



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: "Lithuania"

Loreta Šaltinytė (losal@mruni.eu)

Loreta Šaltinytė is an associate professor of EU law at Mykolas Romeris University, Lithuania. She holds a doctoral degree of social sciences (law) from Mykolas Romeris University (2009), an LL.M. in Natural resources law and policy (1st grade) from the University of Dundee (2008), and an LL.M. in EU and international law (with merit) from Riga Graduate School of Law (2003). In 2013 she started her own legal consultancy practice.

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I - Political context

POLITICAL CHANGE

I.1

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

Note on a general background for a public reaction to the austerity measures

The crisis of 2009 is the third significant economic crisis experienced by Lithuania in the last two decades. This experience might have contributed to the general approach towards the crisis and the 'culture of patience' that is characteristic of the public reaction to the changes during the period at issue and the nature of the measures undertaken during the crisis.[\[1\]](#)

The first crisis was the economic restructuring crisis of the 1990s which resulted in a decline of 70 percent of the country's GDP over a few years. It also led to a decision to introduce the model of a currency board. The Lithuanian currency had been pegged to the euro from 2002 until 1 January 2015, when it became the official currency.

The second crisis - 1998-99 resulted from the financial crisis in Russia, which led to significant spending cuts and public management reforms (strategic planning).

The first election during the period at issue (see below) occurred at the very onset of the financial crisis.

Political context

Lithuania is a parliamentary democracy, governed on the basis of the Constitution of 1992. The post of the head of state, a President, is held by Dalia Grybauskaitė since 12 July 2009. She was elected in the very first round on 17 May 2009 with 68 percent of the popular vote, and reelected for her second term in office with a 58 percent in May 2014.

The parliament of Lithuania (Seimas) is a unicameral body, composed of 141 members, and elected for a four year term. The Prime Minister is appointed by the President with the approval of the Seimas. The Government is appointed by the President after nomination by the Prime Minister.

Before the financial crisis struck, the parliamentary majority was held by the Social Democratic Party which also led the government with Gediminas Kirkilas as Prime Minister.

In 2007-2008 the government, supported by the opposition, made a number of decisions significantly increasing budgetary expenses (eg increasing public sector wages and social expenditure, including maternity leaves and pensions as well as introducing an automatic indexing of the budgetary pay-outs). These decisions were made despite the fact that the budget was never in surplus, even during the intensive period of economic growth in 2002 - 2007, which in 2007 was 9.8 percent of the GDP.

The first round of the 2008 Seimas elections took place a month after the collapse of Lehman Brothers, on 12 October. However, the topic of possible austerity measures never was on the political agenda. It is considered that the reason for that is that the possible impact of the external financial crisis was never sufficiently appreciated either by the opposition or the incumbent government.

October 2008 parliamentary elections

The October 2008 elections led to the following distribution of the 141 seats of Seimas:

The Conservative party (**Homeland Union - Lithuanian Christian Democrats**) - 45 seats.

The Social Democratic Party of Lithuania - 25 seats.

The newly established **National Revelation Party** (composed mostly of well-known stage performers) - 16 seats. The party's goal was to eliminate from politics both the Order and Justice Party and the Labour Party, which, as argued by the leader, were a threat to Lithuanian internal and external security. However, the party lost its popularity quickly: during the 2009 elections to the European Parliament it collected only 1 percent of the votes. It acceded to the Lithuanian Liberal and Centre Union on 22 September 2011.

Order and Justice Party - 15 seats. It is a party which is described as a Lithuanian eurosceptical party. The main criterion of attribution is the fact that both members of this party who were elected to the European Parliament in 2009-2013 (Rolandas Paksas and Juozas Imbrasas) were members of the Europe of Freedom and Democracy political group.^[2] On 10 August 2013 this party adopted a resolution inviting the public to actively encourage the politicians to organize a mandatory referendum and obtain public mandate for the introduction of the euro.^[3] At the same time the Order and Justice Party is a member of the coalition of the government formed in 2012, which publicly declares the goal to introduce the euro. However, although it was publicly voicing eurosceptical opinions with respect to the euro (see discussion under Question V.3), the party did not take steps encouraging the initiation of a referendum on the issue.

Labour Party - 10 seats.

Liberal Movement - 11 seats.

Liberal and Centre Union - 8 seats.

Electoral Action of Lithuanian Poles (LLRA) - 3 seats.

Lithuanian Peasants' Union - 3 seats.

New Union (NS) - 1 seat.

Independent candidates - 4 seats.

The coalition government was formed by the Conservative Party, who were joined by the National Revelation party and the two liberal parties. The leader of the Conservative Party

Andrius Kubilius became Prime Minister.

The newly formed Government, presented with the macroeconomic forecast of 0 percent growth at its very first meeting, had to take immediate measures adjusting the draft budget. It thus became notorious for its 'night reforms', introducing sharp spending cuts and tax rises only a few days before the start of the new financial year of 2009. These measures are also often described as contributing to the severe contraction of the economy by 15 percent in 2009.[4]

The austerity measures provoked the first massive protests on 16 January 2009. For the first time since the restoration of independence in 1990 the police applied measures involving tear gas and rubber bullets. 30 persons were injured. Although subsequently a number of protests against the austerity measures were organized, none of them led to violence. However, at the end of 2009 there were 16,000 residents less in Lithuania compared to 2008. It is commonly assumed that they left to look for better opportunities abroad.

As the economy plunged 15 percent in 2009, the government decided not to call on foreign aid and instead took further austerity measures.[5]

This government became the first one in Lithuania's history to serve a full four-year term in office despite its unpopularity.

The other elections during the period at focus did not attract notable public interest and were not of special importance. The elections to the European Parliament of 7 June 2009 were marked by an exceptionally low turnout - only 20 percent of the electorate participated. Most of the seats - 4 out of 12 - were taken by the Conservative Party (the Homeland Union). The municipal elections of 27 February 2011 did not lead to any surprises.

October 2012 parliamentary elections

On 14 October 2012 national Parliamentary elections and a consultative referendum on the construction of a new nuclear power plant took place.

The Social Democratic Party became the winner of the election, with 38 seats, and formed a coalition with the controversial Labour Party, led by Viktor Uspaskich (29 seats),[6] the populist Order and Justice (11 seats), led by an impeached president and a member of the European Parliament Rolandas Paksas, and the Electoral Action of Poles in Lithuania (5 seats). The Conservatives ended only narrowly behind the Social Democrats with 33 seats. The Liberal Movement, a member of the incumbent coalition, ended with 10 seats, only one seat less than during previous elections.

