



## CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: "Luxembourg"

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# I - Political context

## POLITICAL CHANGE

### I.1

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

Luxembourg being one of the founding fathers of the European Union has a big interest in upholding the Eurozone. The long-time Prime Minister Jean Claude Juncker - head of government from 1995 to 2013 - was the head of the Eurogroup for 8 years and was supported by most parties in his actions in the context of the Euro crisis. The national laws approving the participation in the rescue mechanisms (EFSM, EFSF, ESM) were all passed by a big majority in Parliament consisting of the governmental parties CSV (Christian Democrats) and LSAP (Social Democrats) as well as déi gréng (the Greens) and DP (Conservative Liberals), which were in opposition at this time, and only rejected by a parliamentary minority (ADR (National Conservatives) and déi Lénk (Democratic Socialists)) which were part of the parliamentary opposition. The only exception was the Fiscal Compact, which was not supported by the Greens, the National Conservatives and the Democratic Socialists. Political discussions focus more on the development of the social model in Luxembourg, the reform of the education system and the pension system as well as the unemployment rate.[\[1\]](#)

On 20 October 2013 snap elections took place after the LSAP (Social Democrats) did no longer support the government under Jean-Claude Juncker because of a spy scandal which became public by a news paper report and which was confirmed by a parliamentary report which stated a non-efficient control by the government about the Luxembourg intelligence service.[\[2\]](#) Even though the former governing coalition of CSV (Christian Democrats) and LSAP (Social Democrats) has received enough votes in the 2013 elections to continue the coalition, the new Prime Minister is the leader of the DP (Conservative Liberals), Xavier Bettel, whose party has reached a governmental agreement with the Social Democrats and the Greens (so-called 'Gambia-coalition'). The new government, supported by 32 MPs of their parties in the Chambre des Députés, is in office since 4 December 2013.[\[3\]](#) The CSV, which governed Luxembourg for nearly 40 years, is now in opposition under their leader Jean-Claude Juncker, holding 23 seats in the parliament. The National Conservatives (3 seats) and the Democratic Socialists (2 seats) complement the parties being in parliamentary opposition.

Economic problems also exist in Luxembourg, even though their significance in comparison to south European countries is evanescently low. Luxembourg is criticized because of the negative development of their competitiveness.[\[4\]](#) In response to this criticism Luxembourg has modified its pension system at the end of 2012, which is seen as a major political reform. In addition, the automatic system of rising wages was suspended for three years because this system is seen as not being in conformity with the real economic development of Luxembourg. The fast increase of wages in comparison to the economic development has reduced Luxembourg's competitiveness.

Luxembourg had to defend its economic model (financial market place for banks) after the bail-out and bail-in of Cyprus. Prime Minister Juncker defended this economic model with the argument, that the financial system of Cyprus and Luxembourg is not a comparable model because Cyprus has four national banks while Luxembourg has around 150 banks, most of them having their seat in foreign

countries. Furthermore, banks in Luxembourg do not have the same business model. However, public discussion in Luxembourg is aware of the inherent risks resulting from a construction of the national economy mainly based on the banking sector. Even though Juncker was not in favour of it for a long time, Luxembourg nowadays invests a lot of money in a new university and scientific research.[5]

[1] Interview with Jean-Claude Juncker on l'essentiel.lu, 18 December 2012,  
<http://www.lessentiel.lu/de/news/luxemburg/story/21493287>

[2] See the report 'Luxembourg PM Juncker offers government resignation' on BBC.co.uk, 11 July 2013, <http://www.bbc.co.uk/news/world-europe-23275318>

[3] See the report 'Assermentation des membres du nouveau gouvernement' on the official governmental website of Luxembourg, 4 December 2013,  
<http://www.gouvernement.lu/3311168/04-assermentation>

[4] See the report 'Luxemburg rutscht aus der Top 20' on lessentiel.lu, 24 October 2011,  
<http://www.lessentiel.lu/de/news/luxemburg/story/30644379>

[5] See the report in the German weekly newspaper DIE ZEIT, 'Wo das Geld regiert', 8 July 2013,  
<http://www.zeit.de/2013/23/luxemburg-steuern-bankgeheimnis>

# II - Changes to the Budgetary Process

## BUDGETARY PROCESS

### II.1

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

In Luxembourg, the public budget is passed on a yearly basis by a parliamentary law. Three steps are usually provided. The first is a general discussion about the budget on the occasion of the governmental declaration on the 'l'état de la nation' in the first half of the year. Every minister has to send the report of his ministry for the last year until 1 March to the parliament. Not later than three weeks before the declaration of the Prime Minister on the state of the nation, the ministers have to hand in their budgetary plan for the next year.<sup>[1]</sup> The Finance Minister has to send the updated version of the next years public budget to the parliament, at the latest in the third week of September.<sup>[2]</sup> Stakeholder groups, the Conseil d'Etat and the Court of Auditors deliver opinions on the governmental plans within a period of six weeks.<sup>[3]</sup> The most important institution in the framework of control is the Court of Auditors, whose role is very dominant since the amendment of the Constitution in 1999. Article 105 of the Luxembourg Constitution grants the Court of Auditors with the highest competence of control for the national budget, including the control of efficiency and quality of budgetary policy (la bonne gestion financière). The second step is the adoption of the budgetary law in December after the discussion at parliament. The third and final one is the discussion in the framework of the examination of the law approving the budgetary balance (loi portant approbation des comptes généraux de l'Etat).

## GENERAL CHANGE

### II.2

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

The budgetary process will be changed in 2014. Since the legislative proposal (projet de loi 6597 relatif à la coordination et à la gouvernance des finances publiques et modifiant (a) la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'Etat et (b) la loi modifiée du 10 mars 1969 portant institution d'une inspection générale des finances)<sup>[4]</sup> is still under discussion, it is difficult to predict its outcome. Questions VII.2, VII.3, VII.4, VII.5, IX.4 and IX.5 deal with the changes contained in the legislative proposal.

## 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 budgetary process will be changed in 2014. See the answer to question II.2.

## 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 budgetary process will be changed in 2014. See the answer to question II.2.

## MISCELLANEOUS

II.5

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

No other relevant information

[1] Michael Schroen, Parlament, Regierung und Gesetzgebung, in: Wolfgang H. Lorig/Mario Hirsch (eds.), Das politische System Luxemburgs - eine Einführung, 2008, p. 106 (127).

[2] Michael Schroen, Parlament, Regierung und Gesetzgebung, in: Wolfgang H. Lorig/Mario Hirsch (eds.), Das politische System Luxemburgs - eine Einführung, 2008, p. 106 (128).

[3] Michael Schroen, Parlament, Regierung und Gesetzgebung, in: Wolfgang H. Lorig/Mario Hirsch (eds.), Das politische System Luxemburgs - eine Einführung, 2008, p. 106 (128).

[4] For an overview about the current status of the legislative procedure see <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6597>

# 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)?

Euro-crisis law instruments were adopted by ordinary legislation.

## 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 amendment in response to the Euro-crisis law has been adopted.

## 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?

No such rules exist in the Constitution of Luxembourg.

## PURPOSE CONSTITUTIONAL AMENDMENT

### III.4

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

No constitutional amendment has been adopted.

## RELATIONSHIP WITH EU LAW

### III.5

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

No.

## 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?

No.

## 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?

There was no in-depth discussion about the question which kind of legal instruments are appropriate to adopt Euro-crisis law. The only discussion taken place is whether the 'golden rule' should be put into the Constitution or not. The former government under Jean-Claude Juncker, consisting of the Christian Democrats (CSV) and the Social Democrats (LSAP), was of the opinion that it should not become part of the constitution because political understandings should not form part of a country's guiding principles such as set out in the Luxembourg Constitution, but should be written into a 'separate law' which would include a rule which requires a two-third-majority to amend this law.<sup>[1]</sup> The present legislative proposal on the implementation of the golden rule provides that the rule is written into the ordinary legislation of Luxembourg.

## MISCELLANEOUS

III.9

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

No other relevant information.

<sup>[1]</sup> See the report 'Juncker in Luxembourg Parliament address' on wort.lu, 15 December 2011, <http://www.wort.lu/en/view/juncker-in-luxembourg-parliament-address-4f60bc42e4b047833b93768b>

# IV - Early Emergency Funding

Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 1<sup>st</sup> 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](http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf) and [http://www.efsf.europa.eu/attachments/faq\\_en.pdf](http://www.efsf.europa.eu/attachments/faq_en.pdf))

## NEGOTIATION

### IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID LUXEMBOURG 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?

No difficulties known.

## 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 LUXEMBOURG AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

The participation of Luxembourg is based on 'Loi du 9 juillet 2010 relative à l'octroi de la garantie de l'Etat dans le cadre de l'instrument européen de stabilisation de la zone euro'[1], passed by the Luxembourg parliament (Chambre des Députés) on 1 July 2010. 58 members of parliament voted in favour of the law, one abstained (André Hoffmann from déi Lénk (Democratic Socialists))[2]. The Luxembourg EFSF-law is an ordinary law and consists of two articles of which the first authorises the Luxembourg government to issue a guarantee of up to Euro 1.15 billion to the EFSF and the second lays down that the EFSF is exempted from any fees, charges, direct and indirect taxes and any duties of registration. This law had to be approved by parliament because Article 99 of the Luxembourg Constitution requires that all loans need parliamentary confirmation. Issuing a financial guarantee also falls into this category.



The increase of the EFSF guarantee sum also had to be confirmed by the Luxembourg parliament. The Chambre des Députés passed 'Loi du 22 septembre 2011 modifiant la loi du 9 juillet 2010 relative à l'octroi de la garantie de l'Etat dans le cadre de l'instrument européen de stabilisation de la zone euro'[3] on 15 September 2011 which increased the participation of Luxembourg for the EFSF from Euro 1.15 billion up to Euro 2 billion. The law was confirmed by 54 MPs (déli gréng (the Greens), CSV (Christian Democrats), LSAP (Social Democrats), DP (Conservative Liberals)).[4] The five members of parliament who did not vote in favour of the law were members of the National Conservatives (ADR) and the representative of the Democratic Socialists (Déi Lénk)[5] who had already abstained in the voting for the first Luxembourg EFSF-law.

The EFSF is an institution based on Luxembourg law. The Luxembourg State represented by the Minister of Finance Luc Frieden (CSV-party; Christian Democrats) requested the public notary on 7 June 2010 to establish the EFSF which is created as a Special Purpose Vehicle (SPV)/entité ad hoc. In its first article, the EFSF statute lays down that it is a Luxembourg public limited liability company ('société anonyme')[6] governed by its statutes and the Commercial Companies Act ('Loi du 10 août 1915 sur les sociétés commerciales modifiée'[7]). The immunity of the EFSF was modified in one of the Luxembourg ESM-laws (see question VIII.3).

