



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: "Poland"

Katarzyna Granat (Katarzyna.Granat@EUI.eu)

LL.M., PhD Researcher, Law Department, European University Institute

Publishing date: 16/03/2014

Last update: //

LAW DEPARTMENT PROJECT

FUNDED BY THE RESEARCH COUNCIL OF THE EUI

FOR FURTHER DETAILS SEE [HTTP://EUROCRISISLAW.EUI.EU](http://eurocrisislaw.eui.eu)

I - Political context

POLITICAL CHANGE

I.1

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

In October 2007 the liberal-conservative Platforma Obywatelska (PO) won the parliamentary elections and received 41,51% of votes for Sejm's mandates (209 mandates).^[1] The national-conservative Prawo i Sprawiedliwość (PiS) received 32,11% of votes for Sejm mandates (166 mandates). The centrist Polskie Stronnictwo Ludowe (PSL) received 8,91% of votes (31 mandates) and the left-wing Committee SLD+SDPL+PD+UP - 13,15% of votes (53 mandates) and one mandate - the German minority. Only the Platforma Obywatelska, Prawo i Sprawiedliwość and one independent candidate received seats in the Senat (accordingly 60, 39 and 1 mandate).^[2] The Platforma Obywatelska created a coalition with the Polskie Stronnictwo Ludowe, which lasted until the next elections in October 2011 with Donald Tusk (PO) as prime minister.

In the next parliamentary elections in October 2011, the Platforma Obywatelska again gained the highest number of votes 39,18% (207 mandates) and due to the lack of majority, it entered again into coalition with the Polskie Stronnictwo Ludowe which repeated its outcome from 2007 elections (8,36% of votes, 28 mandates). Donald Tusk became prime minister again. The PiS won 29,89% of votes (157 seats), the left-wing parties Sojusz Lewicy Demokratycznej (SLD) attracted 8,24 % of votes (27 mandates) and the Ruch Palikota (RP) - 10,02 % of votes (40 mandates). The German minority received one mandate. In 2012, some of the PiS MPs formed a new party in the Sejm, right-wing Solidarna Polska (SP).^[3] In the Senat, the PO gained 63- seats, the PiS- 31, the PSL - two and also four independent candidates received seats.^[4]

The President of the Republic is elected directly by the people to serve for five years and can be re-elected only once. In 2005 Lech Kaczyński (PiS) started his term as President of the Republic. In 2010, due to the crash of presidential plane and death of the President Lech Kaczyński, Bronisław Komorowski (PO) became President of the Republic.

No national referenda have taken place within the period at stake.

The Eurozone crisis has definitely affected the perception of Poles about the EU in general.^[5] In March 2013, 78% of Poles supported Poland's membership in the EU, whereas 15% was against it. These numbers are visibly smaller compared to the situation in previous years (July 2007), which was a share of 89% and 5% accordingly. This decrease is 'certainly due to the financial crisis problems in some of the Member States'.^[6] Moreover, only 64% of Poles is in favour of the Eurozone accession.^[7] Yet, the main reason is the possible increase of prices (25%) and not the financial crisis in the Member States that adopted Euro (8%).^[8]

^[1] <http://wybory2007.pkw.gov.pl/SJM/PL/WYN/M/index.htm>.

^[2] <http://wybory2007.pkw.gov.pl/SNT/PL/WYN/W/index.htm>.

^[3] <http://wybory2011.pkw.gov.pl/wsw/pl/000000.html>.

[4] <http://wybory2011.pkw.gov.pl/wsw/pl/000000.html#tabs-2>.

[5] The data comes from the CBOS questionnaires. CBOS is a well established institute researching public opinion in Poland. Cf. CBOS, Obawy i nadzieje związane z wprowadzeniem Euro w Polsce, http://www.cbos.pl/SPISKOM.POL/2013/K_042_13.PDF

[6] CBOS, Obawy i nadzieje związane z wprowadzeniem Euro w Polsce, http://www.cbos.pl/SPISKOM.POL/2013/K_042_13.PDF, p.1.

[7] CBOS, Obawy i nadzieje związane z wprowadzeniem Euro w Polsce, http://www.cbos.pl/SPISKOM.POL/2013/K_042_13.PDF, p.3.

[8] CBOS, Obawy i nadzieje związane z wprowadzeniem Euro w Polsce, http://www.cbos.pl/SPISKOM.POL/2013/K_042_13.PDF, p.9.

II - Changes to the Budgetary Process

BUDGETARY PROCESS

II.1

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

The Polish Constitution enshrines the general principles of the budgetary process. Art. 221 PC indicates that the Council of Ministers has an exclusive right to introduce legislation concerning the Budget (ustawa budżetowa), an interim budget, amendments to the Budget, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State. The project of the budget has to be approved by the Council of Ministers as a whole before presenting it to Sejm (Art. 146 par. 4 pt 5 PC). Infra-constitutional acts^[1] (normative acts, such as statutes, regulations, etc., they are generally binding) provide that the Council of Ministers has to consult the project of the Budgetary act (first draft of the future budgetary act which is often called Budget; budgetary act contains an economic projection of the state budget; it has a form of a legislative act (ustawa), the Constitution and the Public Finances Act contain the rules for creating budget, see question III.3). Next, no later than three months before the fiscal year starts, the Council of Ministers submits to the Sejm a draft Budget for the next year.^[2] In exceptional instances, the draft may be submitted later.^[3]

After the approval of the Budget in the Sejm, the Budget is passed to the Senat. The Senat may amend the Budget within 20 days, but it cannot reject the Budget.^[4] Next, the President of Poland signs the Budget or interim Budget within seven days of submission by the Marshal of the Sejm and orders its promulgation in the Journal of Laws of the Republic of Poland (Dziennik Ustaw).^[5] Before signing the Budget (which is an obligation), the President of Poland may also refer to the Constitutional Court to review the conformity of the Budget or interim budget with the Constitution. The Constitutional Court is obliged to adjudicate this issue within two months from the day of submission of the reference by the President.^[6]

If within four months after the draft Budget was referred to the Sejm it is not presented to the President for the signature, the President may within fourteen days shorten the parliamentary term.^[7]

The Council of Ministers executes the Budget.^[8] Within five months following the end of the fiscal year, the Council of Ministers presents to the Sejm a report on the implementation of the Budget together with information on the condition of the State debt.^[9] The Sejm has to consider the report within 90 days following its receipt, and, after seeking the opinion of the Supreme Chamber of Control, it passes a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers, so-called absolutorium.^[10] The lack of approval does not cause any negative consequences for the government; the government is not obliged to resign.^[11]

In general, the Budget is characterised by two principles enshrined in Art. 219 PC.^[12] The Budget is provided for one year and has to have a form of a legislative act (statute; ustawa). Moreover, Art. 220 PC enshrines a principle of limitation and control over the budgetary deficit. It means that the

increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the draft Budget. In this regard, the budgetary deficit cannot be covered by loans from the central bank.[\[13\]](#)

GENERAL CHANGE

II.2

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

The main change is the new stabilising fiscal rule (Cf. Question VII.7) and in the timeline since the date of publication of the actual convergence program was changed to April, which hence accelerated works on the Multi-Year Financial Plan of the State (Cf. Questions VII.8 and II.4).

INSTITUTIONAL CHANGE

II.3

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

No institutional changes in the functions of the judiciary have taken place in Poland. In the same vein, the competences of the parliament have not been amended. The competences of the parliament have been reformed in 2010 regulating the information from the government to the parliament before the Council meetings.[\[14\]](#) The main change is the new fiscal rule (See Question VII.7), which limits the spending of the government.

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?

In the time-lime of the budgetary process, due to the European Semester, only the date of publication of the actual convergence program was changed to April, which hence accelerated works on the Multi-Year Financial Plan of the State.

MISCELLANEOUS

II.5

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

A study published in 2013 by the European Parliament found that only a few member states had held parliamentary debates on their National Reform Programmes (NRPs).[\[15\]](#) With regard to Poland, the study indicates that the NRP has not been discussed in the parliament.[\[16\]](#)

In fact, the NRP in Poland was only briefly mentioned in the plenary debate of 9 November 2012, when the MPs discussed government's information on Poland's participation in the EU.^[17] It was underlined in the debate that the Commission positively assessed Poland's "macroeconomic scenario" and the Polish government also internally confirmed the indicated necessary reforms.^[18] The Commission recommendations of 2013 within the European Semester were discussed at the Sejm's European Affairs Committee on 7 June 2013.^[19]

[1] For example Art.3 pt 5 Ustawa o Komisji Wspólnej Rządu i Samorządu Terytorialnego, 6.5.2005.

[2] Art. 222 PC.

[3] These are, however, not defined in the Constitution or infra-constitutional law. Cf. Zbigniew Ofiarski, Prawo Finansowe, C.H.Beck 2010, p.185.

[4] Art. 223 PC.

[5] Art. 224 par.1 PC.

[6] Art. 224 par.2 PC.

[7] Art. 225 PC.

[8] Art. 146 par. 4 pt 6 PC.

[9] Art. 226 par. 1 PC.

[10] Art. 226 par. 2 PC,

[11] Zbigniew Ofiarski, Prawo Finansowe, C.H.Beck 2010, p. 188.

[12] Zbigniew Ofiarski, Prawo Finansowe, C.H.Beck 2010, p. 186.

[13] Zbigniew Ofiarski, Prawo Finansowe, C.H.Beck 2010, p. 187.

[14] Ustawa z dnia 8 października 2010 r o współpracy Rady Ministrów z Sejmem i Senatem w sprawach związanych z członkostwem Rzeczypospolitej w Unii Europejskiej, Dz.U. Nr 213 Poz. 1395.

[15] European Parliament, The European Dimension in the National Reform Programmes and the Stability and Convergence Programmes, Study, September 2013, Available at:
<http://www.europarl.europa.eu/document/activities/cont/201311/20131105ATT73932/20131105ATT73932EN.pdf>.

[16] Id, see Table 3 and Table A1.

[17] 25. Posiedzenie Sejmu w dniu 9.11.2012, p.352,
http://orka2.sejm.gov.pl/StenoInter7.nsf/0/9A3DFC35F9453901C1257AB600326B6A/%24File/25_c_ksiazka.pdf.

[18] Id.

[19] Sejm, European Affairs Committee and others, 7.06.2013,
<http://www.sejm.gov.pl/Sejm7.nsf/biuletyn.xsp?sknr=SUE-160>.

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)?

Changes into the Constitution were not introduced and are not planned. Only the ordinary legislation is amended or new pieces of ordinary legislation prepared.

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 amendments were proposed so far. The Constitution will need an amendment when Poland will be joining the Eurozone.

CONSTITUTIONAL CONTEXT

III.3

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

The Polish Constitution and the Public Finances Act (ustawa o finansach publicznych) enshrine fiscal rules on public debt.

Art. 216 par. 5 PC states that:

It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute.

The Polish Constitution enshrined this provision since its enactment in 1997.

Moreover, Art. 220 par. 1& 2 provide that:

The increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the draft Budget.

The Budget shall not provide for covering a budget deficit by way of contracting credit obligations to the State's central bank.

Art. 86 of the Public Finances Act (2009) provides three security thresholds:

- if the public debt exceeds 50%GDP, the Council of Ministers must prepare the Budgetary Act,

where the relationship between the budgetary deficit and the budgetary income is not higher than in the current year (similarly in the regional budgets);

- If the public debt exceeds 55%GDP, the Council of Ministers must prepare such Budgetary Act, where a deficit is not foreseen or the relationship between the deficit and the GDP at the end of the year is lower than currently, with a simultaneous limitation on the deficits of the regional entities. The Council of Ministers must present to the Sejm a reform programme aiming at decreasing the relationship between the public debt and the GDP;
- If the public debt exceeds 60%GDP, the public finances units do not have a right to give assurances or guarantees, the Council of Ministers, within a month after the relationship between the public debt and the GDP is revealed, must present a reform programme, leading to a decrease of the public debt under 60%GDP and the Budgetary Act for the next year and the budgets of the regional units may not foresee any deficit.

Law on Public Finances contains also a 'disciplining expenditure rule' (Art.112a) limiting the growth of certain budget expenditure to forecast CPI inflation rate increased by 1 percentage point, which has been replaced by the 'stabilizing fiscal rule' (Cf. Question VII.7).

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

Not relevant for Poland.

RELATIONSHIP WITH EU LAW

III.5

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

Not relevant for Poland.

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?

Not relevant for Poland.

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 relevant for Poland.

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?

As the parliamentary debates on the Treaty Amendment, the Fiscal Compact and the Six Pack show (see the relevant questions in the questionnaire), the perception was that it is an implementation of Euro-crisis law. This is even more visible in the fact that no constitutional amendments were introduced and the only planned changes concern infra-constitutional law (e.g. the Public Finances Act). Yet, the new stabilising fiscal rule seems to serve both improving the national financial frameworks and implementing the directive 2011/85/EU. ^[1]

MISCELLANEOUS

III.9

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

No other relevant information.

[1] Cf. Uzasadnienie do zmiany ustawy o finansach publicznych (Justification for the amendment of the Public Finances Act, see attachment), p.3.

IV - Early Emergency Funding

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

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

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

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

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

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

NEGOTIATION

IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID POLAND 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?

The Secretary of State in the Ministry of Foreign Affairs stated only that Poland welcomed "with satisfaction" the establishment of the EFSM. ^[1]

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 POLAND AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

Not relevant for Poland.

GUARANTEES

IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN POLAND? WHAT DEBATES HAVE ARISEN DURING THIS PROCEDURE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE GUARANTEES FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

Not relevant for Poland.

ACTIVATION PROBLEMS

IV.4

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

Not relevant for Poland.

CASE LAW

IV.5

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

Not relevant for Poland.

