: P.U.F., 1942, pp. 14 and 16.

53 R. Stourm, *Le budget*, Paris: Guillaumin, 1896, p. 511 (author’s own translation).

54 Kott, *Le contrôle des dépenses engages* p. 71 (author’s own translation).

55 R. Fauci, *Finanza, amministrazione e pensiero economico. Il caso della contabilità di Stato da Cavour al fascismo*, Turin: Einaudi, 1975, p. 137 (author’s own translation).

56 This trend is extensively examined by G.E. Metzger, Taking appropriations seriously, in *Columbia Law Review*, vol. 121, no. 4, 2021, p. 1075.

57 J. Habermas, *The theory of communicative action*, vol. 2, Boston: Beacon Press, 1987, p. 359. The term is ambiguous, and has also been used for the judiciary (A. Stone Sweet, Judicialization and the

First is the “explosion of audits”, which contributed to the “explosion of rules”.⁵⁸ For example, in the British system,

the audit process was to assume a position of central importance in public service delivery and throughout British public administration. A new institutional basis was provided by the National Audit Act 1983, which set in place a well-staffed National Audit Office (NAO), which works alongside devolved counterparts. The National Audit Act empowered the NAO to examine and report on the economy, efficiency and effectiveness of public spending.⁵⁹

The development both of financial and management audits, and of the functions of auditors, fuelled the adoption of a vast set of technical rules, parameters, criteria, etc. This happened in all EU countries where more advanced financial audits evolved.⁶⁰

Second, the New Public Management (NPM) approach incentivized the development of legislation on fiscal responsibility. In particular, NPM promoted “management by objectives”, by connecting specific responsibilities to the achievement of results.⁶¹ In this framework, “fiscal responsibility laws announce substantive economic principles relating to public sector finances, orientated towards reducing or eliminating fiscal deficits and burdens imposed by long-term public debt”.⁶²

The NPM approach is, for example, at the basis of the EU’s adoption of numerous legal constraints and criteria to contain the deficit and public debt of the Member States belonging to the monetary union. Examples are not only the SGP, including the rules establishing the infringement procedures for excessive financial deficits, but also the even more rigorous rules adopted between 2011 and 2012 as part of the so-called “Fiscal Compact” and “Six Pack” and “Two Pack” measures.⁶³

The third factor consists of the crises and emergencies that affected the global economy over the decades. Various fiscal responsibility laws were also the result of the need to adopt measures to control deficits and ensure debt sustainability, by containing the associated negative impacts. Each crisis catalyzed the introduction of a large set of rules, as will be seen in the following chapters.

construction of governance, in M. Shapiro and A. Stone Sweet (eds), *On law, politics and judicialization*, Oxford: Oxford University Press, 2002, p. 71).

58 Harlow and Rawlings, *Law and Administration*, p. 50.

59 Harlow and Rawlings, *Law and Administration*, p. 51.

60 The NAO has conducted a useful study on this: *State audit in the European Union*, December 2005, https://www.nao.org.uk/wp-content/uploads/2005/12/State_Audit_Book.pdf.

61 Ample literature is available on the NPM. Here, suffice it to recall the key studies by C. Hood, *The new public management in the 1980s: Variations on a theme*, in *Accounting, Organizations and Society*, vol. 20, no. 2–3, 1995, p. 93; and by D. Osborne and T. Gaebler, *Reinventing government. How the entrepreneurial spirit is transforming the public sector*, New York: Penguin, 1992 (which inspired the National Partnership for Reinventing Government or NPR, a government reform initiative launched in the United States in 1993 by Vice President Al Gore).

62 Bateman, *Public finance*, p. 119.

63 See Chapter II.

In brief, the financial crisis of 2008, which primarily affected the US financial market, induced market failure on a global scale, requiring public bailouts and new financial adjustments. In the EU, on one hand, stricter financial constraints were introduced (the so-called austerity rules); on the other, collective financial assistance mechanisms were activated (consider especially the European Stability Mechanism, or ESM).

