



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: "Estonia"

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I - Political context

POLITICAL CHANGE

I.1

WHAT IS THE POLITICAL CONTEXT OF THE EUROZONE CRISIS PERIOD IN ESTONIA? HAVE THERE BEEN CHANGES IN GOVERNMENT, ELECTIONS, REFERENDA OR OTHER MAJOR POLITICAL EVENTS DURING THE PERIOD OF 2008-PRESENT?

Estonian political landscape remained stable throughout the crisis. Prime Minister Andrus Ansip formed three governments, in 2005, 2007 and 2011, respectively. His party, the Reform Party maintained popularity in spite of economic reforms and stringent austerity measures taken during the crisis, winning regular parliamentary elections both in 2007 and 2011. After nearly nine years in office, on 26 March 2014 Andrus Ansip resigned as Prime Minister and a new government was formed. The new Prime Minister Taavi Rõivas leads a coalition consisting of two political parties - the Reform Party and the Social Democratic Party. The latter replaced in the government the Pro Patria and Res Publica Union. Effectively conducted economic policy enabled Estonia to adopt the Euro on 1 January 2011, in the midst of the economic crisis.

II - Changes to the Budgetary Process

BUDGETARY PROCESS

II.1

DESCRIBE THE MAIN CHARACTERISTICS OF THE BUDGETARY PROCESS (CYCLE, ACTORS, INSTRUMENTS, ETC.) IN ESTONIA.

“Pursuant to [§ 115 of] the Constitution, the Riigikogu shall pass as a law the budget of all state revenue and expenditure for each year. The Government of the Republic shall submit a draft state budget to the Riigikogu not later than three months before the beginning of the budgetary year. The procedure of drawing up, adoption and implementation of the state budget has been established by the State Budget Act. The legislative proceeding of the draft state budget by the Riigikogu is conducted pursuant to the State Budget Act and the Riigikogu Rules of Procedure and Internal Rules Act. (...)”

The draft state budget is deliberated by the Riigikogu at three readings. At the first reading, the Minister of Finance makes a report on general principles of the draft state budget and gives an overview of the condition of the Estonian economy and the main objectives of the Government of the Republic.”[\[1\]](#)

After the close of the first reading, members, standing committees and factions of the Riigikogu may submit motions to amend; the motions must conform to § 20 of the State Budget Act which requires that the amendments which have the effect of decreasing estimated revenue or increasing or reallocating expenditure be appended with financial calculations which demonstrate the sources of revenue necessary to cover the expenditure. “The Finance Committee considers the motions to amend and introduces the accepted amendments into the draft budget. The Government of the Republic also gives its opinion about the motions to amend.

At the second reading, deliberation of the provisions takes place. After the close of the second reading and at the third reading of the draft state budget, only factions and standing committees of the Riigikogu may submit motions to amend.

The state budget shall be passed by a majority of votes in favour (...). The adopted state budget shall enter into force at the beginning of the budgetary year. If the Riigikogu has not passed the state budget within two months after the beginning of the budgetary year, the President of the Republic shall declare extraordinary elections to the Riigikogu”[\[2\]](#) (according to § 119 of the Constitution).

GENERAL CHANGE

II.2

HOW HAS THE BUDGETARY PROCESS CHANGED SINCE THE BEGINNING OF THE FINANCIAL/EUROZONE CRISIS?

No changes.

INSTITUTIONAL CHANGE

II.3

WHAT INSTITUTIONAL CHANGES ARE BROUGHT ABOUT BY THE CHANGES IN THE BUDGETARY PROCESS, E.G. RELATING TO COMPETENCES OF PARLIAMENT, GOVERNMENT, THE JUDICIARY AND INDEPENDENT ADVISORY BODIES?

No changes.

CHANGE OF TIME-LINE

II.4

HOW HAS THE TIME-LINE OF THE BUDGETARY CYCLE CHANGED AS A RESULT OF THE IMPLEMENTATION OF EURO-CRISIS LAW?

No changes.

MISCELLANEOUS

II.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND CHANGES TO THE BUDGETARY PROCESS?

Not applicable.

[1] Passing the State Budget, available at: <http://www.riigikogu.ee/index.php?id=35271&highlight=budget>.

[2] Passing the State Budget, available at:
<http://www.riigikogu.ee/index.php?id=35271&highlight=budget>.

III - Changes to Constitutional Law

NATURE NATIONAL INSTRUMENTS

III.1

WHAT IS THE CHARACTER OF THE LEGAL INSTRUMENTS ADOPTED AT NATIONAL LEVEL TO IMPLEMENT EURO-CRISIS LAW (CONSTITUTIONAL AMENDMENT, ORGANIC LAWS, ORDINARY LEGISLATION, ETC)?

Organic laws:

- The State Budget Act was amended for the implementation of the EFSF (see question IV.3)
- A new State Budget Bill (to replace the State Budget Act) is planned for the implementation of Directive 2011/85/EU (see question VII.2) and the Fiscal Compact (see question IX.4).

Ordinary legislation (acts of ratification):

- The Act on Ratification and Implementation of Treaty Establishing European Stability Mechanism was adopted for the ESM Treaty (see e.g. questions VIII.5-6)

Resolutions of the Parliament:

- Parliament adopted 'Resolution on ensuring performance of the obligations arising from the European Financial Stability Facility (EFSF) Framework Agreement and amendments thereto' for the EFSF (see question IV.2).

CONSTITUTIONAL AMENDMENT

III.2

HAVE THERE BEEN ANY CONSTITUTIONAL AMENDMENTS IN RESPONSE TO THE EURO-CRISIS OR RELATED TO EURO-CRISIS LAW? OR HAVE ANY AMENDMENTS BEEN PROPOSED?

No.

CONSTITUTIONAL CONTEXT

III.3

IF NATIONAL CONSTITUTIONAL LAW ALREADY CONTAINED RELEVANT ELEMENTS, SUCH AS A BALANCED BUDGET RULE OR INDEPENDENT BUDGETARY COUNCILS, BEFORE THE CRISIS THAT ARE NOW PART OF EURO-CRISIS LAW, WHAT IS THE BACKGROUND OF THESE RULES?

Not applicable.

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

WHAT IS THE PURPOSE OF THE CONSTITUTIONAL AMENDMENT AND WHAT IS ITS POSITION IN THE CONSTITUTION?

Not applicable.

RELATIONSHIP WITH EU LAW

III.5

IS THE CONSTITUTIONAL AMENDMENT SEEN AS CHANGING THE RELATIONSHIP BETWEEN NATIONAL AND EUROPEAN

CONSTITUTIONAL LAW?

There have not been discussions in the context of constitutional amendments being seen as changing the relationship between national and European constitutional law.

ORGANIC LAW

III.6

HAVE THERE BEEN CHANGES TO ORGANIC LAWS OR OTHER TYPES OF LEGISLATION THAT ARE OF A DIFFERENT NATURE OR LEVEL THAN ORDINARY LEGISLATION, IN RELATION TO EURO-CRISIS LAW OR THE BUDGETARY PROCESS?

Yes, the State Budget Act (amendment of which has to take place through a majority of the membership of the Riigikogu, see Article 104 clause 11 of the Constitution and question IV.3) and the Riigikogu Rules of Procedure and Internal Rules Act in reaction to ESM Treaty.

CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

III.7

IF ORDINARY LEGISLATION WAS ADOPTED IN CONJUNCTION WITH A CONSTITUTIONAL AMENDMENT, WHAT IS THE RELATIONSHIP BETWEEN THE TWO?

Not applicable.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

IN THE PUBLIC AND POLITICAL DISCUSSIONS ON THE ADOPTION OF ORDINARY LEGISLATION, WHAT WAS THE PERCEPTION ON THE APPROPRIATE LEGAL FRAMEWORK? WAS THE ORDINARY LEGISLATION SEEN AS IMPLEMENTING NATIONAL CONSTITUTIONAL LAW, OR EURO-CRISIS LAW?

Euro-crisis law. This becomes apparent from all sources, including the short-hand reports of parliamentary debates. The debates in the parliament as well as in the media invariably focus on managing the euro-crisis.

MISCELLANEOUS

III.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND TO CHANGES TO NATIONAL (CONSTITUTIONAL) LAW?

Not applicable.

IV - Early Emergency Funding

Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 1st round of Greek loan assistance).