IMPLEMENTATION

IV.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE EFSF, FOR EXAMPLE WITH REGARD TO DECISIONS ON AID PACKAGES (LOAN FACILITY AGREEMENT AND MEMORANDUM OF UNDERSTANDING) AND THE DISBURSEMENT OF TRANCHES, BOTH OF WHICH NEED UNANIMOUS APPROVAL BY THE SO-CALLED GUARANTORS, I.E. THE EUROZONE MEMBER STATES?

Not relevant for Poland.

IMPLEMENTING PROBLEMS

IV.7

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

Not relevant for Poland.

BILATERAL SUPPORT

IV.8

IN CASE POLAND PARTICIPATED IN PROVIDING FUNDING ON A BILATERAL BASIS TO OTHER EU MEMBER STATES DURING THE CRISIS, WHAT RELEVANT PARLIAMENTARY DEBATES OR LEGAL ISSUES HAVE ARISEN?

Not relevant for Poland.

MISCELLANEOUS

IV.9

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

Not relevant for Poland.

[1] Sprawozdanie Stenograficzne z 76. Posiedzenie Sejmu VI kadencji, 21.10.2010, p.192

[http://orka2.sejm.gov.pl/StenoInter6.nsf/0/5E5E100F92D3025EC12577C3007E37F9/\\$file/76_b_ksiazka.pdf](http://orka2.sejm.gov.pl/StenoInter6.nsf/0/5E5E100F92D3025EC12577C3007E37F9/$file/76_b_ksiazka.pdf).

[1] Sprawozdanie Stenograficzne z 76. Posiedzenie Sejmu VI kadencji, 21.10.2010, p.192

[http://orka2.sejm.gov.pl/StenoInter6.nsf/0/5E5E100F92D3025EC12577C3007E37F9/\\$file/76_b_ksiazka.pdf](http://orka2.sejm.gov.pl/StenoInter6.nsf/0/5E5E100F92D3025EC12577C3007E37F9/$file/76_b_ksiazka.pdf).

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

During the Sejm's European Affairs Committee meeting on 8.04.2011, the government reported on the Belgian presidency of 2010.^[1] With regard to the Treaty amendment, the Undersecretary of State in the Ministry of Foreign Affairs underlined that Poland actively participated in the discussions, despite of not being a Member of the Eurozone.^[2] In the view of the Undersecretary of State, 'the possibility for the non-Eurozone Member States to participate in the activities within the framework of the mechanism was a consequence of Poland's intensive actions.'^[3] This was highly appreciated by other non-Eurozone Member States. The issue was later repeated at the plenary sitting on 28.04.2011.

APPROVAL

V.2

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

The Polish Constitution foresees three types of international agreements demanding ratification.

First, so-called "big ratification" pursuant to Art. 89 par. 1 PC demands a consent of parliament granted by statute, if an international agreement concerns, 1) peace, alliances, political or military treaties; 2) freedoms, rights or obligations of citizens, as specified in the Constitution; 3) the Republic of Poland's membership in an international organization; 4) considerable financial responsibilities imposed on the State; 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute. Pursuant to Art. 89 par.1 PC, the ratification of international agreements demands a simple majority vote, in the presence of at least half of the statutory number of MPs (Cf. Art. 120 PC) and a similar majority in the Senate (Art. 124 PC). Art. 89 par.1 PC does not foresee a national referendum to grant consent for ratification of an international treaty.

Second, so-called "small ratification" pursuant to Art. 89 par. 2 PC demands that the Prime Minister informs the Sejm of any intention to submit for ratification by the President of the Republic

any international agreements whose ratification does not require consent granted by statute (international agreement not covered by Art. 89 par. 1 PC).

Third, Art. 90 PC regulates ratification of international agreements which delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters. According to Art. 90 par. 2 PC, the consent for ratification of such an international agreement must be expressed in the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and in the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators. Moreover, Art. 90 par. 3 PC provides that the consent for ratification of international agreements that delegate to an international organization or international institution competences of state organs in relation to certain matters may also be granted in a national referendum. According to Art. 90 par. 4 the Sejm chooses, by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies, which procedure (2/3 majority by Sejm and Senat or a national referendum) for granting consent to ratification will be applied.

The ratification procedure on the basis of Art. 90 was applied earlier only to the Accession Treaty (national referendum) and the Lisbon Treaty (2/3 majority vote in both chambers). Although in 1997 the Constitution drafters created Art. 90 for the purpose of Poland's EU accession, this article does not refer specifically to EU Treaties. So in fact other treaties, which fulfil the conditions specified in this provision, can be ratified by 2/3 majority of the parliamentarians.

The government's bill of the Ratification Act ^[4] indicates the legal basis for the ratification and undergoes later three readings and a vote in the parliament, where it can be rejected. ^[5]

The Sejm and the Senat approved the Ratification Act for the Treaty change on the basis of Art. 89 par. 1 PC. ^[6] On 11 May 2012, in the Sejm out of 460 MPs: 294 MPs voted in favour of the Ratification Act (centre-right PO, centrist-agrarian PSL, social-democratic SLD, liberal Ruch Palikota), 155 MPs voted against (conservative PiS and SP and an indep. MP), 1 MP abstained (SLD), 10 were absent. ^[7] On 30 May 2012, in the Senat out of 100 Senators: 55 voted in favour (51 PO senators, 1 PSL senator, 3 independent senators), 30 against (29 PiS and 1 SP senator), 15 were absent. ^[8]

On 26 June 2012 the president signed the Ratification Act.

The division on the appropriate procedure for the Treaty change is also visible in the opinions of the legal scholarship (Cf. Question V.3). ^[9]

RATIFICATION DIFFICULTIES

V.3

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

In general, the procedure of approval of the Treaty amendment itself was the main point of the discussion. The issue at stake was whether the agreement to the Treaty amendment would delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters. To pass the ratification act of such a treaty, Art. 90 par. 1 of Polish Constitution demands a 2/3 majority vote in the presence of at least half of the Sejm MPs and

2/3 majority vote in the presence of at least half of the Senators in the Senat. Otherwise, the Constitution demands just a simple majority (as in Art. 89 ust. 1 of Polish Constitution, Cf. Answer to Question V.2).

Sejm

The first reading of the government's bill of the Ratification Act for the Treaty Amendment took place on 11 January 2012.^[10] The Undersecretary of State in the Ministry of Foreign Affairs highlighted that in the opinion of the government the correct way to ratify the treaty amendment is pursuant to Art. 89 par. 1 PC (Ratification of an international agreement which concerns Poland's membership in an international organisation) that demands a simple majority vote.^[11] In this regard, the PiS (conservative party in the opposition) criticised the choice of Art. 89 par.1 and emphasised that the correct ratification procedure is the one expressed in Art. 90 PC, as Poland delegates the competence of State organs in relation to certain matters.^[12] In this regard, the PiS opposition highlighted that it submitted a resolution to the Sejm's Marshal stating that the ratification act should be ratified according to the conditions indicated in Art. 90 PC. Additionally, in the view of the PiS opposition any Treaty amendment implies furthering of EU integration and, in consequence, a further transfer of competences to EU.^[13] Moreover, the PiS opposition highlighted that ratification of the ESM Treaty before Poland joins the Eurozone would also demand a ratification procedure according to Art. 90 PC. In this regard the party proposed an amendment to the Ratification Act at stake, expressing an obligation that the future ESM Treaty shall be ratified pursuant to the Art. 90 PC procedure.^[14]

To counter the opposition's arguments, the Undersecretary of State in the Ministry of Foreign Affairs pointed at the recent changes of the Treaty, namely that the accession of Romania and Bulgaria and the "Spanish protocol" (concerning the EP) were ratified on the basis of Art. 89 par. 1 PC.^[15] Moreover, in the view of the Minister, the ratification of the Treaty amendment did not transfer any competence to the EU and Poland will not be able to join the ESM without being in the Eurozone.^[16]

On 25 April 2012, the joint meeting of the EU Affairs Committee and Foreign Affairs Committee in the Sejm discussed the project of the resolution concerning the Ratification Act^[17] proposed by the PiS opposition.^[18] The proposed resolution indicated that the legal basis for the Ratification Act should be Art. 90 PC.^[19] The PiS opposition insisted on a plenary debate of their resolution.^[20] Accordingly, ratification on the basis of Art. 90 PC would express "care about the sovereignty and safety of Poland".^[21] Additional critical points of the opposition concerned the passerelle procedure^[22] as the basis for the Treaty amendment and that the Treaty change should be looked at jointly with the ESM Treaty.^[23] In reply, the Undersecretary of State in the Ministry of Foreign Affairs pointed that, first, there are some doubts with regard to Art. 90 PC highlighted especially by Sejm's Expertise Office experts, but the correct procedure, according to the government is Art. 89 par.1 PC^[24] and, second, that the Treaty amendment does not imply an automatic ratification of the ESM Treaty.^[25] Further, in the view of the Undersecretary of State in the Ministry of Foreign Affairs also the passerelle was applied correctly.^[26] In response, one of the PiS members underlined that the fact that the EU has chosen a passerelle procedure outlines the probable future approach of the EU to European integration.^[27] In consequence, the majority of the MPs at the joint meeting of the Committees decided to opine the opposition's resolution negatively.^[28] Next,

the report of the joint Committees rejecting the project of PiS resolution was debated in the plenary sitting of the Sejm on 9 May 2012.^[29] The governing majority and the Ruch Palikota party voted in favour of the rejection of PiS proposal, whereas the left-wing opposition SLD abstained due to the doubts with regard to the application of Art. 89 par.1 PC.^[30]

The second and third (vote) readings of the governmental proposal for the Ratification Act took place at the plenary sitting of the Sejm on 10 and 11 May 2012.^[31]

The arguments in this debate were similar to the ones raised at the first reading and at the discussion of the PiS proposal. The representatives of the governing party, the PO, followed the position of the government, namely that Art. 89 par. 1 is the correct legal basis for the Ratification Act; there is no transfer of competences to the EU and the ratification of the Treaty amendment will show solidarity with other Member States.^[32] The governing coalition's partner, the PSL, also expressed its support for the Ratification Act at stake.^[33] Moreover, the left-wing opposition (the Ruch Palikota) maintained that Art. 89 PC is the correct legal base for the ratification procedure and that the ratification is necessary for the "common good" of the EU.^[34] The left-wing opposition, the SLD took a similar position.^[35] On the contrary, the PiS opposition stated that it will vote against the Ratification Act, especially as its own project, demanding Art. 90 PC as the ratification procedure, was rejected earlier.^[36] Another right-wing opposition party, Solidarna Polska, raised the question, whether the introduction and existence of the ESM is in Poland's interest, criticised the simplified Treaty amendment procedure and the national ratification procedure on the basis of Art. 89 par.1 PC, concluding that it will vote against the Ratification Act.^[37]

Further points of discussion in the Sejm were the consequences of the Treaty amendment on ratification of the ESM and the Fiscal Compact (how far all these mechanisms are interrelated); what financial burden does the Treaty amendment imposes on Poland and a possible ex-post complaint to the Constitutional Court.

Senat

On 22 May 2012 the Senat's Foreign Affairs Committee and the EU Affairs Committee jointly debated the Ratification Act.^[38] The Undersecretary of State in the Ministry of Foreign Affairs expressed a similar position as previously that Poland will not be bound by the ESM Treaty unless it joins the Eurozone, the use of passerelle was correct as the Treaty change does not increase the competence of the EU and the right ratification procedure is according to Art. 89 par. 1 of PC.^[39] The representative of the Senat's Legislative Office pointed at the opinions submitted by the Sejm's Expertise Office (or ordered by parliamentarians with regard to ratification procedure).^[40] The opinions submitted by dr K. Kubuj, dr hab M.Szydło and prof. C. Mik indicated that the correct ratification procedure for the Treaty amendment is pursuant to Art. 90 PC, as the Treaty amendment increases the competences of the EU and also causes a transfer of Poland's competences to the EU.^[41] Other opinions pointed that there is no transfer of competences and that the correct ratification procedure is Art. 89 par. 1 PC (dr hab Artur Kozłowski, dr Piotr Czarny). The Senat's Legislative Office, pointing at the different positions, maintained that Art. 89 par.1 PC is the right ratification basis.^[42] The Commissions approved the Ratification Act without any amendments in a majority vote.^[43]

On 30 May 2012, the Senat debated the Ratification Act in the plenary sitting.^[44] The Senator

rapporteur (governing majority PO) raised two arguments in favour of accepting the Ratification Act. First, the ratification according to Art. 89 par. 1 pt 3 PC is possible because member states agreed to the simplified Treaty amendment, hence the Treaty amendment does not increase of competence of the EU. Second, the Treaty amendment is a procedural change: the ESM is a separate international agreement, which will have to be ratified separately, if Poland joins the EU. [45] The arguments raised in the debate were repeating the ones from the committees' sitting. Additionally, the relation of the Treaty amendment to the Fiscal Compact was discussed. [46]

CASE LAW

V.4

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

Case signature K 33/12

- 1) Name of the Court: Trybunał Konstytucyjny (Constitutional Court)
- 2) Parties: Group of MPs (applicant), Sejm, Attorney General (participants)
- 3) Type of action/procedure: ex post review, on the basis of Art. 191 par. 1 in connection with Art. 188 PC: The Constitutional Tribunal shall adjudicate regarding, among other, the conformity of statutes and international agreements with the Constitution, following the application of the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights.
- 4) Admissibility issues: The application was admitted by the Court.
- 5) Legally relevant factual situation: Both chambers of the Polish parliament approved the Council decision on the basis of Article 89(1) PC. Shortly afterwards, the president signed the approved Ratification Act, without requesting the Constitutional Court to adjudicate on its conformity to the Constitution. Whereas constitutional review of international treaties before ratification (ex ante) is possible only at the request of the President, [47] ex post review can be triggered in other ways, including a request from the parliament. [48] This second possibility applied for the case in question.