A similar reaction characterized the management of the effects of the COVID-19 pandemic. This global crisis too spiked the levels of sovereign debts, forcing states to find new resources for the significant increase in public spending on aid and assistance interventions to support the affected populations. Once again, financial rules were adopted. These were defined mostly by the EU, which activated the SGP's general escape clause and established a recovery programme and fund, NextGeneration EU. The EU also developed an articulated financial regulatory framework, the Multiannual Financial Framework (MFF) 2021–2027. Within this framework, the European Commission was temporarily authorized to issue financial instruments on the open market to directly retrieve the resources required to finance the Member States' recovery programmes (Council Decision 2020/2053 of 14 December 2020, or ORD).⁶⁴

Also, Russia's invasion of Ukraine in 2022 and the ensuing critical effects on the European energy market led the EU to adopt several financial rules, in particular to promote energy transition processes in Member States (among many, the REPowerEU plan).⁶⁵

3.3. The “primacy” of public finance rules

With reference to the third aspect, the “primacy” of financial rules and instruments explains how the governance of financial means conditions the definition of public goals, by assuming a central weight, sometimes even in the preparation of reforms.

“Public action is a sociopolitical space constituted both by the techniques and tools and by the purposes, contents and projects of the actors”.⁶⁶ On this point, it has been noted that the functionalist approach, for which the most important factor are the ends, is now outdated: “the view that tools are merely instrumental is now reversed, as they enter the foreground”.⁶⁷

64 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (ORD).

65 R. Bouckaert, *From the green deal to repower EU. What about the EU's Southern fossil gas suppliers?* Foundation for European Progressive Studies, February 2023, <https://feps-europe.eu/wp-content/uploads/2023/02/From-the-Green-Deal-to-REPower-EU.pdf>.

66 P. Lascoumes and P. Le Galès, *Introduzione. L'azione pubblica attraverso i suoi strumenti*, in P. Lascoumes and P. Le Galès (eds), *Gli strumenti per governare*, Italian edition, Milan: Mondadori, 2009, p. 2 (author's own translation).

67 S. Cassese, *Prefazione*, in P. Lascoumes and P. Le Galès (eds), *Gli strumenti per governare*, Milan: Mondadori, 2009, p. X.

The instruments prevail over the ends even more significantly in the context of the financial means and practices adopted in public administration. This is a long-standing trend: already in the introduction to the first complete treatise on Italian administrative law, edited by Vittorio Emanuele Orlando, it was noted that “the budgets of modern states have increased by prodigious proportions, so much so that finance, from being a simple means, has ended up prevailing over the goals of the modern state”.⁶⁸ From this perspective, financial rules and measures can be defined as “governance tools”.⁶⁹

To specify the meaning of financial primacy, at least two aspects can be considered. First, what are the foundations of such primacy? Second, what are its effects?

With regard to the foundations, it is possible to recognize a “need for financial rules”. This need is strictly connected to the politics of sound public finances, as currently defined by Article 317 of the Treaty on the Functioning of the European Union (TFEU).⁷⁰ The principle of sound public finances involves balanced budgets, reduction of public debts, transparency in reporting, audits, control of expenditure and more.⁷¹ It derives from the rule of law as applied in the EU context: “respect for EU values must be ensured throughout all EU policies, including the EU budget”.⁷² Especially in relation to EU funds,

the CJEU [Court of Justice of the European Union] holds that the principle of sound financial management . . . corresponds to the principle of sincere cooperation (as applied more generally in EU law). The CJEU often recalls this principle in the context of EU rules that establish tasks related to the management and spending of EU funds to underline the necessity of ensuring the integrity of their distribution.⁷³

From another perspective, “sound financial management can be understood as closely associated with ‘value for money’ considerations – above anything else”.⁷⁴

68 V.E. Orlando (ed), *Primo trattato completo di diritto amministrativo italiano*, Milan: Soc. ed. Libreria, 1897, I (Introduzione), p. XIII (author’s own translation).

69 P. Bezes and A. Siné (eds), *Gouverner (par) les finances publiques, Perspectives de recherche*, Paris: Presses de Sciences Po, 2011, p. 17.

70 Article 317(1): “The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management”.

71 Sound public finances form the cornerstone of budget law. See Chapter V, Section 2.

72 A.V. Bogdandy and J. Lacy, *Suspension of EU funds for breaching the rule of law – a dose of tough love needed?* in *European Policy Analysis*, no. 7, June 2020, p. 2.

73 Bogdandy and Lacy, *Suspension of EU funds for breaching the rule of law*, p. 4.

74 N. Vogiatzis, On the interplay between good administration and sound financial management. The view from Strasbourg, in P. Stephenson, M.-L. Sánchez-Barrueco and H. Aden (eds), *Financial accountability in the European Union. Institutions, policy and practice*, London and New York: Routledge, 2021, p. 77.