The European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF) are two temporary emergency funds, both resulting from the turbulent political weekend of 7-9 May 2010. On May 9, a Decision of the Representatives of the Governments of the Euro Area Member States was adopted expressing agreement on both funds.

The EFSM is based on a 'Council regulation establishing a European financial stabilisation mechanism' of May 11, 2010 adopted on the basis of article 122(2) TFEU and therefore binding on all 27 member states of the EU.

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0001:EN:PDF>)

The EFSF is a special purpose vehicle created under Luxembourgish private law by the 17 member states of the Eurozone. The EFSF Framework Agreement was signed on June 7, 2010. On June 24, 2011, the Heads of State or Government of the Eurozone agreed to increase the EFSF's scope of activity and increase its guarantee commitments.

(http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf and http://www.efsf.europa.eu/attachments/faq_en.pdf)

NEGOTIATION

IV.1:

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER IN THE NEGOTIATION OF THE EFSF AND THE EFSM, IN PARTICULAR IN RELATION TO (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

During the negotiations of the EFSF (and the EFSM) in May 2010, Estonia was not yet a member of the Eurozone. Estonia adopted the Euro on 1 January 2011 and participated in the revision of the EFSF in June 2011. Estonia subjected its acceptance of the broadened intervention instruments EFSF and EFSM to strict conditionality and use only on the basis of the concluded MoU's.

Prior to the discussion in the Estonian Parliament (Riigikogu) on the draft resolution 90 OE on 27-29 September 2011, Indrek Teder, the Chancellor of Justice, addressed an opinion to the chair of the Riigikogu Economic Affairs Committee.^[1] The Chancellor of Justice is an independent institution established under the Constitution of Estonia. His tasks are twofold. As a general body of petition, the Chancellor of Justice ensures that public authorities do not infringe the fundamental rights of citizens and observe laws and the practice of good administration while performing their duties. As a guardian of constitutionality, the Chancellor of Justice ensures that the laws, regulations and other legislative acts are adopted in conformity with the Constitution and other laws. Under the Chancellor of Justice Act, the Chancellor of Justice may exercise this function either on the basis of an application or on his own initiative. Both legal acts in force and draft acts may be subject to the constitutionality procedure. In case an infringement has been established, the Chancellor of Justice may propose to the institution which has adopted the act to bring it in conformity with the Constitution or laws. If the institution that has passed the legislative act fails to reply to the proposal, the Chancellor of Justice may submit a request to the Constitutional Review Chamber of the Supreme Court to declare the legislative act in question unconstitutional or invalid.^[2] The Constitutional Review Chamber reviews

the constitutionality of laws and regulations which have entered into force as well as those which have not been promulgated by the President and have not entered into force.[\[3\]](#)

In the letter, the Chancellor of Justice enlisted reasons for questioning the constitutionality of the draft resolution. He emphasised that the Constitution does not prohibit Estonia from participating in the EFSF and giving state guarantees, yet draws attention to the following aspects:

1. providing state guarantees and delegating the decision-making to the Government of the Republic requires amending the State Budget Act because the provisions of the Draft go beyond the rules on state guarantees provided by in § 40² of the State Budget Act, in particular as concerns the involvement of the Riigikogu. § 40² does not provide for a possibility to delegate the decision-making to the Government;
2. the draft resolution does not include the Riigikogu to a sufficient extent and does not guarantee control of the Riigikogu over the increase of guarantee obligations of the Republic of Estonia.

The proposals made by the Chancellor of Justice in his letter were given due consideration by the relevant parliamentary committees and the Chancellor of Justice agreed with the amendments made to the draft. § 40² State Budget Act was duly amended (see Question IV.4 below).

Entry into force

IV.2

Article 1(1) EFSF Framework Agreement provides that it will enter into force if sufficient Eurozone member states have concluded all procedures necessary under their respective national laws to ensure that their obligations shall come into immediate force and effect and provided written confirmation of this. What does this procedure look like in Estonia and in what way does it involve Parliament?

Under § 65 clause 1 of the Estonian Constitution, the Riigikogu shall pass laws and resolutions. The unicameral Riigikogu comprises 101 members.

In order to be able to make a confirmation that all necessary procedures under Estonian law have been concluded in order to join the EFSF, the Riigikogu adopted on 29 September 2011 a Resolution on ensuring performance of the obligations arising from the European Financial Stability Facility (EFSF) Framework Agreement and amendments thereto. The resolution was adopted with 59 votes in favour, 18 votes against, no abstentions.

Pursuant to the Resolution, the Government of the Republic must submit to the Riigikogu for approval drafts on MoUs to be concluded between the European Commission and a Eurozone country for the purposes of the guarantees given under the EFSF. Also, the Government of the Republic is given the task to present for approval to the Riigikogu European Union Affairs Committee the conditions on financing and economic policy of an assistance programme of a Eurozone country in question, the obligation to present arising from the Riigikogu Rules of Procedure and Internal Rules Act § 18 subsection 3. In the resolution, a mandate is given to the Government of the Republic to provide guarantees to a specific country within the limits of the guarantee that has previously been approved by the Riigikogu as a draft MoU. It falls within the competences of the Government under Government of the Republic Act § 20¹ subsection 1 to approve EFSF debt obligations by which aid programmes are guaranteed. The technical details and economic policy programme of the particular aid programme,

as well as the financing plan will not be approved by the plenary of the Riigikogu but by the European Affairs Commission. In Paragraph 6 of the Resolution, the Riigikogu mandates the Government to conduct the procedures of providing guarantees and entertaining claims on the basis of the guarantees.

GUARANTEES

IV.3

Member states are obliged to issue Guarantees under the EFSF. What procedure was used for this in Estonia? What debates have arisen during this procedure, in particular in relation to the implications of the guarantees for (budgetary) sovereignty, constitutional law, socio-economic fundamental rights, and the budgetary process?

Amendments were made to both the State Budget Act and the Riigikogu Rules of Procedure and Internal Rules Act.

Pursuant to § 104 clause 11 of the Constitution, a majority of the membership of the Riigikogu is necessary to amend the State Budget Act. The amendment was adopted on 29 September 2011 with 60 votes in favour, none against, one abstention.

To the State Budget Act § 40², clause 3² was added. The addition states that state guarantee can be given to an EU Member State or a legal person, of which the majority share belongs to the EU Member States. In this event, the Riigikogu may oblige the Government to apply for complementary delegations from the Riigikogu or provide an opinion on decisions made with regard to the guarantee provided by the Riigikogu.

On 29 September 2011, also § 152¹ subsection 2 of the Riigikogu Rules of Procedure and Internal Rules Act was amended to include that the Government shall submit to the Riigikogu at their own initiative or at the request of the Riigikogu European Union Affairs Committee or the Foreign Affairs Committee “other significant matters of the European Union”.

Many questions were raised and remarks made in the Riigikogu. These concerned primarily:

- whether it has been implied in the procedure of the Government deciding on the size of guarantees that the Member States are ready to give up full state sovereignty and amend the founding treaties;
- whether the guarantee appears in the state budget as a debt;
- whether the approval to provide guarantees affects the state rating;
- whether or not the EFSF generates further centralisation of the European Union that leads to a decrease of national sovereignty;
- that the Resolution violates Estonian laws (the Riigikogu lacks legal basis to adopt the resolution) and Constitution (it is against the object of the Constitution to give the Government the opportunity to decide upon every specific loan).[\[4\]](#)

The Resolution of the Riigikogu was adopted on 29 September 2011 with 59 votes in favour, 18 against, no abstentions.

Activation problems

IV.4

What political/legal difficulties did Estonia encounter during the national procedures related to the entry into force of the EFSF Framework Agreement and/or the issuance and increase of guarantees?

No political or legal difficulties were encountered.

Case law

IV.5

Is there a (constitutional) court judgment about the EFSM or EFSF in Estonia?

No.

Implementation

IV.6

What is the role of Parliament in the application of the EFSF, for example with regard to decisions on aid packages (Loan Facility Agreement and Memorandum of Understanding) and the disbursement of tranches, both of which need unanimous approval by the so-called Guarantors, i.e. the Eurozone member states?

The Riigikogu has to approve the decisions on aid packages on the basis of § 65 clause 10 of the Constitution pursuant to which the Riigikogu shall, on the proposal of the Government, decide on borrowing by the state and on the assumption of other proprietary obligations by the state as opposed to the technical details for which no parliamentary approval is needed (see question IV.2).