The Treaty amendment Ratification Act entered into force on 17 July 2012. (Dz. U. poz. 748)

- 6) Legal questions:

In its application of 26 July 2012, the group of PiS MPs (opposition) asked the Constitutional Court to review whether the Ratification Act is compatible with Art. 90 PC in connection with Art. 120 first sentence PC (see answer to question V.2 for more constitutional background), taking into account the procedure in which the Ratification Act was approved. In the view of the applicants, the Ratification Act violates the Constitution because the ratification of the amended Art. 136 (3) TFEU creates a legal to transfer to an international organisation – the ESM – competences of state organs in some matters. These competences include the management of Poland's participation in monetary union. Moreover, the decision-making power on Poland's participation in the monetary union is conferred upon the ESM institutions. In addition, the jurisdiction of the CJEU and the Court of

Auditors is extended with regard to Poland.

The argument was that the Council decision created a link in the TFEU to confer upon the international organisation, the ESM, competences of state organs in certain matters. The applicant argued that Poland had transferred competences concerning the terms of Poland's participation in the monetary union to the ESM. Moreover, the ratification of Article 136 TFEU extended the jurisdiction of the Court of Justice of the European Union (Luxembourg Court) and the Court of Auditors with regard to Poland. The conferral of competence to the ESM also allowed the European Commission to specify the terms of a mechanism correcting the financial economy of states at the expense of the competence of the Sejm to exercise budgetary policy and the competence of the Council of Ministers to conduct economic policy. Additionally, the applicant argued that the ratification of the Article 136 TFEU amendment, which was a basis for the ESM Treaty, created an obligation for Poland to participate in the ESM upon its accession to the euro area. Finally, the applicant advocated the inclusion of the TSCG in the Court's review. Namely, the TSCG referred to the ESM Treaty directly, as well as to regulated matters subject to the TFEU, such as the jurisdiction of the Luxembourg Court.

- whether the Ratification Act was compatible with Article 48(6) TEU?

In this context, in fact, the applicants ask the Constitutional Court to review national act against the EU Treaty. The applicants argued that the Ratification Act violates Art. 48(6) TEU, because the amendment of Art. 136 TFEU leads to an increase of the competences conferred upon the EU in the treaties. This increase takes place via the agreement to create a new international organisation, broadening the jurisdiction of the ECJ and the Court of Auditors and significantly changing the decision-making procedure (so-called reversed qualified majority). In consequence, the ratification of the Council decision allowed for legal provisions incompatible with EU law to flow into the Polish legal system thus violating the Polish Constitution (Art. 88 of the Constitution states that the condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof)

7) Arguments of the parties

Other parties' positions:

The Marshal of the Sejm submitted its explanations stating that the Ratification Act is not contrary to Art. 90 PC and Art. 48 par. 6 TEU. The Marshall stated that the Ratification Act does not transfer any competences to the EU and the ESM is a separate Treaty, which also does not transfer any competences (Explanations of the Marshall of the Sejm, submitted on 11.02.2013, p.35). With regard to Art. 48 par. 6, the Marshall of the Sejm pointed out that it cannot be a benchmark to assess the constitutionality of the Ratification Act.

The Attorney General expressed a similar position in its explanations of 23 April 2013. In the view of the Attorney General, Art. 89 par. 1 PC is the correct ratification procedure. Namely, the change of Art. 136 TFEU is based on Art. 48(6) TEU which does not allow for an increase of competences by the EU. In consequence, ratification of the Treaty amendment does not transfer any competence to the EU and ratification on the basis of Art. 90 PC is not necessary.

With regard to the CJEU Pringle judgement the Attorney General and the Marshall of the Sejm

underlined that the notion of “transfer of competences” in this judgement concerns the applicability of the EU simplified revision procedure, yet it may be an useful hint for the interpretation of the transfer of competences enshrined in Art. 90 PC.

8) Answer by the Court to the legal questions and legal reasoning of the Court:

The case was decided on 26 June 2013.^[49]

The Constitutional Court, with five dissenting opinions,^[50] did not declare the Ratification Act unconstitutional. The Court pointed out that Art. 136 par. 3 does not concern competences of the state organs, hence no transfer of such competences can be at stake. In consequence, a higher voting threshold indicated in Art. 90 par. 2 PC was not necessary for the approval of the Ratification Act.

On relationship between Art. 136 par. 3 TFEU and the ESM Treaty:

With regard to the meaning of Art. 136 par. 3 TFEU, the Court stated that this provision ascertains the competences of the Member States to create a mechanism aiming at protection of the Eurozone’s stability, using the instruments of international law. Art. 136 par. 3 neither creates a stability mechanism on its own, nor obliges the EU Member States to create such a mechanism. Moreover, Art. 136 par. 3 TFEU does not determine the legal character or the details of the stability mechanism’s construction. Art. 136 par. 3 TFEU only generally indicates that the stability mechanism may be created if it is necessary for the protection of the financial stability of the Eurozone and that the financial assistance will be subjected to a strict conditionality. This provision does not oblige the EU institutions to participate in the ESM and does not determine which competences the EU institutions may gain. Even if Art. 136 par. 3 created a basis for the modification of the requirements for Poland to access the Eurozone (obligation to participate in the ESM Treaty without any possibility to renegotiate it), the transfer of competences would formally take place only in the moment of the ratification of the EMS Treaty by Poland.

As the opposition argued that the ESM Treaty changes the conditions on which Poland will accede to the Eurozone in the future, the Constitutional Court maintained that the ESM Treaty is not binding for the non-Eurozone Member States and the creation of the ESM did not change the conditions for the accession to the Eurozone (the provisions on the derogation did not change), moreover, Member States do not automatically become parties to the ESM Treaty when accessing the Eurozone.

Further, as Poland is not a party to the ESM Treaty, the Court refrained from assessing the merits of the ESM Treaty whilst reviewing the compatibility of the Treaty Amendment Ratification Act with the Constitution.

In the view of the Court, its position corresponds with the CJEU case C-370/12 (Pringle) on the issue that the Treaty amendment does not transfer new competences to the EU, as well as with a similar position expressed by the German Constitutional Court (2 BvR 1390/12, 12.09.2012).

On the compatibility of the Ratification Act with Art. 90 PC

The Court indicated that Article 90 PC is applicable when a change of the scope or way of exercise of already conferred powers is at stake (and not only when the competences are transferred).

Considering Article 136(3) TFEU, the Court stated that the new Treaty provision was very general and did not allow to state, whether the Union or its institution received new competences; none of the EU institutions was even mentioned in the new provision. The Court underlined that whereas Article 136(3) TFEU acknowledges the competences of member states to create a stability mechanism, only the provisions of the ESM Treaty regulate the competences of specific EU institutions in the ESM.

On the compatibility of the Ratification Act with Art. 48(6) TEU:

The Constitutional Court declared itself not competent to judge upon the legality of EU legal acts: the ECJ, acting within its competence, had already confirmed the legality of the Council decision. With regard to the review of the Ratification Act, the Court did not find Article 48(6) TEU to be an adequate benchmark for control and declared the Ratification Act not incompatible with Article 48(6) TEU. The Court did not analyse the merits of the applicant's claim. The Court explained that it took into account the content of Art. 136 (3) TFEU as a 'material content of the Ratification Act' in order to control the constitutionality of the Ratification Act, but not to control whether Art. 136(3) was compatible with Art. 48(6) TEU.^[51] The Court underlined that Art. 48(6) TEU could have served only to check the legality of the Council decision, which is the competence of the ECJ.

9) Legal effects of the judgment/decision:

The Court declared the Ratification Act as not incompatible with Art. 90 PC and Art. 48(6) TEU. Otherwise, the ratification procedure would have restarted in Poland.

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

An issue worth noting is that five dissenting opinions (out of 15 judges adjudicating the case) were issued in the case at stake, even though the case seemed less problematic than the pending case on the ratification of the Fiscal Compact (Cf. Question IX.9).

MISCELLANEOUS

V.5

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

Not applicable.

[1] Sejm SUE 8.04.2011, Biuletyn z Posiedzenia Komisji do Spraw Unii Europejskiej (Nr 240) Nr 4918/VI kad.

[http://orka.sejm.gov.pl/Biuletyn.nsf/0/6767A9B970729D28C1257872004D03C3/\\$file/0491806.pdf](http://orka.sejm.gov.pl/Biuletyn.nsf/0/6767A9B970729D28C1257872004D03C3/$file/0491806.pdf) .

[2] Id, p. 5.

[3] Id, p. 5.

[4] Council of Ministers has a legislative initiative according to Art. 118 (1) PC.

[5] For example, in the case of Art. 136 Amendment the government proposed Art. 89 (1) PC as a legal basis cf. <http://orka.sejm.gov.pl/Druki7ka.nsf/0/DF11766FCA6BCCEEC1257959003FAB58/%24File/37.pdf>.

[6] Ustawa o ratyfikacji decyzji Rady Europejskiej 2011/199/UE z dnia 25 marca 2011 r. w sprawie zmiany art. 136 Traktatu o funkcjonowaniu Unii Europejskiej w odniesieniu do mechanizmu stabilności dla państw członkowskich, których walutą jest euro (Dz.U. 2012 nr 0 poz. 748).

[7] 14. Posiedzenie Sejmu w dniu 11 maja 2012, p. 317, Głosowanie nr 68, <http://www.sejm.gov.pl/sejm7.nsf/agent.xsp?symbol=glosowania&NrKadencji=7&NrPosiedzenia=14&NrGlosowania=68>.

[8] 13. Posiedzenie Senatu w dniu 30 maja 2012, Głosowanie nr 20, <http://www.senat.gov.pl/prace/senat/posiedzenia/przebieg,22,1,glosowania.html>.

[9] The opinions are published in Przegląd Sejmowy Nr 2 (2012), <http://orka.sejm.gov.pl/przeglad.nsf/0/E4C185D6BFB8423BC1257A0C00395202/%24File/ps109.pdf> and Przegląd Sejmowy Nr 3 (2012) <http://orka.sejm.gov.pl/przeglad.nsf/0/39E3A68D109C139EC1257A3F00477C06/%24File/ps110.pdf>.

[10] Pełny zapis przebiegu posiedzenia, Komisja do Spraw Unii Europejskiej nr 12, Komisja do Spraw Zagranicznych nr 4, <http://orka.sejm.gov.pl/zapisy7.nsf/0/4B1DFC46F49EFDA1C1257A21003CFC7C/%24File/0012507.pdf>.

[11] Id., p.5.

[12] Id.

[13] Id., p.7.

[14] Id., p.6.

[15] Id, p.9.

[16] Id, p.9.

[17] Poselski projekt uchwały w sprawie trybu wyrażenia zgody na ratyfikację decyzji Rady Europejskiej nr 2011/199/UE z dnia 25 marca 2011 r. w sprawie zmiany art. 136 Traktatu o funkcjonowaniu Unii Europejskiej w odniesieniu do mechanizmu stabilności dla państw członkowskich, których walutą jest euro (druk nr 114).

[18] Pełny Zapis Przebiegu Posiedzenia Komisji do Spraw Unii Europejskiej (nr 41) Komisji Spraw Zagranicznych (nr 20), 25.04.2012, <http://www.sejm.gov.pl/sejm7.nsf/biuletyn.xsp?documentId=9F72E6E3067BBA77C12579FB003D3369>.

[19] Cf. Druk 114.

[20] Pełny Zapis Przebiegu Posiedzenia Komisji do Spraw Unii Europejskiej (nr 41) Komisji Spraw Zagranicznych (nr 20), 25.04.2012, p.4.

[21] Id, p.12.

[22] The MP referred to a 'passerelle clause', which seems to be caused by confusion of the passerelle clause of Art. 48.7 TEU with the simplified revision procedure of Art. 48.6 TEU. This confusion is repeated also in the further discussions below.

[23] Pełny Zapis Przebiegu Posiedzenia Komisji do Spraw Unii Europejskiej (nr 41) Komisji Spraw Zagranicznych (nr 20), 25.04.2012,, p.5.

[24] Id, p.14.

[25] Id, p 6-7.

[26] Id, p.14.

[27] Id, p. 7.

[28] Id, p.15.

[29] Sprawozdanie Stenograficzne z 14. Posiedzenia Sejmu Rzeczypospolitej Polskiej, 9.05.2012, pp. 14-25, http://orka2.sejm.gov.pl/StenoInter7.nsf/0/97FD15B3FCC8D509C12579FA0002BF07/%24File/14_a_ksiazka.pdf.

[30] Cf. Sprawozdanie Stenograficzne z 14. Posiedzenia Sejmu Rzeczypospolitej Polskiej, 10.05.2012, p.146, głosowanie nr

11,

http://orka2.sejm.gov.pl/StenoInter7.nsf/0/B0F2A8D31AAEFBF2C12579FB000786E5/%24File/14_b_ksiazka.pdf,

<http://www.sejm.gov.pl/Sejm7.nsf/agent.xsp?symbol=glosowania&NrKadencji=7&NrPosiedzenia=14&NrGlosowania=11>

[31] Sprawozdanie Stenograficzne z 14. Posiedzenia Sejmu, 10.05.2012 and Sprawozdanie Stenograficzne z 14. Posiedzenia Sejmu,

11.05.2012,

http://orka2.sejm.gov.pl/StenoInter7.nsf/0/B0F2A8D31AAEFBF2C12579FB000786E5/%24File/14_b_ksiazka.pdf,

http://orka2.sejm.gov.pl/StenoInter7.nsf/0/546487516A1EAE24C12579FB006AA0B9/%24File/14_c_ksiazka.pdf.

[32] Sprawozdanie Stenograficzne z 14. Posiedzenia Sejmu, 10.05.2012, p.170.

[33] Id, p.173.

[34] Id, p.172.

[35] Id, p.174.

[36] Id, p. 172.

[37] Id, p.175-176.

[38] Zapis stenograficzny, Wspólne posiedzenie Komisji Spraw Zagranicznych Nr 21 oraz Komisji Spraw Unii Europejskiej (Nr 27), 22.05. 2012.

[39] Id, p.3.

[40] Id, p.4.

[41] Some of the opinions referred to by the Committee were published in „Przegląd Sejmowy” nr 2/2012, available at <http://orka.sejm.gov.pl/przeglad.nsf/0/E4C185D6BFB8423BC1257A0C00395202/%24File/ps109.pdf>.

