



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

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Publishing date: 02/02/2015

Last update: //

LAW DEPARTMENT PROJECT

FUNDED BY THE RESEARCH COUNCIL OF THE EUI

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# I - Political context

## POLITICAL CHANGE

### I.1

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

There were parliamentary elections on 27 September 2009 and on 5 June 2011, as well as presidential elections on 23 January 2011.

The elections in 2009 resulted in the re-election of the Socialist Party (PS), centre-left political formation, as the first party in the country. However, in the context of the Eurozone crisis and the already ongoing unpopular reforms, Socialists lost the majority; José Sócrates formed a minority government (see question X.1).[\[1\]](#)

Anibal Cavaco Silva, Portugal's conservative president was re-elected on 23 January 2011.

The Prime Minister resigned on 23 March 2011 after a defeat in a parliamentary vote on a package of austerity measures that came to be known as "PEC IV" (Stability and Growth Pact, SGP 2011-2014). Pedro Passos Coelho, at the time Democratic People's Party/Social Democratic Party (PPD/PSD)'s leader, opposed these measures and strongly advocated for calling for international financial assistance (see question X.1). On 24 March Germany regretted that the austerity measures package was not adopted; it was the Euro's stability that was at stake. Portuguese bonds recorded high after resignation: interest rates went from 7% to 14%. The political void and the financial situation left no alternative but to seek assistance from the European Financial Stability Facility (EFSF), the Eurozone's bail-out fund.

On 5 June PPD-PSD won the elections and formed a coalition with the People's Party (CDS-PP), a centre-right party. The MoU was negotiated before the elections with little public discussion (see question X.3).

The governing coalition came close to collapse in mid-2013 after the minister of finance, Vítor Gaspar, resigned on 1 July. In his resignation letter, Vítor Gaspar stated that his credibility had been undermined by rulings by the constitutional court overturning government policies in October 2012 and in April 2013. He also suggested that his increasing isolation within the cabinet over the implementation of Portugal's EU/IMF austerity programme contributed to his resignation, adding that his departure would reinforce "the cohesion of the government".[\[2\]](#) Vítor Gaspar had been seen as inflexible by the Popular Party (CDS-PP), and parts of the dominant Social Democratic Party (PSD), particularly in response to calls for lower taxes and other measures to support investment and economic growth.[\[3\]](#)

Minister of Foreign Affairs, Paulo Portas (CDS-PP leader), resigned from the government immediately after Vítor Gaspar was replaced by his deputy, Maria Luis Albuquerque. Paulo Portas stated that the prime minister had chosen the "path of continuity", a decision he did not support. The prime minister did not accept his resignation and political instability sent interest rates on government debt soaring.[\[4\]](#)

On 21 July, Portugal's president, Aníbal Cavaco Silva, announced that the current government should remain in office until the end of its term (2015). Paulo Portas reintegrated government as Deputy Prime Minister.<sup>[5]</sup> The decision followed the failure of negotiations between the three main political parties (PSD, CDS-PP and PS) to agree on a broader parliamentary consensus over the steps necessary to complete the country's EU/IMF programme.<sup>[6]</sup>

Portugal made a clean exit from its EU/IMF bailout in May 2014.<sup>[7]</sup>

<sup>[1]</sup> Socratic Method, 1 October 2009, The Economist at <http://www.economist.com/node/14560974#>.

<sup>[2]</sup> Full resignation letter can be read in <http://expresso.sapo.pt/carta-de-demissao-de-visor-gaspar=f817482>.

<sup>[3]</sup> For more details see Country report, the economist intelligence unit, available at <http://country.eiu.com/article.aspx?articleid=1570676341&Country=Portugal&topic=Politics&subtopic=Forecast&subsubtopic=Political+stability&u=1&pid=762217060&oid=762217060&uid=1>

<sup>[4]</sup> For more details see Country report, the economist intelligence unit, available at <http://country.eiu.com/article.aspx?articleid=2020682386&Country=Portugal&topic=Politics&subtopic=Forecast&subsubtopic=Political+stability&u=1&pid=762217060&oid=762217060&uid=1>

<sup>[5]</sup> "Seeking to Repair a Rift in Portugal's Ruling Coalition", 6 July 2013, available at <http://www.nytimes.com/2013/07/07/world/europe/seeking-to-repair-a-rift-in-portugals-ruling-coalition.html>

<sup>[6]</sup> The Economist Intelligence Unit, Portugal, available at <http://country.eiu.com/article.aspx?articleid=980757082&Country=Portugal&topic=Politics&subtopic=Forecast&subsubtopic=Political+stability&u=1&pid=762217060&oid=762217060&uid=1>

<sup>[7]</sup> The Economist Intelligence Unit, Portugal, <http://country.eiu.com/portugal>; "Portugal bank knocks recovery", 10 August, The Financial Times

# II - Changes to the Budgetary Process

## BUDGETARY PROCESS

### II.1

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

Pursuant to art. 105/2 CRP, the budget,<sup>[1]</sup> a law with enhanced value, is prepared in accordance with the annual Broad Economic Plan and taking into account obligations determined by law or contracts.<sup>[2]</sup> The Plan Options are voted by Parliament (art. 91<sup>o</sup> CRP) and constitute the guidelines for which the Plan itself is organized; they must obey the budget, since they also represent, according to the Constitution, the financial expression of the annual plan. The Government is in charge of submitting the budget proposal to the Parliament. The budget proposal draft is prepared by the Ministry of Finance, and then subject to approval of the Government. By the 15<sup>th</sup> October of each year, the Government must present the draft State Budget Law to the Parliament. Besides the actual proposal, also budget maps and informative annexes are included.