In 2012 another newly established party, *Drąsos kelias* (DK, The Way of Courage) entered Seimas, winning 7 seats. Its establishment resulted from a non-political so-called paedophilia scandal, which allegedly involved an assistant of an influential Member of Seimas. Both him and the father of the minor subsequently died. The formal leader of the Party was a priest Jonas Varkala, however, an important role in its establishment had an aunt of an allegedly abused minor girl, formerly a judge Neringa Venckienė, who was

elected to the Seimas in 2012. She fled Lithuania in April 2013, after she was stripped of parliamentary immunity in a criminal investigation against her on the charges including contempt of court and abuse of the status of a guardian of her niece. Allegedly she claimed asylum in the United States in April 2013.[7] Her whereabouts are currently unknown.[8] Soon after the whole party went to a disarray: it could not take part in 2014 elections to the European Parliament as it failed to collect the minimum 10 000 votes required by law,[9] and on 19 June 2014 its separate political group in Seimas ceased to exist. Questions were raised whether as it happened this party still had the number of members to be considered a political party as required by law.[10]

The issue which became a source of most political confusion was the result of the consultative referendum on a planned nuclear power station. On a 52 percent turnout 65 percent of voters were against the project, despite the fact that all major parties were in principle in favour of it.

25 May 2014 elections to the EP, the second round of Presidential elections and a failed attempt to have a referendum on the euro

Two eurosceptical issues were mainly raised during the EP electoral campaign: the selling of land to foreigners and introducing the euro in 2015. Referendums were attempted on both questions. The initiators managed to collect the required 300.000 votes with respect to a referendum on the selling of land to foreigners, which took place on 29 June 2014, but failed, as it attracted only 15 percent of the electorate. However, it is important that it was the first time in the country's history that 300.000 signatures for holding a referendum were collected: all prior referendums were initiated by the Seimas. The attempt to initiate a referendum concerning the introduction of the euro was blocked at its infancy: on 7 April 2014 the State Electoral Commission refused to issue the initiators the signature collection papers, reasoning that the initiative was against the Constitution and Lithuania's international obligations.[11] An appeal against the decision was filed to the Supreme Administrative Court of Lithuania, which referred the case for an opinion to the Constitutional Court. On 17 July 2014 the Supreme Administrative Court, in view of the opinion of the Constitutional Court of 11 July 2014,[12] and sitting in its extended composition, decided that the Central Electoral Commission was correct in refusing to register the initiative and to issue it the signature collection papers.[13]

The very initiative for a referendum on the introduction of the euro was taken in February – March 2014, with the initiators arguing that introducing the euro in 2015 was too early as 'it might cause a crisis and Lithuania would end up like Greece or Portugal'.[14] The initiators argued that they did not contest Lithuania's EU membership, but that they only wanted to give a chance to the people to express more clearly their will on the issue, especially because after the referendum on EU membership of 2003 the legal framework of EMU had changed significantly. One of the initiators, R. Ozolas, who is also known as the father of the national currency, argued that a key factor of the Baltic States' success in dealing with the crisis was the fact that they had their own national currencies. Although the initiators of the referendum were not against euro membership in general, they thought that it was too early for Lithuania to join the eurozone. They formulated a draft law on a constitutional amendment supplementing Art. 125 of the Constitution with two additional parts providing, first, that the national monetary unit of Lithuania is the litas, and

second, that the Bank of Lithuania has an exclusive right to issue money. It was suggested to include a third part of the article that was to provide that the decision to change the national monetary unit may be decided only by a referendum and that international treaties may allow for payments in other monetary units.[15]

Both selling of land to foreigners and introducing the euro in 2015 were topics that were raised by a nationalist party during the elections to the European Parliament of May 2014. However, in view of the Ukrainian crisis and the Russian aggression in the Crimea the mainstream political parties did not put them on their agenda emphasizing instead the European security issues. The entry to the eurozone was presented as a security, not an economic issue, and the mainstream media presented the supporters of the referendum on land ownership as undercover agents for separation from the EU. Questioning the importance of the EU (or NATO) was viewed as betrayal.[16]

Another factor in the European Parliamentary elections was the fact that their date coincided with the date of the second round of the Presidential elections. The fact that Dalia Grybauskaitė did not collect a sufficient number of votes to be reelected at the very first round meant higher participation rates at the elections to the European Parliament. However, this also had an impact on the nature of campaigning: the major topics of the campaign were security issues and Russian aggression.[17] The other topics included fighting unemployment, promoting Lithuania's energy independence, social inclusion, security, Lithuania's role in the EU, federalization of the EU and discrimination of Lithuanian farmers with respect to direct payments.[18]

The critical view on the introduction of the euro in 2015 equally failed to persuade the electorate. Although the Eurobarometer 2013 autumn results showed that as many as 49 percent of the respondents did not support the single currency, compared with 40 percent who did and 11 percent who were undecided,[19] support grew to 50 percent in 2014[20] and constituted 73 percent in July 2015.[21] Lithuania became a member of the eurozone on 1 January 2015.

A surprising outcome of the EP elections was that the incumbent Social Democratic Party won only two seats at the European Parliament, which was substantially less than expected on the basis of the opinion polls. The same number of seats went to the opposition Conservative Party (Homeland Union), the Order and Justice Party and to the Liberal Movement, which was the best result in its history. The Labour Party, the Peasants and the Greens got one seat each.

Municipal elections of March 2015

The municipal elections of March 2015 were the first municipal elections through which mayors were directly elected. This might explain an elevated public interest in the event: compared with the elections of 2011, the public participation increased by 3 points (2011- 44.08 %, 2015- 47.17%). After the elections two political parties changed their leadership: Andrius Kubilius resigned from the Conservative Party giving way to the member of the European Parliament Gabrielius Landsbergis, and Loreta Graužinienė resigned from the leadership of the Labour Party. Its newly elected leader is a member of the European

Parliament (ALDE group) Valentinas Mazuronis, who only recently left another party, Order and Justice. Although the majority of municipal mandates (359) were collected by the Social Democratic Party, followed by the Conservative Party (253), the results demonstrate an increasing political influence of the Liberal Movement, which received 217 mandates. The Labour Party ended with 148 mandates, the Peasants and Greens – 82, a coalition of Polish Electoral Action and Russian Alliance – 62 mandates. The community electoral committees – non-party units collected 118 mandates throughout the country.