## GUARANTEES

### IV.3

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

The law authorises the government to issue guarantees. More explicit requirements about the way of issuing guarantees are not contained in the law. The guarantee is issued by the Luxembourg state via the Luxembourg treasury.[8]

## ACTIVATION PROBLEMS

### IV.4

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

In the framework of the Luxembourg legislative procedure, the Luxembourg State Council (Conseil d'Etat) published an opinion on the legislative proposal authorising the government to issue guarantees to the EFSF (more information about the role of the Conseil d'Etat and its competences under the Luxembourg Constitution can be found in question II.2). This procedural requirement is laid down in Article 83bis of the Luxembourg constitution. In its opinion concerning the first EFSF-law from 8 June 2010 the Conseil d'Etat criticized that the norms of the law did not make it clear which kind of guarantee (legal nature) is granted to the EFSF and that there is no rule about possible objections against the guarantee.[9] In its second vote, after the parliament (Chambre des Députés) had put some terminological changes to the formulation of the law, the Conseil d'Etat declared its approval.[10]

One of the main discussions on this law was an amendment proposed by the government in the

framework of the legislative packages on the ESM. The amendment contained the granting of a far-reaching immunity to the EFSF. In the view of the Conseil d'Etat, granting a wide degree of immunity to the EFSF is contrary to the international obligations of Luxembourg (in particular Article 6 ECHR (right to a fair trial and to access to court) and to the principle of equality laid down in Article 10bis (1) Luxembourg Constitution).<sup>[11]</sup> The high degree of immunity is particularly difficult in the case of the EFSF because it is a Luxembourg corporation under private law and no international organisation. The fact that the EFSF is completely outside the jurisdiction of any Luxembourg Court is seen as being not in conformity with the principle of equality laid down in Article 10bis Luxembourg Constitution. The Conseil d'Etat was of the opinion that the immunity is way too far-reaching and cannot be a justified reason for inequality under the respect of objectivity, rational justification, adequacy and proportionality.<sup>[12]</sup> This is why the Conseil d'Etat pleaded for a less far-reaching degree of immunity and proposed a new text for this article, which is in accordance with the principle of equality.

The Luxembourg parliament has modified this proposal after the severe critique from the Conseil d'Etat.

## CASE LAW

### IV.5

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

The Luxembourg Constitutional Court (Cour Constitutionnelle) was established in 1996 by two laws.<sup>[13]</sup> The Court has the competence to control a posteriori the constitutionality of ordinary legislation, except those laws, which contain the approval to international agreements (Art. 95ter (2) Luxembourg Constitution). This is the consequence of the Luxembourg principle of precedence of international law over national law (see also question V.2).<sup>[14]</sup>

The Conseil d'Etat is an advisory body for legal questions in the Luxembourg political system, which has to be consulted about new legislative proposals (Article 83bis Luxembourg Constitution). The Conseil d'Etat analyses the proposal in relation to its accordance with the Luxembourg Constitution and the international obligations of Luxembourg. The Conseil d'Etat consists of 21 members of which at least 12 must have a legal education. Its opinions cannot be considered as constitutional court judgments. After the European Court of Human Rights had decided that the Luxembourg Conseil d'Etat did not fulfil the requirements of a tribunal in the sense of Article 6 ECHR<sup>[15]</sup>, Luxembourg amended the structure of the Conseil d'Etat in 1996.<sup>[16]</sup> Since then, the Conseil d'Etat does not have any jurisdictional competences. However, it is not a second parliamentary chamber. Its members are not determined in general elections, but mostly by the Grand Duke of Luxembourg. It is considered to be a non-parliamentary committee with competences under constitutional law whose task is to control the constitutionality of legislative proposals.<sup>[17]</sup> Its opinions enjoy a lot of attention<sup>[18]</sup>, but the Luxembourg parliament is not legally bound to the opinions. If the Conseil d'Etat objects to a legislative proposal, it publishes an opposition formelle (formal opposition). However, parliament can proceed with the legislative procedure. In this case, the Conseil d'Etat can use its suspensory veto (veto de temporisation). This veto stops the legislative procedure for three months.<sup>[19]</sup> If parliament still wants to pass the law, it has to mention publicly the formal opposition of the Conseil d'Etat. Altogether, the Conseil d'Etat has restricted competences in the Luxembourg legislative procedure but does neither fulfil the role of a court nor of a parliamentary

chamber.

## 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?

Parliament is only informed by the government about decisions taken at the level of the EFSF. Alex Bodry, member of the LSAP (Social Democrats), which was one of the government parties at this time, mentioned that the Government should inform parliament about aid packages and discuss them in plenary sessions. However, this should not be a legal, but a political obligation.[\[20\]](#) The rapporteur for the first Luxembourg EFSF-law Lucien Thiel from the then governmental party CSV (Christian Democrats) also emphasized that the Chambre des Députés has to be informed about the activities at the EFSF and that parliament has to be consulted before every decision of the EFSF about granting financial assistance to a Member State. Within the reasons for the first EFSF-law the government committed itself to inform parliament regularly and previously about the development of the engagement of the EFSF and Luxembourg's participation in this context.[\[21\]](#) However, this commitment was not part of the law and there is no compulsory procedure of parliamentary approval for every EFSF-decision. The government simply promised to inform parliament. However, the same political agreement can also be found in the report of the parliamentary Commission for Finances and Public Budget for the second EFSF-law, signed by the Rapporteur Michel Wolter from the CSV (Christian Democrats).[\[22\]](#) This makes it clear that there is a political agreement on informing parliament about the EFSF-measures, but no legally guaranteed obligation of the government.

Even though there is no legal obligation for the government to inform parliament, the Minister for Finance informs the committee for financial and budgetary affairs (Commission des Finances et du Budget) regularly about decisions of the EFSM and the EFSF. This happened - for example - in the framework of the rescue package for Ireland in the session on 30 November 2010.[\[23\]](#)

## IMPLEMENTING PROBLEMS

### IV.7

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

In a parliamentary discussion on 7 June 2011 about the debt crisis in Europe, the group déi gréng (the Greens) emphasised that the policy of austerity cannot be the only mean to solve the debt crisis, in particular in the case of Greece.[\[24\]](#) In the following, the discussion focused on the European decisions and the governmental parties (CSV (Christian Democrats) and LSAP (Social Democrats) highlighted that the participation of Luxembourg is risky, but necessary - a point of view which was also shared by one party being in opposition (the DP (Conservative Liberals)). The ADR (National Conservatives) was of the opinion that the European institutions are jointly responsible for the European debt crisis.[\[25\]](#) The National Conservatives and the Democratic Socialists also demanded a change in the national policies on tax dumping.

## BILATERAL SUPPORT

#### IV.8

IN CASE LUXEMBOURG 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?

Luxembourg has given Euro 140.1 million as part of the bilateral loan program to Greece (figure from 30 September 2013).[\[26\]](#) The 'Intercreditor Agreement' from 8 May 2010 allows a loan of up to Euro 206.1 million.[\[27\]](#)

The loan to Greece was an operation of the Ministry for Finance for which - in the view of the government - the existing legislation (budgetary law which is adopted by simple majority in the parliament) was seen as a sufficient legal basis.[\[28\]](#) There was no separate law passed by the Luxembourg parliament. The parliamentary groups supporting the government (Christian Democrats and Social Democrats) as well as some parties being in opposition (Conservative Liberals and the Greens) approved this procedure.[\[29\]](#) The National Conservatives criticised the approach and demanded the adoption of a parliamentary law because Article 99 of the Luxembourg Constitution requires that every important financial engagement must be based on a separate law.[\[30\]](#) However, Luxembourg participated in the loan agreement with Greece without adopting a separate law.

## MISCELLANEOUS

#### IV.9

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

Not other relevant information.

[\[1\]](#) Published in the national gazette under A - N° 108, p. 1890, [http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/016/901/091050.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/016/901/091050.pdf).

[\[2\]](#) Chambre des Députés, Séance 39, p. 549, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2009-O-039-0002](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2009-O-039-0002).

[\[3\]](#) Published in the national gazette under A - N° 201, p. 3632 ([http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/135/078/103747.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/135/078/103747.pdf)).

[\[4\]](#) [http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/134/051/103530.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/134/051/103530.pdf).

[\[5\]](#) The positions of the different parties in the public session on this law can be found on <http://www.europaforum.public.lu/fr/actualites/2011/09/chd-efsf/>.

[\[6\]](#) Journal Officiel du Grand-Duché de Luxembourg, Recueil des sociétés et associations, C - N° 1189, 8 June 2010, p. 57026, <http://www.etat.lu/memorial/2010/C/Pdf/c1189086.pdf#Page=2>

[\[7\]](#) <http://eli.legilux.public.lu/eli/etat/leg/loi/1915/08/10/n1>

- [8] <http://www.gouvernement.lu/3351296/Annexe-01c.pdf>.
- [9] Avis du Conseil d'Etat, 8 June 2010, p. 1-2,  
[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/005/909/090048.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/005/909/090048.pdf).
- [10] Dispense de second vote constitutionnel par le Conseil d'Etat, 6 July 2010,  
[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/019/919/091188.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/019/919/091188.pdf).
- [11] Avis complémentaire du Conseil d'Etat, 12 June 2012, p. 2,  
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[24] Chambre des Députés, Séance 35, p. 479-480,  
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# 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 LUXEMBOURG ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

No difficulties known.

## APPROVAL

V.2

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

The amendment was ratified on the basis of the 'Loi portant approbation de la décision du Conseil européen du 25 mars 2011 modifiant l'article 136 du traité sur le fonctionnement de l'Union européenne en ce qui concerne un mécanisme de stabilité pour les Etats membres dont la monnaie est l'euro'[1]. It was approved by the Chambre des Députés by a majority of 66,7% on 26 June 2012, granted by the Grand Duc du Luxembourg on 3 July 2012 and published in the official gazette on 5 July 2012.[2] 48 members of Parliament voted in favour (all members of the parliamentary groups supporting the government (Christian Democrats and Social Democrats) as well as all members of the opposition parties déi gréng (the Greens) and DP (Conservative Liberals)). 5 MPs voted against the law (ADR (National Conservatives) and déi Lénk (Democratic Socialists)).[3] This law consists of one unique Article, which contains the approval of Luxembourg to Council decision 2011/199/EU. In addition, the mentioned Council decision is attached and forms part of the national law. The approval by a qualified majority was necessary because the Luxembourg Constitution demands such a majority for those laws, which transfer competences to an international institution.