Therefore, the primacy of public finance law in the EU context is based on the need to guarantee specific financial conditions in order to preserve the economy of the Member States and ensure first entry, and then permanence, in the monetary union (euro area). The Treaty of Maastricht, as later also reiterated in the TFEU, declares that sound management of the public finances of Member States must be considered one of the main premises for the creation of an open market economy with free competition, giving rise to the need to set specific and uniformly applicable parameters, based on the ban on excessive deficits. This goal prevails over all others.

With regard to the foundations, there is another aspect to consider. The primacy of public finance law also appears to derive from financial rules' apparent "moralizing force". Using public resources properly is a duty, regardless of the existence of specific regulatory provisions. Such proper use enables concrete respect for the rule of law, which lies at the basis of a democratic state, a cornerstone of modern civilized democracies. This ideological perspective has also been expressed in the following terms: "finance is like fate in ancient times: it leads the willing and drags the unwilling".⁷⁵

The primacy of public finance law has multiple effects, as will be seen in the forthcoming examples.

Some scholars examine the relationship between public finance and the protection of rights, by highlighting at least two dimensions. The first considers the positive impact that public financial rules can have on the protection of some fundamental rights (as in the case of the European financial conditionality, envisaged to guarantee the protection of the rule of law: see, for example, Regulation EU 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, or the rules on European funds for the common agricultural policy and cohesion policies). The second dimension, instead, highlights the negative impacts and limitations that public financial constraints can have on the protection of certain social rights (for example "financially conditioned rights", which the Italian Constitutional Court examined in relation to the rules on public spending cuts).⁷⁶

Other effects regard how public finance constraints condition the formulation of administrative reforms, not only in the sense of spending reviews but also of developing specific public policies (such as digital transition in public administrations, financed by NextGeneration EU). From this perspective, the rules on public finance conditioned the policies to recover and relaunch the country after the pandemic, especially within the NextGeneration EU framework.⁷⁷

Last, the primacy of public finance law strengthens public administration, and especially the role of the financial bureaucracy. It is the natural reflection of the growing weight of financial means in formulating public policies: whoever manages the resources also manages the power. This tendency is also part of the more

75 Chamber of Deputies of the Italian Parliament, *Discorsi parlamentari di Marco Minghetti, II*, Roma: Tipografia della Camera dei deputati, 1888, 2 August 1862, p. 78 (author's own translation).

76 For further details, see Chapter V, Section 2.

77 See Chapters III, Section 4 and V, Section 1.

complex phenomenon of the power of “instrumentation” (think of Max Weber’s theories on the role of the instruments of public action as techniques for domination, or Michel Foucault’s studies on the concept and practices of “governmentality”).⁷⁸

Currently, the growing weight of the EU financial constraints is one of the main causes of the strengthening of both public administration (to the detriment of politics) and the administrative bodies’ ability to influence public policies. However, this tendency was also clear in the past. Basically, financial constraints are not readily understandable by politicians, while they are the “daily bread” of the professional bureaucracy.

Think of the Treasury’s role in the history of England, as told by John Maynard Keynes:⁷⁹

The Treasury has been co-existent in its present form with the civil service in its present form, and it was the crown of the structure which under the Gladstonian epoch took the place of the old semi-corrupt patronage institutions which were the legacy of the eighteenth century. Under the successive great chiefs of the Treasury, its prestige was built up. As it existed in the days previous to the war, while its legal authority was very considerable, its real force was derived, I should say, from its prestige which had been built up by the successive great chiefs under various Chancellors of the Exchequer and traditions of government of which it was so important a part.

Moreover, “the Treasury thus came to adopt those weapons which are, perhaps, usual with an institution which depends to a great extent on prestige – precedent, formalism, aloofness, and even sometimes obstruction by the process of delay, and sometimes indefinite replies”. The upshot is that:

the Treasury is not only the head of the civil service in name, but it stands for the prestige of the whole body; and no bureaucracy can be efficient unless it is subject to the hourly castigation of a formidable Treasury.⁸⁰

Thus, the technicality and relevance of the rules and instruments of public finance strengthen those who know and control them – the financial bureaucracy (“*burocrazia della cifra*”, in Italy). In this sense, the primacy of public finance law translates into the strengthening (and primacy) of public administration (and especially of public financial administration).⁸¹

78 On the relationship between instrumentation and administrative capacities, K. Wegrich, Policy instruments and administrative capacities, in B.G. Peters and I. Thynne (eds), *Oxford encyclopedia of public administration*, Oxford: Oxford University Press, 2022.