[42] Zapis stenograficzny, Wspólne posiedzenie Komisji Spraw Zagranicznych Nr 21 oraz Komisji Spraw Unii Europejskiej (Nr 27), 22.05. 2012, p.4.

[43] Id, p.6.

[44] 13. Posiedzenie Senatu, 30.05.2012, Sprawozdanie Stenograficzne, <http://www.senat.gov.pl/prace/senat/posiedzenia/przebieg,22,1.html>.

[45] Id, p. 54.

[46] Id, p. 57.

[47] Art. 133(2) PC.

[48] 50 deputies or 30 senators may request a constitutional review of international treaties. Cf. Art. 191(1)(1) PC.

[49] K 33/12 available here:[http://otk.trybunal.gov.pl/OTK/otk_odp.asp?droga=\(otk_odp\)&sygnatura=K 33/12.](http://otk.trybunal.gov.pl/OTK/otk_odp.asp?droga=(otk_odp)&sygnatura=K_33/12.), parts of the English translation available at http://trybunal.gov.pl/eng/summaries/documents/K_33_12_en.pdf.

[50] The Constitutional Court consists of 15 judges. The Treaty amendment case was decided in the full chamber which consists of all the judges of that court.

[51] K 33/12, Uzasadnienie III 8.3.

VI - Euro Plus Pact

On March 11, 2011 the Heads of State or Government of the Eurozone endorsed the Pact for the Euro. At the 24/25 March 2011 European Council, the same Heads of State or Government agreed on the Euro Plus Pact and were joined - hence the 'Plus' - by six others: Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (leaving only the UK, Czech Republic, Sweden and Hungary out). The objective of the pact is to foster competitiveness, foster employment, contribute to the sustainability of public finances and reinforce financial stability. In the Euro-Plus-Pact the Heads of State or Government have entered into commitments on a number of policy areas, in which member states are competent.

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

NEGOTIATION

VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID POLAND 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.

The opposition (PiS) asked the government to present its position on the Euro-Plus Pact to the Sejm's plenary session.^[1] According to the opposition, the government should have discussed the Pact with the parliament before agreeing to it.

During the debate, the Secretary of State in the Ministry of Foreign Affairs, Mikołaj Dowgielewicz summarised the negotiations of the Euro-Plus-Pact. In February 2011, according to Dowgielewicz, some Member States advanced the idea of the Pact so that the member states would agree to the financial aid for Greece. Dowgielewicz maintained that the government perceived this situation as possible to cause "Europe of two speeds". Hence, in the opinion of the government, it was necessary to open the Pact for non-Eurozone Member States. Other Member States supported this idea.^[2] Dowgielewicz underlined also the good situation of Poland in the areas that the Pact refers to: the retirement system, consolidation of public finances or the salaries system in public administration.^[3] Moreover, the Secretary of State highlighted that the Pact incorporates the provisions stating that the pact cannot cause harm to the internal market, on which Poland insisted.^[4]

The debate in the Sejm focused further on the questions from the PiS opposition with regard to the legal form of the Pact^[5]; lack of previous information of the government to the parliament on the Pact^[6] and on the CIT tax.^[7] In general, in the view of the PiS opposition the Pact will decrease the competitiveness of Poland and Poland should not be joining it. The SLD opposition raised the question of obligations that the Pact will impose on Poland, including the accession to the Eurozone^[8] or increase of the retirement age.^[9] The coalition partner, PSL, sided with the government, underlining the possibility of creation of Two Speed Europe without the Pact.^[10]

In addressing the questions of MPs, the Secretary of State underlined that the Euro-Plus-Pact is a political declaration approved in order to improve the supervision over competitiveness in the EU.^[11] According to Dowgielewicz, Poland is not required to take any "radical steps" in the area of retirement and the EU does not get any competence to increase CIT.^[12]

MISCELLANEOUS

VI.2

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

The National Reform Programme 2011 ^[13] indicated the intention for ‘institutional strengthening’ of public finances, which will contribute to the delivery of the Euro Plus Pact objectives. The ‘institutional strengthening’ concerned the establishment of the permanent expenditure rule will aim at stabilising the structural deficit at the level of the medium-term budgetary objective (-1% of GDP).

The following commitments were adopted under the Euro-Plus-Pact in 2012 (unless stated differently). ^[14]

Economic measures:

- a new fiscal rule (implementation underway).
- Introduction of a limit of deficit for the self-government sector - not implemented (the current provisions of the Act on public finance proved effective enough, thus introducing an additional rule for local self-government units was found ungrounded)
- changes in mining fees so that ‘the State participates in profits from exploitation of certain mineral resources that belong to the State’
- introduction of ‘elements of risk-based oversight to the current system of oversight of insurance and pension insurance market in Poland’

Social measures:

- ‘general pension reform (gradually equalising and raising the pensionable age of man and woman to reach 67 years for men in 2020 and women 2040)’. In this regard, the government adopted the draft act amending the Act on pensions from the Social Insurance Fund and some other acts adopted by the Government in first half of 2012.
- continuation of ‘the policy of freezing wages in the public sector’, extending access to the regulated professions (which normally require certain qualifications provided for in the legislation),
- implementation of Applied Research Programme in 2012, implementation of the “TOP 500 Innovators” Programme,
- reducing the administrative burden and information obligations for pursuing business activity (REGON). Assumptions for the draft act amending the Act on National Court Register and other acts
- fostering employment for the youngest and the oldest groups (implementation under way), under the Programme “Solidarity between Generations. Measures to Increase Professional Activity of people aged 50+” such aims as support for lifelong learning of persons 50+, etc.,
- introducing reduced disability pensions contribution of 8% instead of 13%,
- Implementation of the reform of vocational education system, adjusting the education/training system to the needs of the labour market. The Act of 19 September 2011 amending the Act on

education system and certain other acts (Dz.U. No 205, item 1206) - the Act entered into force on 1 September 2012.

- introducing the “Toddler” programme for 2012 (care for children in childcare institutions below 3 years) and social insurance for 10.000 of nannies (partial implementation-in fact lower numbers).
- changes in the pension scheme for privileged groups (uniformed services - implemented, miners, clergymen - implementation underway), ‘(i) Assumptions for a draft act amending the Act on guarantees of freedom of conscience and religion, and some other acts, or (ii) assumptions for a draft act amending the Act on taking over mortmain estate by the State, on guarantees of farm ownership for parish priests and on establishing the Church Fund, and certain other acts’ (by the end of 2012) [implemented]
- limiting the number of recipients of the newborn allowance,
‘closing the possibility of circumvention of the capital gains tax on bank deposits’.

Finally, as regards as the Commitments for 2013 and 2014 under the Euro-Plus-Pact see further the National Reform Programme.

[1] Sprawozdanie Stenograficzne z 89 posiedzenia Sejmu Rzeczypospolitej Polskiej w dniu 31 marca 2011 r., p. 162, [http://orka2.sejm.gov.pl/StenoInter6.nsf/0/313BF2360B2FC51DC1257864007BC909/\\$file/89_b_ksiazka.pdf](http://orka2.sejm.gov.pl/StenoInter6.nsf/0/313BF2360B2FC51DC1257864007BC909/$file/89_b_ksiazka.pdf).

[2] Id, p. 163.

[3] Id, p. 164.

[4] Id, p. 164.

[5] Id, p. 165.

[6] Id, p. 166.

[7] Id, p. 170.

[8] Id, p. 166.

[9] Id, p. 171.

[10] Id, p. 167.

[11] Id, p. 179.

[12] Id, p. 179.

[13] National Reform Programme 2011, p. 11, http://ec.europa.eu/europe2020/pdf/nrp/nrp_poland_en.pdf,

[14] This paragraph cites the National Reform Programme, Europe 2020, 2013/2014 Update, adopted by the Council of Ministers, 30.04.2013, Annex 3., p. 90-93. Available at:

http://ec.europa.eu/europe2020/pdf/nd/nrp2013_poland_en.pdf

VII - Six-Pack

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

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

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

NEGOTIATION

VII.1

WHAT POSITIONS DID POLAND 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?

In general terms the government was supportive towards the Six Pack.^[1] The critical points were raised with regard to specific measures (cf. questions VII.6, VII.9, VII.13, VII.14).

With regard to the directive, the government expressed a positive view during the Senat European Affairs Committee meeting.^[2] The only critical comment was on the frequency of the statistical statements that are supposed to be done every month, which is not feasible in some sectors. Hence the government proposed a change that the statistical statements with regard to the non-central sectors should be taking place every four months. The Committee's rapporteur, senator Jan Wyrowiński, also critically assessed the frequency of statistical statements, but in general positively opined the proposed directive, as did also the whole Senat's European Affairs Committee.

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)?

The new fiscal rule is a partial implementation of the directive (Art. 5-7).^[3]

The Law on Public Finances has been also adjusted to implement Chapter V of the directive.^[4]

Implementation of Art. 6 (1)(b) of the directive, does not demand any changes in Polish law.^[5]

Law on Public Finances and Law on Accounting contains already provisions demanded by the directive (Chapter 1 - Art. 2, Chapter II - Art.3, Chapter VI- Art. 12, Chapter III - Art. 4, Chapter VI - Art. 13).^[6]

IMPLEMENTATION DIFFICULTIES

VII.3

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

So far, the new directive is implemented by the forthcoming stabilising fiscal rule. (See question VII.2). The parliamentary debate of 8 November 2013 shows however that the adoption of the new fiscal rule in order to implement the directive has a rather secondary meaning. The MPs mention that the adoption of the rule will “at the same time” implement the EU directive. ^[7]

There were no specific points about the budgetary sovereignty and constitutional law, but the criticism of the opposition was that the rule will have a negative impact on the public finances as it allows the government to waive the public debt of 50%GDP security threshold (Cf. Question III.3). ^[8]

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 existing provisions of Polish law are sufficiently regulating macroeconomic and budgetary forecasts and no additional implementing provisions are necessary. ^[9]

In short, the Ministry of Finance, Department of Analysis and Forecasts prepares the assessments after consultations with other institutions. Specifically, Rada Polityki Pieniężnej assesses the budgetary forecasts and the Tripartite Committee for Socio Economic Affairs receive the forecasts of macroeconomic forecasts.

The Convergence Programme 2013 gives following details on the forecasts: “[t]he fiscal data will be published on the website of the Ministry of Finance: monthly - concerning the central government sub-sector and social security funds sub-sector (with a one-month delay) and quarterly - concerning the local government sub-sector (with a one-quarter delay). A reconciliation table showing the methodology of transition between data from public accounting and the statistics of general government, in accordance with ESA 95, will also be available on the website.” ^[10]

However, so far the forecasts of the Ministry of Finance are based on the data from the European Commission, the International Monetary Fund and OECD.

The Central Statistical Office will publish data concerning: “contingent liabilities with potentially significant impact on the budget, including those relating to non-performing loans, liabilities of public enterprises, public-private partnership agreements considered off-balance sheet, guarantees granted by the sector as a whole and all sub-sectors, as well as the shares of general government in the capital of private and public companies (if the amounts are economically significant).” ^[11] As a next step, “the government compares its forecasts with the projections of other institutions and presents them to different institutional bodies (Monetary Policy Council, Tripartite Commission for Social and Economic Affairs, parliament, banking analysts) to receive their opinion.” ^[12]

The information provided by Poland to the European Commission indicates the following ways of forecasts’ assessments ^[13]:

“Firstly, budgetary forecasts are assessed by the Central Bank and its Monetary Policy Council. Article 23(1)(2) of the Act on the National Bank of Poland calls for the President of the NBP, on behalf of the Monetary Policy Council, to submit opinions on the draft Budget Act to the Council of Ministers and the Minister of Finance.

Secondly, the government submits its forecasts to the Tripartite Commission for Social and Economic Affairs. The Commission is a forum for social dialogue in order to reconcile the interests of employees, the interests of employers and public welfare. Under Article 3 of the ‘Act on the Tripartite Commission for Social and Economic Affairs and Voivodship social dialogue commissions’, the government should present a preliminary macroeconomic forecast to the Tripartite Commission each year as a basis for the budget bill for the next year. No later than 15 June, the government must send the Commission its assumptions for next year’s budget draft. The social partners (i.e. representatives of employers and employees) have six days to express their views.

Thirdly, at the beginning of the budgetary process, the Ministry of Finance, which is responsible for preparing macroeconomic forecasts, usually organises a meeting with private bank economists to exchange views on the short- and medium-term prospects of the Polish economy.

Finally, after submission of the budget bill to the Polish parliament’s lower chamber (Sejm), the members of parliament can express their opinion on it.

The Polish authorities also mention that, as a rule, the macroeconomic forecasts used for budgetary planning are based on the external assumptions provided by the European Commission (spring or Autumn Forecast). If these are not available when the Polish projections are prepared, the projections of other international institutions are used (e.g. IMF or OECD).

Finally, the macroeconomic forecasts used for budgetary planning are assessed ex post by the Supreme Audit Office. ^[14] Under Article 182 of the Public Finance Act, the Council of Ministers must submit to the Sejm and to the Supreme Audit Office by 31 May an Annual Report on the implementation of the budget act for the previous year. The Supreme Audit Office (SAO) presents its opinion on the implementation of the previous year’s budget act, with reference to the macroeconomic assumptions.”

FISCAL COUNCIL

VII.5

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

A Fiscal Council has to be created. ^[15] So far, the government did not submit any proposal to create a Fiscal Council, as the Supreme Audit Office (Najwyższa Izba Kontroli), a constitutional organ, currently exercises a function comparable to the Fiscal Council. (Cf. Art. 202-207 of the Polish Constitution).

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 POLAND 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?