Luxembourg laws, which transfer competences to an international institution, must be adopted by a qualified majority (Articles 49bis, Article 37 (2), Article 114 (2) of the Luxembourg constitution). In the case of a conflict between the national norm and a norm of international law, which has direct effect, the international rule prevails. The same rule is applied in a conflict between national and EU law because the Luxembourg Conseil d'Etat has decided that the European Treaties have created a new legal order and that the Member States have limited their competences in favour of this new order.[4]

Luxembourg has a monistic tradition which means that rules of international law apply in the same way as national legal acts. However, Luxembourg has to approve the international treaty. Thereby, it is important to distinguish between the ratification and the internal legal force. The ratification act simply states that the international treaty is hereby approved which authorises the government to ratify the treaty, but it does not create any legal effect of the rules contained in the international treaty. The ratification is an approval and does not transpose the rules laid down in the international treaty. In order to enter the international treaty into force as part of Luxembourg's internal law, three conditions have to be fulfilled: (1) Luxembourg must have ratified the treaty, (2) the treaty must be in force on the international level and (3) the wording of the treaty must be published in the public gazette such as prescribed for national legal acts. Even though many acts of ratification contain the approval as well as the text of the international treaty as part of the national law, these two steps (ratification and internal legal force) must be distinguished. The publication of the ratification act is legally different from the publication of the text of the international treaty required by Article 37 of the Luxembourg Constitution, even though these two steps are often made in the same national legal act.

## RATIFICATION DIFFICULTIES

### V.3

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

Even though the amendment of Article 136 TFEU does not itself create financial obligations, the government reasoned the amendment of Article 136 TFEU by the need to introduce the ESM, which causes financial obligations for Luxembourg. In the view of all Luxembourg institutions (government, parliament, Conseil d'Etat, etc.), the amendment of Article 136 TFEU and the creation of the ESM are closely linked.<sup>[5]</sup> All debates about the amendment of the European Treaties also refer to the establishment of the ESM itself.

The Luxembourg Conseil d'Etat agreed on the law, which contains the approval of Luxembourg to Council decision 2011/199/EU, but also expressed some critique (for more details about the role of the Conseil d'Etat and its competences under the Luxembourg Constitution see question II.2).<sup>[6]</sup> Several points were criticised by the Conseil d'Etat. Firstly, the law did not contain a financial schedule (fiche financière), which is compulsory for all laws burdening the budget (Article 79 (1) of Loi du 8 juin 1999 sur le Budget, la Comptabilité et la Trésorerie de l'État). A fiche financière is an overview containing the expected short, middle and long term effects on the budget. In addition, the type, duration and impact of the expenses must be mentioned. Secondly, the Conseil d'Etat was not convinced that the ESM would achieve the highest rating from rating agencies and would be an effective rescue mechanism because the main part of the monetary volume of the ESM (Euro 620 billion out of Euro 700 billion) has to be raised at the financial market under the support of guarantees by all Eurozone-Members, including those which – at least for a certain period of time – do not have access to the financial market. Thirdly, it was criticised that political decisions simply follow the economic and financial realities and do not lead them. Fourthly, the Conseil d'Etat emphasised (by agreeing to the position of the ECB) that the ESM shall lead to a European and not an intergovernmental mechanism. Fifthly, the Conseil d'Etat had some doubts whether the amount of Euro 700 billion is sufficient to bring enough reassurance into the financial market because the necessary financial needs are significantly higher. Sixthly, the Conseil d'Etat mentioned the systemic



dimension of the debt crisis and emphasised the necessity to reduce public debts and increase the competitiveness of the European economy. The Conseil d'Etat regretted that the government did not include its analysis of Luxembourg's position within this economic surrounding.

The parliamentary Committee for Financial and Budgetary Affairs (Commission des Finances et du Budget) discussed both legislative proposals (approval to the amendment of Article 136 TFEU and to the ESM) in the same session. In its meeting on 20 March 2012 the Minister for Finance Luc Frieden from the Christian Democrats (SVP) emphasised that the capital for the ESM will be financed by budgetary expenses, but that this will not influence the estimation of the public debt in view of the Maastricht criteria (ESA95) because Member States receive a real economic equivalent. In view of these criteria the participation is neutral.<sup>[7]</sup> Furthermore, it is not clear how ESM and EFSF shall cooperate during the period of time when both of them are in force.<sup>[8]</sup> Moreover, in the case of a request for financial assistance of a Member State, parliament shall be informed before taking a decision at the EFSF-level, which was approved by the government. However, there is no right to approval for the parliament.<sup>[9]</sup>

The law approving the amendment of Article 136 TFEU was discussed in a parliamentary plenary session on 26 June 2012 along with two other laws concerning the approval to and the implementation of the ESM (see question VIII.2).<sup>[10]</sup> The rapporteur of the Luxembourg Article 136 TFEU-law<sup>[11]</sup> (Michel Volter from the Christian Democrats) emphasised that the participation of Luxembourg is slightly higher than its shared capital of the ECB (0.2497%). Due to the situation in countries such as Estonia, Slovakia, Slovenia, Malta and Cyprus the shared capital amounts to 0.2504%, which is equivalent to a capital of Euro 1.7528 billion.<sup>[12]</sup> Luxembourg has to deposit Euro 200 million as paid-in capital to the ESM. This was made clear in the public session, because the Conseil d'Etat had asked for clarification.<sup>[13]</sup> The total participation of Luxembourg in ESM and EFSF covers the sum of Euro 3.7528 billion.<sup>[14]</sup> The representative of the LSAP (Social Democrats) was of the opinion that the ESM is not satisfying, but an important step onwards.<sup>[15]</sup> He also mentioned that the six biggest countries are able to overrule the rest because of the ESM-voting-system, which is seen as highly problematic. The weak part of the ESM was seen in its reduced possibilities for the parliament to intervene in the decisions.<sup>[16]</sup> Gast Gibéryen from the ADR (National Conservatives) criticized that the ESM means the transfer of sovereignty rights to an undemocratic EU.<sup>[17]</sup> Furthermore, the voting-right of Luxembourg in the ESM is nearly inexistent because it has a participation of 0.25%, while countries like Germany and France have more than 20% and can block every decision in the ESM council.<sup>[18]</sup> He also emphasised that the Luxembourg Central Bank has receivables of Euro 120 billion in the TARGET2-System, which increases the public debt.<sup>[19]</sup> The participation of Luxembourg in the ESM (guarantees and paid-in capital) reaches the sum of Euro 1.75 billion, which means 3.305 Euro for every citizen in Luxembourg, while other countries have lower sums per capita.<sup>[20]</sup> Serge Urbany from déi Lénk (Democratic Socialists) raised the question whether a second constitutional vote should be made before the adoption of the ESM-laws.<sup>[21]</sup> However, the president of the parliament did not arrange a separate vote.<sup>[22]</sup>

At the same session three motions were presented. A member of the party déi gréng (the Greens) introduced a motion which demands from government to take care that banks work in a way achieving social and economic goals such as credits on a sustainable level for small and medium enterprises, to fulfil the goals of the EU 2020 strategy, to make sure that economic policy in the EU also fulfils social goals laid down in the Treaties and to ask the European Court of Justice whether

the ESM is in line with the social goals of the ESM.[\[23\]](#) However, the motion was refused (8 votes in favour, 43 against the law and 9 abstentions).[\[24\]](#) Also the second motion of déi gréng was refused (10 yes, 39 no, 1 abstention).[\[25\]](#) The second motion aimed at increasing the coordination of economic policy on the European level, making sure that money is used for social goals, using the interests of the credits from ESM for the sectors mentioned in the EU 2020 strategy and pleading for a banking licence for the ESM.[\[26\]](#) The third motion, also introduced by déi gréng, was approved[\[27\]](#) and demanded from government to increase the transparency of the ESM. It obliges the government to present the position of the Luxembourg Governor at the ESM before the ESM Council of Governor's meeting. In addition, the government must report to the parliamentary Commission for Financial and Budgetary Affairs (Commission des Finances et du Budget), explaining the financial impact on Luxembourg of decisions taken at the level of the ESM, the conditions offered to the benefitted country and the relation to reports of the Commission.[\[28\]](#)

Because of the severe financial engagement of Luxembourg, two members of the opposition (Gast Gibéryen, from the National Conservatives, and Serge Urbany, from the Democratic Socialists) claimed that it is necessary to have a qualified majority in order to pass the law. In the view of the two MPs, the financial engagements resulting from the adoption of the law authorising the ratification of the Art. 136 TFEU amendment (in combination with the ESM) are seen as permanent international engagements, which need the support of a two-third majority in the parliament because the Luxembourg Constitution (Article 49bis, Article 37 (2), Article 114 (2)) requires such a majority for the transfer of competences to an international institution (for more details on this constitutional background see question V.2).[\[29\]](#) Alex Bodry from the Social Democrats (LSAP) which was part of the government at this time also argued in favour of a qualified majority voting in the Luxembourg parliament because it is not clear whether this decision does not mean an abandonment of sovereignty.[\[30\]](#)

However, the government represented by the Minister for Finance Luc Frieden (Christian Democrats) was not of the opinion that this law has to be passed by a qualified majority because the law does not confer sovereign powers to an international institution.[\[31\]](#)

## CASE LAW

V.4

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

No. The opinions of the Conseil d'Etat cannot be considered as constitutional court judgments (see question II.2).

## MISCELLANEOUS

V.5

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

Not applicable.

[1]

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[bqp8bleNm4aioCAAk2luC/dl4/d5/L0lDU0lKSWdrbUEhIS9JRFJBQUlpQ2dBek15cXchLzRKQ2lEb01OdEJqdEJIZmxDRUEhL1o3X0QyRFZSSTQyMEdWTTEwMkJJM1FKUDkzOEUxLzA!/?PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_action=doDocpaDetails&id=6334&filter\\_action=doDocpaDetails&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_displayLink=true&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_numPage=1&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_positionInHistory=&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_display=9&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_numPageTop=1&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_numPageBottom=1#Z7\\_D2DVRI420GVM102BI3QJP938E1](http://www.chd.lu/wps/portal/public!/ut/p/b1/04_SjzQ0NTI2NjEyMLLQj9CPykssy0xPLMnMz0vMAfGjzOJdjFzCggyBKtzNA00MjLxcvcxgDg_2MLdyNgQoigQqMLCyCg9wdfV0tLUOdDDwNnA2DXQOdjAw8jYjTb4ADoBoQ0u_nkZ-bqp8bleNm4aioCAAk2luC/dl4/d5/L0lDU0lKSWdrbUEhIS9JRFJBQUlpQ2dBek15cXchLzRKQ2lEb01OdEJqdEJIZmxDRUEhL1o3X0QyRFZSSTQyMEdWTTEwMkJJM1FKUDkzOEUxLzA!/?PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_action=doDocpaDetails&id=6334&filter_action=doDocpaDetails&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_displayLink=true&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_numPage=1&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_positionInHistory=&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_display=9&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_numPageTop=1&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_numPageBottom=1#Z7_D2DVRI420GVM102BI3QJP938E1)

[2] MEMORIAL - Journal Officiel du Grand-Duché de Luxembourg, Recueil de Legislation, A - N° 135, p. 1706-1708,

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[3] Chambre des Députés, Bulletin de Vote, 26 June 2012,

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[4] See the annotations to Article 49bis in the Luxembourg Constitution.

[5] See, for example, the opinion of the Minister for Finance Luc Frieden from the Christian Democrats in the meeting of the Commission for Financial and Budgetary Affairs, 20 March 2012, p. 3,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/101/134/110303.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/101/134/110303.pdf).