[1] R. Vilpišauskas, V. Nakrošis, V. Kuokštis, The Politics of Reacting to the Crisis in Lithuania from 2008-2013: Exiting the Crisis, Entering Politics as Usual? In: K. Bukovskis (ed.) *The Politics of Economic Sustainability: Baltic and Visegrad Responses to the European Economic Crisis*. Riga: Latvian Institute of International Affairs, 2014, p. 38- 63, p. 38.

[2] M. Jastramskis, Lietuvos visuomenės ir politinių partijų nuostatos ES atžvilgiu. [Positions on EU of the Lithuanian Public and Political Parties] *Lietuva Europos Sąjungoje*. Metraštis [Yearbook] 2009-2013, Europos Integracijos studijų centras: 2014.

[3] Resolution of the Order and Justice Party of 12 August 2013, available in Lithuanian at <http://www.tvarka.lt/index.php?id=8125> [last accessed on 23 November 2015]. Also see T. Janeliūnas, „Tvarka ir teisingumas“ remsis euroskeptikais? [Order and Justice will draw on eurosceptics?] www.iq.lt, 2013-08-14. [last accessed on 23 November 2015].

[4] G. Davulis, Global Crisis and Economic Processes in Lithuania and other Baltic Countries. *Business Systems and Economics* No. 2 (1), 2012: 134-147, p. 139, 140; J. Čičinskas, A. Dulkys, Finansų krizė ir nauji sprendimai Europos Sąjungoje: mažos valstybės atvejis. [Financial Crisis and new decisions in the European Union: a case study of a Small State] *Lietuvos metinė strateginė apžvalga* 2012-2013, p. 125; S. Jakeliūnas, *Lietuvos krizės anatomija* [The Anatomy of Lithuanian Crisis], Iš arčiau: 2010, p. 68; LRV 2008 m. veiklos ataskaita, pritarta 2009 m. kovo 25 d. nutarimu Nr. 223, [report of the Government of the Republic of Lithuania on its activities in 2008].

[5] Discussed in detail at I. Hawkesworth, R. Emery, J. Wehner and J. Saegert, Budgeting in Lithuania, *OECD Journal on Budgeting* 2010/3, p. 8, available at <http://www.oecd.org/countries/lithuania/48170576.pdf>

[6] V. Uspaskich was indicted with criminal charges for fraud and fraudulent bookkeeping and was sentenced to four years in prison by Vilnius Regional Court on 12 July 2013. See BNS, Vilnius Court pronounced the verdict in Labour Party's case, available at <http://www.lithuaniantribune.com/44590/vilnius-court-pronounced-the-verdict-in-labour-partys-case-201344590/> On 7 August 2013 another case was filed against V. Uspaskich for contempt of court. The factual circumstances are discussed in detail at European Parliament, Report on the request for waiver of the immunity of Viktor Uspaskich, A8-0149/2015, 11 May 2015.

- [7] The Lithuania Tribune, Venckienė's attempts to seek political asylum abroad seem suspicious, 2013- 04-13,
<http://www.lithuaniatribune.com/35766/venckienes-attempts-to-seek-political-asylum-abroad-seem-suspicious-201335766/>
- [8] LRT, Prokurorai prisipažino, kad nežino, kur yra N. Venckienė [Prosecutors concede that they are not familiar with the whereabouts of N.Venckienė], www.lrt.lt, 2015-11-01.
- [9] BNS, Dar vienas rinkimų fiasko: „Drąsos kelias“ nesurinko parašų [Another election failure: 'Way of Courage' failed to collect the necessary number of signatures], www.delfi.lt, 2014-04-10.
- [10] Lietuvos Respublikos politinių partijų įstatymo pakeitimo įstatymas XII-614 [The Law amending the Law on Political Parties], Žin., 2013-12-14, Nr. 128-6513. Art. 5(3) of the Law currently requires 2000 members for the purpose of establishing a party. If the number of members becomes less than the required statutory minimum, and the party does not reorganize itself within two years so that its number of members fulfils the legal requirements, the party is removed from the register of political parties.
- [11] Lietuvos Vyriausiosios rinkimų komisijos sprendimas Dėl atsisakymo įregistruoti iniciatyvinę grupę privalomajam referendumui paskelbti [Decision of the Central Electoral Commission on refusal to register the petition on announcement of a referendum] 2014-04-07, nr. SP-101.
- [12] Ruling of the Constitutional Court of the Republic of Lithuania on the compliance of the provisions of the Republic of Lithuania's law on referendums [sic] with the Constitution of the Republic of Lithuania, an official translation is available in English at <http://www.lrkt.lt/en/court-acts/search/170/ta859/content>
- [13] Decision of the Supreme Administrative Court of Lithuania of 17 July 2014 No. R-858-11-14.
- [14] R. Vilpišauskas et al, *Lithuania*. Available at: <http://www.eu-28watch.org/?q=node/1203>
- [15] J. Ūdris. Member of the Central Electoral Commission. Pažyma dėl referendumo iniciatyvinės grupės prašymo [Certificate on the request to register the petition to announce a referendum] 2014-04-07, www.lrs.lt
- [16] G. Aleknonis, European Parliament elections in Lithuania: populist competition in the shadow of the presidential vote. *Political preferences* 9/2014: 39-56, p. 41.
- [17] Ibid, p. 46.
- [18] R. Vilpišauskas et al, *Lithuania*. Internet Access: <http://www.eu-28watch.org/?q=node/1203>
- [19] Standard Eurobarometer 80, autumn 2013, p. 25. Available at http://ec.europa.eu/public_opinion/archives/eb/eb80/eb80_first_en.pdf
- [20] Standard Eurobarometer 81, autumn 2014, p. 20, available at <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2040>
- [21] Standard Eurobarometer 83, first results May 2015, p.26.

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[9] BNS, Dar vienas rinkimų fiasko: „Drąsos kelias“ nesurinko parašų [Another election failure: 'Way of Courage' failed to collect the necessary number of signatures], www.delfi.lt, 2014-04-10.

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[12] Ruling of the Constitutional Court of the Republic of Lithuania on the compliance of the provisions of the Republic of Lithuania's law on referendums [sic] with the Constitution of the Republic of Lithuania, an official translation is available in English at <http://www.lrkt.lt/en/court-acts/search/170/ta859/content>

[13] Decision of the Supreme Administrative Court of Lithuania of 17 July 2014 No. R-858-11-14.

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II - Changes to the Budgetary Process

BUDGETARY PROCESS

II.1

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

The general legal framework for the budget, the relationship between the Seimas and the Government in the budgetary process is governed by the Constitution of the Republic of Lithuania, adopted by a referendum on 25 October 1992.

The budgetary system consists of an independent State budget as well as independent municipal budgets (Art. 127 Constitution).