The Government submits to the Parliament the following drafts for debate:

- the draft parliamentary resolution, drafted by the Government;
- the draft MoU;
- the draft on Private Sector Involvement (PSI).

The Estonian position in the European Council and at the Meeting of the Heads and State or Government of the eurozone Member States (Eurosummit) receives prior consent from the European Union Affairs Committee of the Riigikogu. The Riigikogu adopts the resolution by simple majority.

The conditions on financing and economic policy of an assistance programme of a Eurozone country requiring financial assistance will be approved by the European Union Affairs Committee of the Riigikogu.

The disbursement of tranches requires the approval of the Riigikogu European Affairs Committee.

Implementing problems

IV.7

What political/legal difficulties did Estonia encounter in the application of the EFSF?

Debates on the 2nd Greek package took place at the Riigikogu on 23 February 2012. Questions were raised on the effect of the loans on the Estonian debt rate; whether Greece can reduce the debt,

achieve economic growth and return to the financial market; improving efficiency of the Greek tax authorities and taxation system; the future relationship between the EFSF and the ESM; what is the plan B if the aid package fails to produce results; the idea of economically less wealthy Estonia providing assistance to more wealthy Greece; by which mechanisms can the aid to Greece be stopped. There was lengthy debate in the Riigikogu and the general sentiment expressed in the speeches by the parliamentarians, especially those representing the opposition, was questioning the efforts of the Greek government and the general mentality of the country and its people.

The resolution to approve the draft memorandum of the 2nd Greek aid package was adopted by the Riigikogu with 56 votes in favour, 32 votes against, no abstentions.

On 11 January 2013, The Riigikogu European Union Affairs Committee approved the disbursement of tranches to Ireland and Portugal.^[5] No difficulties have been encountered.

Bilateral support

IV.8

In case Estonia participated in providing funding on a bilateral basis to other EU Member States during the crisis, what relevant Parliamentary debates or legal issues have arisen?

Not applicable.

MISCELLANEOUS

IV.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND THE EFSM/EFSF?

Estonia joined the eurozone on 1 January 2011. Prior to that, very few discussions on the EFSF, etc. took place.

^[1] Opinion of the Chancellor of Justice on the Draft Resolution of the Riigikogu (90 OE) of 25 September 2011.

^[2] www.oiguskantsler.ee/en/constitutional-review

^[3] www.riigikohus.ee

^[4] Deniss Boroditš, Centre Party (opposition), First Reading of Draft Resolution 90 OE, Riigikogu, 27 September 2011.

^[5] Riigikogu Press Release, 11 January 2013.

V - 136(3) TFEU

At the 16/17 December 2010 European Council a political decision was taken to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. On March 25, 2011 the European Council adopted the legal decision to amend article 136 TFEU by adding a new third paragraph: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

The process of approval of this decision by the member states in accordance with their respective constitutional requirements as prescribed by article 48(6) has been completed and the amendment has entered into force on 1 May 2013.

NEGOTIATION

V.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

There was no controversy in Estonia as to whether the amendment of Article 136 TFEU should take place or not.

APPROVAL

V.2

HOW HAS THE 136 TFEU TREATY AMENDMENT BEEN APPROVED IN ESTONIA AND ON WHAT LEGAL BASIS/ARGUMENTATION?

Pursuant to § 25 subsection 1 of the Foreign Relations Act, a treaty shall be amended pursuant to the same procedure as it was concluded unless otherwise prescribed in the treaty. Since the TFEU has been ratified by the Riigikogu, an amendment made to it, too, must be ratified by the Riigikogu pursuant to § 20 clause 6 of the Foreign Relations Act, and § 25 subsection 1 and § 121 clause 5 of the Constitution.

The amendment was approved by Riigikogu on 8 August 2012 with 86 votes in favour, two abstentions, five MPs present did not participate in the vote. Ratification was published on 16 August 2012 and notified to the Council on 7 September 2012.

During the second reading of the Bill on ratification of the amendment a referendum was not considered necessary by the Constitutional Committee of the Riigikogu because the amendment was not perceived as adding competences to the European Union.[\[1\]](#) Moreover, pursuant to § 106 of the Constitution, issues regarding the ratification and denunciation of international treaties shall not be submitted to a referendum.

RATIFICATION DIFFICULTIES

V.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER DURING THE RATIFICATION OF THE 136 TFEU TREATY AMENDMENT?

No political or legal difficulties were countered during the ratification procedure.

CASE LAW

V.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT IN ESTONIA ON THE 136 TFEU TREATY AMENDMENT?

No.

MISCELLANEOUS

V.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND THE 136 TFEU TREATY AMENDMENT?

Not applicable.

[\[1\]](#) Second reading of the Bill on Ratification of the Amendment to the Treaty on the Functioning of the European Union 237 SE, Riigikogu, 8 August 2012.

VI - Euro Plus Pact

On March 11, 2011 the Heads of State or Government of the Eurozone endorsed the Pact for the Euro. At the 24/25 March 2011 European Council, the same Heads of State or Government agreed on the Euro Plus Pact and were joined – hence the ‘Plus’ – by six others: Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (leaving only the UK, Czech Republic, Sweden and Hungary out).

The objective of the pact is to foster competitiveness, foster employment, contribute to the sustainability of public finances and reinforce financial stability. In the Euro-Plus-Pact the Heads of State or Government have entered into commitments on a number of policy areas, in which member states are competent.

(http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf)

NEGOTIATION

VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER IN THE NEGOTIATION OF THE EURO-PLUS-PACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE PACT FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

From a government document explicitly referring to the Euro-Plus-Pact, it follows that, in accordance with the founding Treaties, the Estonian government was willing to take additional steps in coordinating economic policies between the eurozone countries and countries outside the eurozone. According to the Government, the implementation and surveillance of agreements on economic policy must take place in the framework of the Europe 2020 process, the excessive deficit procedure and the macroeconomic imbalances procedure. Enhanced cooperation and the implementation of eurozone specific binding agreements must be based on the EU Treaties and secondary law. The additional steps in coordinating economic policies should not create new market barriers nor thereby impede with the functioning and development of the internal market.^[1]

No difficulties were encountered.

MISCELLANEOUS

VI.2

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND THE EURO-PLUS-PACT?

Estonia assumed nine reform commitments that were subsequently approved by a decision of the Government of 28 April 2011 in the national reform programme “Estonia 2020”. The Programme was updated on 26 April 2012.

The reform commitments include the following:^[2]

1. initiatives implemented by April 2012:

- launching a start-up programme for supporting the inception of innovative enterprises;
- reducing the personal income tax effective 2015;
- abolishing fringe benefit tax on formal education related to work;
- lowering the upper limit on the income tax incentive to 1,920 euros;
- bringing the budget into balance by 2013 and achieving a surplus by 2014 (state budget

strategy);

2. initiatives planned to be implemented by summer 2012:

- reform of public service benefits and increasing the transparency of the salary system;
- first stage of special pension reform;
- higher education reform;

3. initiatives to be implemented later:

- the introduction of the budgetary balance requirement in the State Budget Act.

The reform plan to be executed by June 2013 includes the following initiatives:[\[3\]](#)

- Reform of the upper secondary school network and launching a programme of investments for raising the quality of the school system;
- Developing principles for funding of general education for raising the quality of education and enhancing the reputation of teachers;
- Liberalising the natural gas market;
- Implementing an environmentally friendly public transport investment programme;
- Completion of the first stage of investments into energy conservation;
- Simplifying and better targeting of entrepreneurship grants to raise competitiveness;
- Lowering the unemployment insurance premium rate in 2013 in order to reduce the tax burden on the workforce;
- Establishing occupational and professional health insurance along with a new insurance scheme for incapacity for work;
- Development of new programmes for improving employment among youths with low competitiveness;
- Modernisation of vocational education curricula;
- Completing reform of centralisation of financial and personnel accounting;

Reform of management and support systems of European Union funds.

[\[1\]](#) White Book, supra note 4.

[\[2\]](#) Estonia 2020 action plan – ANNEX Estonian Reforms for Achieving the Objectives of the Euro Plus Pact, 26 April 2012.

[\[3\]](#) Supra note 9.

VII - Six-Pack

The 'Six-Pack' is a package of six legislative measures (five regulations and one directive) improving the Economic governance in the EU. The Commission made the original proposals in September 2010. After negotiations between the Council and the European Parliament, the package was adopted in November 2011 and entered into force on December 13, 2011. Part of the 'Six-Pack' measures applies only to the Eurozone member states (see the individual titles below).