[6] Avis du Conseil d'État, 06 March 2012,

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[7] Rapport de la Commission des Finances et du Budget, 22 June 2012, p. 6,

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[8] Commission des Finances et du Budget, Procès-verbal de la réunion, 20 March 2012, p. 4,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/101/134/110303.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/101/134/110303.pdf).

[9] Commission des Finances et du Budget, Procès-verbal de la réunion, 20 March 2012, p. 4-5,

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[10] Chambre des Députés, Séance 34, 26 June 2012, p. 436-444,

[http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[11] The original title is 'Loi portant approbation de la décision du Conseil européen du 25 mars 2011 modifiant l'article 136 du traité sur le fonctionnement de l'Union européenne en ce qui concerne un mécanisme de stabilité pour les Etats membres dont la monnaie est l'euro', [http://www.chd.lu/wps/portal/public!/ut/p/b1/04\\_SjzQ0NTI2NjEyMLLQj9CPykssy0xPLMnMz0vMAfGjzOJdjFzCggyBKtzNA00MjLxcvcxDg\\_2MLdyNgQoigQqMLCyCg9wdfV0tLUOdDDwNnA2DXQOdjAw8jYjTb4ADoBoQ0u\\_nkZ-bqp8bleNm4aioCAAk2luC/dl4/d5/L0lDU0lKSWdrbUEhIS9JRFJbQUlpQ2dBek15cXchLzRKQ2lEb01OdEJqdEJIZmxDRUEhL1o3X0QyRFZSSTQyMEdWTTEwMkJJM1FKUDkzOEUxLzA!/?PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_action=doDocpaDetails&id=6334&filter\\_action=doDocpaDetails&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_displayLink=true&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_numPage=1&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_positionInHistory=&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_display=9&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_numPageTop=1&PC\\_Z7\\_D2DVRI420GVM102BI3QJP938E1019404\\_numPageBottom=1#Z7\\_D2DVRI420GVM102BI3QJP938E1](http://www.chd.lu/wps/portal/public!/ut/p/b1/04_SjzQ0NTI2NjEyMLLQj9CPykssy0xPLMnMz0vMAfGjzOJdjFzCggyBKtzNA00MjLxcvcxDg_2MLdyNgQoigQqMLCyCg9wdfV0tLUOdDDwNnA2DXQOdjAw8jYjTb4ADoBoQ0u_nkZ-bqp8bleNm4aioCAAk2luC/dl4/d5/L0lDU0lKSWdrbUEhIS9JRFJbQUlpQ2dBek15cXchLzRKQ2lEb01OdEJqdEJIZmxDRUEhL1o3X0QyRFZSSTQyMEdWTTEwMkJJM1FKUDkzOEUxLzA!/?PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_action=doDocpaDetails&id=6334&filter_action=doDocpaDetails&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_displayLink=true&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_numPage=1&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_positionInHistory=&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_display=9&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_numPageTop=1&PC_Z7_D2DVRI420GVM102BI3QJP938E1019404_numPageBottom=1#Z7_D2DVRI420GVM102BI3QJP938E1).

[12] Chambre des Députés, Séance 34, 26 June 2012, p. 436, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[13] Chambre des Députés, Séance 34, 26 June 2012, p. 436, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[14] Chambre des Députés, Séance 34, 26 June 2012, p. 436, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[15] Chambre des Députés, Séance 34, 26 June 2012, p. 438, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[16] Chambre des Députés, Séance 34, 26 June 2012, p. 439, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[17] Chambre des Députés, Séance 34, 26 June 2012, p. 441, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[18] Chambre des Députés, Séance 34, 26 June 2012, p. 442, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[19] Chambre des Députés, Séance 34, 26 June 2012, p. 442, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[20] Chambre des Députés, Séance 34, 26 June 2012, p. 442, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[21] Chambre des Députés, Séance 34, 26 June 2012, p. 442, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[22] Chambre des Députés, Séance 34, 26 June 2012, p. 444, [http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[23] Motion de Francois Bausch from the Greens, Assurer le respect explicite des objectifs de l'emploi, de la

protection sociale élevée et de lutte contre le changement climatique dans les conditionnalités de politiques économiques du Mécanisme Européen de Stabilité, 26 June 2012,  
[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/132/112321.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/132/112321.pdf)

[24]

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/133/112322.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/133/112322.pdf).

[25] Chambre des Députés, Bulletin de Vote, 26 June 2012,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/131/112320.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/131/112320.pdf).

[26] Motion de Francois Bausch from the Greens, Renforcer l'Action du Mécanisme Européen de Stabilité, 26 June 2012,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/140/112319.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/140/112319.pdf).

[27] Motion de Francois Bausch from the Greens, Veiller à la transparence de la gouvernance du Mécanisme Européen de Stabilité vis à vis de la Chambre des Député-e-s, 26 June 2012,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/139/112318.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/139/112318.pdf).

[28] Motion de Francois Bausch from the Greens, Veiller à la transparence de la gouvernance du Mécanisme Européen de Stabilité vis à vis de la Chambre des Député-e-s, p. 2, 26 June 2012,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/139/112318.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/139/112318.pdf).

[29] Chambre des Députés, Séance 34, 26 June 2012, p. 442,

[http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[30] Chambre des Députés, Séance 34, p. 438,

[http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[31] Chambre des Députés, Séance 34, 26 June 2012, p. 443,

[http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

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

## NEGOTIATION

### VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID LUXEMBOURG 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.

No known discussions.

## MISCELLANEOUS

### VI.2

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

Not applicable.

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

## NEGOTIATION

### VII.1

WHAT POSITIONS DID LUXEMBOURG 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?

The Luxembourg Government consisting of the Christian Democrats and the Social Democrats at this time was of the opinion that it is in the interest of all Member States and of a common economic and monetary policy that European institutions have the competence to control ('droit de regard') national budgets.[1] Luxembourg is generally in favour of a more Europeanized governance in the field of economic and fiscal policy. However, there were no discussions in Parliament concerning the negotiation of the Six-Pack.

## 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)?

In 2012, the Central Bank of Luxembourg presented the status of implementation for the Directive in a chart. Following this analysis 3 of 5 obligations are already partly implemented (reliable and standardised statistics, macroeconomic forecast and budgetary coordination between sub-sectors) and two are not at all implemented (golden rule combined with automatic correction procedure; perennial perspective).[2] The obligations, which are marked as partly implemented, have already existed in the Luxembourg legal system and are not the result of modifications caused by this Directive.

Luxembourg has not yet implemented all obligations of Directive 2011/85/EU. The Conseil d'Etat emphasised the urgency of the implementation in its opinion on the budget law for 2013.[3] The former government consisting of the Christian Democrats (CSV) and the Social Democrats (LSAP) has introduced into parliament a legislative proposal on 2 July 2013 in order to implement chapters

IV and V of the Directive, but the law was not yet passed. Recently, after having been informed about the opinions of different stakeholder-groups and of the Conseil d'Etat (see questions VII.3, VII.5 and IX.5), the Luxembourg government has proposed some changes to the legislative proposal.[\[4\]](#)

In its Article 3 the legislative proposal provides that the medium term budgetary objective must be laid down in a separate law, called 'loi de programmation financière pluriannuelle' (LPFP). The period of time covered by this law must be in conformity with the time frame covered by the updated stability and growth programme. The LPFP ought to be introduced into parliament in October so that the Chambre des Députés can vote on this law along with the yearly budgetary law. This procedure shall guarantee compliance with Article 10 of Directive 2011/85/EU, but it is not written into the law but mentioned in the explications of the government on the respective articles of the legislative proposal.[\[5\]](#) The next sections of Article 3 of the legislative proposal contain the specific requirements laid down in Articles 6 and 9 of Directive 2011/85/EU.

In addition to the rules laid down in this legislative proposal, there are further rules already in force concerning the three levels of public administration existing in Luxembourg (central administration, local administration and social security administration). For the central administration, Article 5 of the Luxembourg Treasury Law[\[6\]](#) is relevant which obliges the central administration to spend money from loans only for public investments. For the local administration, there are several obligations to limit the indebtedness in the Luxembourg Loi communale.[\[7\]](#) The Luxembourg Code de la Sécurité sociale[\[8\]](#) contains several limitations for expenses of every social security administration. Several institutions, which already exist, control these obligations (see question VII.5).

The proposal also contains in its Article 8 obligations to comply with the requirements of transparency, statistics and coordination as required by Directive 2011/85/EU.[\[9\]](#) The norm implements the obligations laid down in article 3 (2), article 4(4), article 4(5), article 12, article 13 (1), article 13 (2), article 14 (1) and article 14 (3) of the Directive 2011/85/EU. The Grand Duke of Luxembourg is authorized to regulate details via Grand-Ducal regulations.

## **IMPLEMENTATION DIFFICULTIES**

### VII.3

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

In addition to the discussion about the implementation of the golden rule (see question IX.4) which is part of the same legislative proposal such as the implementation of Directive 2011/85/EU, the representatives of the economic sector (Chambre de Commerce (CC)) welcomed the introduction of a law which lays down the medium term objective (so called Loi de programmation financière pluriannuelle (LPFP)).[\[10\]](#) The CC recommended defining a date when the LPFP must have been passed by parliament, preferably before the adoption of the budgetary law because the budgetary law must respect the LPFP.[\[11\]](#)

The State Council (Conseil d'Etat) clarified the legal nature of the LPFP. Government wants that this law must be passed by a two-third-majority in parliament. However, Article 114 of the Luxembourg



Constitution lays down in which cases such a majority is necessary and this enumeration cannot be extended by this legislative proposal. The obligation to pass the LPFP by a two-third majority would only have a political value, but would not change the hierarchy of norms.[\[12\]](#) This means that, in the view of the Conseil d'Etat, the LPFP can be modified by a law passed by parliament after the LPFP has been passed (for example by the budgetary law) because in such cases the legal rule of *lex posterior* applies. In contrast to the French legal system, which contains the possibility to pass so-called organic laws ('lois organiques'), which have a legal value between the constitution and ordinary law, the Luxembourg legal system is not aware of such a concept. Furthermore, the commentaries on the single articles of the legislative proposal mention that the LPFP and the budgetary law should be passed conjointly. The Conseil d'Etat prefers that this procedure is written into an article of the legislative proposal and should not only form part of the commentaries, which are not part of the law.[\[13\]](#)

## 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 forecasts are made by a 'forecast committee' (comité de prévision) which consists of representatives from the Ministry for Finance, certain administrative authorities (tax, customs), the Ministry for Economics, the Ministry for Interior, the statistics authority, the authority for the inspection of social security (under the authority of the Ministry for Social Security) and the authority for financial regulation in Luxembourg.[\[14\]](#) This committee is not established on the basis of any legal source but part of the organisation of the government. It was not set up for the implementation of the Directive because the Luxembourg Finance Minister had created the committee in 2010.