The main law governing the State budget is the Law on the Budget Structure (July 1990).[1] It defines the content of both State and municipal budgets, the legal grounds for raising revenues and using appropriations, as well as the duties of their managers.

The Law on Fiscal Discipline (2007)[2] sets an objective of a balanced budget in the medium term and long term sustainability. The Law was adopted in reaction to the fact that on 23 May 2007 Standard and Poor's downgraded Lithuania's credit debt rating.[3] The Ministry of Finance concluded that the only way to persuade the markets of a stable economic perspective of the country would be to adopt a law which would be difficult to amend and would oblige the country to engage in a stable fiscal policy in a long and medium-term perspective.[4] However, the Law on Fiscal Discipline did not establish a binding medium-term expenditure framework, and did not provide for an enforcement mechanism. Furthermore, as it was a simple law, its amendment was not more difficult than that of any other ordinary law.

The Seimas has a constitutional duty to approve the budget by law prior to the start of the new budgetary year, (Art. 131 (1) Constitution) i.e. by 1 January (Art. 129 Constitution). The Law on the Budget Structure enshrines a stricter requirement to approve the budget at least 14 calendar days prior to the start of the new budget year (Art. 20).

The Constitution allows the Seimas to increase the expenditure only provided that the Seimas identifies the financial resources that can cover it. However, if certain expenditure is provided by law, it may not be reduced until that law is amended (Art. 131(2) Constitution).

The municipal budgets are approved by the municipal councils. They include municipal revenues which are calculated on the basis of the rules defined in the Law on the Methodology of Determination of Municipal Budgetary Revenues[5] and funds transferred from the State to exercise delegated functions of the state.

Under the Constitution the budget is approved for one calendar year. Since 11 July 2000 Art. 17(3) of the Law on Budgetary Structure provides that the State budget will be planned for three years (the budget year plus two succeeding years) based on the principle of strategic planning.[6] Beginning with the budgetary year of 2014 the three-year planning rule is extended also to municipal budgets. The latter change implements the requirements of article 9 of

the directive 2011/85 to establish a credible, effective medium-term budgetary framework providing for a fiscal planning horizon of at least 3 years (see also question VII.2).

The Budget is drafted and submitted for consideration to the Seimas by the Government (Art. 94(4) Constitution) no later than 75 days before the end of the budget year (ie by 17 October). (Art. 130 Constitution, Art. 18 of the Law on Budget Structure). The procedure of approval of the State budget is governed by chapter 27 of the Statute of the Seimas, which has a status of a law.[7] There is no formal pre-budget consultation with the Parliament, although the Minister of Finance may consult the chair of the Budget and Finance Committee during the drafting process. The main focus of parliamentary scrutiny follows the presentation of the draft budget by the Minister of Finance in mid-October.

Following the Government's presentation the Seimas has at least 15 days to consider the draft budget. Having received the draft, the Seimas then submits it to the National Audit Office of Lithuania. Art. 173 (1) of the Statute of Seimas requires the Office to present its conclusions on the Draft Budget to the Seimas' Budget and Audit Committees by 15 November. The conclusions may also be submitted to the Seimas on its request and on the date set by it.

The National Audit Office also has constitutional powers to control the execution of the budget (Art. 134 Constitution).

The committees may submit their comments and proposals to the Budget and Finance Committee by 10 November.

Following an amendment of the Law on Budget Structure of 16 October 2012, starting with 2014 the Bank of Lithuania presents a report to the Seimas on the impact of the implementation of the general structural government balance impetus target on the confidence in the stability of the financial system and prices.[8] Prior to this amendmend the scope of the report of the Bank of Lithuania was narrower and concerned only its duties as a central bank with respect to the banking sector.

The first reading of the Law on the draft budget in the plenary session is held on 25 November, followed by a second reading in the plenary session and approval in mid-December. The State budget and the main financial indicators of municipal budgets are approved by the Seimas adopting a Law on Approval of the Fiscal Indicators of the State Budget and Municipal Budgets.[9] The Law covers the revenue and expenditure of the Government's ministries and other budgetary institutions, and includes state allocations to the municipalities.

Should parliamentary approval be delayed beyond the beginning of the relevant budget year, Art. 132 Constitution allows monthly expenditure not exceeding one-twelfth of the State budget expenditure approved for the previous budget year. Under Art. 29 of the Law on the Budget Structure the monthly appropriations of every appropriation manager may not exceed one-twelfth of the previously appropriated funds. Such interim funding cannot be used for new activities but only for 'continuous activities', obligations established by laws and debt-servicing obligations. The Law explicitly exempts EU financial support and co-

funding and other financial support from these restrictions. During the budgetary year, the Constitution allows the Seimas to approve adjustments to the budget under the same procedure as applicable for the main budget, and it may approve an additional budget if necessary (Art. 132 Constitution).

Following the parliamentary approval of the budget, the Government issues a decree that contains a breakdown of expenditure on the programme level and by economic category.

Under Article 5 of the Constitutional Law on the Implementation of the Fiscal Treaty Seimas is empowered to establish the medium-term objective by 15 March, for a maximum period of three years (see also question VII.10).

The government presents a report to the Seimas on the implementation of the structural impetus target and on the general government sector balance indicator by 1 May. If the structural impetus target is not implemented, the Government must also submit the reasons for that to the Seimas and to the National Audit Office. The National Audit Office then presents its report on the validity of such reasons and whether the measures on the implementation of the structural impetus target are appropriate. In view of this report, the Government must present the Seimas with the final list of reasons why the structural impetus target was not achieved. The Government has an obligation to do it at a time when the draft Law on Fiscal Indicators of the State and Municipal Budgets is submitted to the Seimas (eg by 17 October).

GENERAL CHANGE

II.2

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

There have been no significant changes affecting the timeline of the budgetary process. The content of documentation has changed, as the European Semester and the relevant documents are now integrated in the budgetary process.

One more notable change is that since 2011 the budget formulation procedure has been amended allowing for an increased minister's role in establishing priorities for their ministries.

Under the system used in 2008-2010, each year in May the Budget Department of the Ministry of Finance prepared preliminary allocations for the State budget taking into account the strategic goals, macroeconomic projections, preliminary limits on public investment for three years and preliminary data about EU fiscal support. In May or June, the Government would approve overall ceilings and limits on public investment for the budget year and the two succeeding years. The Ministry of Finance then set individual ministry ceilings and distributed planning guidance to appropriation managers, who on their own turn submitted their budget proposals by early September, followed by negotiations between the Ministry of Finance and the appropriation managers. As the Government approves the plan on fiscal indicators at the end of February - March, it takes into consideration the deadlines when it has to submit the relevant documents to the European

institutions. Also, under the Law on Budget Structure the Government is under an obligation to submit to the Seimas the documents received from the European institutions adopted during the European Semester and to discuss their recommendations in the Draft Law on Fiscal Indicators of State Budget and Municipal Budgets.