The 'Six-Pack' measures reinforce the Stability and Growth Pact (SGP), among others by introducing a new Macroeconomic Imbalances Procedure, new sanctions (for Eurozone member states) and reversed qualified majority voting. Also, there is more attention for the debt-criterion.

(http://ec.europa.eu/economy_finance/economic_governance/index_en.htm)

NEGOTIATION

VII.1

WHAT POSITIONS DID ESTONIA ADOPT IN THE NEGOTIATION OF THE 'SIX-PACK', IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE 'SIX-PACK' FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

No difficulties were encountered. The Estonian government has been supportive of automatic sanctioning (see: question VI.1).

DIRECTIVE 2011/85/EU

[Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States](#)

IMPLEMENTATION

VII.2

WHAT MEASURES ARE BEING TAKEN TO IMPLEMENT DIRECTIVE 2011/85/EU ON REQUIREMENTS FOR BUDGETARY FRAMEWORKS (REQUIRED BEFORE 31 DECEMBER 2013, ARTICLE 15 DIRECTIVE 2011/85/EU)?

Since 2004, all public sector institutions are subject to a common legal framework on accounting.[1]

By a new State Budget Bill, Directive 2011/85/EU will be implemented in Estonia. The current State Budget Act will be replaced with a new Act in which provisions will be introduced on a balanced state budget and automatic corrective mechanism required by the Fiscal Compact Treaty. In addition to the State Budget Act, a total of 42 laws need to be amended but only to the extent of technical details (new numbering of references to the State Budget Act, etc.).[2]

IMPLEMENTATION DIFFICULTIES

VII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER IN THE IMPLEMENTATION PROCESS, IN PARTICULAR IN RELATION TO IMPLICATIONS OF THE DIRECTIVE FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

A question arose in the parliamentary debate as to a possible infringement of the principle of separation of powers by a provision of the State Budget Bill. The Financial Affairs Committee made a request to the Committee on Constitutional Affairs for an opinion on the constitutionality of the Bill.

Proposals were made during the parliamentary debate to separate the provisions on budgetary balance from other amendments in order to give more time for the discussion of the latter.

On 12 November, the Auditor General Alar Karis submitted an opinion to the Riigikogu on the State Budget Bill. In his Opinion, the Auditor General makes a number of suggestions, none of which relate to the provisions implementing Directive 2011/85/EU. The conclusion of the Auditor General is that the implementation deadline for the Directive should not adversely affect the adoption of a politically broadly supported State Budget Act. If necessary, the Auditor General suggests amending the State Budget Act currently in force in order to implement the Directive but to continue discussion on other matters until satisfactory solutions have been found.^[3]

The Financial Affairs Committee asked for an opinion on the Bill from the European Central Bank (ECB). In its opinion, the ECB is critical of some of the additional tasks the draft Bill would impose on the Bank of Estonia (Eesti Pank).^[4] The text of the Bill as it currently stands is not final. The second reading of the Bill in Riigikogu continues. The answers to the following questions on the Six-Pack which reflect the original Bill are, therefore, subject to change.

MACROECONOMIC AND BUDGETARY FORECASTS

VII.4

WHAT INSTITUTION WILL BE RESPONSIBLE FOR PRODUCING MACROECONOMIC AND BUDGETARY FORECASTS (ARTICLE 4(5) DIRECTIVE 2011/85/EU)? WHAT INSTITUTION WILL CONDUCT AN UNBIASED AND COMPREHENSIVE EVALUATION OF THESE FORECASTS (ARTICLE 4(6) DIRECTIVE 2011/85/EU)?

The macroeconomic and budgetary forecasts will be produced by the Ministry of Finance and an unbiased and comprehensive evaluation of these forecasts will be conducted by Eesti Pank (Bank of Estonia). Pursuant to §15 subsection 2 of the State Budget Bill, the officials producing the forecasts are unbiased in the compiling of the forecasts as well as in their choice of methodology. § 16 subsection 1 of the Bill specifies that the evaluation of Eesti Pank is not binding but that the Ministry of Finance is to justify not taking the evaluation into account.

FISCAL COUNCIL

VII.5

DOES ESTONIA HAVE IN PLACE AN INDEPENDENT FISCAL COUNCIL (ARTICLE 6(1) DIRECTIVE 2011/85/EU: 'INDEPENDENT BODIES OR BODIES ENDOWED WITH FUNCTIONAL AUTONOMY VIS-À-VIS THE FISCAL AUTHORITIES OF THE MEMBER STATES')? WHAT ARE ITS MAIN CHARACTERISTICS? DOES ESTONIA HAVE TO CREATE (OR ADAPT) A FISCAL COUNCIL IN ORDER TO IMPLEMENT DIRECTIVE 2011/85/EU?

An independent Fiscal Council was created by the new State Budget Act which introduced a new § 4² into the Bank of Estonia (Eesti Pank) Act.

REGULATION No 1176/2011 ON THE PREVENTION AND CORRECTION OF MACROECONOMIC IMBALANCES

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT>

MEIP DIFFICULTIES

VII.6

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR

ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

No debates.

REGULATION No 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS

(
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:20111213:EN:PDF>
E)

MTO PROCEDURE

VII.7

WHAT CHANGES TO THE RULES ON THE BUDGETARY PROCESS ARE MADE TO ACCOMMODATE THE AMENDED MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) PROCEDURE?

No changes.

EUROPEAN SEMESTER

VII.8

WHAT CHANGES HAVE TO BE MADE TO THE RULES AND PRACTICES ON THE NATIONAL BUDGETARY TIMELINE TO IMPLEMENT THE NEW RULES ON A EUROPEAN SEMESTER FOR ECONOMIC POLICY COORDINATION (SECTION 1-A, ARTICLE 2-A CONSOLIDATED REGULATION 1466/97)?

None.

MTO DIFFICULTIES

VII.9

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No debates.

RESPECT MTO

VII.10

HOW IS RESPECT OF THE MEDIUM-TERM BUDGETARY OBJECTIVE INCLUDED IN THE NATIONAL BUDGETARY FRAMEWORK (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)?

§ 9¹ of the State Budget Act lays out conditions for the state budget strategy. Pursuant to § 9¹ subsection 3, the budget strategy shall be compiled for the following budgetary year and the subsequent three years and shall be approved by the Government of the Republic on the proposal of the Minister of Finance at least seven months before the beginning of the budgetary year.

§ 4 subparagraph 3 of the State Budget Bill contains an explicit reference to the Medium-term Budgetary Objective with a reference to Regulation 1466/97.

CURRENT MTO

VII.11

WHAT IS ESTONIA'S CURRENT MEDIUM-TERM BUDGETARY OBJECTIVE (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)? WHEN WILL IT BE REVISED?

Stability Programme 2012(-2015): the MTO of the Estonian Government is a general government structural surplus. The Stability Programme 2012 reaches the year 2016, as required from the budget strategy by § 9¹ subsection 3 of the State Budget Act (the next fiscal year and the three years following).

ADOPTION MTO

VII.12

BY WHAT INSTITUTION AND THROUGH WHAT PROCEDURE IS ESTONIA'S MEDIUM-TERM BUDGETARY OBJECTIVE ADOPTED AND INCORPORATED IN THE STABILITY PROGRAMME (EUROZONE, ARTICLE 3(2)(A) CONSOLIDATED REGULATION 1466/97)?

The Government approved the State Budget Strategy 2013-2016 and the Stability Programme 2012 on 26 April 2012. Before the approval the documents were discussed in the Committees of the Riigikogu.[\[5\]](#)

Pursuant to § 9¹ subsections 3 and 4 of the State Budget Act, the budget strategy is approved by the Government of the Republic on the proposal of the Minister of Finance. The Ministry of Finance has the right to obtain information from the state authorities and persons in the public sector. § 9¹ subsection 5 identifies the public sector as consisting of the state, local governments, other legal persons in public law, with the exception of the Bank of Estonia, the Compensation Fund, the Guarantee Fund, the Estonian Traffic Insurance Foundation and professional associations established under public law; and foundations founded by the abovementioned if more than half of the revenue thereof for the last two years has been comprised of support from such persons.

REGULATION No 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

(
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF>
E)

EDP DIFFICULTIES

VII.13

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No debates.

REGULATION No 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1173:EN:NOT>)

SANCTIONS

VII.14

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

None.