The legislative proposal for the implementation of Directive 2011/85/EU (see question VII.2) provides for the establishment of a new 'National Council for Public Finances' (for more details about this Council see question VII.5) which also has the task to evaluate the macroeconomic and budgetary forecasts.[\[15\]](#) This law is not yet adopted.

## FISCAL COUNCIL

### VII.5

DOES LUXEMBOURG 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 LUXEMBOURG HAVE TO CREATE (OR ADAPT) A FISCAL COUNCIL IN ORDER TO IMPLEMENT DIRECTIVE 2011/85/EU?

Luxembourg will have to create such an independent body or give the respective competences to an already existing institution, which has sufficient guarantees of independence. The first legislative proposal for the implementation of Directive 2011/85/EU provided that the Luxembourg Central Bank (BCL) should be equipped with the power to supervise compliance with the financial rules laid down in the proposal as well as the economic forecasts.[\[16\]](#) However, in an opinion published on 18 December 2013 the European Central Bank recommended to revise the assignment of the financial

supervisory tasks to the BCL because the monetary policy mandate as well as the independence of the BCL run the risk of being undermined if the BCL takes up the monitoring activities set out in Article 5 of Regulation (EU) No 473/2013 and Article 4 of Directive 2011/85/EU.[17] In consequence of this opinion the Luxembourg government has proposed to establish a new 'National Council on Public Finances' (Conseil national des finances publiques) which will fulfil the role of an independent Fiscal Council in the sense of article 6 (1) Directive 2011/85/EU.[18] Following the proposal this Council will consist of seven members (two members proposed by the parliament who must have expertise in financial and economic matters, two members proposed by the government, one member proposed by the Court of Auditors, one member proposed by economic stakeholder-representatives (Chambre de Commerce, Chambre des Métiers, Chambre d'Agriculture) and one member proposed by employees stakeholder-representatives (Chambre des Fonctionnaires et Employés publics, Chambre des Salariés)). The members fulfil their function in complete neutrality and independence. The government highlights that the creation of this Council is inspired by the Swedish approach.[19] However, the law is not yet adopted by the parliament.

There are already certain obligations for all levels of public administrations in several Luxembourg laws (see question VII.2). Compliance with these rules is controlled by the Court of Auditors for the central administration as well as by the inspecting authority for social security (Inspection générale de la Sécurité sociale (IGSS)) and the authority for compliance of the municipalities (Service de contrôle de la comptabilité des communes (SCCC)).[20] While the Court of Auditors enjoys certain guarantees of independence from the government as required by Article 105 of the Constitution and the Law on the Court of Auditors[21], the IGSS and the SCCC are under the authorities of Luxembourg ministries.

## **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 LUXEMBOURG 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 discussions known. The discussion focussed rather on the recommendations of the Commission.

As for the application in 2012 of the Alert mechanism, some numbers of indicators are above the indicative threshold: current account surplus, nominal labour unit cost, private sector debt and export market shares indicator. Luxembourg has a constant deficit of the goods trade balance, but gains more export market shares in export. The nominal labour unit costs are - in comparison with the rest of the Eurozone - significantly higher. Since 2000 they have risen more than five times faster than in Germany. Large lending and borrowing operations inside international non-financial corporations can explain the indebtedness of the private sector. The growth rate for house prices is slowing down. The Commission mentions the large size of the financial sector compared to the overall economy of Luxembourg. Conclusion: No further in-depth analysis.

As regards the application of the Macroeconomic Imbalances Procedure in 2012, the government of

Luxembourg acknowledges the Commission's criticism that the competitiveness of Luxembourg has decreased, because the nominal labour unit costs have risen significantly in the last years. The government has passed some measures at the beginning of the year 2012, which changed the creation of the automatic wage index for the years 2012-2014. Luxembourg is one of the few countries, which have an automatic and statutorily determined adaptation of salaries. Usually, the wages have to be increased, if the inflation rate reaches a certain level. However, the automatic adaptation does not take into account, which factors have led to the inflation rate. The measures adopted at the beginning of 2012 are temporary measures until 2014. It will be necessary to pass a new system, which can be applied from 2015 onwards.[22] Therefore, it will be necessary to negotiate with all affected social partners. The goal of a reform has to be that the development of the salaries reflects the economic productivity in more realistic way.[23]

## **REGULATION No 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS**

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

### **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?

Following a legislative proposal, which is discussed at the moment (see questions VII.2, VII.3, VII.4, VII.5, IX.4 and IX.5), the MTO ought to be set by a separate parliamentary law called 'Loi de programmation financière pluriannuelle'. [24]

### **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)?

The budgetary process will be changed in 2014. Since the legislative proposal (projet de loi 6597 relatif à la coordination et à la gouvernance des finances publiques et modifiant (a) la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'Etat et (b) la loi modifiée du 10 mars 1969 portant institution d'une inspection générale des finances)[25] implementing inter alia Regulation (EU) 1175/2011 is still under discussion, it is difficult to predict its outcome. Questions VII.2, VII.3, VII.4, VII.5, IX.4 and IX.5 deal with the changes contained in the legislative proposal.

### **MTO DIFFICULTIES**

VII.9

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

A legislative proposal implementing Council Regulation 1175/2011 has led to statements of certain

stakeholder-groups and the Conseil d'Etat. Questions VII.3, VII.5 and IX.5 deal with the legal difficulties and the debates concerning the legislative proposal. However, the law is not yet adopted.

## 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)?

Luxembourg government uses a model to simulate macro and micro-economic impacts of structural reforms in order to make the adequate reforms (Dynamic Stochastic General Equilibrium (DSGE), also called the Luxembourg structural model (LSM))[26], which was developed for Luxembourg by a group of economic scholars.[27] This model shall help to respect the Medium-term Budgetary Objective.

The legislative proposal for a new governance framework for the public budget includes a norm, which contains the obligation to pass a separate law (so called 'Loi de programmation financière pluriannuelle') whose main reason is to lay down the MTO.[28] (See also question VII.7).

## CURRENT MTO

VII.11

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

The Medium-term Budgetary Objective (MTO) for 2012 is a surplus of 0.4% of GDP in structural terms. The forecast of the MTO for 2013 is 0.7%.[29] Luxembourg Government expects a surplus of 0.6% in 2014.[30] In the following two years, the government expects that Luxembourg's structural deficit will not be in accordance with the European obligations laid down in the Stability and Growth Pact. In 2015, it is expected that Luxembourg will have a deficit of 0.3% and in 2016 a deficit of 1.1%.[31] In 2017, government expects to fulfil the European prerequisites again. The main reason for this negative development in 2015 and 2016 is seen in the change of the regime of value-added taxation in the field of telecommunications, broadcasting and electronic services.[32]

## ADOPTION MTO

VII.12

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

The Ministry of Finance adopts the MTO. However, Luxembourg does not have a medium-term budgetary framework.[33] To be able to give some information on the MTO the Ministry is supported by the comité de prevision, which calculates a forecast on the basis of an "unchanged policy"[34] (see also question VII.4).

## REGULATION No 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

(

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

[:PDF\)](#)

## EDP DIFFICULTIES

VII.13

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

A legislative proposal implementing Council Regulation 1177/2011 has led to statements of certain stakeholder-groups and the Conseil d'Etat. Questions VII.3, VII.5 and IX.5 deal with the legal difficulties and the debates concerning the legislative proposal. However, the law is not yet adopted.

## 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 LUXEMBOURG ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

A legislative proposal implementing Council Regulation 1173/2011 has led to statements of certain stakeholder-groups and the Conseil d'Etat. Questions VII.3, VII.5 and IX.5 deal with the legal difficulties and the debates concerning the legislative proposal. However, the law is not yet adopted.

## 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?

Luxembourg will have to amend its treasury law (Loi de 8 juin sur le Budget, la Comptabilité et la Trésorerie de l'Etat). At the moment, there is a legislative proposal, which will implement the Six-Pack rules, once in force (see question VII.2).

## MISCELLANEOUS

VII.16

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

No other relevant information.

[1] Réunion de la Commission des Finances et du Budget, 25 September 2012, p. 3, [http://www.chd.lu/wps/PA\\_Archive/FTSShowAttachment?mime=application%2fpdf&id=1162755&fn=1162755.pdf](http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=1162755&fn=1162755.pdf).

[2] Avis de la Banque Centrale de Luxembourg concernant projet de loi 6500, 15 November 2012, p. 47 et

seq.,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/169/169/116688.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/169/169/116688.pdf).

[3] Avis du Conseil d'Etat concernant projet de loi 6500, 20 November 2012, p. 17,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/168/168/116674.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/168/168/116674.pdf).

[4] Amendements gouvernementaux au projet de loi relatif à la coordination et à la gouvernance des finances publiques et modifiant: a) la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'Etat b) la loi modifiée du 10 mars 1969 portant institution d'une inspection générale des finances, 11 March 2014,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf).

[5] Projet de loi relatif à la coordination et à la gouvernance des finances publique, Commentaire des Articles, 22 July 2013, p. 13,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf).

[6] <http://eli.legilux.public.lu/eli/etat/leg/loi/1999/06/08/n2>.

[7] <http://eli.legilux.public.lu/eli/etat/leg/loi/1988/12/13/n1>.

[8]

[http://www.legilux.public.lu/leg/textescoordonnes/codes/code\\_securite\\_sociale/01\\_css\\_lois\\_reglement\\_s\\_sommaires.pdf](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_securite_sociale/01_css_lois_reglement_s_sommaires.pdf)

[9] See Article 8 of the projet de loi 6597, p. 10,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf).

[10] Avis de la Chambre de Commerce, 11 November 2013, p. 12,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/170/224/126293.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/170/224/126293.pdf)

[11] Avis de la Chambre de Commerce, 11 November 2013, p. 13-14,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/170/224/126293.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/170/224/126293.pdf)

[12] Avis du Conseil d'Etat, 10 December 2013, p. 4-5,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/166/220/126159.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/166/220/126159.pdf).

[13] Avis du Conseil d'Etat, 10 December 2013, p. 6,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/166/220/126159.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/166/220/126159.pdf).

[14] Note du comité de prévision, prévisions macroéconomiques et évolution des finances publiques

2011-2015, 20 March 2012, p. 3,

[http://www.mf.public.lu/publications/divers/previsions\\_fin\\_180412.pdf](http://www.mf.public.lu/publications/divers/previsions_fin_180412.pdf).

[15] Amendements gouvernementaux au projet de loi relatif à la coordination et à la gouvernance des finances publiques et modifiant: a) la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'Etat b) la loi modifiée du 10 mars 1969 portant institution d'une inspection générale des finances, 11 March 2014, p. 6,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf).

[16] See Article 7 of the projet de loi 6597, p. 10,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf).

[17] European Central Bank, Opinion of 18 December 2013 on public finances, CON/2013/90, p. 5,

[https://www.ecb.europa.eu/ecb/legal/pdf/en\\_con\\_2013\\_90\\_f.sign.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2013_90_f.sign.pdf).