In October 2012 the Law on Budget Structure was also supplemented with a 6th chapter which sets out the procedure with respect to a breach of fiscal discipline. It provided for the Government's obligation to present to Seimas the report on the implementation of the government balance structural impetus target. If it becomes clear that the target is not met, the Law requires the Prime Minister to verbally explain to the Seimas the reasons for such failure. If the causes identified do not fall within the list of the escape clauses identified in Art. 39 of the Law on Budget Structure, the Prime Minister must explain them and suggest the specific measures which would enable avoiding them in the future. The Prime Minister is also requested to explain the causes of the heightened tax risk indicator as well as its medium term management perspectives. Art. 39 also lists the permissible causes justifying the failure to implement the structural impetus target or provisions on surplus and balanced medium term budget.

This duty applies to the planning of the 2014 budget and to subsequent budgets.

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?

The major change is an extension of the competence of the National Audit Office empowering it to exercise the functions of an independent fiscal institution. (see also question VII.5).

This was done by the Constitutional Law on the Implementation of the Fiscal Treaty^[10] and the amendment of the Law on National Audit Office (No.I-907),^[11] both of which were adopted on 6 November 2014 and entered into force on 1 January 2015.

Another amendment enhanced the involvement of the Bank of Lithuania in the budgetary process. Starting with the budget of 2014 under Art. 19(3) of the Law on Budgetary Structure within 15 days after the Government presents the draft Budget to the Seimas the Bank of Lithuania is to present its report on the impact of the implementation of the general structural government balance impetus target on the confidence in the stability of the financial markets and prices. Also, after the adoption of the Constitutional Law on the Implementation of the Fiscal Treaty the Bank of Lithuania is under an obligation to submit to the monitoring authority its macroeconomic forecasts each time they are updated, but at least twice per calendar year (see also question VII.4). The provision also empowers the Bank to request information from state and municipal institutions for the performance of this function (Art. 9(2) Constitutional Law on the Implementation of the Fiscal Treaty).

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?

The timeline has not changed significantly. The requirement to make public the draft budget for the forthcoming year by 15 October almost coincides with the national constitutional deadline to submit the draft budget to Seimas by 17 October. Consequently there was no change of legal regulation on this issue.

MISCELLANEOUS

II.5

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

No further relevant information.

[1] Lietuvos Respublikos biudžeto sandaros įstatymas [Law on the Budget Structure] Nr. IX-1946, 2003-12-23, Žin., 2004, No. 4-47. An official translation of the law in English is available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.440733?jfwid=cxhryny4f3>

[2] Lietuvos Respublikos fiskalinės drausmės įstatymas [Law on Fiscal Discipline] Nr. X-1316, 2007-11-8, Žin., 2007, Nr. 120-4881.

[3] Aiškinamasis raštas dėl Lietuvos Respublikos fiskalinės drausmės įstatymo projekto [Explanatory memorandum on the Draft Law on Fiscal Discipline] Nr. XP-2394, 2007-07-09.

[4] Ibid.

[5] Lietuvos Respublikos savivaldybių biudžetų pajamų nustatymo metodikos įstatymas [The Law on the Methodology of Determining Budgetary Income of the Municipalities], Nr. VIII-385, 1997-07-02, Žin., Nr.69-1743.

[6] B. Sudavičius, V. Vasiliauskas, Narystės Europos Sąjungoje įtaka Lietuvos Respublikos biudžeto planavimui, [The Impact of the EU Membership on the Budgetary planning in the Republic of Lithuania] in: G. Švedas (ed.), *The 10th anniversary of the Lithuanian Membership in the European Union* (Vilnius university: 2014) p. 469- 487.

[7] Lietuvos Respublikos Seimas, Statutas [Statute of Seimas of the Republic of Lithuania] Nr. VIII-1000, Žin., 1999, Nr.5-97.

[8] Lietuvos Respublikos biudžeto sandaros įstatymo 1, 2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 32, 33, 35, 37 straipsnių, penktojo skirsnio pavadinimo pakeitimo, Įstatymo papildymo šeštuoju skirsniu ir priedu bei 16 straipsnio pripažinimo netekusiu galios įstatymas [The Law amending articles 1, 2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 32, 33, 35, 37 of the Law on the Budget Structure] XI-2274,

Žin., 2012-10-31, Nr. 126-6323.

[9] E.g. Lietuvos Respublikos 2015 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas [Law on Approval of the Fiscal Indicators of the State Budget and Municipal Budgets for 2015], Nr. XII-1408. TAR, 2014-12-23, No. 20611.

[10] Lietuvos Respublikos Fiskalinės sutarties įgyvendinimo konstitucinis įstatymas [Constitutional Law of the Republic of Lithuania on the Implementation of the Fiscal Treaty], Nr. XII-1289, 2014-1-06, TAR No. 2014-17028. An official translation in English is available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1012060 [last accessed on 23 November 2015].

[11] Lietuvos Respublikos valstybės kontrolės įstatymo Nr. I-907 2, 4, 6, 9 ir 23 straipsnių pakeitimo įstatymas [Law on amendment of arts. 2, 4, 6, 9 and 23 of the Law of the Republic of Lithuania on National Audit Office] Nr. I-907, 2014-11-06, TAR Nr.2014-16779.

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)?

The Fiscal Compact was mainly implemented by the Constitutional Law on the Implementation of the Fiscal Treaty, which was adopted on 6 November 2014. The peculiarity of the Constitutional Law is that it is not considered to be a part of the Constitution, therefore theoretically the Law still must comply with the Constitution, although it has a higher legal power than an ordinary law. It differs from an ordinary law by the procedure of its adoption (which requires a qualified majority vote, ie more than half of all members of Seimas) and amendment (a majority of at least 3/5 members of Seimas). Art. 69 (3) of the Constitution also requires adopting a separate law providing for a list of constitutional laws (see also question IX.2)

A few amendments were also made to the Law on Fiscal Discipline (also see question II.1). Most significant amendments were made to the Law on Budget Structure by a normal act of Seimas.