GENERAL CHANGES

VII.15

WHAT FURTHER CHANGES HAVE TO BE MADE TO THE RULES ON THE BUDGETARY PROCESS IN ORDER TO COMPLY WITH THE SIX-PACK RULES?

None.

MISCELLANEOUS

VII.16

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND THE SIX-PACK?

Not applicable.

[1] A. Naarits. "The Global Financial Crisis and Statistics", 1 Quarterly Bulletin of Statistics Estonia 2012, p. 8.

[2] For complete list see: Explanatory report to the State Budget Bill, pp. 1-2.

[3] Summary of the Opinions of the State Audit Office on the State Budget Bill, 12 November 2013.

[4] Opinion of the European Central Bank of 18 December 2013 on Public Finances (CON/2013/91), http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2013_91_f_sign.pdf, par. 5.5.

[5] Stability Programme 2012, p. 3.

VIII - ESM Treaty

The European Stability Mechanism (ESM) Treaty was signed on July 11 2011. It was later renegotiated and a new ESM Treaty was signed on February 2, 2012. The Treaty provides a permanent emergency fund that is intended to succeed the temporary emergency funds. It entered into force on September 27, 2012 for 16 contracting parties (Estonia completed ratification on October 3). The 17 contracting parties are the member states of the Eurozone, but the ESM Treaty is concluded outside EU law.

(<http://www.european-council.europa.eu/eurozone-governance/esm-treaty-signature?lang=it> and <http://www.esm.europa.eu/pdf/FAQ%20ESM%2008102012.pdf>)

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER IN THE NEGOTIATION OF THE ESM TREATY, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

No difficulties were encountered during the negotiations. The Estonian Government supported bringing the entry into force of the ESM forward in time because of the greater operational effectiveness of the ESM compared to the EFSF as well as the more favourable size of commitment for Estonia in the former. Estonia's primary preference was to establish a ceiling to cumulative loans granted by the ESM and EFSF to 500 billion euro. Following the decisions adopted at the meeting of the Heads of State and Government of the eurozone on 9 December 2011, Estonia was willing to raise the cumulative assets of the EFSF and ESM should this prove essential for maintaining the stability of the eurozone. In exceptional circumstances, Estonia was willing to forgo decision-making by unanimity in the adoption of aid programmes and adopt decisions by qualified majority vote (85%). Similar voting majority is in use in the IMF. Estonia supported the principle by which countries who wish to receive assistance from the ESM have to join the fiscal agreement.^[1]

RATIFICATION

VIII.2

HOW HAS THE ESM TREATY BEEN RATIFIED IN ESTONIA AND ON WHAT LEGAL BASIS/ARGUMENTATION?

Pursuant to § 20 clause 6 of the Foreign Relations Act, a treaty shall be ratified in the Riigikogu if ratification is prescribed in the treaty. Since the acts of ratification and implementation of the ESM Treaty regulate the internal fulfilment of fiscal obligations taken by the state, the ratification act must be adopted by a majority of the membership vote pursuant to § 104 clause 15 of the Constitution.

Pursuant to § 106 of the Constitution, issues regarding the ratification and denunciation of international treaties shall not be submitted to a referendum.

The ESM Treaty was ratified by the Riigikogu on 17 October 2012 with 59 votes in favour, 34 votes against, 1 abstention.

Both the ratification of the ESM Treaty and its implementation are provided in the Act on Ratification and Implementation of Treaty Establishing European Stability Mechanism.

RATIFICATION DIFFICULTIES

VIII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER DURING THE RATIFICATION OF THE ESM TREATY?

On 12 March 2012, the Chancellor of Justice initiated Constitutional Review Procedure at the Supreme Court on the basis of § 6 subsection 1 clause 4 of the Constitutional Review Court Procedure Act with a request to declare Article 4(4) of the signed Treaty providing for a 85 per cent majority for decisions on granting aid from the ESM to be in conflict with the principle of parliamentary democracy arising from § 1(1) and § 10 of the Constitution, and with § 65 10) and § 115 of the Constitution.[\[2\]](#)

In the parliamentary debates, the following issues were touched upon:

- Whether the ESM will solve problems;
- Whether financial centralization can lead to a loss of national sovereignty;
- The role of the plenary of the Riigikogu versus the European Union Affairs Committee of the Riigikogu in the ESM application procedures. The arguments for participation of the membership were related to the question exercising parliamentary control whereas the arguments against highlighted the inflexibility the membership in convening for matters requiring speedy decision-making as well as the lack of necessity of burdening the institution of membership with questions on implementation of an act. A comparison with the procedures relating to the IMF and other international organizations was made.

2301 votes were gathered in support of organising a referendum on the ESM Treaty. The petition however was of marginal importance and the numbers relatively low. In any event, Article 106 of the Constitution prohibits a referendum on this issue (see also question VIII.2).

CASE LAW

VIII.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE ESM TREATY?

Estonian Supreme Court judgment of July 12, 2012

1. Name of the Court

Supreme Court of Estonia

2. Parties

Chancellor of Justice, the Government of the Republic

3. Type of action/procedure

Constitutional review procedure, regulated by the Constitutional Review Court Procedure Act. Pursuant to the Act, the Supreme Court adjudicates, i.a. requests to verify the constitutionality of legislative act or refusal to issue a legislative act, and of international agreements. The Court can do so on the basis of a reasoned request, court judgment or court ruling. Requests to the Supreme Court can be submitted by the President of the Republic, the Chancellor of Justice, a local government council or the Riigikogu. The procedure can take place both prior and after the entry into force of the legislative act in question.

4. Admissibility issues

The Supreme Court en banc held the request of the Chancellor of Justice to be admissible.

5. Legally relevant factual situation

Excerpt from the Judgment:

“At a meeting of the European Council on 16–17 December 2010 the European Union (EU) Member States agreed about the need to establish for EU Member States where the single currency euro is in use a permanent stability mechanism for ensuring the financial stability (of the euro area). At the same meeting the EU Member States also agreed on amendment of Article 136 of the Treaty on the Functioning of the European Union (TFEU) in such a manner that the euro area Member States would have a clear authorisation to establish a stability mechanism. On 11 July 2011 the Minister of Finance signed the Treaty establishing the European Stability Mechanism (ESM) (the Treaty). On 9 December 2011 at a meeting of the European Council the Heads of Government of the euro area Member States agreed on the amendment of the Treaty.

On 26 January 2012 the Chancellor of Justice addressed the Minister of Finance with a memorandum concerning the amendments to the Treaty. The Minister of Finance replied to the Chancellor of Justice on 1 February 2012.

On 2 February 2012 the Government of the Republic adopted an order no. 60 “Approval of the Draft Treaty establishing the European Stability Mechanism and grant of authorisation”. By the order the Draft Treaty was approved and the permanent representative of Estonia to the EU was authorised to sign it. On 2 February 2012 the representative of Estonia in Brussels signed the amended Treaty which the Member States are required to ratify.

On 12 March 2012 the Chancellor of Justice had recourse to the Supreme Court, relying on § 6(1)4) of the Constitutional Review Court Procedure Act (CRCPA), with a request to declare Article 4(4) of the signed Treaty to be in conflict with the principle of parliamentary democracy arising from § 1(1) and § 10 of the Constitution, and with § 65 10) and § 115 of the Constitution.

By a ruling of 22 March 2012 the Constitutional Review Chamber of the Supreme Court referred the case to the Supreme Court en banc. The Supreme Court en banc asked the opinion of experts on the constitutionality of Article 4(4) of the Treaty. Opinions were submitted to the Supreme Court en banc by Dr Anneli Albi, the Department of Economics of the Estonian Business School, the Tallinn University Law School, the Faculty of Social Sciences of the Tallinn University of Technology and the Faculty of Law of the University of Tartu.”[\[3\]](#)

6. Legal questions

Is Article 4(4) of the ESM Treaty in conflict with the principle of parliamentary democracy arising from § 1(1) and § 10 of the Constitution, and with § 65 10) and § 115 of the Constitution?