[18] Amendements gouvernementaux au projet de loi relatif à la coordination et à la gouvernance des finances publiques et modifiant: a) la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'Etat b) la loi modifiée du 10 mars 1969 portant institution d'une inspection générale des finances, 11 March 2014, p. 5 and 6,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf).

[19] Amendements gouvernementaux au projet de loi relatif à la coordination et à la gouvernance des finances publiques et modifiant: a) la loi modifiée du 8 juin 1999 sur le budget, la comptabilité et la trésorerie de l'Etat b) la loi modifiée du 10 mars 1969 portant institution d'une inspection générale des finances, 11 March 2014, p. 6,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/184/276/128735.pdf).

[20] See Projet de loi relatif à la coordination et à la gouvernance des finances publique, Commentaire des Articles, 22 July 2013, p. 14,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf).

[21] Loi du 8 juin 1999 portant organisation de la Cour des comptes,

<http://eli.legilux.public.lu/eli/etat/leg/l/1999/06/08/n1>.

[22] Le Gouvernement du Grand-Duché de Luxembourg, Luxembourg 2020 - Plan national pour une croissance intelligente, durable et inclusive. Programme national de réforme du Grand-Duché de Luxembourg dans le cadre du semestre européen 2012, April 2013, p. 14,

[http://ec.europa.eu/europe2020/pdf/nd/nrp2013\\_luxembourg\\_fr.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2013_luxembourg_fr.pdf).

[23] Le Gouvernement du Grand-Duché de Luxembourg, Luxembourg 2020 - Plan national pour une croissance intelligente, durable et inclusive. Programme national de réforme du Grand-Duché de Luxembourg dans le cadre du semestre européen 2012, April 2013, p. 10,

[http://ec.europa.eu/europe2020/pdf/nd/nrp2013\\_luxembourg\\_fr.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2013_luxembourg_fr.pdf).

- [24] See Article 3 of the projet de loi relatif à la coordination et à la gouvernance des finances publiques, p. 9,  
[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf)
- [25] For an overview about the current status of the legislative procedure see  
<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6597>
- [26] National Reform Program for the Grand Duchy of Luxembourg as part of the European semester 2013, April 2013, p. 7, [http://ec.europa.eu/europe2020/pdf/nd/nrp2013\\_luxembourg\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2013_luxembourg_en.pdf).
- [27] See the information on the public website <http://www.odc.public.lu/activites/LSM/index.html>.
- [28] See Article 3 of the legislative proposal 6597 (projet de loi 6597),  
[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf).
- [29] 14th update of the Luxembourg Stability and Growth Programme 2013-2016, 24 April 2013, p. 12,  
[http://www.mf.public.lu/publications/programme/14th\\_update\\_stability\\_growth\\_programme.pdf](http://www.mf.public.lu/publications/programme/14th_update_stability_growth_programme.pdf).
- [30] 14th update of the Luxembourg Stability and Growth Programme 2013-2016, 24 April 2013, p. 14,  
[http://www.mf.public.lu/publications/programme/14th\\_update\\_stability\\_growth\\_programme.pdf](http://www.mf.public.lu/publications/programme/14th_update_stability_growth_programme.pdf).
- [31] 14th update of the Luxembourg Stability and Growth Programme 2013-2016, 24 April 2013, p. 14,  
[http://www.mf.public.lu/publications/programme/14th\\_update\\_stability\\_growth\\_programme.pdf](http://www.mf.public.lu/publications/programme/14th_update_stability_growth_programme.pdf).
- [32] 14th update of the Luxembourg Stability and Growth Programme 2013-2016, 24 April 2013, p. 15,  
[http://www.mf.public.lu/publications/programme/14th\\_update\\_stability\\_growth\\_programme.pdf](http://www.mf.public.lu/publications/programme/14th_update_stability_growth_programme.pdf).
- [33] 14th update of the Luxembourg Stability and Growth Programme 2013-2016, 24 April 2013, p. 27,  
[http://www.mf.public.lu/publications/programme/14th\\_update\\_stability\\_growth\\_programme.pdf](http://www.mf.public.lu/publications/programme/14th_update_stability_growth_programme.pdf).
- [34] 14th update of the Luxembourg Stability and Growth Programme 2013-2016, 24 April 2013, p. 27,  
[http://www.mf.public.lu/publications/programme/14th\\_update\\_stability\\_growth\\_programme.pdf](http://www.mf.public.lu/publications/programme/14th_update_stability_growth_programme.pdf).



# 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 LUXEMBOURG 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 known during the negotiation of the ESM.

## RATIFICATION

### VIII.2

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

The ratification of the ESM in Luxembourg is based on Loi du 3 juillet 2012 portant approbation du traité instituant le mécanisme européen de stabilité, signé le 2 février 2012 à Bruxelles[1]. This law consists of one unique article, which contains the approval of Luxembourg to the ESM treaty. The complete text of the ESM Treaty is attached to the ratification law.[2] The financial schedule (fiche financière), required by Article 9 of the Loi du 8 juin 1999 sur le Budget, la Comptabilité et la Trésorerie de l'Etat, declares that this law does not debit the national budget (because the financial contributions are seen neutral in the view of the Maastricht-criteria (ESA95)).[3]

This law in combination with a second law on the ESM (see question VIII.6) was approved on 26 June 2012 by the Chambre des Députés, granted by the Grand Duc de Luxembourg on 3 July 2012 and published in the official gazette on 5 July 2012. In the Chamber 49 MP voted in favour, among them the then governmental party members of the CSV (Christian Democrats) and LSAP (Social Democrats) as well as the members of the parliamentary opposition from déi gréng (the Greens) and DP (Conservative Liberals). 5 MPs, members of the opposition from ADR (National Conservatives) and déi Lénk (Democratic Socialists) voted against the adoption of the law.[4] This law had to be adopted by a qualified majority because it transfers competences to an international institution (for more information about the constitutional background see question V.2).

## RATIFICATION DIFFICULTIES

### VIII.3

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

The discussions and difficulties focussed mainly on the law containing the participation criteria for Luxembourg.

The first draft of this law from 5 March 2012 contained only the approval of the parliament to participate in the ESM capital and the exact sums. Government proposed some changes to this draft on 14 May 2012.[\[5\]](#) The first amendment added a new Article to the law, which gives broad immunity to the ESM and the European Investment Bank (EIB). The debts and the goods are unseizable, cannot be put under sequestration or blocked.[\[6\]](#) This immunity clause in the national law was necessary – following the reasoning of the Luxembourg government – because the ESM shall enjoy the same kind of immunity such as the IMF. For the IMF, there is a national protection clause in the law of the state of residence. Since the ESM is located in Luxembourg, Luxembourg law must contain such a provision. The wording of the text is inspired by the Luxembourg Law of the National Central Bank.[\[7\]](#) The EIB is also mentioned in the clause, because it has its seat in Luxembourg and was also established in order to fulfil European goals.[\[8\]](#)

The second amendment added a new Article 3 to the proposed law, which itself added a new Article 3 to the Luxembourg EFSF-law. This clause laid down the same kind of immunity for the EFSF as for the ESM (and the EIB).[\[9\]](#) The main reason for this amendment was to grant equal status to both mechanisms.[\[10\]](#)

The third amendment added a new Article 4 to the law, which itself added a new Article 4 to the Luxembourg EFSF-law.[\[11\]](#) It laid down that the EFSF can renounce the immunity expressly or stipulate the exemption of the immunity in a contract. The next paragraphs contained clarifications of immunities. The immunity was enlarged to the archive of the ESM and to all its employees. However, the administrative council of the ESM can renounce the immunity of employees by decision. The overall immunity is valid *ex ante*. The reasoning of the government was again that the EFSF and the ESM have to enjoy the same degree of immunity.[\[12\]](#)

The fourth amendment changed the title of the Luxembourg EFSF-law from “loi relative à l’octroi de la garantie de l’Etat dans le cadre de l’instrument européen de stabilisation de la zone euro” to “Loi relative au Fonds européen de stabilité financière”. From the point of view of the government, it was necessary to adapt the title to the proposed modifications.[\[13\]](#)

The Conseil d’Etat published two opinions concerning this legislative proposal. The first opinion contained several remarks. Firstly, it referred to its opinion from 6 March 2012 on the Luxembourg approval to the amendment of Article 136 TFEU by stating that the general remarks on the ESM in this earlier opinion are also valid for this law.[\[14\]](#) Secondly, the Conseil d’Etat criticised that the law does not contain when and under which conditions financial contributions of Luxembourg have to be paid.[\[15\]](#) The guarantees have to be treated as financial engagements in the sense of Articles 14, 15 and 19 of the national treasury law.[\[16\]](#) This means that the guarantees have to form part of the national list of budgetary expenses.[\[17\]](#) Thirdly, the Conseil d’Etat was surprised by the fact that the law seems to downplay the financial risks and demanded clarification of the wording.[\[18\]](#)

The Conseil d’Etat published a further opinion concerning this law on 12 June 2012 (avis complémentaire) regarding the proposed amendments by the government. The first amendment (immunity to ESM and EIB) was seen as superfluous because the respective treaties already contain such a guarantee of immunity (Article 32 ESM-Treaty). The second amendment was criticised

because it violates Article 10bis of the Luxembourg Constitution (principle of equality), because it gave the ESM a degree of immunity, which is only granted to the Grand Duke of Luxembourg in Article 4 of the Luxembourg Constitution.[19] The Conseil d'Etat explicitly opposed this amendment, a strong statement of the Conseil d'Etat.

The opinion of the Conseil d'Etat was discussed at the meeting of the parliamentary Committee for Finances and the Public Budget (Commission des Finances et du Budget) on 22 June 2012. They took Conseil d'Etat's opinion on the first governmental amendment into consideration, but decided to keep it in the law.[20] The second proposed amendment of the law was not passed in the form proposed by the government, but in the less far-reaching formulation of the Conseil d'Etat.[21]

In the plenary session of the Parliament about the adoption of these laws Claude Meisch, member of the then in opposition DP (Conservative Liberals) mentioned that the structure of the ESM shows a democratic deficit, because it is not parliament, which decides, but the ESM Council. Nonetheless, he also pointed to the fact that there are still a lot of national egoisms, which make the coordination difficult.[22] However, the DP was of the opinion that there should be a discussion about how to improve the participation of the parliament in the ESM.

## CASE LAW

### VIII.4

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

No. The opinions of the Conseil d'Etat cannot be considered as constitutional court judgments (see question II.2).

## 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?

Parliament approved the law, which contains the payment of Luxembourg but there is no further role of the parliament for the disbursement of the separate tranches.