79 In January 1915, Keynes took up an official government position in the Treasury.

80 Shorthand record of a speech given by Keynes in 1921 at the Society of Civil Servants. The speech is published in English and Italian: G. Farese, *John Maynard Keynes. Il Tesoro*, Rome: Fondazione Ugo La Malfa, 2018, p. 48.

81 This theory is explained by J. Gonçalves De Araújo, F.J. Sobreira De Matos and J.G. Nascimento De Araújo, Accounting as a tool for maintenance of bureaucratic domination, in *International Journal of Critical Accounting*, vol. 10, no. 5, 2018, p. 380.

This book identifies and explores a new issue: the effects of public finance rules on the public administration. This approach could be considered a new way of studying and demonstrating the primacy of public finance law, through a reversal of perspectives: no longer is the lens of the exercise of power adopted, but rather that of the specific impacts of the exercise of such power. Such impacts also have repercussions on those involved in the exercise of power, that is, public administration, as will be explained in the following chapters. For this reason too, the approach both of administrative law and of public administration scholarship take on a central role.

3.4. Public finance law as part of administrative law

Paul Laband defined budget law as “the cornerstone and basis of all rights of representation of the people, the fulcrum of constitutional law”.⁸² Later, the fourth volume of Guido Zanobini’s “Administrative Law Course”, on the “tools of administrative action”, contains an analysis of “financial legislation as part of administrative law”. It concerns the “dynamic tools” of public action, which demonstrate the “natural position of financial activity within the broader field of administrative activity”.⁸³

Therefore, public finance law is intimately connected with public law. In particular, it is possible to affirm that the origin of financial power (the power of the purse) constitutes the backbone of every modern parliamentary system, the reason why there are constitutional law studies on the genesis and substantive nature of this power. At the same time, its concrete exercise is of direct interest to the executive branch and, in particular, to the public administration; various administrative law textbooks devote a chapter to public finance.⁸⁴

The management of public resources is one of the main functions of public administration. The use of public resources is an instrumental activity and forms the objective of the organization of public administrations. The management phase is usually characterized by common revenue management procedures (assessments, collections, tax payments) and expenses (commitments, liquidations, orders and payments) and by other administrative tasks of different types. Indeed, the public administration is tasked with the management of public resources, although, as reported in the previous section, the administration also plays an increasingly significant role in decision-making and governance – that is, the direction expressed through the identification, definition and programming of financial means. Public administration *de facto* affects and makes many financial choices, which precede the management phase.

From this perspective, public finance law is the core of the administrative state.⁸⁵

82 Laband, *Das Budgetrecht*.

83 G. Zanobini, *Corso di diritto amministrativo, vol. IV: I mezzi dell'azione amministrativa*, Milan: Giuffrè, 1945, p. 250 (author’s own translation).

84 For an interesting point of view, see Tsindeliani, *Estructura institucional del derecho de finanzas públicas*, p. 370, which studied how to define the system of financial law as a separate branch of the law.

85 For a general perspective, see K.C. Dogan and O. Ugur (eds), *Public administration and public finance research*, Lyon: Livre de Lyon, 2021. This work analyzes the relationship between public administration and public finance in non-EU countries, such as Türkiye.

Currently, the centrality of public finance law in the activity of public administrations, and consequently administrative law, is even greater, for at least two reasons. The first is the process of EU integration, especially through the creation of the monetary union. This entailed the establishment of precise constraints and financial rules at the EU level, the application of which was entrusted mainly to national public administrative bodies in the Member States.