7. Arguments of the parties

Chancellor of Justice:

The main claim of the Chancellor of Justice is that Article 4(4) of the Treaty interferes with the principles of parliamentary democracy and reservation by the parliament, and the budgetary powers of the Riigikogu. The nominal value of the capital stock to be subscribed by Estonia in the Treaty – about 8.5% of the GDP – is an extremely vast proprietary obligation, which significantly reduces the discretionary powers of the Riigikogu in making choices about the state budget – one of the most central elements of parliamentary organisation. The Chancellor of Justice does not consider the declarative condition that the ESM will exercise its right to grant financial assistance on strict and appropriate conditionality to suffice in legitimising all subsequent decisions of the ESM. This is particularly so because of Article 4(4) of the Treaty, which enables the ESM to approve financial assistance by a qualified majority of 85% of the votes cast and, thus, potentially only on consent of the six largest Member States. Since the benefit accompanying Article 4(4) of the Treaty to the financial stability of the euro area does not outweigh the interference with the principles of parliamentary democracy and reservation by the parliament, and the budgetary powers of the Riigikogu, the Chancellor of Justice considers the provision to be in conflict with the Constitution.[\[4\]](#)

Government of the Republic:

The Government of the Republic considers the request of the Chancellor of Justice to be inadmissible. Should the Court consider the application admissible, it is the opinion of the Government that Article 4(4) of the ESM Treaty is formally and substantively in conformity with the Constitution. Moreover, the Government perceives Article 4(4) of the Treaty to sufficiently secure the control function of the Riigikogu. This is particularly so because of the possibility to require, in the act ratifying the ESM Treaty, the representative of Estonia to act according to the guidelines provided by the Parliament when adopting decisions in the ESM.[\[5\]](#)

8. Answer by the Court to the legal questions and legal reasoning of the Court

Summary of the opinions of the Supreme Court en banc (excerpt from the Judgment):

“204. The Supreme Court en banc addressed the Treaty and obligations arising therefrom for Estonia. First, the Supreme Court en banc came to the conclusion that with the contribution key the Treaty determines the upper limit of the obligations of the Member States. Estonia undertakes to contribute 0.1860% of the authorised capital stock of the ESM and Estonia’s contribution amounts to 1 302 million euros. The Treaty sets out when and how the capital to be paid in must be paid in – for Estonia it is 148.8 million euros within five years. The Treaty determines the conditions as to how the ESM can make a call for callable capital to a Member State which for Estonia is 1 153.2 million euros.

205. The Supreme Court en banc held that the request of the Chancellor of Justice is admissible. The Treaty is an international agreement which the Chancellor of Justice is competent to challenge based on § 123(1) of the Constitution and § 6(1)4) of the CRCPA. The Supreme Court en banc was of the opinion that the Treaty is not part of the primary or the secondary law of the European Union. The Chancellor of Justice is not challenging in his request the constitutionality of the entire Treaty, but merely the constitutionality of Article 4(4) of the Treaty. Therefore, the Supreme Court en banc is in this case competent to review said provision only.

206. The Supreme Court en banc found that Article 4(4) of the Treaty interferes with the financial competence of the Riigikogu provided for in § 65 6) of the Constitution in conjunction with § 115(1) of

the Constitution and in § 65 10) of the Constitution in conjunction with § 121 4) of the Constitution, and is related to the principle of a democratic state subject to the rule of law. By ratifying the Treaty the Riigikogu exercises the right arising from its financial competence and assumes financial obligations for Estonia. The Riigikogu's possibility to make political choices is thereby restricted, because the choices already made have decreased the state's financial resources. It also interferes with the financial sovereignty of the state of Estonia arising from the preamble to and § 1 of the Constitution, because the people's right of discretion is thereby indirectly restricted. Article 4(4) of the Treaty interferes with the financial competence of the Riigikogu, as well as the state's financial sovereignty related thereto and the principle of a democratic state subject to the rule of law due to the possibility that at the request of the ESM the callable capital must be paid in the future (up to 1 153.2 million euros).

207. In order to assess the constitutionality of the contested provision, the Supreme Court en banc weighed up the interference with principles and its objectives. The Supreme Court en banc is of the opinion that the purpose of Article 4(4) of the Treaty is to guarantee for the ESM in an emergency the efficiency of the decision-making mechanism to eliminate a threat to the economic and financial sustainability of the euro area. The Supreme Court en banc held that this objective is legitimate for interfering with the financial competence of the Riigikogu arising from § 65 6) of the Constitution in conjunction with § 115(1) of the Constitution and from § 65 10) of the Constitution in conjunction with § 121 4) of the Constitution, with the principle of a democratic state subject to the rule of law arising from § 10 of the Constitution, and with the principle of sovereignty arising from § 1 of the Constitution.

208. The purpose of Article 4(4) of the Treaty is related to the purpose of the Treaty to safeguard the financial stability of the euro area. The financial instability and closely related economic instability of the euro area also endanger the financial and economic stability of the state of Estonia, because Estonia is a part of the euro area. Economic and financial stability is necessary in order for Estonia to be able to fulfil its obligations arising from the Constitution. Consequently, the interference arising from Article 4(4) of the Treaty is justified by substantial constitutional values – the need arising from the preamble to and § 14 of the Constitution to guarantee the protection of fundamental rights and freedoms.

209. The Supreme Court en banc assessed the constitutionality of the interference arising from Article 4(4) of the Treaty by way of review of proportionality, and found that Article 4(4) of the Treaty provides for an appropriate, necessary and reasonable measure for the achievement of the objective. In weighing up reasonableness the Supreme Court en banc deemed it necessary to distinguish the interference occurring on the ratification of the Treaty and the interference which may occur later in implementing the Treaty when, at the request of the ESM, the callable capital must be paid. The Supreme Court en banc held that the interference occurring on ratification is not in itself very serious; however, the interference is based on weighty constitutional values – the need to guarantee the protection of fundamental rights and freedoms. On the basis of the aforesaid, the Supreme Court en banc assumed the position that Article 4(4) of the Treaty does interfere with the financial competence of the Riigikogu and thereby also the principle of the financial sovereignty of the state and of a democratic state subject to the rule of law, but the objectives justifying the interference are sufficiently significant.

210. In keeping with the aforesaid, the Supreme Court en banc found that Article 4(4) of the Treaty is

not in conflict with the Constitution, and dismissed the request of the Chancellor of Justice.”

Ten judges submitted five dissenting opinions.

9. Legal effects of the judgment/decision

The request of the Chancellor of Justice to declare Article 4(4) of the ESM Treaty in conflict with the Constitution was dismissed.

For a discussion of this case, see: Carri Ginter, ‘Constitutionality of the European Stability Mechanism in Estonia: Applying Proportionality to Sovereignty’, 9 European Constitutional Law Review (2013) p. 335-354.

10. Shortly describe the main outcome of the judgment/decision and its broader political implications.

The ESM Treaty was ratified by the Riigikogu.

CAPITAL PAYMENT

VIII.5

WHAT IS THE ROLE OF PARLIAMENT IN THE PAYMENT OF THE (FIRST INSTALMENT OF) PAID-IN CAPITAL REQUIRED BY THE ESM TREATY (ARTICLE 36 ESM TREATY)? WHAT RELEVANT DEBATES HAVE ARISEN IN RELATION TO THIS PAYMENT?

The Parliament approved the payment by § 2 subsection 1 of the Act on Ratification and Implementation of Treaty Establishing European Stability Mechanism. No separate debates took place.

Pursuant to § 3 subsections 1 and 2 of the Act on Ratification and Implementation, the representative of the Republic of Estonia in the Board of Governors and the Board of Directors of the ESM requires a prior resolution of the Riigikogu in order to participate in a vote and to vote on changes in the ESM authorised capital stock on the basis of Article 10(1) of the Treaty, maximum lending volume and financial assistance instruments on the basis of Article 19 of the Treaty. If amendments to the Treaty arise from decisions to change the maximum lending volume or financial assistance instruments, or the ESM authorised capital stock is increased, the Government of the Republic shall submit the amendments to the Treaty to the Riigikogu for ratification.

APPLICATION & PARLIAMENT

VIII.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE ESM TREATY, FOR EXAMPLE WITH REGARD TO DECISIONS TO GRANT FINANCIAL ASSISTANCE AND THE DISBURSEMENT OF TRANCHES, WHICH BOTH REQUIRE UNANIMOUS ADOPTION BY THE BOARD OF GOVERNORS COMPOSED OF THE NATIONAL FINANCE MINISTERS.