The ESM treaty was ratified by law, and implemented by the Government adopting a decision.[1] (see question VIII.6)

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. Prior to ratification of the Fiscal Compact the Department of European Law of the Ministry of Justice issued an advice to Seimas[2] that there was no ground to believe that there could be a conflict between the Fiscal Compact and the Constitution.

The Department reasoned that the Fiscal Compact merely specified in more detail the constitutional principle that it was necessary to balance the expenditure on social needs with the budgetary capacity.

The main focus of the opinion was the ruling of the Constitutional Court of 2002 where the Court had emphasized that the budgetary estimates should ensure a balance between the social needs and the budgetary capacity; that it was an exclusive duty of the Government to draft the budget just like discussing and adopting the budget was an exclusive duty of the Seimas, and that these competences were not transferrable.[3]

With respect to the corrective measures required by the Fiscal Compact Treaty, the Department of European Law did not think that the need to take into consideration the opinion of the European Commission in adjusting the budget in any way contradicted the

Constitution. The Department also did not consider that the Fiscal Compact Treaty requirement to appoint an independent fiscal institution affected the exclusive budgetary competence of either the Parliament or the Government.

With respect to the specific Fiscal Treaty rules and the requirement to have a balanced budget the Department reasoned that these could be taken as a part of the principle accepted by the Constitutional Court that the budget needs to be planned in view of the current economic and social status, needs and capacities of the society and the State, the State's financial resources and its international obligations.

The department therefore did not think that there were any issues in the Fiscal Compact that could be in conflict with the Constitution, however, as the final conclusion on this issue could only be made by the Constitutional Court, it was preferable to make a reference on this issue.[4]

The Seimas, however, did not feel that the issue was as topical as to warrant a reference: only one speaker, Vytenis Andriukaitis, spoke in favour of this idea, however, clearly it was outside of the parties' agenda of priorities.[5] Instead, a decision was taken to speed up the ratification procedure. In total the discussions over the Treaty took less than one hour after which it was ratified.[6]

Contrary to the opinion of the European Law Department, a former president of the Constitutional Court and currently a Judge at the European Court of Human Rights prof. dr. Egidijus Kūris had expressed his view publicly that in order to accommodate the implementation of the Fiscal Compact it was necessary to reconsider a number of articles of the Constitution - especially those concerning the composition of the budget and collection of taxes. His view was that a reference to the Constitutional Court was necessary before ratifying the Treaty, as it would enable to identify what, if any, constitutional amendment was needed.[7]

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?

The Constitution does not contain explicit provisions touching on the principles provided for by the Fiscal Compact.

However, the Constitutional Court has developed a concept which relates to the principle of a balanced budget. The Court accepts that the constitutional concept of State budget and the principle of responsible governance imply the need to form a realistic budget, and that the projected income and expenditure must correspond to the needs and possibilities of the society and the State.[8] Therefore the Court emphasizes that the Seimas and the Government, when in need to restrict the budgetary expenditure, are under a duty to take into consideration the state functions established in the Constitution, the existing economic and social situation, the needs and possibilities of the society and the State, the available

and potential financial resources and state obligations (*inter alia*, international ones). The Court also accepted the principle requiring balanced assessment of the social needs and the fiscal ability of the State in its ruling concerning the constitutional model of healthcare.^[9]

In this jurisprudence the Court further restricted the scope of the State's ability to downsize the budgetary expenditure to the need to comply with the following principles:

1. The salaries of the State servants can be reduced for no longer than one year; the budget of the next year should be adopted in view of the status of the economy. One year after adoption, the decision to reduce the salaries must be reconsidered.
2. The principles of the rule of law, equality, justice, proportionality and legitimate interests and legal certainty, social solidarity and other imperatives must be taken into consideration. The social guarantees may be reduced only as an *ultima ratio*.
3. Reduction of the salaries of the State servants and pensions is allowed only if the State is in a severe financial crisis. Upon an official finding that the State is in such a crisis, the Seimas may reduce the salaries and pensions. However, the reduction must be temporary and compensations must follow subsequently.

The Constitutional Court so far did not have a chance to express its views on the doctrine of the independence of the National State Audit Office.

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?

Not applicable.

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 Constitutional Law on the Implementation of the Fiscal Treaty No. XIIP-1761(2) was adopted on 6 November 2014. Its content is addressed above under part IX. The Law is of a different level than ordinary legislation as it requires a stricter, longer and a more complicated amendment procedure. The constitutional law is adopted if more than half of all members of the Seimas (more than 71) vote for it. Once adopted, it can be amended if at least 3/5 of all members of the Seimas vote in favour.

The Constitutional Law on the Implementation of the Fiscal Treaty was adopted by 103 members of Seimas voting for, 1 against and 2 abstending. The Law was thus included in the list of Constitutional Laws, which includes 9 other Laws: the Law on State Language, The Law on State Heraldic Arms and other Heraldic Arms and Signs, the Law on State Flag and other Flags, the Law on State Anthem, the Law on Referendum, the Law on the Approval, Entry into Force and Implementation of the Code of Elections, the Law on Citizen's Legislative Initiative, the Law on Petitions, the Law on State of Emergency.

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?

With little discussions as there were on the issue, there was a clear understanding among the Members of Parliament and the public that the rules were of a European origin and were adopted in order to implement the eurocrisis law.

MISCELLANEOUS

III.9

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

No other relevant information.

[1] Lietuvos Respublikos Vyriausybės nutarimas Dėl LR dalyvavimo Europos Stabilumo Mechanizmo valdytojų taryboje ir direktorių valdyboje. Europos stabilumo mechanizme tvarkos aprašas [Decision of the Government of Lithuania on Lithuania's participation at the European Stability Mechanism Board of Governors and the Board of Directors] 2015-01-01, TAR Nr. 2902.

[2] Europos teisės departamento išvada įstatymo dėl Belgijos Karalystės, Bulgarijos Respublikos, Danijos Karalystės, Vokietijos Federacinės Respublikos, Estijos Respublikos, Airijos, Graikijos Respublikos, Ispanijos Karalystės, Prancūzijos Respublikos, Italijos Respublikos, Kipro Respublikos, Latvijos Respublikos, Lietuvos Respublikos, Kiuksemburgo Didžiosios Hercogystės, Vengrijos,

Maltos, Nyderlandų Karalystės, Austrijos Respublikos, Suomijos Respublikos, Portugalijos Respublikos, Rumunijos, Slovėnijos Respublikos, Slovakijos Respublikos, Suomijos Respublikos ir Švedijos Karalystės sutarties dėl stabilumo, koordinavimo ir valdysenos ekonominėje ir pinigų sąjungoje ratifikavimo projektui, XIP-4491 [The conclusion of the Department of European Law on the draft Law Ratifying the Fiscal Compact], 2012-06-05, Nr. S-2012-4726. Department of the European Law under the Ministry of Justice is an institution which advises the Government and Seimas on issues concerning implementation of European law. It also represents the Government in cases considered by the EU Court of Justice.