## 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.

In the framework of the ratification of the ESM-Treaty (see question VIII.2), a second law was passed which regulates the criteria to participate in the ESM. The title of the law is Loi du 3 juillet 2012 relative

(1) à la participation de l'État au mécanisme européen de stabilité;

(2) à certaines immunités du mécanisme européen de stabilité et de la banque européenne

d'investissement et

(3) modifiant la loi modifiée du 9 juillet 2010 relative à l'octroi de la garantie de l'État dans le cadre de l'instrument européen de stabilisation de la zone euro,

This law contains the authorisation for the government to participate in the capital of the ESM. The financial participation is limited to Euro 200.320.000 for the paid in capital and Euro 1.552.480.000 for the financial guarantees. In addition, the law contains an overall immunity for the obligations and goods of the ESM and the EIB.[23] The fiche financière contains the sums for the paid in capital as well as the amount of the guarantees.

The Luxembourg Government informs parliament about measures taken by the ESM. This information procedure is based on a political agreement, which is not written and signed by government and opposition or written into any Luxembourg law, but government has promised to inform parliament regularly. Assumingly, this agreement does not have any legal force but it is rather a kind of convention between political parties. Nonetheless, it seems that this agreement is respected by the government.

## **APPLICATION DIFFICULTIES**

VIII.7

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

No difficulties known in the application of the ESM.

## **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 relevant changes.

## **MISCELLANEOUS**

VIII.9

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

No other relevant information.

[1] During the reading of the law classified as projet de loi 6405.

[2] MEMORIAL - Journal Officiel du Grand-Duché de Luxembourg, Recueil de Legislation, A - N° 135, p. 1709-1723,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/168/112687.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/168/112687.pdf).

[3] [Projet de loi 6405](#), p. 4,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/194/006/109035.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/194/006/109035.pdf).

[4] [Chambre des Députés, Bulletin de Vote](#), 26 june 2012,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/137/112316.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/122/137/112316.pdf).

[5] [Projet de Loi 6406](#),

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[6] [Amendements gouvernementaux](#), p. 2,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[7] [Amendements gouvernementaux](#), p. 2,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[8] [Amendements gouvernementaux](#), p. 2,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[9] [Amendements gouvernementaux](#), p. 2,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[10] [Amendements gouvernementaux](#), p. 3,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[11] [Amendements gouvernementaux](#), p. 3,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[12] [Amendements gouvernementaux](#), p. 3,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[13] [Amendements gouvernementaux](#), p. 3,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/105/111084.pdf).

[14] [Avis du Conseil d'Etat](#), 22 May 2012, p. 1,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf).

[15] [Avis du Conseil d'Etat](#), 22 May 2012, p. 1,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf).

[16] See in particular Article 19 of the Luxembourg Treasury Law (Loi du 8 juin 1999 sur le Budget, la Comptabilité et la Trésorerie de l'Etat),

<http://www.legilux.public.lu/leg/a/archives/1999/0068/a068.pdf#page=6>.

[17] Avis du Conseil d'Etat, 22 May 2012, p. 2,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf).

[18] Avis du Conseil d'Etat, 22 May 2012, p. 2-3,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/119/148/111487.pdf).

[19] Avis complémentaire du Conseil d'Etat, 12 June 2012, p. 1,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/128/112227.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/123/128/112227.pdf).

[20] Rapport de la Commission des Finances et du Budget, 22 June 2012, p. 10,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/147/112486.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/147/112486.pdf).

[21] Rapport de la Commission des Finances et du Budget, 22 June 2012, p. 10,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/147/112486.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/147/112486.pdf).

[22] Chambre des Députés, Séance 34, p. 437,

[http://www.chd.lu/wps/PA\\_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005](http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2011-O-034-0005).

[23] MEMORIAL - Journal Officiel du Grand-Duché de Luxembourg, Recueil de Legislation, A - N° 135, p. 1724,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/168/112687.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/129/168/112687.pdf).

# 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 LUXEMBOURG 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 in the negotiation known.

## RATIFICATION

### IX.2

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

The ratification is based on Loi portant approbation du traité sur la stabilité, la coordination et la gouvernance au sein de l'Union économique et monétaire, signé à Bruxelles, le 2 mars 2012. Since the Treaty includes the transfer of sovereign competences to an international institution, it is based on Article 49bis Luxembourg Constitution which lays down that the competences reserved to the legislative, executive and judicial powers by the constitution can be transferred to an international institution by a treaty<sup>[1]</sup> (see for the constitutional background question V.2; for the discussion about the necessity of a qualified majority in this case see question IX.3). The Luxembourg Fiscal Compact ratification law (Loi portant approbation du traité sur la stabilité, la coordination et la gouvernance au sein de l'Union économique et monétaire, signé à Bruxelles, le 2 mars 2012) passed the Chambre des Députés on 27 February 2013. 46 members of parliament voted in favour, among them the members of the government coalition from the CSV (Christian Democrats) and the LSAP (Social Democrats) as well as MPs from parties being in opposition (DP (Conservative Liberals) and M. Jacques-Yves Henckes (Indépendant)). 10 MPs voted against the law (déi gréng (the Greens), ADR (National Conservatives), déi Lénk (Democratic Socialists) and M. Jean Colombera (Indépendant)).<sup>[2]</sup> Both Indépendants Jacques-Yves Henckes and Jean Colombera were members of the ADR, but left the party at the end of the year 2012 because of inner-party conflicts, which were not directly related to the adoption of the Fiscal Compact, but on domestic political questions as well as the general point of view towards the EU. Henckes left the party on 18 December 2012<sup>[3]</sup>, Colombera on 21 December 2012.<sup>[4]</sup> The law entered into force on 4 April 2013, entitled "Loi du 29 mars 2013 portant approbation du traité sur la stabilité, la coordination et la gouvernance au sein de l'Union économique et monétaire, signé à Bruxelles, le 2 mars 2012".<sup>[5]</sup>

## RATIFICATION DIFFICULTIES

### IX.3

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

In the framework of the legislative procedure, stakeholder groups are always invited to present their opinion on the legislative proposal. The social dimension of the Fiscal Compact was emphasised by the representatives of the employees (Chambre des Salariés). They denied their approval and called on the national and European decision-makers not to forget the social dimension of fiscal policy.[\[6\]](#) Therefore, they reminded them to strengthen economic growth and fight against unemployment. They were of the opinion that the Fiscal Compact will destroy the European social model. The measures laid down in this Treaty will - in their point of view - aggravate the crisis. The strict framework of the Fiscal Compact does not help to fight the crisis, but makes it even worse.[\[7\]](#) In addition, they criticized the democratic deficit of the institutional structure, in particular the restriction of the parliamentary right to decide about the public budget.[\[8\]](#)

The Conseil d'Etat generally conducts the constitutional analysis of the legislative proposal and in its opinion on the Luxembourg Fiscal Compact-law it emphasised that this Treaty is of a legally unknown nature ("nature juridique inédite"). Formally, it is an intergovernmental treaty, in substance it refers to EU law.[\[9\]](#) The Conseil d'Etat did not have any objections against titles I, II, IV, V and VI, but against title III (articles 3 to 8) of the Fiscal Compact.

The Conseil d'Etat examined the approval to the Fiscal Compact by analysing whether the approval to the Fiscal Compact infringes any constitutional provision. Therefore, the Conseil d'Etat mentioned that the right to pass the budgetary law yearly is one of the core competences of the parliament and its most effective mechanism of control of the government.[\[10\]](#)

Since the obligation of Article 3 (1) TSCG (keeping the budgetary position balanced or in surplus) is not new in the framework of the Economic and Monetary Union (EMU), Luxembourg did not have to amend its constitution. All necessary amendments had already been made on the occasion of earlier obligations of the EMU.[\[11\]](#) The TSCG was also not contrary to Article 104 of the Luxembourg Constitution, which obliges the Parliament to vote every year on the budget because even though the Fiscal Compact has a perennial programme, the Chambre des Députés can vote on a yearly basis on the budget.[\[12\]](#) The changes demanded from the TSCG concerning the 'golden rule' did not require changing the Constitution, because the Fiscal Compact put an international obligation on Luxembourg, which does not have a different legal value, if it is written into the Constitution.[\[13\]](#) However, the Constitution did not prohibit writing the golden rule into it, so that the parliament was free to decide to do so. The automatic correction mechanism including the establishment of an independent supervisory institution did not per se require changes to the Constitution, except the Government decides to implement both measures on the constitutional level, which is not required by the Fiscal Compact.[\[14\]](#)

Concerning the transfer of sovereign competences onto international organisations in the sense of Article 49bis of the Luxembourg Constitution the Conseil d'État did not determine an additional transfer of competences in Article 3 (1) Fiscal Compact, which was not already laid down in the Treaty of Maastricht.[\[15\]](#) However, Article 3 (2) Fiscal Compact, which must be read along with Article 8, seemed to be more problematic, also because its formulation was not very clear. The



Conseil d'Etat emphasised that it is extremely difficult to determine whether this obligation infringes the Constitution because the wording is so vague. Without any legislative proposal implementing this international obligation Conseil d'Etat could not determine which provisions of the Constitution might be in conflict with this obligation.[16] However, the combination of Article 3 (2) with Article 8 TSCG (control of budgetary discipline which can be supervised by the European Commission and sanctioned by the ECJ) leads to a transfer of competences, which are not part of present EU law.[17] The competences of the Commission and the European Court of Justice in the case of an infringement of the golden rule are of procedural nature, but they have an important impact on the decision-making procedure. This made it necessary to adopt the law with a two-third majority as laid down in Article 114 of the Luxembourg Constitution.[18] The government did not agree on this latter interpretation.[19]

Taking into consideration the opinion of the Conseil d'Etat the parliamentary Committee for Finances and the Public Budget (Commission des Finances et du Budget) decided - for reasons of legal certainty - to vote with a two-third majority.[20]

The legislative proposal was discussed in a plenary session of the Luxembourg parliament on 27 February 2013. Claude Meisch from the DP (Conservative Liberals) criticised that the government proposes to ratify the Treaty, but does not say how the goals of the Treaty can be achieved by Luxembourg, in particular the structural deficit of 0.5%.[21] Alex Bodry from the then governmental party LSAP (Social Democrats) emphasised that the 'golden rule' does not have to be written into the Luxembourg constitution, but that it is sufficient to include this law in the ordinary legislation.[22] In addition, he explained that the European Court of Justice will not have the competence to control whether the Member States have respected the balanced budget rule, but only whether the Member States have implemented the TSCG-rules into its legal system. Serge Urbany from déi lénk (Democratic Socialists) asked where the conditions of the structural deficit are laid down and Alex Bodry confirmed that this is a weak point in the construction of this requirement.[23] Bodry also commented on certain aspects of the implementation of the Fiscal Compact. He and his party (the Social Democrats) think that the Court of Auditors should be equipped with the surveillance competences.[24] However, the present legislative proposal for the implementation made by the new government consisting of DP (Conservative Liberals), LSAP (Social Democrats) and déi gréng (the Greens) lays down that this task ought to be fulfilled by a newly created 'National Council on Public Finances' (for more information see question VII.5). Furthermore, he demanded a European-wide Social Pact and a strategy for economic growth.[25] The Social Democrats approve the Luxembourg TSCG-law, not because they are convinced that this Treaty is a perfect one, but at least it points into the correct direction and accepts the reality of a common Eurozone.[26] Francois Bausch from the Greens mentioned several points why his party could not approve the law. Firstly, the golden rule creates with its automatic deficit procedure a too rigid tool for economic policy, which has to react on cyclical economic developments.[27] Secondly, the Fiscal Compact creates a non-democratic and non-European institution because it is mainly governed by the two big Member States France and Germany.[28] Thirdly, the Fiscal Compact is no solution for the Euro-crisis because it does not regulate the financial market, which - in the view of Bausch - had caused the crisis.[29] The ADR (Conservative Nationals), represented by Gast Gibéryen, regretted that Luxembourg loses sovereign rights with this ratification.[30] Decisions, which were formerly made by the Luxembourg parliament will from now on be decided by technocratic institutions and the European Court of Justice said Gibéryen.[31] Serge Urbany from

the Democratic Socialists (déi lénk) emphasised that the Fiscal Compact is an undemocratic instrument, which follows the logics of the austerity policy and will lead to the reduction of social guarantees.[\[32\]](#) The Minister for Finance Luc Frieden from the CSV (Christian Democrats) refused that the Treaty is antidemocratic because it was negotiated from the elected representatives of all Member States.[\[33\]](#)