The national proceedings regarding draft decision specified in Article 13(2) of Treaty on Act on Ratification and Implementation of Treaty Establishing European Stability Mechanism are regulated by § 4 subsections 1-4:

- The Government of the Republic shall, pursuant to subsection 152¹ (2) of the Riigikogu Rules of Procedure and Internal Rules Act, submit to the European Union Affairs Committee of the Riigikogu for

an opinion a draft decision of principle on grant of financial assistance specified in Article 13(2) of the Treaty. The representative of the Republic of Estonia is required to adhere to the opinion of the Committee upon voting on a decision of principle on grant of financial assistance.

- Proprietary obligations shall not be assumed with regard to the Republic of Estonia and the representative of the Republic of Estonia shall not be authorised to define the conditions of the financial obligation by the forming of an opinion specified in subsection (1) of this section.
- The European Union Affairs Committee may decide that, in order to participate in a vote and to vote on a decision of principle on grant of financial assistance, the representative of the Republic of Estonia requires a prior resolution of the Riigikogu. In such case the Government of the Republic shall submit the corresponding draft resolution of the Riigikogu.
- The Government of the Republic shall submit a decision of principle on grant of financial assistance to the Committee for an opinion at the earliest opportunity after receipt of the agenda and materials of the meeting of the Board of Governors and the Board of Directors of the ESM where the specified issue is discussed.

The national proceedings regarding the memorandum are regulated by § 5 subsections 1-3 of the Act on Ratification and Implementation:

- In order to participate in a vote and to vote on a draft memorandum, the representative of the Republic of Estonia requires a prior resolution of the Riigikogu.
- The Government of the Republic may submit a draft memorandum, except a draft memorandum specified in Article 14(2), Article 16(2) and Article 17(2) of the Treaty, to the Committee for an opinion instead of the Riigikogu pursuant to subsection 152¹ (2) of the Riigikogu Rules of Procedure and Internal Rules Act if the publication of the draft memorandum may threaten the purpose of the provision of stability support by the ESM. The Government of the Republic shall justify the submission of the draft memorandum to the Committee.
- The provisions of the second sentence of subsection 4 (1) and subsections (3) and (4) of this Act on apply to the proceedings regarding the draft memorandum:
 - o The representative of the Republic of Estonia is required to adhere to the opinion of the Committee upon voting on a draft memorandum;
 - o The European Union Affairs Committee may decide that, in order to participate in a vote and to vote on a draft memorandum, the representative of the Republic of Estonia requires a prior resolution of the Riigikogu. In such case the Government of the Republic shall submit the corresponding draft memorandum of the Riigikogu;
 - o The Government of the Republic shall submit a draft memorandum to the Committee for an opinion at the earliest opportunity after receipt of the agenda and materials of the meeting of the Board of Governors and the Board of Directors of the ESM where the specified issue is discussed.

The national proceedings regarding amendments to memorandum are specified in § 6 of the Act on Ratification and Implementation:

- In order to participate in a vote and to vote on amendments to the memorandum, the representative of the Republic of Estonia requires a prior resolution of the Riigikogu.
- The Government of the Republic may submit draft amendments to the memorandum specified in subsection (1) of this section to the Committee for an opinion instead of the Riigikogu pursuant to subsection 152¹ (2) of the Riigikogu Rules of Procedure and Internal Rules Act if:
 - 1) publication of the draft amendments to the memorandum, except to the memorandum specified in Article 14(2), Article 16(2) and Article 17(2) of the Treaty, may threaten the purpose of the provision of stability support by the ESM, or
 - 2) the memorandum is amended to an insignificant extent and the amendments are not related to increasing the amount of stability support.
- The Government of the Republic shall justify the submission of draft amendments to the memorandum specified in subsection (2) of this section to the Committee.
- The provisions of the second sentence of subsection 4 (1) and subsections (3) and (4) of this Act apply to the proceedings regarding draft amendments to the memorandum:
 - o The representative of the Republic of Estonia is required to adhere to the opinion of the Committee upon voting on a draft amendment;
 - o The European Union Affairs Committee may decide that, in order to participate in a vote and to vote on a draft amendment, the representative of the Republic of Estonia requires a prior resolution of the Riigikogu. In such case the Government of the Republic shall submit the corresponding draft amendment of the Riigikogu;
 - o The Government of the Republic shall submit a draft amendment to the Committee for an opinion at the earliest opportunity after receipt of the agenda and materials of the meeting of the Board of Governors and the Board of Directors of the ESM where the specified issue is discussed.

APPLICATION DIFFICULTIES

VIII.7

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER IN THE APPLICATION OF THE ESM?

No particular difficulties in the application.

During the debates on the Draft memorandum of Cyprus the following issues prevailed:

- whether it is realistic for Cyprus to be able to implement the reform programme;
- whether Cyprus is transparent and trustworthy partner;
- interest rate on the aid package.

The Resolution approving the draft MoU to be entered into between the Commission and Cyprus was adopted by the Riigikogu on 18 April 2013 by 54 votes in favour, 21 against, no abstentions.

IMPLEMENTATION

VIII.8

HAVE THERE BEEN ANY RELEVANT CHANGES IN NATIONAL LEGISLATION IN ORDER TO IMPLEMENT OR TO COMPLY WITH REQUIREMENTS SET BY THE ESM-TREATY?

No.

MISCELLANEOUS

VIII.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND THE ESM TREATY?

Not applicable.

[1] White book, supra note 6, p. 14.

[2] Estonian Supreme Court Judgment of 12.07.2012 No. 3-4-1-6-12, para. 4.

[3] Ibid., paras. 1-5.

[4] Ibid., paras. 9-16.

[5] Ibid., paras. 17-22.

IX - Fiscal Compact

The Fiscal Compact (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) was signed on March 2, 2012. Negotiations on this Treaty began between 26 member states of the EU (all but the UK) after the 8/9 December 2011 European Council. 25 contracting parties eventually decided to sign the Treaty (not the Czech Republic).

After ratification by the twelfth Eurozone member state (Finland) in December 2012, the Fiscal Compact entered into force on 1 January 2013. For several contracting parties the ratification is still on-going.

(<http://www.european-council.europa.eu/eurozone-governance/treaty-on-stability?lang=it>)

NEGOTIATION

IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER IN THE NEGOTIATION OF THE FISCAL COMPACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

No difficulties were encountered.

In the negotiations, the Estonian delegation proceeded from the Government's political agenda for the years 2011-2015, as well as the mandate given for the European Council of December 2011 and the meetings of the Eurozone heads of states and governments. The position of the Government was presented in the Government White Book of January 2012.^[1] The White Book was submitted to the Riigikogu for an opinion and approval under § 152¹ subsection 2 of the Riigikogu Rules of Procedure and Internal Rules Act.

Pursuant to the White Book, the Conclusions of the European Council of December 2011 as regards strengthening the euro and concluding a new fiscal compact treaty, are in conformity with the EU policy principles and objectives of the Government as laid out in the framework document "Estonia's European Union Policy 2011-2015". According to the framework document, Estonia is open to the deepening of EU's competences along with the strengthening of the Community method. A strong and well-functioning eurozone is necessary for securing Estonia's economic development and economic security. Estonia supports a speedy introduction of the fiscal compact treaty into the EU legal framework, including primary law.

Estonia supports adopting a balanced budget rule in all EU Member States. Estonia wishes that the margin of allowed structural deficit of 5% of the GDP were interpreted as a maximum. In addition, Estonia supports fixing sovereign debt level to 60% and setting a more ambitious debt reduction rate to countries with a higher level of debt (faster than 1/20th of debt that exceeds the 60% margin). Estonia prefers the balanced budget requirement to be inserted in the base legislation on national budgets that is binding and of a stable nature (i.e. not an annual state budget act. The coalition party Pro Patria and Res Publica Union made a proposal in 2010 to include a budgetary balance requirement into the Constitution but the other coalition party, the Reform Party preferred a solution in which the balanced budget rule would be inserted into the State Budget Act.^[2]

Estonia supports granting the Court of Justice competence to review whether the Member States have

fulfilled the obligation of adopting in their legal orders the requirement of a balanced budget.

Already in the reform of the stability and growth pact, Estonia has supported (more) automatic decision-making in budgetary deficit and sovereign debt cases, and more severe surveillance procedures.

RATIFICATION

IX.2

HOW HAS THE FISCAL COMPACT BEEN RATIFIED IN ESTONIA AND ON WHAT LEGAL BASIS/ARGUMENTATION?