On 5 November 2011, the Sejm's European Affairs Committee discussed this proposal.^[16] The Undersecretary of State in the Ministry of Finance, Jacek Dominik, positively opined the proposal.^[17] The only point of concern for the government was to make sure that the recommendations issued by the Commission within the excessive deficit procedure and the macroeconomic imbalances procedure were not contradictory to each other.^[18] Moreover, the government's representative underlined that in general Poland is in a good situation when it comes to the economic imbalances, the existing constitutional provisions and the budgetary law provisions function well in this regard. The Sejm's European Affairs Committee did not raise any concerns with regard to the proposal.

On 16 November 2010, the Senat's European Affairs Committee discussed this proposal and the concerns were identical to the ones in the Sejm's committee.^[19]

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?

Poland plans to introduce a new fiscal rule through an amendment to the Public Finances Act (Cf. Question VII.2) aiming at "stabilis[ing] the nominal general government balance at the MTO level in the medium term and prevent public debt from breaching a predefined threshold corresponding to the reference value stipulated in the TFEU."^[20]

The amendment of the Public Finances Act entered into force at the end of 2013 (it has been signed by the president on 23 Dec. 2013.)^[21] The rule is expressed in Art. 112aa of the Public Finances Act.

Next to the existing rules anchored in the Constitution and the Public Finances Act (Cf. Question III.3) the new rule allows, on the one hand, a security margin with regard to the 3% budget deficit, so that the risk of the excessive deficit procedure is minimised and, on the other hand some flexibility in the budgetary planning (especially investment).^[22]

The new fiscal rule ('stabilising fiscal rule') replaces the current 'disciplinary fiscal rule' enshrined in

Art.112a Law on Public Finances. The new rule has a wider scope than the previous one, as it concerns the expenditures of both governmental and self-government institutions (general government). This comparatively broader scope aims at accommodating the provisions of the Regulation (EU) No 1175/2011 to cover the largest extent public expenditures.[\[23\]](#) The rule foresees the absolute limit of spending; it is the government expenditure diminished by the expenses of local governments and their associations, other institutions foreseen in art. 139(2) of the Public Finances Act and the total cost of the National Health Fund. The rule does not apply with regard to budget spending of EU funds and that part of the expenditure which is financed by means of a non-refundable grant from the EU and EFTA countries and the costs of units which do not have the ability to generate high deficits.

“The medium-term horizon for meeting the general government balance target should provide space for countercyclical fiscal policy, as deviations from the target would be allowed in the short run. To reach the MTO, the rule also sets an overall expenditure growth cap for general government, net of expenditure financed with non-returnable EU funds. The formula for the growth cap is based on the medium-term GDP growth rate. Significant deviations of the general government balance from the MTO in the medium term, a high level of public debt, or the initiation of the EDP procedure will trigger a correction mechanism”. [\[24\]](#)

The Ministry of Finance specifies further, how the rule will correct the imbalance in public finances:

‘If public debt (calculated using the average annual exchange rate and reduced by free cash to fund next year’s borrowing requirements) exceeds 55% of GDP or the deficit (including pension reform costs) exceeds 3% of GDP, the stronger correction is applied (2 percentage points subtracted from the medium real GDP growth). This adjustment takes place regardless of the economic forecast. Otherwise, if the debt exceeds 50% of GDP, a normal correction is applied (1.5 percentage points), unless strong economic slowdown is projected (next year’s projected real GDP growth lower by over 2 percentage points than mid-term - the so-called “bad times”).

Where none of the above conditions is met, the correction depends on the sum of the differences between the general government nominal balance and the medium-term budgetary objective - MTO (currently 1% of GDP). The purpose of this corrective mechanism is a temporary reduction (increase) in the amount of expenditure growth below (above) the real medium-term GDP growth, as long as there are excessive deviations from the target. This mechanism will ensure long-term sustainability of public finances. It is worth noting that the mechanism is automatic and precisely determines the type of correction. If the sum of the differences exceeds -6% (+6%) of GDP, a simple negative (positive) correction is applied. The exception is “bad times”, when the negative correction is suspended and the “good times” (projected next year’s real GDP increase by over 2 percentage points than the mid-term) when the positive correction is suspended symmetrically.’[\[25\]](#)

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)?

According to my knowledge, the only adjustment of the budgetary timeline is that the Actual

Convergence Programme is now published in April, which accelerates the works on the Multi-Year Financial Plan of the State. ^[26]

MTO DIFFICULTIES

VII.9

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

On 19 November 2010, the Sejm's European Affairs Committee decided not to make any critical comments with regard to this proposal. ^[27]

On 16 November 2010, the Senat's European Affairs Committee discussed this proposal. The Minister's Advisor in the Ministry of Finance, Marta Barańczak, underlined that in general, the government has a positive opinion on this proposal. ^[28] She raised, however, two points. First, the government perceived that the 0,5% GDP and 0,25% GDP (in two years) reference points for a Commission warning are too high. ^[29] Second, when it comes to the expenses that the Commission may assess, the representative of the Ministry of Finance highlighted that Poland is one of the beneficiaries of the EU subventions and these should not be taken into account by the Commission when assessing the expenses in the governmental and self-governmental sector. ^[30] The MP Rapporteur shared the government's opinion on the proposal, but in general positively opined it and the committee supported it. ^[31]

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)?

Art. 142 pt 3 of the Public Finances Act provides that the MTO should be included in the Budget (ustawa budżetowa). The government plans to include the respect of the MTO in the national budgetary plans. Namely, according to the planned fiscal rule, significant deviations of the general government balance from the MTO in the medium term, will trigger a correction mechanism (Cf. question VII.2, VII.4, VII.7). "This will reduce the expenditure growth limit below the medium term GDP growth rate until the excessive deviation from the target is corrected. The correction mechanism is not expected to be fully automatic, as it will take into account cyclical developments. Escape clauses will come into effect only in the case of war or martial law. Monitoring of compliance with the rule is to be carried out by the Supreme Audit Office." ^[32]

CURRENT MTO

VII.11

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

Poland adopted its medium-term budgetary objective that is the target structural general government balance at the level of -1% of GDP and is currently on the adjustment path toward that objective. ^[33] It is planned that Poland will achieve its medium-term budgetary objective by 2016. ^[34]

ADOPTION MTO

VII.12

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

Art. 142 pt 3 of the Public Finances Act provides that the government which prepares the budgetary act (budżet; ustawa budżetowa) annexes a justification which contains, among others, the MTO.

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

On 3 November 2010 Senat's European Affairs Committee discussed the proposal of this regulation on its meeting.^[35] The Undersecretary of State in the Ministry of Finance, who generally negatively assessed the draft regulation, underlined that one of Poland's points was to include in the Excessive Deficit Procedure the costs of retirement pensions reforms.^[36] Moreover, one of the issues proposed by Poland was to eliminate the 5-year period that the proposal applies in this matter and to allow for a constant inclusion of the pension reform into the public finances.^[37] Finally, Poland supported inclusion of the public debt of 60%, as it is unproblematic from Poland's own perspective. The discussion between the senators concerned mainly the inclusion and exclusion of the pension system reform into the excessive deficit procedure, and the senators negatively opined the draft regulation.^[38]

In the Sejm, similar arguments were raised on 5 November 2010, when the European Affairs Committee discussed this proposal.^[39] The Undersecretary of State in the Ministry of Finance, Jacek Dominik, underlined that the proposed regulation should standardize the base for assessing the budgetary deficit and public debt.^[40] The underlining problem was that the Commission would apply the excessive deficit procedure to Member States that reformed their pension schemes: the costs of such reform enlarge the debt. Hence, the government negatively opined the proposed regulation. The opposition agreed with the negative position of the government towards the proposal, especially as Poland would not be able to justify its deficit with the pension reform: namely, the proposal foresees that this may be done just within 5 years, whereas the Polish reform started in 1999.^[41] This proposal, in the view of the opposition MPs, did not encourage Member States, which did not conduct a pensions reform, to actually introduce such reforms.

Similarly, before the ECOFIN meeting in March 2011, the government again expressed concerns with regard to this proposal and the retirement pensions reform.

In Poland exists excessive deficit of the general government. The recommendations issued by the Council in order to lower the deficit has not been fulfilled by Poland by the end of 2013.^[42] The Commission and the Council has issued new recommendations allowing Poland to bring an end to the excessive deficit by 2015.^[43]

The new stabilising fiscal rule is expected to ensure sustainability of public finances in Poland and will correct their possible excessive imbalances.^[44] (Question VII.7)

Also since 2011, the Public Finances Act, “prohibits the Council of Ministers from adopting certain draft acts while Poland is subject to the excessive deficit procedure. These include:

- stipulating exemptions, reliefs and deductions whose financial outcome may be a reduction in the income of general government units in relation to the amounts resulting from applicable regulations;
- causing an increase in state budget expenditure which is not covered by the temporary rule (CPI+1)

Fiscal self-discipline has been strengthened for ministries which are responsible for draft legislation which has financial consequences. In draft acts adopted by the Council of Ministers, whose financial consequences may cause a change in the level of general government expenditure in relation to the amounts resulting from present regulations, the limits of these expenditures have to be determined, expressed as a value, for a period of 10 budget years from the execution of the act, separately for each year, starting from the first year when the act enters into force. This requirement will remain in effect even when Poland will not be subject to the excessive deficit procedure. In addition, such a draft has to determine:

- corrective mechanisms when the maximum limit of expenditures adopted for a given budget year is exceeded or is in danger of being exceeded;
- a competent authority which monitors the use of the expenditure limit for performance of public tasks by general government units;
- a competent authority responsible for the implementation of corrective mechanisms.”^[45]

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

On 5 November 2010^[46] and 11 March 2011,^[47] in the Sejm’s European Affairs Committee the government expressed no concerns with regard to this proposal.

On 16 November 2010, in the Senat’s European Affairs Committee, the Minister’s Advisor in the Ministry of Finance positively opined this proposal.^[48] The Minister’s Advisor presented an idea

that the sanction rules included in the proposal could also apply to Poland, if the sanctions were similarly applying to all the Member States and if the proposal would appropriately take into account the costs of the pensions reform.

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?

Not relevant for Poland.

MISCELLANEOUS

VII.16

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

No other relevant information.

[1] Sejm EAC, Komisja do Spraw Unii Europejskiej Nr 224, Nr 4678/VI, 3.02.2011, p.4, <http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&SUE>.

[2] Cf. Senat, EAC, Zapis stenograficzny 1821, 121. Posiedzenie Komisji Spraw Unii Europejskiej, 3.11.2010, pp.7-8.

[3] Uzasadnienie do ustawy o zmianie ustawy o finansach publicznych, p. 3.

[4] Uzasadnienie do ustawy o zmianie ustawy o finansach publicznych, p. 3.

[5] Uzasadnienie do ustawy o zmianie ustawy o finansach publicznych, p. 3

[6] Uzasadnienie do ustawy o zmianie ustawy o finansach publicznych, p. 3.

[7] 53. Posiedzenie Sejmu, 6.11.2013, p. 33, 36 available at [:http://orka2.sejm.gov.pl/StenoInter7.nsf/0/E26DFF9E0EB222A8C1257C1C000A4708/%24File/53_a_ksiazka.pdf](http://orka2.sejm.gov.pl/StenoInter7.nsf/0/E26DFF9E0EB222A8C1257C1C000A4708/%24File/53_a_ksiazka.pdf)

[8] 53. Posiedzenie Sejmu, 6.11.2013, p. 39 available at [:http://orka2.sejm.gov.pl/StenoInter7.nsf/0/E26DFF9E0EB222A8C1257C1C000A4708/%24File/53_a_ksiazka.pdf](http://orka2.sejm.gov.pl/StenoInter7.nsf/0/E26DFF9E0EB222A8C1257C1C000A4708/%24File/53_a_ksiazka.pdf)

[9] Uzasadnienie do ustawy o zmianie ustawy o finansach publicznych, p. 5.

[10] Convergence Programme 2013, p. 41.

[11] Convergence Programme 2013, p. 41.

[12] European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2013, p. 70.

[13] European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2013, p. 70.

[14] Supreme Audit Office (Najwyższa Izba Kontroli) is a constitutional body (Art. 202 of the Constitution). It

is an independent body. It has a collegial composition. The President of the Supreme Audit Office is appointed by the Sejm, with the consent of the Senate, for a period of 6 years, which may be extended for one more period only. The Supreme Audit Office includes, except for its president and vicepresidents and the director general, also 7 representatives of legal or economic sciences and 7 directors of control institutes. Cf. <http://www.nik.gov.pl/o-nik/>

[15] Cf. K. Marchewka-Bartkowiak, Ramy budżetowe państw członkowskich - nowe regulacje prawne w zakresie polityki budżetowej w Unii Europejskiej, *Studia BAS* Nr 3(31)2012, p. 178. On possible ways of creation of the Fiscal Council in Poland and its composition Cf. G. Gołębiowski, K. Marchewka-Bartkowiak, *Niezależna Instytucja (Rada) Fiskalna - międzynarodowe modele instytucjonalne. Wnioski dla Polski, Analizy BAS*, nr 2(91), 26.03.2013.

[16] Komisja do Spraw Unii Europejskiej Nr 204, Nr 4349/VI kad. 5.11.2010, <http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&SUE>.

[17] Id, p.9.

[18] Similarly, cf. Sejm, SUE, 3.02.2011, p. 14

[19] Senat, Zapis stenograficzny 1840, 122. Posiedzenie Komisji Spraw Unii Europejskiej, p. 9-10.

[20] European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2013, p. 70.

[21] <http://www.prezydent.pl/prawo/ustawy/podpisane/art,41,grudzien-2013-r-.html>.

[22] Uzasadnienie do zmiany ustawy o finansach publicznych, p. 6.

[23] Uzasadnienie do zmiany ustawy o finansach publicznych, p. 11.

[24] European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2013, p. 71.

[25] Ministry of Finance 'Information on measures taken by Poland to implement the Recommendation of the Council on Article 126.7 of the Treaty on The Functioning of the European Union of 21 June 2013,' Appendix 1, available at the http://www.finanse.mf.gov.pl/en/web/bip/ministry-of-finance/poland-in-eu/convergence-programme/-/asset_publisher/80mX/content/information-on-measures-taken-by-poland-to-implement-the-recommendation-of-the-council-on-article-126-7-of-the-treaty-on-the-functioning-of-the-european-union-of-21-june-2013

[26] On the Multi-Year Financial Plan, cf. European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2014, p. 71.