For example, the balanced budget rule established under EU law requires Member States to carefully evaluate the financial effects of expenditure forecasts on their balances, not only in the state budget but also in the legislative acts adopted throughout the year and that may entail new or greater charges than those foreseen in the budget. Identifying these effects, especially on countries' net debt, is key to comply with EU parameters, especially under the previous SGP. For budget forecasts, this calculation is entrusted to public administration – more precisely, to the administrative bodies dealing with public finance. For further regulatory provisions involving new or greater charges than those in the budget, the task would fall to the ministries responsible for the matter covered by the expenditure forecast. This significantly affects the public administration's actions.⁸⁶

Another example regards the introduction of the European Semester cycle. This Semester has a timetable, according to which the Member States receive EU guidelines and then submit their policy plans for assessment by EU institutions. The evaluation of these plans, explained in country-specific recommendations (CSRs), affects national budgetary and reform policies. "The Member States are expected to take these recommendations into account when defining their budget for the following year and when taking decisions related to their economic, employment and education policies, among others".⁸⁷ The cycle is articulated in various phases, within which EU institutions orient and monitor the main public reforms and choices of Member States.⁸⁸

Therefore, EU rules on public finance are increasingly blended with the state's procedural and organizational administrative rules, becoming one and the same.

The second reason why public finance law has assumed a pivotal position in public administrative activity concerns the recent economic global crises, which also involved the EU. The great economic crises of recent decades, such as the one resulting from the COVID-19 pandemic, have highlighted even more how the EU Member States' stability and capacity for recovery and development depend, first and foremost, on the ability to direct and manage public resources, in the two opposing perspectives of austerity and the more recent one of "cascade of resources". In both cases, the financial framework played a preliminary role, constituting the framework within which public administrations were required to implement reform plans.

The application of the national recovery and resilience plans (RRPs) under the NextGeneration EU framework is a clear example of this trend. The Recovery and

86 See Chapters II, Section 3 and III, Section 5, which also analyze the revised SGP.

87 See <https://www.consilium.europa.eu/en/policies/european-semester/how-european-semester-works/>.

88 For the analysis of the European Semester cycle, see again Chapters II, Section 3 and III, Section 3.

Resilience Facility (RRF) generated an enormous amount of new administrative rules, profoundly influencing the reporting methods of administrative activities, the regulation of public contracts, the transparency of public accounts and the system of administrative controls, to mention only some aspects.⁸⁹

Both of the aforementioned reasons (EU monetary policy and economic global crises) can be considered “exogenous” factors with respect to the state. These phenomena not only have enormous impacts on the subject matter of administrative law (the organization of the administration, civil service, administrative procedures, institutional relations, etc., as will be seen in following chapters) but also on the configuration of this branch of law in relation to the legal system, as a whole. Administrative law has become the “site” where the rules of national administrative action and the needs of public finance, increasingly dependent on exogenous factors, are reconciled. From this perspective, administrative law today contains the “point of balance” between the specificities of national systems and the financial conditioning resulting from multifarious external sources. This tendency has fuelled the “living dimension” of this branch of law, which evolves into strict adherence to the evolution of the relationship between public institutions and civil – today, global – society.⁹⁰

4. The European Union context: the scope of the analysis

In the EU context, a “supranational governance of public finance” is distinguishable, based primarily on Articles 119 and 121 TFEU. Article 119(3) TFEU establishes the principle of sound (national and supranational) public finances within the regulation of economic and monetary policy. Article 121(3) provides for “closer coordination of economic policies and sustained convergence of the economic performances of the Member State”. Therefore, public finance governance in the EU is based on a general mechanism of closer coordination among Member States, and between the EU and each Member State. It reflects a specific structure of

89 For an analysis of the burdens entailed under NextGeneration EU and related details, see D. Cahen, A. Valroff and E. Krief, *Is next generation EU a game changer? A comparison with IRA and ways to respond*, EUROFI Regulatory Update, February 2024, https://www.eurofi.net/wp-content/uploads/2024/03/eurofi_is-next-generation-eu-a-game-changer-a-comparison-with-ira-and-ways-to-respond_ghent_february_2024.pdf.

90 There are several studies on how EU law affects national administrative law in Member States: for example, among the studies regarding the founding Member States, see H. Hofmann, *Europeanisation and German public administration*, in S. Kuhlmann, I. Proeller, D. Schimanke and J. Ziekow (eds), *Public administration in Germany. Governance and public management*, London: Palgrave Macmillan, 2021, p. 53; on the newer Member States, see J. Radomir, *The influence of EU Law on public administration in new Member States*, in *Public Governance, Administration and Finances Law Review*, vol. 5, no. 1, 2020, p. 48. In contrast, it is worth mentioning the study of L. Enqvist and M. Naarttijärvi, *Administrative independence under EU law: Stuck between a Rock and Costanzo?* in *European Public Law*, vol. 27, no. 4, 2021, p. 707, who explained how the effect of the EU law obligations of effectiveness and loyalty weakens the government’s hierarchical influence over its own bodies, interfering with the effective application of EU law. Nevertheless, there are no studies on how EU public finance rules have shaped – and are shaping – national public administrations.

attributions: while monetary policy at national and supranational levels is an exclusive competence of the EU (regarding which the roles of the European Central Bank, or ECB, and the European System of National Central Banks are essential), economic–financial policy falls within the shared competence of the EU and the Member States.