According to Foreign Relations Act § 20 clauses 2 and 6 and Constitution § 121 sub-subsections 2 and 5, if the implementation of the treaty requires the passage, amendment or repeal of Acts of the Republic of Estonia and if ratification is prescribed in the treaty the treaty needs to be ratified by the Riigikogu. The ratification of the Fiscal Compact requires amendments to be made to the State Budget Act and ratification is also foreseen in the Fiscal Compact Treaty. A simple majority of votes in the Riigikogu is required.

The Fiscal Compact was ratified by the Riigikogu on 17 October 2012 by 63 votes in favour, none against, no abstentions.

RATIFICATION DIFFICULTIES

IX.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ESTONIA ENCOUNTER DURING THE RATIFICATION OF THE FISCAL COMPACT?

No political or legal difficulties were encountered during the ratification procedure in the Riigikogu.

BALANCED BUDGET RULE

IX.4

ARTICLE 3(2) FISCAL COMPACT PRESCRIBES THAT THE BALANCED BUDGET RULES SHALL TAKE EFFECT IN NATIONAL LAW THROUGH "PROVISIONS OF BINDING FORCE AND PERMANENT CHARACTER, PREFERABLY CONSTITUTIONAL, OR OTHERWISE GUARANTEED TO BE FULLY RESPECTED AND ADHERED TO THROUGHOUT THE NATIONAL BUDGETARY PROCESSES." HOW IS THE BALANCED BUDGET RULE (INTENDED TO BE) IMPLEMENTED IN ESTONIA? WILL THERE BE AN AMENDMENT OF THE CONSTITUTION? IF NOT, DESCRIBE THE RELATION BETWEEN THE LAW IMPLEMENTING THE BALANCED BUDGET RULE AND THE CONSTITUTION. IF THE CONSTITUTION ALREADY CONTAINED A BALANCED BUDGET RULE, DESCRIBE THE POSSIBLE CHANGES MADE/REQUIRED, IF ANY.

The provisions of the Fiscal Compact Treaty as concerns conditions on the state budget will be introduced into the State Budget Act rather than the Constitution.

The amendment is being prepared by the Ministry of Finance and is planned to be adopted in 2014.[\[3\]](#)

DEBATE BALANCED BUDGET RULE

IX.5

DESCRIBE THE NATIONAL DEBATE ON THE IMPLEMENTATION OF THE FISCAL COMPACT/BALANCED BUDGET RULE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

The principle of budgetary balance has been one of the foundations of Estonia's economic policy

already before joining the European Union. A deficit-free budget should be an objective of economic policy in itself and where necessary, future occurrences of a deficit should be hindered by legal means. At the beginning of 2012, Estonian laws did not provide for a balanced budget rule but the Government recognises the need for it in order to secure stability in economic growth and long-term budgetary balance with sufficient reserves.[\[4\]](#)

According to the chairman of the Finance Committee of the Riigikogu, the ESM Treaty is in compliance with the Constitution as a balanced budget requirement does not impede the functioning of sovereignty as a fundamental principle of the Constitution.[\[5\]](#) There was no debate in Parliament on whether an amendment of the Constitution would be more appropriate.

RELATIONSHIP BBR AND MTO

IX.6

WHAT POSITIONS, IF ANY, ARE TAKEN IN THE NATIONAL DEBATE ABOUT THE RELATIONSHIP BETWEEN THE BALANCED BUDGET RULE OF ARTICLE 3(1)(B) FISCAL COMPACT AND THE MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) RULE IN THE SIX-PACK (SECTION 1A, ARTICLE 2A REGULATION 1466/97, ON WHICH SEE ABOVE QUESTION VII.10)?

No positions.

CASE LAW

IX.7

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE FISCAL COMPACT/IMPLEMENTATION OF THE BALANCED BUDGET RULE?

No.

NON-EUROZONE AND BINDING FORCE

IX.8

Has Estonia decided to be bound by parts of the Fiscal Compact on the basis of article 14(5) Fiscal Compact already before joining the Euro area, or has this option been debated?

Not applicable, Estonia is a member of the Eurozone.

MISCELLANEOUS

IX.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ESTONIA AND THE FISCAL COMPACT?

Not applicable.

[\[1\]](#) White Book: Overview of the suggestions on strengthening the eurozone and the positions of Estonia, 19 January 2012.

[\[2\]](#) "Tasakaalunõue jõuab baasseadusesse", ERR News, 13.09.2010.

[3] Riigikogu debate on 17 October 2012.

[4] White book, supra note 6, p. 10.

[5] Second reading of the Bill on Ratification of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (249 SE) Riigikogu, 17 October 2012.

X - Financial Support

A number of member states have received direct financial assistance through balance of payments support (Hungary, Rumania, Latvia), bilateral agreements/IMF (Greece), the temporary emergency funds/IMF (Ireland, Portugal, Greece), and the permanent emergency fund (Spain and Cyprus).

(http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm)

Several member states have (also) indirectly benefited through the Securities Markets Programme (SMP) created in May 2010, a bond-buying programme of the European Central Bank that was replaced in September 2012 by the Outright Monetary Transactions (OMT) programme (Greece, Ireland, Portugal, Italy, Spain).

(<http://www.ecb.int/mopo/liq/html/index.en.html#portfolios>)

CONTEXT

X.1

IF RELEVANT, DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE MOMENT OF THE FORMAL REQUEST OF DIRECT FINANCIAL ASSISTANCE.

Estonia has not received financial assistance.

NEGOTIATION

X.2

DESCRIBE THE PUBLIC AND POLITICAL DEBATE DURING THE NEGOTIATIONS ON THE FINANCIAL ASSISTANCE INSTRUMENTS, NOTABLY THE MEMORANDUM OF UNDERSTANDING (MoU) AND FINANCIAL ASSISTANCE FACILITY AGREEMENT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

Estonia has not received financial assistance.

STATUS INSTRUMENTS

X.3

WHAT IS THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS IN THE NATIONAL LEGAL ORDER (POLITICAL AGREEMENT, INTERNATIONAL TREATY, ETC.)?

Estonia has not received financial assistance.

TRANSPOSITION NATIONAL LEGAL ORDER

X.4

CONSIDERING THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS, WHAT PROCEDURE DOES THE CONSTITUTION PRESCRIBE FOR THEIR ADOPTION/TRANSPOSITION INTO THE NATIONAL LEGAL ORDER?

Estonia has not received financial assistance.

ROLE PARLIAMENT

X.5

WHAT IS THE ACTUAL ROLE OF PARLIAMENT WITH REGARD TO THE ADOPTION/TRANSPOSITION INTO THE NATIONAL LEGAL ORDER OF THE FINANCIAL ASSISTANCE INSTRUMENTS?

Estonia has not received financial assistance.

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

Estonia has not received financial assistance.

MISSIONS

X.7

WHAT LEGAL CHANGES, IF ANY, HAD TO BE MADE TO ACCOMMODATE 'TROIKA' REVIEW MISSIONS, POST-PROGRAMME SURVEILLANCE MISSIONS, ETC?

Estonia has not received financial assistance.

CASE LAW INTERNATIONAL INSTRUMENTS

VIII.8

HAVE THERE BEEN DIRECT OR INDIRECT LEGAL CHALLENGES AGAINST THE FINANCIAL ASSISTANCE INSTRUMENTS BEFORE A NATIONAL (CONSTITUTIONAL) COURT?

No. Estonia has not received financial assistance.

CASE LAW IMPLEMENTING MEASURES

X.9

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON NATIONAL POLICY MEASURES ADOPTED IN RELATION TO THE MEMORANDA OF UNDERSTANDING?

No. Estonia has not received financial assistance.

BOND PURCHASES ECB

X.10

DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE MOMENT WHERE THE EUROPEAN CENTRAL BANKS STARTED BUYING GOVERNMENT BONDS ON THE SECONDARY MARKET (THROUGH THE SECURITIES MARKETS PROGRAMME, SMP).

Estonia has not received financial support.

CONDITIONALITY BOND PURCHASES ECB

X.11

WHAT NATIONAL POLICY MEASURES HAVE BEEN REQUESTED BY THE ECB IN EXCHANGE FOR THE ACQUISITION OF GOVERNMENT BONDS ON THE SECONDARY MARKET? HOW HAVE THESE REQUESTS BEEN SUBJECT TO DEBATE IN LIGHT OF THEIR IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

Estonia has not received financial support.

MISCELLANEOUS

X.12

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE ESTONIA AND FINANCIAL SUPPORT?

None.