[27] Cf. Posiedzenie Komisji do Spraw Unii Europejskiej Nr 205, Biuletyn Nr 4354/VI kad. 19.11.2010, <http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&SUE>.

[28] Senat, Zapis stenograficzny 1840, 122. Posiedzenie Komisji Spraw Unii Europejskiej, p.9.

[29] Id.

[30] Id, p.10.

[31] Id, p.11.

[32] European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2013, p. 71.

[33] Convergence Programme, 2013 update, Warsaw April 2013, p.22.

[34] Convergence Programme, 2013 update, Warsaw April 2013, p.22.

[35] Zapis stenograficzny (1821) 121. posiedzenie Komisji Spraw Unii Europejskiej w dniu 3.11. 2010.

[36] Id, p. 9.

[37] Id, p.10.

[38] Id, p.14.

[39] Komisja do Spraw Unii Europejskiej Nr 204, Nr 4349/VI kad. 5.11.2010,
<http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&SUE>.

[40] Id, p. 6.

[41] Id, p. 7.

[42] Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in Poland, 16852/13, 2.12.2013, p.4-5. Available at
http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edps/126-07_council/2013-12-10_pl_126-7_council_en.pdf

[43] Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in Poland, 16852/13, 2.12.2013, p. 10. Available at
http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edps/126-07_council/2013-12-10_pl_126-7_council_en.pdf

[44] http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edps/other_documents/2013-10-01_p_-_ear_-_annex_1_en.pdf

[45] Convergence Programme 2012, p. 41.

[46] Sejm, Komisja do Spraw Unii Europejskiej Nr 204, Nr 4349/VI kad. 5.11.2010, p.5
<http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&SUE>.

[47] Sejm, EAC, Komisja do Spraw Unii Europejskiej Nr 233, Nr 4799/VI kad, 11.03.2011 p.5
<http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&SUE>.

[48] Zapis Stenograficzny 1840, 122. Posiedzenie Komisji Spraw Unii Europejskiej, 16.11.2010, p.2

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 POLAND 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.

On 31 January 2012 the Senat's Budget and Public Finances Committee and the EU Affairs Committee discussed some aspects of the ESM Treaty at their joint meeting.^[1] The Senators asked the following questions: whether signing the Fiscal Compact will oblige Poland to pay contributions to the ESM and whether signing the ESM Treaty it is the only way to get funds from the ESM.^[2] In reply, the representative of the Ministry of Finance underlined that the decision about signing the ESM Treaty will need to be taken at the moment when Poland will be joining the Eurozone.^[3] Similar problems were later discussed by the ratification of the Fiscal Compact in the Senat, including the question of how much Poland would have to contribute to the ESM.^[4]

RATIFICATION

VIII.2

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

Not relevant for Poland.

RATIFICATION DIFFICULTIES

VIII.3

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

Not relevant for Poland.

CASE LAW

VIII.4

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

No.

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?

Not relevant for Poland.

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.

Not relevant for Poland.

APPLICATION DIFFICULTIES

VIII.7

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

Not relevant for Poland.

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?

Not relevant for Poland.

MISCELLANEOUS

VIII.9

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

No other relevant information.

[1] Zapis stenograficzny ze wspólnego posiedzenia Komisji Budżetu i Finansów Publicznych (Nr 9) oraz Komisji Spraw Unii Europejskiej (Nr 11), 31.01.2012.

[2] Id, pp.10-12.

[3] Id, p. 28.

[4] 27. Posiedzenie Senatu, 21.02.2013, p.126, <http://www.senat.gov.pl/prace/senat/posiedzenia/przebieg,39,1.html>

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 POLAND 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.

On 3 February 2012, the Sejm's European Affairs Committee (EAC) discussed some aspects of the Fiscal Compact negotiation process.^[1] The EU Commissioner, Janusz Lewandowski, who attended the meeting, underlined that Poland wanted introduction of Art. 12 par. 3 of the Fiscal Compact.^[2]

On 16 February 2012, during the next meeting of the Sejm EAC and Public Finances Commission, the representative of the Ministry of Foreign Affairs Mikołaj Dowgielewicz pointed at the aim achieved by Poland, namely the possibility to participate in the Eurozone meetings (except for the ones on purely internal Eurozone issues).^[3]

Similarly, on 31 January 2012, during the joint meeting of the Senat Budget and Public Finances Committee and the EU Affairs Committee, the Undersecretary of the Ministry of Foreign Affairs, Maciej Szpunar, underlined the importance of Art. 12 (3) in the negotiations.^[4] Szpunar highlighted also, that one of Polish aims was the openness of the Fiscal Compact (Art. 15 Fiscal Compact), to avoid that a Member State that does not join the Fiscal Compact would need the acceptance of all the Contracting Parties to join if decided to join in the future.^[5] Another aim of the Polish government during the negotiations was to narrowly draft the competences of EU institutions under the Fiscal Compact and give the Fiscal Compact a temporary validity, hence the 'sunset clause' - as it was described by Maciej Szpunar - in Art. 16 of the Fiscal Compact.^[6] Moreover, Poland's aim during the negotiations was not to create through the Fiscal Compact new institutions, parallel to the EU on the basis of Art. 12 of the Fiscal Compact, in which, according to the Ministry of Foreign Affairs, Poland succeeded.^[7] Also Poland's negotiations aim was to safeguard the primacy of EU law over the Fiscal Compact (Art. 2 of FC), which was also achieved.^[8]

RATIFICATION

IX.2

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

The Polish Constitution foresees three types of international agreements demanding ratification. (Cf. question V.2).

The ratification on the basis of Art. 90 was applied earlier only to the Accession Treaty (national referendum) and the Lisbon Treaty (2/3 majority in both chambers), yet in general Art. 90 PC is not limited to European Treaties (see question V.2). The government qualified the Fiscal Compact as 'an international treaty closed between some of the EU Member States, outside of EU's framework' and as 'supplementing EU Treaties, especially TFEU and Protocol No.12. as well as the Stability and Growth Pact.'^[9]

In the case of the Fiscal Compact, the opposition MPs and Senators (PiS and SP) argued for a higher, 2/3 majority vote, yet Art. 90 PC was not applied as a legal basis in the ratification of the Fiscal Compact (Cf. Answer to Question IX.3). In its draft Ratification Act the government proposed Art. 89 (1) PC as a legal basis for the ratification of the Fiscal Compact.^[10] (See for comparison also question V.2).

The outcome of the voting procedure was the following. On 20 February 2013 the lower chamber, the Sejm, approved the Ratification Act.^[11] Out of 438 MPs attending, 282 voted in favour (governing majority PO and PSL and left-wing opposition SLD and RP, as well as 2 indep.) and 155 against (conservative opposition PiS and SP, 1 independent) and 1 abstained (PSL).^[12] Next, on 21 February 2013, the Senat did not introduce any amendments and approved the Ratification Act.^[13] Out of 83 senators attending, 57 voted in favour, 26 against.^[14] Finally, on 24 July 2013, the President signed the Ratification Act.^[15] The consequence of this late ratification was that the Constitutional Court decided to discontinue the proceedings with regard to the constitutional review of the TSCG on formal grounds, namely because the request for constitutional review by the MPs was lodged before the Ratification Act became a binding law. (Cf. question IX.9).

RATIFICATION DIFFICULTIES

IX.3

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

Sejm

On 19 December 2012, the Sejm EU Affairs Committee, Public Finances Committee and Foreign Affairs Committee discussed the government's project for the Ratification Act for the first time.^[16] The Secretary of State in the Ministry of Foreign Affairs, Maciej Szpunar, underlined that by ratifying of the Fiscal Compact Poland will benefit from participation in the Euro Summits (Art. 12 of Fiscal Compact)^[17] and that the Polish parliament will participate in the cooperation with other parliaments. Replying to the arguments that the Fiscal Compact limits sovereignty of Poland, the Undersecretary of State pointed out that, in the context of the Fiscal Compact, sovereignty means for Poland having an impact on the institutional, social and economic architecture of the EU.^[18] Therefore, the TSCG was seen by the Government as opportunity for Poland. Szpunar also highlighted that Art. 89 par 1 pt 3 PC is the right legal base for ratification of the Fiscal Compact, as there is no transfer of competence to the EU or any other institution.^[19] The Fiscal Compact, in the view of Szpunar, does not imply that Poland automatically joins the Eurozone.^[20]

The opposition MPs were critical about the Fiscal Compact. They prepared a motion for rejection of the Ratification Act, which was rejected by the majority of the members of the Committees. In the view of MP Krzysztof Szczerski (PiS), the Fiscal Compact divides the EU Member States; destroys

the unity of EU law (is outside of EU law regime, but uses EU institutions); the Euro Summits do not give Poland the same voice in debates as in the ECOFIN Council; the Fiscal Compact and its ratification process are contrary to the Polish Constitution.^[21] Also MP Anna Fotyga (PiS) underlined the long period between signing the Fiscal Compact by the Prime Minister and the launching of the ratification procedure, which according to the MP is connected to the attempt to gain benefits in the Multiannual Financial Framework negotiated at that point, by putting forward the Poland will ratify the Fiscal Compact.^[22] Further, according to MP Krystyna Pawłowicz, the excessive deficit procedure in the Fiscal Compact impacts on competence of Polish state organs, especially of the Sejm and Senat and Council of Ministers: the EU institutions supervise them within that procedure, which also violates Art. 216 and 219 PC (Sejm and Senat's competences), Art. 221 PC (Council of Ministers' competence).^[23] Moreover, MP Henryk Kowalczyk underlined the problems with the Balanced Budget Rule and its sanctions as causing some asymmetries. Namely, the penalties imposed on Poland would be paid to the Commission, whereas the penalties of the Eurozone Member States to the Fund, from which Poland will not benefit.^[24] Additionally, the MPs underlined the vast integration of the Commission in the budgetary procedure, having impact on the admissible amount public debt.^[25] Some opposition MPs underlined also problems with the budgetary and economic partnership programme (Fiscal Compact Art.5) with regard to the endorsement by the Commission and the Council of such programmes that limit the independent undertakings of Poland.^[26] Furthermore, the opposition maintained that Art.8 of the Fiscal Compact creates a possibility that Poland may be taken before the ECJ by another Member State.^[27]

On the contrary, the governing majority MPs maintained that the Fiscal Compact does not violate the Constitution and most of the fiscal constrains exists already in the Six Pack.^[28] Finally, the representative of the Ministry of Foreign Affairs underlined again that the Fiscal Compact does not transfer any competences.^[29]

Also in an earlier plenary debate on EU Affairs in the Sejm, the Prime Minister encouraged the chamber to approve the Fiscal Compact.^[30] At this point the PiS opposition criticised the Fiscal Compact, as a part of the "pseudodemocratic European federation".^[31] The left-wing opposition supported the Fiscal Compact.^[32] The right-wing Solidarna Polska expressed its view against the Fiscal Compact, however proposed to the prime minister that it could be ratified at a later time as anyway the Fiscal Compact can enter into force without Poland.^[33] To that question the Minister of Foreign Affairs replied that an earlier ratification would improve Poland's position.^[34]

The central debate (19 February 2013) in the Sejm on the ratification of the Fiscal Compact was connected to the discussion of the negotiations of Financial Frameworks 2014-2020 (EU budget).^[35] The Prime Minister, Donald Tusk, encouraged the chamber to ratify the Fiscal Compact.^[35] The MP Rapporteur (from the governing party PO) first summarised the joint meeting of the committees: the main issues in the discussions the reasons for the ratification, the procedure of ratification, the opposition's arguments on obligations for Poland caused by the ratification, the limitation of national competences, the introduction of Euro "through the back door" and creation of "Europe of two speeds".^[36] However, the MP Rapporteur underlined that the Fiscal Compact does not put any obligations on Poland and that no competences are transferred.^[37] Moreover, in the view of the MP Rapporteur, the Fiscal Compact does not oblige Poland to introduce Euro. Moreover, other governing majority MPs underlined that the Fiscal Compact does not violate the sovereignty of

Poland, because as long as Poland can decide to approve or not an international treaty, its sovereignty persists.^[38]

The right-wing opposition underlined the importance of “the primacy of EU law and EU institutions and EU budget and solidarity” over the “egoistic” Eurozone law, its institutions and budget and internal competition.^[39] In the view of the opposition party Solidarna Polska, “the freedom to shape the budget is one of the fundamental elements of state sovereignty”.^[40] Again, the PiS opposition underlined that the Fiscal Compact transfers budgetary competences, which is a limitation of Poland’s sovereignty.^[41]

The left-wing SLD supported the ratification of the Fiscal Compact, as a “necessary step for further integration”.^[42] Yet, the SLD underlined that the government should declare that it would not join the full treaty on the base of Art. 14 par. 5 of the Fiscal Compact before Poland joins the Eurozone, because in such a case, the penalties included in Art. 8 would apply to Poland.^[43] Similarly, the Ruch Palikota expressed support for the Fiscal Compact, which “is in Poland’s interest”.^[44]

The representative of the Ministry of Foreign Affairs underlined again that Art.119 and 221 of PC are not violated as they do not imply that other institution will approve Poland’s budget, even after joining the Eurozone and being fully bound by the Fiscal Compact.^[45]

On 20 February 2013, the Sejm debated the Ratification Act for the Fiscal Compact before the vote.^[46] The opposition MP, Tadeusz Iwiński (SLD), asked the representative of the Ministry of Foreign Affairs again with regard to Art. 14 of the Fiscal Compact, to ensure that until joining the Eurozone, Poland will not declare binding Poland with the whole Fiscal Pact.^[47] The Under-Secretary of State in the Ministry of Foreign Affairs confirmed that the government has no intention to be bound by the rest of the Fiscal Compact earlier than when joining the Eurozone.^[48] The opposition MPs argued that the Fiscal Compact is part of the federalisation of Europe and that the Fiscal Compact transfers the budgetary competences to EU institutions and to the Contracting Parties of the Fiscal Compact.^[49] The Undersecretary of State in the Ministry of Foreign Affairs negated any transfer of competences and confirmed that the correct ratification base is Art. 89 par. 1 PC.