This legal framework is the result of a long historical process.⁹¹ In particular, the affirmation of an EU monetary governance, which began as early as the 1970s with the establishment of the European Cooperation Fund and the European Monetary System, gradually led to the inclusion of national budgetary policies in the matters of common EU interest.⁹² At least two important points arise. The first regards the centrality of EU monetary policy and its growing ability to influence economic–financial policy at national and supranational levels. The second concerns how the governance of public finances constitutes the *passé-partout* through which the needs of EU monetary policy influence not only the contents of national public policies but especially the configuration of the “right of budget” and, more specifically, national public administration.

In relation to the first aspect, the Delors report recognized the strong role of the ECB and foreshadowed a centralization of monetary policy, separating it from economic–financial policy, as was then crystallized in the Maastricht Treaty and in the TFEU.⁹³ Some scholars underlined that this separation was a serious mistake in the construction of the EU legal framework.⁹⁴ Nevertheless, EU monetary policy does not only have strong and evident connections with economic–financial policy (it should be recalled that sound national public finances were defined as a main parameter for the development of the EU monetary union, as programmed by the aforementioned Delors report). Above all, it also exercised growing forms of conditioning on economic–financial governance in Member States, by increasingly affecting the public finance choices adopted by national governments.

This ability of monetary policy to influence the governance of national public finances became more pronounced especially during crises. Briefly, the sovereign debt crisis and, in particular, the near-default of Greece in 2009–2010 led the ECB to intervene on a “supplementary basis” due to the limited effectiveness of

91 It was a process partially influenced by the – positive and negative – developments of the preexisting Bretton Woods system: for the theoretical framework, we recall the well-known study of J.M. Keynes, *A treatise on money (1930)*, London: Palgrave Macmillan, 1935, especially Chapters 36 and 38 (vol. VII), pp. 332 and 388 ff.

92 From a historical point of view, A. Varsori, *Storia della costruzione europea. Dal 1947 a oggi*, Bologna: Il Mulino, 2023, especially p. 185.

93 The Delors report (report on “Economic and Monetary Union in the European Community”, April 1989), among other aspects, studied the full and irreversible convertibility between currencies, the absolute free movement of capital and the elimination of exchange rate fluctuations.

94 Nevertheless, this approach was strengthened by the CJEU. In Case C-370/12, *Thomas Pringle v Government of Ireland*, 27 November 2012, it excluded that the ESM Treaty could affect the rules on monetary policy, on the basis of the different objectives pursued by the two types of measures: the mechanism for granting financial assistance to Member States “manifestly does not fall within the sphere of monetary policy” (paragraphs 53 and 57).

the financial assistance instruments put in place by the European Commission (or Commission) and Council of the EU (or Council). To this end, the ECB purchased bonds and debt securities of struggling Member States (Italy, Spain, Portugal, Greece), made loans to central banks (to increase circulating liquidity), established reductions of the interest rate and launched the Outright Monetary Transactions (OMTs) programme, with which the ECB could unlimitedly purchase public debt securities of Member States that agreed to implement a structural reform programme. Moreover, in 2015, the ECB launched quantitative easing programmes to promote an increase in the quantity of currency in circulation and to facilitate access to credit for businesses and families. Through these tools and interventions, monetary policy strongly influenced the adoption of several public reforms in some Member States, in those specific historical phases.⁹⁵

More recently, it should be noted that the RRF, within NextGeneration EU, further increased the weight of monetary policy and its connection with the governance of public finances. In particular, the “common European indebtedness”, with the issuance of debt securities directly by the Commission (in a “Europeanization” of debt), had the main aim of guaranteeing the conditions to ensure price stability and the solidity of the euro area. The trend confirms that monetary policy has always been the main driver of the EU public finance choices applied to Member States.