[3] Lietuvos Respublikos Konstitucinio Teismo nutarimas Dėl valstybės ir savivaldybių biudžetų rodiklių [Ruling of the Constitutional Court of the Republic of Lithuania on the Fiscal Indicators of State and Municipal Budgets, Nr. 25/01, 2002-01-14. An official translation is available at: <http://lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2002>

[4] Europos Teisės Departamento išvada LR Seimo Teisės ir teisėtvarkos komitetui įstatymo dėl Belgijos Karalystės, Budgarijos Respublikos, Danijos Karalystės, Vokietijos Federacinės Respublikos, Estijos Respublikos, Kipro Respublikos, Latvijos Respublikos, Lietuvos Respublikos, Liuksemburgo Didžiosios Hercogystės, Vengrijos, Maltos, Nyderlandų Karalystės, Austrijos Respublikos, Lenkijos Respublikos, Portugalijos Respublikos, Rumunijos, Slovėnijos Respublikos, Slovakijos Respublikos, Suomijos Respublikos ir Švedijos Karalystės sutarties dėl stabilumo, koordinavimo ir valdysenos ekonominėje ir pinigų sąjungoje ratifikavimo projektui, [European Law Department Conclusion to Seimas on the draft Law on the Ratification of the TSCG, 5 June 2012, no S-2012-4726.]

[5] Seimo rytinio posėdžio stenograma, [Seimas' morning session transcript] 2012-06-28.

[6] Ibid.

[7] Fiskalinės drausmės paktas į Lietuvos Konstituciją nesikėsins? [Will the Fiscal Treaty threaten the Constitution of Lithuania?] www.veidas.lt, 2012-03-15.

[8] Rulings of the Constitutional Court of 14 January 2002 and of 15 February 2013, and an interpretative decision of 16 April 2014. An academic summary is presented by T. Birmontienė, Konstitucinė valstybės biudžeto doktrina [The Constitutional Doctrine on the State Budget], *Konstitucinė Jurisprudencija* 2012, vol. 3 (27) p. 94-119.

[9] Ruling of the Constitutional Court of 11 July 2002 on the funding of healthcare system, longterm funding of the systems of research and education, drafting and composition of the State Budget; Ruling of the Constitutional Court of 16 May 2013 on compliance with the Constitution of a number of provisions of the Law on Social Insurance, the Law on Health Insurance, the Law on Social Insurance of Maternity and Sickness. All official translations in English are available at www.lrkt.lt

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:2010:118:0001:0004: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 LITHUANIA 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?

There is no publicly available information on the discussions at the Government or Seimas with respect to either the EFSF or the EFSM.

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 LITHUANIA AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

GUARANTEES

IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN LITHUANIA? 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?

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

ACTIVATION PROBLEMS

IV.4

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA ENCOUNTER DURING THE NATIONAL PROCEDURES RELATED TO THE ENTRY INTO FORCE OF THE EFSF FRAMEWORK AGREEMENT AND/OR THE ISSUANCE AND INCREASE OF GUARANTEES?

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

CASE LAW

IV.5

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ABOUT THE EFSM OR EFSF IN LITHUANIA?

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

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?

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

IMPLEMENTING PROBLEMS

IV.7

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA ENCOUNTER IN THE APPLICATION OF THE EFSF?

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

BILATERAL SUPPORT

IV.8

IN CASE LITHUANIA 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 LITHUANIA AND THE EFSM/EFSF?

Not applicable.

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 LITHUANIA ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

No difficulties were publicly reported. I requested the Ministry of Finance to provide information on the issues concerning negotiations of the eurocrisis instruments under the Law on the Right to Obtain Information from State and Municipal Institutions. The Ministry replied via email on 7 September 2015. In its reply to this particular question the Ministry of Finance indicated the following: 'Lithuania was not an eager supporter of the amendment, however, for the sake of compromise and in the interest of EU financial stability Lithuania did not object to a partial amendment of article 136 TFEU, which would include a provision enabling establishment of the stability mechanism, and would be based on strict conditionality. Lithuania's primary interest was transparency of further consultations on the permanent mechanism of crisis management, which would be held in cooperation with all EU Member States and their national parliaments.'[1]

APPROVAL

V.2

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

The amendment was approved on 12 June 2012 by the Seimas adopting a Law ratifying the amendment of Art. 136 TFEU with regard to a stability mechanism for Member States whose currency is the euro, made by the decision no. 2011/199 of the European Council.[2]

The explanatory memorandum of the Law[3] argued that it was an important measure facilitating the creation of a permanent crisis management mechanism, which would be used when the need would arise to safeguard the financial stability of the eurozone as a whole. The amendment was presented as a clear legal ground to establish the ESM, which would be created by the agreement of the Member States. It further emphasized that the new provision reflects the ability to create the ESM to the eurozone Member States without suggesting that in the absence of such a provision of the TFEU it would not be permissible to establish the ESM. It further emphasized that

although it was the primary duty of the eurozone Member States to solve their fiscal problems, and that the ESM would not apply to the States which are not party to the eurozone, it was in the interest of all EU Member States to ensure stability of the eurozone. These arguments were reiterated during the discussions before ratification.

The question of legal basis to ratify the treaty did not raise any public discussions. It was presented as a technical issue and was accepted as such without further consideration. It was agreed that the ratified document is an amendment of the TFEU, despite the fact that the amendment itself was made by a decision of the European Council.

The technical issue of whether it was a treaty or a European Council decision which needed to be ratified was raised by the Parliament's legal department:[4] the draft of the ratification law referred to the decision of the European Council of the European Union. It was agreed that even though the amendment of the TFEU was made by a European Council decision, the amendment was still a treaty amendment, therefore the document to be ratified was the TFEU, not the decision of the European Council.

APPROVAL DIFFICULTIES

V.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA ENCOUNTER DURING THE APPROVAL OF THE 136 TFEU TREATY AMENDMENT?