Senat

On 31 January 2012, the Senators discussed the Fiscal Compact at the joint Budget and Public Finances Committee and the EU Affairs Committee.^[50] The Senators asked questions concerning Art. 13 of the Fiscal Compact (whether the Polish parliament will also participate) and whether signing the Fiscal Compact will oblige Poland to contribute to the ESM.^[51] They were also concerned about the obligations and rights of Poland under the Fiscal Compact.^[52]

The actual discussion on the ratification of the Fiscal Pact took place first at the joint meeting of the Budget and Public Finances Committee, Foreign Affairs Committee and EU Affairs Committee on 21 February 2013.^[53] Also here, with regard to Art. 14 par. 5 of the Fiscal Compact, the representative of the Ministry of Foreign Affairs underlined that declaring accession to Title III and IV of the Pact, as a change of the international agreement will need a separate ratification act in the future.^[54] The Committees positively opined the Ratification Act.

During the Senat plenary debate^[55] on the Fiscal Compact Ratification Act the Senator Rapporteur

stated that the Fiscal Compact does not transfer any competences and that Poland is not put under any obligations, but in fact Poland receives rights (Art.12 par.3 Fiscal Compact). Moreover, Art. 89 par. 1 is the right basis for ratification. ^[56]

Similarly as in the Sejm, the Senat's right-wing opposition argued that Art. 89 par. 1 PC is not the right legal base for the ratification act. ^[57] Additionally, the right-wing opposition was concerned with regard to Art. 14 of the Pact that the government will declare in the due time that Poland is bound by the whole Fiscal Compact without an additional ratification act and any influence of the parliament. ^[58] The right-wing opposition underlined also that the freedom to decide on taxation and budget is the fundament of sovereignty. ^[59] Moreover, in the view of the right-wing opposition, the ratification of the Fiscal Compact violates Art. 219 PC (competence of Sejm to approve the budget) and Art. 221 PC (budgetary initiative, change of budget etc. has the government). ^[60] The senators also asked about the consequences of a judgement of the Constitutional Court, in case it adjudicates that the correct legal base for the ratification of the Fiscal Compact is Art. 90 PC. ^[61] On a formal issue, the opposition complained about the fact that the Senat is taking the decision under time pressure, without the information for the Senators on the Fiscal Compact being circulated in advance and hence claiming a violation the Rules of Procedure of the chamber. ^[62] Also one of the questions was whether Poland will have to raise taxes (especially CIT) after ratification of the Fiscal Compact. ^[63] Moreover, it was underlined that transfer of powers to international institutions causes "dedemocratisation" of the EU and the Constitutional Court can serve as the only safeguard by granting more powers to the national Parliament. ^[64]

As the added value of ratification of the Fiscal Compact, the government and the governing majority underlined the possibility for a Polish minister to participate in the Euro Summits (art. 12 par 3 of the Fiscal Compact) and an impact on the future changes of the Fiscal Compact if Poland becomes a Contracting Party. ^[65] The governing majority senators defended the ratification, pointing also at positive points of Title III (budgetary constraints), the importance of the right to attend the Euro Summits and the strengthening of national parliaments and the European Parliament by the Lisbon Treaty (hence no "dedemocratisation"). ^[66]

On the margin, it is worth mentioning that a number of academics prepared opinions on the ratification of the Fiscal Compact that differed. Cf. the bibliographic references.

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 POLAND? 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 Undersecretary of State in the Ministry of Foreign Affairs opined that Poland will not be obliged to introduce the Balanced Budget Rule before accessing the Eurozone, but amending the Public Finances Act to accommodate this rule may have a positive effect. ^[67] An implementation of the

Balanced Budget Rule may take place either when Poland joins the Eurozone or earlier, if Poland would declare willingness to apply the Balanced Budget Rule. In the latter case, as the representative of the Ministry of Foreign Affairs explained, such a declaration demands ratification analogous to the Fiscal Compact ratification as it changes the scope of the Treaty.^[68] The Balanced Budget Rule, in the view of the representative of the Ministry of Foreign Affairs does not demand a constitutional amendment,^[69] especially as the Fiscal Compact allows anyway for an introduction in infra-constitutional law.

The new stabilization fiscal rule has been introduced by the amendment to the Public Finances Act (hence infra-constitutional law; regular statute-ustawa) in December 2013 (See question VII.7). This rule allows, on the one hand, a security margin with regard to the 3% budget deficit, so that the risk of the excessive deficit procedure is minimised and, on the other hand some flexibility in the budgetary planning (especially investment).^[70] This rule has however been introduced in the context of the Six Pack.

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.

This question does not concern Poland as it is not a Eurozone Member and did not declare earlier willingness to be bound by the Fiscal Compact provisions. On how the Balanced Budget Rule might be implemented in the future, see question IX.4.

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)?

The Secretary of State in the Ministry of Finance, by comparing the Balance Budget Rule (Article 3(1)(b) of Fiscal Compact with the -1%GDP for Member States that participate in ERM2, described the Fiscal Compact Rule as “more ambitious.”^[71]

CASE LAW

IX.7

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

The constitutional review of the TSCG and the Ratification Act of the TSCG, initiated in the ex post procedure by two applications of members of the parliament, is pending before the Polish Constitutional Court (as of March 2013). So far, the Constitutional Court decided to discontinue the proceedings with regard to the constitutional review of the TSCG on formal grounds.^[72]

In Poland, the ex ante review is available only on the request of the president who may, before

ratifying an international agreement or before signing a bill, refer to the Constitutional Court with a request for the constitutional review of such treaty or bill.^[73] This procedure was not at stake with regard to the TSCG. The review of the TSCG was requested by the members of the parliament in the ex post review.^[74]

The TSCG is an international treaty demanding ratification with a prior approval expressed by the parliament in the bill. (See question V.2) The Polish Constitution grants the ratification competence to the president; it is the president that ratifies the treaty.^[75] In the case at stake, the parliament approved the ratification of the TSCG, but in the moment when the MPs lodged the application for constitutional review (23 March 2013), the president has not yet ratified the treaty. In other words, the application for the ex post constitutional review has been lodged too early. Hence ex post review was excluded. The ex ante review was also excluded, because the president has not demanded it. Therefore, the Constitutional Court will only decide on the constitutionality of the procedure leading to the approval of the TSCG by parliament (the bill approving the TSCG - Ratification Act) and will not review the TSCG, unless the applicants again request the constitutional review of the merits of the TSCG, being that the president has since ratified it on 24 July 2013.^[76]

Joint cases K 11/13 and K 12/13

1) Name of the Court: Constitutional Court

2) Parties: group of MPs,^[77] group of Senators^[78] (applicants) the Sejm, the Senat, the Attorney General (participants)

3) Type of action/procedure: ex post review, on the basis of Art. 191 par. 1 in connection with Art. 188 PC: The Constitutional Tribunal shall adjudicate regarding, among other, the conformity of statutes and international agreements with the Constitution, following the application of the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights.

4) Admissibility issues: The application was admitted by the Court. Constitutional Court will give justification to the admissibility in the judgement.

5) Legally relevant factual situation: The compatibility of the Ratification Act for the TSCG and of the TSCG as an international treaty with the Polish Constitution

6) Legal questions and arguments of parties:

A group of PiS MPs (21.03.2013) lodged application to the Constitutional Court asking for a constitutional review of both the Ratification Act of the TSCG and the TSCG itself.^[79]

According to the MPs interpretation of the TSCG, the Treaty is **binding** for Poland from the moment of entry into force (Art. 14(2) TSCG) or deposition of the ratification document (if done later), but its **application** is postponed to the moment of the abrogation of the derogation (Art. 14(5) TSCG).^[80]

In the view of the MPs, Article 26 of the Vienna Convention of the Law of Treaties (Pacta sunt servanda) creates however an obligation to observe and perform the TSCG in good faith. Hence, the

TSCG, in the view of the MPs, has to be compatible with the Constitution already at the moment of its ratification because it is demanded by international law. In addition, in the view of the MPs, the Treaty as a whole needs to be compatible with the Constitution. The possibility to be bound only by some of the parts of the Treaty does not mean, according to the MPs, that the other parts of the Treaty might be contrary to the Constitution. The MPs underlined that as the whole TSCG has been ratified, formally Poland is bound by the whole treaty.

-[regarding the ratification procedure] compatibility of the TSCG's Ratification Act with Art. 90 PC:

a) compatibility of Art. 3 par. 1 of the TSCG which transfers the control competences of Sejm expressed in Art. 95 par. 2 PC to the European Commission (Sejm exercises the control over the activities of the Council of Ministers. The introduction of the automatic correction mechanism violates this control power of the Sejm, even if the correction mechanism will be implemented to national law and even if it is supposed to fully respect the prerogatives of national parliaments. Moreover, if the correction mechanism is implemented in Poland in the infra-constitutional provisions, the competences of the Sejm stemming from the Constitution will be violated.)

b) compatibility of Art. 3 par 2 of the TSCG which transfers the competences of Sejm expressed in Art. 95 par. 1 PC in connection with Art. 4 par. 1 PC to the European Commission acting on behalf of an international organisation (Common principles foreseen in Art. 3 par. 2 of the Fiscal Compact violate the Sejm's legislative autonomy expressed in Art. 95 par.1 PC, as the framework for adopting the national legal act is created by an international institution.)

c) Compatibility of Art. 5 par. 1 and par. 2 of the TSCG which transfers the competence of the Sejm and the Council of Ministers expressed in Art. 219 par.1 and Art. 221 PC. (Creation of new competences for the EU Commission and the EU Council. Introduction of the EU institutions into the budgetary process violates the autonomy of Sejm and the Council of Ministers, as the only organs designated by the Constitution to participate in the budgetary procedure).

d) Compatibility of Art. 7 of the TSCG which modifies the obligations expressed in Art. 126 TFEU. In consequence, according to the applicants it means a redefinition of the scope of conferred competences, which were transferred before through the ratification of the Lisbon Treaty. In particular the competences of the Council of Ministers expressed in Art. 146 par. 1 and par. 4 pt 9 PC are limited, jointly with the limitation of the competences of the Sejm and Senat expressed in Art. 95 par. 1 PC in favour of the European Commission. (The automatism of the support of Member States for a Commission's recommendation limits the freedom of decision of a national Minister in the Council. By limiting the scope of decision-making by representatives in the Council, the competences of the Sejm and the Senat are violated, as in the EU legislative process the national representative in the Council substitutes the legislative role of the Sejm and the Senat. Moreover, the automatic support for Commission's recommendations, which may be overturned by the reversed qualified majority vote has only a procedural character and is independent from the position of a single Member State.)

e) Art. 8 par. 1 of the TSCG which limits the competences of the Constitutional Court expressed in Art. 188 PC by creating a competence of the CJEU to review acts of national law, in case of the implementation of Art. 3 par. 2 of the Fiscal Compact by Poland through an infra-constitutional act.

f) Art. 8 par. 1 and par. 2 of the TSCG, which grants the CJEU a new competence to review the exercise of competences by the legislative power. This limits the competence of the national courts expressed in Art. 10 par. 1 and par. 2. (The financial sanctions imposed by the CJEU are a penalty for not executing its judgement, hence they are a penalty for not acknowledging the authority of the CJEU).

g) Art. 10 of the TSCG which extends the scope of competences transferred to the EU in the ratification of the Lisbon Treaty, by transferring competences of the Council Ministers to exercise the foreign affairs policies expressed in Art. 146 par. 1 and par. 4 PC. Poland will have to participate in every initiative launched by the Fiscal Compact contracting parties, as Art. 10 provides that the contracting parties “stand ready to make active use.” This provision limits the decision-making power of a Member State.