As regards the second aspect, it can be seen that the governance of public finances is the vehicle through which EU monetary policy can influence national legal systems. In this sense, a “chain of conditioning” is recognizable, which starts from EU monetary policy and reaches national public administrations in the Member States. The conditioning operates through indirect interconnections, intrinsic but not formalized links, which are made possible especially thanks to the tools and rules of public finance established by the EU.

This phenomenon makes far-reaching changes to the configuration and aims of the right of budget. Previous sections have highlighted how such a right lies at the origins of modern European national states, representing the cornerstone of democratic–parliamentary structures. The sections recalled the fundamental principle according to which the budget, which contains the state’s main financial rules, is approved by the parliament (the representative body of the community taxpayers), which authorizes the government (in the past, the sovereign) to exercise the power to arrange income and expenses. Spending is limited by the economic capacity and willingness of taxpayers to finance it.

In the EU context, the original aims of the national right of budget are increasingly replaced by the purposes of EU monetary policy, through the rules and tools of EU economic–financial policy. This trend – as will be seen in the following

95 For a general analysis of impacts deriving from crises on the EU, also in the financial dimension, M. Riddervold, J. Trondal and A. Newsome (eds), *The Palgrave handbook of EU crises*, London: Palgrave Macmillan, 2021, pp. 375–442 (the four chapters written, respectively, by A. Newsome, M. Riddervold and J. Trondal; E.D.H. Olsen and G. Rosén; E. Tegle Stenstad and B. Sofus Tranøy; J.A. Caporaso).

chapters – places public administration at centre stage for at least two reasons. First, national finance rules are strongly conditioned by EU financial rules and programmes. This further contributes to the weakening of national parliaments (with the resulting problem of a democratic deficit), since financial decisions taken in Brussels assume a leading role, and the main interpreters of those decisions are the national executive branches, through the technical–administrative apparatus.⁹⁶ Second, EU financial rules and programmes, which are also implemented at the national level, touch upon every aspect of public administrative action. Hence, a “shaping power” of public finance law emerges, in ways and forms that will be examined in the following chapters.

Therefore, EU and national public finance rules (which usually implement the European ones) are the main tools of this shaping power. At the same time, EU institutions and, especially, public administrations in the Member States are “shaped”. In the past, “administrative systems and administrative law were shaped according to the needs of the various different state models”.⁹⁷ Today, national administrative systems are shaped by public finance rules, according to technical and exogenous needs.

This scenario raises numerous questions. Do public finance rules cause the fragmentation of public administrations? Or, on the contrary, do they standardize them? Do they “Europeanize” public administrations? Do they improve them? Do they make them worse? Do they affect the relationships between the public administration and other public powers? Do they affect the capacity of public administrations to protect fundamental rights?⁹⁸

5. The structure of this book

The main purpose of this book is to analyze how the proliferation of public finance rules (public finance law) in the EU has affected – and still affects – the configuration of public administrations in EU Member States, shaping their characteristics in light of technical needs, which do not always represent general public interests.⁹⁹ The ultimate goal is to understand whether such a “shaping power” has resulted in the capacity to improve the public administration or, instead, has produced negative and dysfunctional effects, especially for civil society. Therefore,

96 On the democratic deficit in the EU, there is a vast literature. Among the many studies, we limit ourselves to recalling D. Curtin, *Executive power of the European Union. Law, practices, and the living constitution*, Oxford: Oxford University Press, 2009 and P.L. Lindseth, *Power and legitimacy. Reconciling Europe and the nation state*, Oxford: Oxford University Press, 2010.

97 S. Cassese, The administrative state in Europe, in A. von Bogdandy, P.M. Huber and S. Cassese (eds), *The administrative state*, vol. I, Oxford: Oxford University Press, 2017, p. 58.

98 A wider process of “Europeanization” has been studied in terms of institutional learning and legal doctrine: K. Featherstone and C. Radaelli (eds), *The politics of Europeanization*, Oxford: Oxford University Press, 2003 and M. Bobek, Europeanization of public law, in A. von Bogdandy, P.M. Huber and S. Cassese (eds), *The administrative state*, Oxford: Oxford University Press, 2017, p. 631.

99 Therefore, this analysis is not an economic evaluation or impact assessment of the rules (such as those implemented by the EU Commission for EU rules).

the book seeks to shed light on and study a phenomenon or trend that transcends specific temporal coordinates, while having a specific spatial scope (the territory of the EU).