No difficulties were encountered. During the discussions no serious argument against ratification of this Law was voiced. In support of ratification Kęstutis Glaveckas, a chairman of the Parliamentary Budget and Finance Committee, argued that ratification of the Law would show solidarity with the eurozone Member States, whereas failure to ratify would destroy everything that Lithuania sought to achieve during the past eight years.[5]

The Minister of Foreign Affairs A.Ažubalis argued that failure to ratify would mean that [Lithuanian Seimas] creates a hurdle to stabilization of the vulnerable situation in the financial markets and does it without clear reasons.[6] P.Auštrevičius noted the potential benefit to Lithuania to have resort to the fund in the future in case of need.[7]

Members of the political group Order and Justice Julius Veselka and Egidijus Klumbys argued against ratification on the ground that the document was irrelevant to Lithuania which was not yet a member of the eurozone. E. Klumbys added that ratification of this law contradicted the Constitution of the Republic of Lithuania.

The amendment was ratified with 81 votes for, 0 against and 8 abstentions.

CASE LAW

V.4

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

No.

MISCELLANEOUS

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

The Law ratifying an amendment of Art. 136 of the TFEU was subsequently amended on 23 January 2014. The need for an amendment arose because the ratifying Law used the term 'euro' with a Lithuanian ending, and was written in the following way: 'euras (*euro*)'. This did not comply with the formal EU requirements that the name of the common currency should be identical in its nominative singular use. The government proposed this amendment in view of the planned entry to the eurozone the year after so that the European Central Bank would not have a ground to criticize Lithuania in its opinion.[8] On 23 January 2014 the amendment was approved by Seimas with a vote of 102 in favour, one against and one abstention.

[1] A. Jonušas, „Fw: Dėl informacijos pateikimo“ Message to Loreta Šaltinytė“, 7 September 2015. Email in Lithuanian. Translated by L. Šaltinytė.

[2] LR įstatymo dėl Sutarties dėl Europos Sąjungos veikimo 136 straipsnio, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras (*euro*), pakeitimo, priimto 2011 m. kovo 25 d. Europos Vadovų tarybos sprendimu 2011/199/ES, ratifikavimo [The Law on ratification of the amendment of Art. 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro], 2012-06-12 Nr. XI-2058; Pakeitimo įstatymas, 2014-01-23 Nr. XII-763. An official translation in English is available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a6e453d08d9211e39e3c992f044525a9?jfwid=cxhrnxzkm>, [last accessed on 23 November 2015].

[3] Užsienio reikalų ministerija, Lietuvos Respublikos įstatymo Dėl 2011 m. kovo 25 d. Europos Vadovų Tarybos sprendimo 2011/199/ES, kuriuo iš dalies keičiamas Sutarties dėl Europos Sąjungos veikimo 136 straipsnis, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras, ratifikavimo Projekto nr. XIP-3638, Aiškinamasis raštas [Explanatory memorandum on draft Law no. XIP-3638], 2011-09-26.

[4] LR Seimo kanceliarijos teisės departamentas, Išvada dėl Lietuvos Respublikos įstatymo „Dėl 2011 m. kovo 25 d. Europos Vadovų Tarybos sprendimo 2011/199/ES, kuriuo iš dalies keičiamas Sutarties dėl Europos Sąjungos veikimo 136 straipsnis, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras, ratifikavimo“ projekto [Seimas' Chancellery, Department of law, Conclusion on draft Law No. XIP-3638, 10 October 2011].

[5] Seimo rytinio posėdžio stenograma. 2012-06-12 [Transcript of Seimas' 12 June 2012 morning session].

[6] Ibid.

[7] Ibid.

[8] Įstatymo „Dėl Sutarties dėl Europos Sąjungos veikimo 136 straipsnio, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras (euro), pakeitimo, priimto 2011 m. kovo 25 d. Europos Vadovų Tarybos sprendimu 2011/199/ES, ratifikavimo“ pakeitimo įstatymo projekto aiškinamasis raštas [Explanatory memorandum of the Law on ratification of Art. 136 of the Treaty on the Functioning of the European Union with regard to the Stability mechanism for Member States whose currency is the euro] XIIP-1344.

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 LITHUANIA 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.

Being a non-eurozone Member State Lithuania did not participate at the negotiations of the Euro-Plus-Pact in March 2011. Nevertheless, it was among the six non-eurozone Member States which joined the Pact without being able to negotiate its terms and conditions. This suggestion to join the pact in the mode of "take it or leave it" was described by the minister of foreign affairs A. Ažubalis as arrogant.[1] Lithuania still agreed to join as the Euro-Plus-Pact was viewed as reflecting its interest to proceed towards becoming a part of the eurozone. President D. Grybauskaitė expressed her support to the Euro-Plus-Pact stating that it promotes employment, fosters business growth and, last but not least, ties the hands of those who may want to make excessively populist decisions.[2]

In its reply to this particular question, the Ministry of Finance commented that []during the negotiations Lithuania supported enhancing of the economic coordination for the sake of stability of the EU and of the eurozone. It was important for Lithuania to ensure that at this stage new criteria of membership in the eurozone were not created and that the following principles of the Pact were implemented: 1) direct taxes remained a part of national competence, 2) new initiatives were to comply with existing EU instruments (eg Europe 2020, European Semester, Stability and Growth Pact) and EU provisions of internal market 3) the European Commission and the EU Council in its relevant formations should be actively engaged in the process of surveillance of the implementation of the Pact.[]

MISCELLANEOUS

VI.2

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

No other relevant information.

[1] ELTA, "Prezidentė: „Euro plus“ paktas bus naudingas Lietuvos žmonėms", [President: "Euro-Plus-Pact will benefit the Lithuanian people" 25-03-2011],

<http://ekonomika.tv3.lt/naujiena/prezidente-euro-plus-paktas-bus-naudingas-lietuvos-zmonems-6062.html#ixzz3gRpvs4j9>

[2] Ibid.; 'Lithuania joins EU's new economic pact barring economic populism', 29 March 2011
<http://www.lithuaniantribune.com/5998/lithuania-joins-eus-new-economic-pact-barring-economic-populism-20115998/>

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 LITHUANIA 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?

As the information on Lithuania's negotiating position is not publicly available, the answer to this question is based on the reply of the Ministry of Finance to my request to provide information on the issues under the Law on the Right to Obtain Information from State and Municipal Institutions. The Ministry replied via email on 7 September 2015.[1] The Ministry only provided a summary of its positions, which did not touch on the issues identified above. On this basis it is assumed that during the negotiations Lithuania did not raise any concerns with respect to the issue of the implications of the 'Six-Pack' for budgetary sovereignty, constitutional law, socio-economic fundamental rights or the budgetary process. Lithuania supported the proposal to impose financial sanctions on the eurozone Member States which fail to ensure budgetary discipline as prescribed by the SGP.

DIRECTIVE 2011/85/EU