## 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 LUXEMBOURG? 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 golden rule has not yet been implemented into Luxembourg law. The Constitution does not contain such a rule and the former Prime Minister Jean-Claude Juncker, leader of a coalition of Christian Democrats (CSV) and Social Democrats (LSAP), was of the opinion that the Luxembourg Constitution is not the appropriate legal text for such a political rule (see question III.8). A legislative proposal, introduced into parliament on 2 July 2013, provides in its Article 4 the Balanced Budget Rule by referring to Article 3 of the Fiscal Compact.[\[34\]](#) This proposal is still under discussion in the framework of the Luxembourg legislative procedure and would, in the case of a successful approval by the parliament, be part of the ordinary legislation and not modify the Constitution (for more information on this see questions VII.2 and VII.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.

Luxembourg plans to implement the obligation of the golden rule in a new law. During a meeting on 8 January 2013, the parliamentary Commission of Financial and Budgetary Affairs (Commission des Finances et du Budget) did not see any problem in writing this rule into the Constitution.[\[35\]](#) However, the then Prime Minister Juncker from the Christian Democrats (CSV) did not want to write the rule into the Constitution because he classified this rule as a political understanding which should not form part of the guiding principles of the country set out in the Constitution (see question III.8).

Concerning the obligation to equip an independent institution with the supervision of the budgetary process, the government at this time wanted to avoid the creation of a new institution, but preferred to grant this competence to an already existing institution.[\[36\]](#) The rapporteur du projet de loi 6449 preferred to equip the Central Bank with this competence, because it is politically more independent than the Court of Auditors.[\[37\]](#)

At the moment, a legislative proposal called projet de loi relatif à la coordination et à la gouvernance des finances publiques which was brought into the parliamentary process by the then Finance Minister Luc Frieden from the CSV (Christian Democrats) on 22 July 2013, is discussed in parliament. The law is not passed until now, but the first draft of the legislative proposal provides that the Luxembourg Central Bank will be empowered to exercise the supervision role. A second, recently published draft of this law contains the establishment of a new 'National Council on Public Finances'.[\[38\]](#) In case of the adoption of this new legislative proposal the Luxembourg Central Bank will not have these supervisory competences.

In the framework of the legislative procedure certain stakeholder groups can bring in their opinion on the legislative proposal. The representatives of the public servants (Chambre des Fonctionnaires et Employés Publics (CFEP)) emphasised that the Fiscal Compact does not contain sufficient guarantees of democratic legitimacy.[\[39\]](#) Furthermore, the CFEP clearly objected against the transfer of budgetary competences to international institutions and welcomed that the government had rejected any proposal to write fiscal rules into the Constitution.[\[40\]](#) In addition, the CFEP was of the opinion that it is important that the proposal respects the prerogatives of the parliament.[\[41\]](#) Concerning the independent surveillance institution, the CFEP noted severe doubts that the Central Bank of Luxembourg is independent and impartial.[\[42\]](#)

The representatives of the artisanry and of the small and medium enterprises (Chambre des Métiers (CM)) welcomed the legislative proposal all in all but criticised that the proposal does not go far enough because the CM was convinced that the necessity to reform the public budget law is a good opportunity to implement further reforms.[\[43\]](#) Moreover, the CM expressed its concerns about the fact that Article 2 of the legislative proposal only refers to Article 3 (1) of the Fiscal Compact but does not use the wording of this article.[\[44\]](#) The CM also supported the proposal to transfer surveillance competences for fiscal rules to the Central Bank of Luxembourg.[\[45\]](#)

The representatives of the employees (Chambre des Salariés (CS)) published the most distinct critique concerning the legislative proposal. One of the main points concerned the golden rule itself. In the point of view of the CS, the golden rule is a tool - at least in its present setting - to follow a neoliberal and austerity policy, which does not take into account the social dimension of the public budget.[\[46\]](#) The golden rule does not leave enough room for manoeuvre for the Member States, if there are severe economic drops.[\[47\]](#) The concept of an anti-cyclical economic policy would no longer be possible. Moreover, the method to determine a structural deficit contains many indeterminate factors, which questions the whole procedure.[\[48\]](#) The CS was also not convinced that the Luxembourg Central Bank is the adequate institution for the surveillance of the compliance of the public budget with the golden rule because of constitutional norms.[\[49\]](#) In their point of view, Article 32 of the Luxembourg constitution, which lays down that the sovereign power resides in the (Luxembourg) nation, is infringed because the Luxembourg Central Bank does not have sufficient guarantees of democratic legitimacy. Moreover, the legislative proposal infringes the competence of the parliament to decide about the public budget (Article 104 Luxembourg Constitution) and the competence of the Court of Auditors to control the expenses (Article 105 Luxembourg Constitution). The CS proposed to open the procedure, which determines a violation of the golden rule, by allowing more stakeholder groups to participate, which would increase the democratic legitimacy of the whole procedure.[\[50\]](#)

The Chambre de Commerce (CC), representing a main part of the economic sector, criticised that the golden rule is neither written into the Constitution nor part of a law, which can only be amended by a qualified majority. The fact that – following this legislative proposal – the golden rule could be overruled by another law passed by a simple majority would not fulfil the obligations laid down in the Fiscal Compact and would not create guarantees for a permanent budgetary policy in Luxembourg but rather depend on short-term political considerations.[\[51\]](#) In the view of the CC, the golden rule is also a good step in the direction of a more stable public budget. However, they proposed to add a further rule only applicable for the central administration because its negative budget in the last years has been significantly higher than those of the municipalities and the social security administration.[\[52\]](#) The CC was convinced that the Luxembourg Central Bank is the adequate institution for the surveillance of the fiscal rules, but it recommended establishing a consultative procedure before the publication of the opinion of the Central Bank in order to incorporate the point of view of all stakeholder groups.[\[53\]](#) In addition, the CC demanded from the government to use this legislative proposal to make more extensive reforms in the budgetary architecture of Luxembourg.[\[54\]](#)

The State Council (Conseil d'Etat) commented in depth on the different levels of the public administration (central, social security and municipality). In its opinion the Conseil d'Etat recommended including very detailed rules on how to make sure that the social security administration respects the balanced budget rule and not only, as laid down in the present legislative proposal, to base this obligation on a norm which generally obliges the social security administration to respect the golden rule.[\[55\]](#) Concerning the implementation of the automatic correction mechanism the Conseil d'Etat wanted to wait for the position taken by the European Commission because a similar implementation exists in France.[\[56\]](#) (More information about the opinion of the Conseil d'Etat can be found in question VII.3).

## 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 position known.

## CASE LAW

IX.7

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

No. The opinions of the Conseil d'Etat cannot be considered as constitutional court judgments (see question II.2)

## NON-EUROZONE AND BINDING FORCE

IX.8

HAS LUXEMBOURG 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, since Luxembourg is a Euro area member state.

## MISCELLANEOUS

### IX.9

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

Yes. The legislative proposal for a reformed governance of public finances contains a provision which implements the automatic correction mechanism mentioned in Article 3 of the Fiscal Compact.<sup>[57]</sup> This provision obliges the government to lay down in the budgetary law for the next year which measures will be made to achieve the Medium Term Objective, if there is a higher structural deficit than 0.5%. This procedure inspired by the French legislation is justified by a reference to the last sentence of Article 3 (2) Fiscal Compact<sup>[58]</sup> which says that ‘Such

correction mechanism shall fully respect the prerogatives of national Parliaments’. This interpretation makes it possible to state a structural deficit in year 1, write down the measures to correct the structural deficit in the budgetary law in year 2 (usually in October) and to undertake these measures in year 3.

<sup>[1]</sup> The original wording is ‘L’exercice d’attributions réservées par la Constitution aux pouvoirs législatif, exécutif et judiciaire peut être temporairement dévolu par traité à des institutions de droit international.’

<sup>[2]</sup> Chambre des Députés, Bulletin de Vote, 27 February 2013,  
[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/191/165/119604.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/191/165/119604.pdf).

<sup>[3]</sup> See the report ‘Die ADR-Spitze zerbricht’ on [lessentiel.lu](http://www.lessentiel.lu), 14 December 2012,  
<http://www.lessentiel.lu/de/news/story/27149800>.

<sup>[4]</sup> See the report ‘«Das ist Betrug am Wähler»’ on [lessentiel.lu](http://www.lessentiel.lu), 21 December 2012,  
<http://www.lessentiel.lu/de/news/luxemburg/story/21451876>.

<sup>[5]</sup> Recueil de Legislation, A - N° 62, p. 788,  
[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/101/299/120908.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/101/299/120908.pdf).

<sup>[6]</sup> Avis de la Chambre des Salariés, 22 October 2012, p. 2,  
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[20] Rapport de la Commission des Finances et du Budget, 19 February 2013, p. 7,  
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[39] Avis de la Chambre des Fonctionnaires et Employés Publics, 10 October 2013, p. 2,  
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[45] Avis de la Chambre des Métiers, 5 November 2013, p. 8-9,  
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[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf).

[58] See *Projet de loi relatif à la coordination et à la gouvernance des finances publique*, *Commentaire des Articles*, 22 July 2013, p. 15,

[http://www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/149/257/124586.pdf).

# 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](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.

Not applicable.

## 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.

Not applicable.

## STATUS INSTRUMENTS

X.3

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

Not applicable.

## 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?

Not applicable.

## 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?

Not applicable.

## **ADJUSTMENT REQUIREMENTS**

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

Not applicable.

## **MISSIONS**

X.7

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

Not applicable.

## **CASE LAW INTERNATIONAL INSTRUMENTS**

X.8

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

Not applicable.

## **CASE LAW IMPLEMENTING MEASURES**

X.9

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

Not applicable.

## **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).

Not applicable.

## **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?

Not applicable.

## **MISCELLANEOUS**

X.12

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

Not applicable.