The effects to be considered are those related to the application of the rules, but also those that arise due to changes in the EU system and are reflected at the national level. Accordingly, the impacts of public finance law on the “static” elements of public administration (functions, public organization and the civil service) are analyzed.

The analysis will develop in the following chapters and, in particular, in Chapter II (*The problem*). This chapter examines the legal dimension of public finance, reconstructing the complex of principles and rules adopted by the EU. EU financial rules have a crucial role and impact on the national management of public finance. From this perspective, there exist a multilevel governance of public finance and a complex of financial law sources applied at both the EU and national levels, with significant effects on the configuration and functioning of the public administration.

Chapter III (*The origins of the problem*) examines the effects of the global crises on public finance and, especially, how they have contributed to the expansion of public finance law in EU legislation. More precisely, public finance rules have proliferated over the course of a decade. This was fuelled by the directly proportional relationship between the entity of the crises, exacerbated by the outbreak of war in Ukraine in 2022 and the interventions of the EU and national regulatory powers. This trend left – and continues to leave – notable marks on the public administration, at both supranational and domestic levels. Indeed, the recent global economic crises increased the legal dimension of public finance. This emerged visibly in relation to the 2008 economic crisis but also the more recent one caused by the COVID-19 pandemic, which entailed the need to define and adopt new financial rules. Indeed, in both the austerity and the post-pandemic periods, the EU adopted several financial rules and measures to deal with the crises affecting the Member States (and the rest of the world). This contributed to the increasing influence of public finance rules on the EU administrative apparatus, especially the role of the Commission, and on public administration in the EU Member States. In this sense, the constant leading role of public finance law in the EU emerged.

The following chapters of this book engage in a detailed analysis of the various impacts of public finance on public administration in EU Member States. In particular, for the purpose of identifying these forms of conditioning or impacts, certain key components of the public administration are selected.

Chapter IV (*How public finance rules shape public administration: case studies*) analyzes the impacts of public finance rules on certain structural aspects of the public administration, here called “static elements”. These elements include activities such as the provision of public services, the organization of the public administration (apparatus, ministries, departments, agencies, etc.) and the civil service. The chapter examines the impacts of public finance rules on administrative activities, especially the development or curtailment of public services. Second, it studies how public finance rules redefine the scope of public administrations’ organization.

Third, it analyzes the impacts of public finance rules on the size of the civil service. For each element, case studies from selected EU Member States are examined. Nevertheless, the analysis does not compare different national experiences, but rather shows how public finance rules act in different EU Member States.

Chapter V (*Constructing a theory of the shaping power: general trends and perspectives*) reconstructs general trends and perspectives in the implementation of public finance rules, especially in relation to the political and social dimensions. The chapter draws a set of outcomes (lessons) from the case studies analyzed in Chapter IV, around a series of questions. Do public finance rules improve or worsen the functioning of the public administration? Does more public spending mean better functioning for the public administration? What is the impact of the primacy of public finance rules on good administration? Is there opposition between the principle of sound financial management and that of good administration? Did these principles improve the public administration's capacity to react to increased complexity in the management of public resources? Did these regulations strengthen the role of the public administration, or weaken it by favouring other centres of power?

In answering these questions, on one hand, the chapter explains the relationship between public administration and civil society, also in relation to the ability of public administration to protect individual rights and public interests. On the other hand, the chapter considers the relationship between public administration and politics in broad terms, especially the roles of public administration, governments and parliaments in the exercise of financial power. An analysis of the public finance rules' impacts on the balance between public powers follows, examining how public finance rules boost the role of budget administration (especially) to the detriment of the other public institutions. At the same time, the chapter investigates the influence of public finance rules on the relationship between public administration and the private sector, highlighting interesting trends.

Chapter VI (*Conclusions: will public finance law "save" public administration?*) concludes the analysis, highlighting that the shaping power of EU public finance law is not detrimental to public administration – quite the opposite. Nevertheless, the national implementation of EU public finance rules and measures has generated various problems, due to the promotion of a model that is not always aligned with the specificities of public administrations in the Member States. The future implementation of EU public finance rules should, instead, take these specificities into greater account, also because public administrations in Member States will play an increasingly crucial role in the future evolution of the European public finance system.