- [on the merits] compatibility of the TSCG with Art. 1, Art.2, Art. 4 par. 1 and par.2, Art. 95 par.1, Art. 104 par. 1, Art. 219 par. 1, Art. 221, Art. 216 par. 5, Art. 235 par. 4 PC:

a) Art. 3 par. 1 of the TSCG with Art. 216 par. 5 PC (the lower limit of a structural deficit of 0.5 % of the gross domestic product at market prices is not identical to the rule existing in Art. 216 par. 5 PC which provides that ‘it shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product.’ It hence creates a new obligation in the budgetary procedure. The primacy of the automatic correction mechanism, if implemented as an infra-constitutional law, will result in violation of the Constitution.)

b) Art. 3 par. 2 of the TSCG with Art. 235 par. 4 PC, Art. 4 par.1 and par. 2 and Art. 221 PC. (Art. 3 par. 2 of the TSCG demands, in principle, an introduction of the “golden rule” into the Constitution [only mitigated by the possibility to introduce an infra-constitutional provision]. Only a legal obstacle, in contrast to a political one [e.g. insufficient parliamentary majority] may excuse a MS from not implementing the “golden rule” at the constitutional level. Hence, in the view of the applicants, this provision limits the scope of the decision of the parliament [and the supreme power of the Nation exercised by its representatives] whilst debating a constitutional amendment.)

c) Art. 5 par. 1 of the TSCG is not precise enough and hence violates the democratic state ruled by law principle expressed in Art.2 PC. (The notion of “EU law” may cause that Poland will be bound by fiscal-budgetary norms which were approved without Poland’s participation in areas where Poland is under derogation).

d) Art. 8 par. 1 of the TSCG violates Art. 235 par. 4 in connection with Art. 4 par. 1 PC. It also violates Art. 2 PC. (If the “golden rule” is introduced at the constitutional level, the Commission and the Contracting Parties will gain authority to assess and impact on a constitutional amendment procedure that has a democratic legitimacy and is a sovereign right of the Nation).

e) Art. 10 of the TSCG violates Art. 4 par. 1 and par. 2 PC. Its lack of precision violates also the democratic state ruled by law principle expressed in Art.2 PC. (Art. 10 of the Fiscal Compact mentions the use of measures specific to those Member States whose currency is the euro, as provided for in Article 136 TFEU. This reference binds Poland with obligations applicable to Eurozone Members and, hence, goes beyond the competences transferred by Poland in the

Accession Treaty. The fact that the legal acts taken on the basis of Art. 136 TFEU are approved only by the Eurozone Members in the Council, without a Polish representative will not be legitimate from the perspective of the Polish constitution. If Poland will become bound by Art. 10 of the TSCG on the basis of Art. 14 par. 5, the Sejm has no possibility to review the declaration of the Council of Ministers expressing such willingness. Hence, such declaration will not have democratic legitimacy. Finally, the uncertainty of the effects of the application of Art. 136 TFEU or the enhanced cooperation violates the principle of legal certainty).

f) Art. 10 of the TSCG violates the sovereignty principle (Art. 4 par. 1 PC) with regard to the right of the Polish People to indicate their political interests and the principle of common good (Art. 1 PC). (The actions prescribed by Art. 10 on matters that are essential for the proper functioning of the euro area may not be compatible with the interest of the Member States with derogation. These actions, which may go against the economic (budgetary) interests of the Member States with derogation, are contrary to the sovereign right to designate state interests and the principle of common good).

g) Art. 16 of the TSCG with Art. 4 par. 1 and par. 2 PC, Art. 95 par. 1 PC, Art. 219 par. 1 PC, Art. 221 PC and Art. 235 par. 4 PC. (The future incorporation of the TSCG into the legal framework of the European Union, puts an obligation on the Contracting Parties not to introduce any changes in the national constitutional and infra-constitutional law, which would be incompatible with the Fiscal Treaty. Hence, the sovereign rights of the Nation are violated [Art. 4 par. 1 and par. 2 PC]: the legislative autonomy of the Sejm [Art. 95 par. 1 PC] with the freedom to specify the principles of and procedure for preparation of a draft State Budget [Art. 219 par. 2 PC] and its role to adopt the State budget [Art. 219 par. 1] due to the possible budgetary limits provided for in national law or international treaties. Moreover, Art. 16 of the TSCG violates the freedom of the Nation to shape the constitution according to the procedure of constitutional amendment as expressed in Art. 235 par. 4 PC.)

A group of PiS senators (28.03.2013) lodged applications to the Constitutional Court asking to review:

-If the TSCG's Ratification Act is compatible with Art. 2, Art. 7, Art. 108 in connection to Art. 104 par. 1 first sentence, Art. 121 par. 2 first sentence and Art. 124 in connection to Art. 112 PC.

-arguments: the Senat Rules of Procedure were violated during the ratification procedure and hence Art. 124 in connection with Art. 112, Art. 108, Art. 104 PC were violated; as well as Art. 121 par. 2 (In the view of the applicants, the Senat approved the Ratification Act without amendments within the prescribed period of 30 days, but the procedure leading to the approval violated constitutional provisions. Especially, the legally prescribed period allowing the Senators to prepare for the ratification procedure was unlawfully limited).

-With regard to the Ratification Act itself, the applicants raised that it is incompatible with Art. 7 and Art. 2 PC (as the Ratification Act was ratified without a sufficient knowledge of the senators regarding the subject of the ratification proceedings)

7) Answer by the Court to the legal questions and legal reasoning of the Court: the case has not yet been decided with regard to the ratification procedure.

8) Legal effects of the judgment/decision: The legal effect of the judgement might be that the Court declares the Ratification Act unconstitutional and the act will lose its binding force.

9) Shortly describe the main outcome of the judgment/decision and its broader political implications. The case has not been decided yet (March 2014)

NON-EUROZONE AND BINDING FORCE

IX.8

Has Poland 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?

No, Poland is bound only by Title V of TSCG. A possibility to be bound by parts of the TSCG on the basis of Article 14(5) TSCG was discussed in the parliament. The controversial issue was if the declaration to be bound by Title III and IV before Poland joins the Eurozone will demand a separate ratification in the future. The government confirmed that such a declaration will demand a separate ratification act as it is a change of the Treaty. (See question IX.3).

MISCELLANEOUS

IX.9

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

The Senate's committees raised a question concerning Art. 11 of Fiscal Compact: what is the impact of Commission proposals on the coordination of major economic policy reforms on the sovereignty of Polish parliament?^[81] The Undersecretary of State in the Ministry of Foreign Affairs answered that Poland will not be bound by this provision and its existence is justified by the need to provide the budgetary discipline and no violation of sovereignty is at stake.^[82]

[1] Komisja do Spraw Unii Europejskiej Nr 23, 3.02.2012, <http://orka.sejm.gov.pl/SQL2.nsf/Main7?OpenForm&SUE>.

[2] Id, p.8.

[3] Pełny zapis przebiegu posiedzenia Komisji do Spraw Unii Europejskiej Nr 27, Komisji Finansów Publicznych Nr 28, 16.02.2012, p.5, 7, <http://orka.sejm.gov.pl/SQL2.nsf/Main7?OpenForm&SUE>.

[4] Zapis stenograficzny ze wspólnego posiedzenia Komisji Budżetu i Finansów Publicznych (Nr 9) oraz Komisji Spraw Unii Europejskiej (Nr 11), p.5.

[5] Id, p.6.

[6] Id, p. 7.

[7] Zapis Stenograficzny, Wspólne posiedzenie Komisji Budżetu i Finansów Publicznych (Nr 75), Komisji Spraw Unii Europejskiej (57.) oraz Komisji Spraw Zagranicznych (Nr 67), 21.02.2013, p.6.

[8] Id, p.7.

[9] See in Uzasadnienie do Druku nr 961, p.1. and p. 20, available at <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=961>

[10] See in Uzasadnienie do Druku nr 961, p.20., available at <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=961>

[11] Cf. 34. Posiedzenie Sejmu, 20.02.2013, http://orka2.sejm.gov.pl/StenoInter7.nsf/0/7F1A0DBDE3073E8CC1257B18007EEC81/%24File/34_b_ksiazka.pdf.

[12] Cf. Głosowanie nr 5.

[13] Cf. 27. Posiedzenie Senatu, 21.02.2013, <http://www.senat.gov.pl/prace/senat/posiedzenia/przebieg,39,2.html>.

[14] Głosowanie nr 64.

[15] The Polish Constitution does not precise the grounds (political or legal) for which the President may decline to sign a legislative act. The President has two possibilities at hand before signing a legislative act (including ratification act). First, the President may ask the Constitutional Court to review the act (Art. 122 par. 3 PC). Second, the President may refer legislative act back to the Sejm (Art. 122 par. 5 PC). If the Sejm approves that act again with a 3/5 majority of votes, the President is obliged to sign it and may not refer the act to the Constitutional Court.

[16] Pełny zapis przebiegu posiedzenia Komisji do Spraw Unii Europejskiej Nr 111, Komisji Finansów Publicznych Nr 136, Komisji Spraw Zagranicznych Nr 60, 19.12.2012, <http://orka.sejm.gov.pl/SQL2.nsf/Main7?OpenForm&SUE>.

[17] Id, p.7-8.

[18] Id, p.8.

[19] Id, p.13.

[20] Id, p.13.

[21] Id, p.13.

[22] Id, p.16.

[23] Id, p.16.

[24] Id, p.19.

[25] Id, p.19.

[26] Id, p. 26.

[27] Id, p. 34.

[28] Id, p. 32.

[29] Id, p.41.

[30] Sejm, 25. Posiedzenie Sejmu 9.11.2012, p.314, http://orka2.sejm.gov.pl/StenoInter7.nsf/0/9A3DFC35F9453901C1257AB600326B6A/%24File/25_c_ksiazka.pdf.

[31] Id, p. 318.

[32] Id, p.325.

[33] Id, p.328.

[34] Id, p.342.

[35] 34. Posiedzenie Sejmu, 19.02.2013, p. 8,

http://orka2.sejm.gov.pl/StenoInter7.nsf/0/7F1A0DBDE3073E8CC1257B18007EEC81/%24File/34_b_ksiazka.pdf.

[36] Id, p. 13

[37] Id, p. 13.

[38] Id, p. 33.

[39] Id, p. 19.

[40] Id, p. 44.

[41] Id, p. 94.

[42] Id, p. 25.

[43] Id, p. 43.

[44] Id, p. 41.

[45] Id, p. 107.

[46] Sprawozdanie Stenograficzne z 34. Posiedzenia Sejmu Rzeczypospolitej Polskiej, 20.02.2013,

http://orka2.sejm.gov.pl/StenoInter7.nsf/0/7F1A0DBDE3073E8CC1257B18007EEC81/%24File/34_b_ksiazka.pdf.

[47] Id, p. 120.

[48] Id, p. 120. Also on an earlier occasion, Ministry of Finance representative, Jacek Dominik, underlined that Poland will not declare the willingness to be bound by the Treaty earlier than when joining the Eurozone, Sejm SUE 16.02.2012, p. 23.

[49] Sprawozdanie Stenograficzne z 34. Posiedzenia Sejmu Rzeczypospolitej Polskiej, 20.02.2013, p.122-123.

[50] Zapis stenograficzny ze wspólnego posiedzenia Komisji Budżetu i Finansów Publicznych (Nr 9) oraz Komisji Spraw Unii Europejskiej (Nr 11), 31.01.2012.

[51] Id, pp.10-12.

[52] Id, p.20.

[53] Wspólne posiedzenie Komisji Budżetu i Finansów Publicznych (Nr 75), Komisji Spraw Zagranicznych (Nr 67) oraz Komisji Spraw Europejskich (Nr 57), 21.02.2013.

[54] Id, p. 8

[55] 27. posiedzenie Senatu w dniu 21 lutego 2013 r.

[56] Id, p. 108-109.

[57] Id, p. 111.

[58] Id, p. 111.

[59] Id, p. 112.

[60] Id, p. 117.

[61] Id, p. 124.

[62] Id, p. 129

[63] Id, p. 128.

[64] Id, p. 136.

[65] Id, p. 120.

[66] Id, p. 134.

[67] Pełny zapis przebiegu posiedzenia Komisji do Spraw Unii Europejskiej Nr 111, Komisji Finansów Publicznych Nr 136, Komisji Spraw Zagranicznych Nr 60, 19.12.2012, p. 8, <http://orka.sejm.gov.pl/SQL2.nsf/Main7?OpenForm&SUE>.

[68] Id, p. 10.

[69] Senat, wspólne posiedzenie Komisji Budżetu i Finansów Publicznych (Nr 75), Komisji Spraw Zagranicznych (Nr 67) oraz Komisji Spraw Europejskich (Nr 57), 21.02.2013, p. 7. At the same meeting, the opposition MPs (PiS) criticise the Balanced Budget Rule, as causing a “severe limitation of the budgetary competences of a Member State”. Cf. p.19.

[70] Uzasadnienie do zmiany ustawy o finansach publicznych, p. 6.

[71] The joint Budget and Public Finances Committee and the EU Affairs Committee discussed the Fiscal Compact on 31.01.2012 (Zapis stenograficzny ze wspólnego posiedzenia Komisji Budżetu i Finansów Publicznych (Nr 9) oraz Komisji Spraw Unii Europejskiej (Nr 11), p. 9.

[72] Trybunał Konstytucyjny, decision of 21 May 2013, K 11/13, available at [http://otk.trybunal.gov.pl/OTK/otk_odp.asp?droga=\(otk_odp\)&sygnatura=K 11/13](http://otk.trybunal.gov.pl/OTK/otk_odp.asp?droga=(otk_odp)&sygnatura=K 11/13)

[73] Art. 133 par. 2 and Art. 122 par. 3 Polish Constitution.

[74] Art. 191 par. 1 Polish Constitution.

[75] Art. 133 par. 1 Polish Constitution.

[76] 24 July 2013, < www.prezydent.pl/aktualnosci/wydarzenia/art,2636,pakt-fiskalny-ratyfikowany.html>, visited 2 November 2013.

[77] Wniosek z 21.03. 2013 na podstawie art. 191 ust. 1 pkt 1 w związku z art. 188 Konstytucji Rzeczypospolitej Polskiej o zbadanie zgodności z Konstytucją Rzeczypospolitej Polskiej ustawy z dnia 20 lutego 2013 o ratyfikacji Traktatu (...) i Traktatu. Available at http://db.trybunal.gov.pl/sprawa/sprawa_pobierz_plik62.asp?plik=F2011466284/K_11_13_wns_2013_03_21_ADO.pdf&syg=K%2011/13.

[78] Wniosek z 28.03. 2013 o zbadanie zgodności z Konstytucją Rzeczypospolitej Polskiej ustawy z dnia 20 lutego 2013 o ratyfikacji Traktatu (...). Available at [:http://db.trybunal.gov.pl/sprawa/sprawa_pobierz_plik62.asp?plik=F428203884/K_12_13_wns_2013_03_28_ADO.pdf&syg=K%2012/13](http://db.trybunal.gov.pl/sprawa/sprawa_pobierz_plik62.asp?plik=F428203884/K_12_13_wns_2013_03_28_ADO.pdf&syg=K%2012/13)

[79] The section below summarises the arguments of the applicants. For the sake of clarity, I do not repeat, in the view of the applicant” etc. The translations of the arguments have been done by the author herself.

[80] See Wniosek z 21.03. 2013 pp 7-8.

[81] Joint Budget and Public Finances Committee and the EU Affairs Committee discussed the Fiscal Compact on 31.01.2012 (Zapis stenograficzny ze wspólnego posiedzenia Komisji Budżetu i Finansów Publicznych (Nr 9) oraz Komisji Spraw Unii Europejskiej (Nr 11), p.21.

[82] Id, p. 25.

X - Financial Support

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

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

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

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

CONTEXT

X.1

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

Not relevant for Poland.