The Parliament then has to vote the proposed Budget until the 15<sup>th</sup> of December. This is discussed in a plenary session, being matters such as the creation and extinction of taxes and loans and other financing means taken to a discussion in specialised committees. If one tenth of the deputies so requires, other matters relating to the fiscal regime can also be discussed in committee.

Once the Budget starts being executed, the peculiarity of the system resides with the expenses: each credit cannot be used entirely at once. This means that the expenses should be made and the payments authorized by amounts not exceeding the accrued twelfths. The Parliament, upon approval of the Budget, fixes not only the maximum amount of total expenditure, but also the expenses relating to each chapter and function. The Government cannot, in principle, transfer funds from chapter to chapter/function to function, nor can it open credits which can raise the total expenditure predicted on the Budget. There are some exceptions, amongst which the need for the Government to respond to unforeseen and unavoidable expenses - for such purpose, a reserve fund is annually made in the budget of the Ministry of Finance. One should furthermore note the 'brake' provision contained in article 167/2 of the Constitution: no proposals to amend the budget can be submitted during the financial year if they involve an increase in expenditure to a decrease of the State revenue, as provided for in the Budget.

As for the inspection of Budget execution, the control over revenue is made by reference to the duty of the entitled services to collect certain amounts. The expenses' control is made by reference to the predictions made in the Budget. This control is exercised by the Public Accounts and the Court of Auditors, both a priori and a posteriori, by considering each service's allocation and the law.<sup>[3]</sup>

## GENERAL CHANGE

### II.2

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

The budget is applied by means of the so-called LEO, which establishes the framework for budget application. Since 2001 this law (L-91/2001) suffered several amendments during the Eurozone crisis. Its most meaningful amendment is nevertheless the inclusion of the Balanced Budget Rule (so called 'golden rule') (See question IX.5).

The LEO also incorporates new principles, as well as serves as means of implementation of Directive 2011/85/EU. A new budgetary model was proposed, based on a reform to be led by the Ministry of Finance. It predicts a phased approach to the budget, based on a detailed plan of action, with technical support being sought in the Commission and the IMF. A multiannual framework plan is established, with tight control mechanisms for expenditure; this plan was presented for the first time to the Parliament in April 2012, together with the Plan for Stability and Growth (PEG).

Another change was the abolishment of the horizontality in the application of the budget: each Ministry started being responsible for its own share of the budget, which reinforces the control. To enhance control, a new and independent entity was created (see questions VII.4 and II.3): the Portuguese Public Finance Council (CFP), which acts as an advising body to the viability of the budgetary measures and public expenditure.<sup>[4]</sup> The Council's mission is to conduct an independent assessment of the consistency, compliance with the defined objectives and sustainability of public finances, while fostering its transparency.

## 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 main changes are found in the competences of the institutions. However, the role of the judiciary was enhanced, with the Court of Auditors' work gaining prominence; on the other hand, a new entity was created: the CFP.

The Court of Auditors is a sovereign body, whose competences are defined in article 214 of the Portuguese Constitution. Its independency from the Public Administration ensures a free exercise of its judicial and financial control; it has the duty to examine 'the legality of public expenditure and rules on the accounts which the law has ordered to be submitted to the Court'.

The Court of Auditors might be asked by the Parliament to provide for 'intercalary reports' on the budget control results throughout the year, as well as clarifications which might help the evaluation of the budget.

The Government is also entitled to ask this Court to provide it with audits and opinions; in total, around 7500 entities are subject to control by this Court.

The Portuguese Public Finance Council (CFP), created by the Budget Framework Law in 2011, has the mission to assess, in an independent way, 'the proposed objectives in relation to the macroeconomic and budgetary scenarios, [and] long-term public finance sustainability'. Its main objectives are the transparency and quality of policy decision making. It is to act as an advisor to the

Government by enacting reports on the draft Budget law (for more information on CFP see question VII.4).

The parliament's Budgetary Technical Support Unit (UTAO) prepares technical analyses of government bills on the state budget and amendments thereto, assesses general state accounts, monitors budgetary execution, and analyses revisions to the stability and growth programme. It functions under the Budget committee's direct guidance. Having been created in 2006 it has seen its powers amplified in 2014 to monitor and control projects involving public investment. This will include public-private partnerships (PPPs) and concessions, paving the way for an approach that is geared to rolling out projects that are technically and financially sustainable.[5]

## 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?

Legislatively, the main change can be found in the law establishing the framework for budget application. Before 2011, its article 39° established the deadline for presenting the proposal to the Parliament on the 15<sup>th</sup> of October, except when there is no Government at that date. After the amendment, these deadlines were changed - although the proposal has to be submitted still by the 15<sup>th</sup> October, the contemplated exceptions changed the date for the 30<sup>th</sup> of September, according to the new article 12<sup>o</sup>-E.

The biggest impact of Euro-crisis law in the budgetary was nevertheless a practical one. Pressured by upcoming troika evaluations the government approved - what proved to be - unrealistic budget proposals. Eight rectifications have been approved in the last 3 years, two rectifications per year, breaking a 1977 record (a time of great economical and political instability in Portugal - following the 1974 revolution). The circumstances that lead to this situation have been subject of much discussion. On one hand, the expected time-line of the budgetary cycle was deemed irrelevant - alterations had to be discussed and approved and months were spent on this process -; on the other hand, the budget itself was emptied of its main function, it became, to a certain extent, a formality.[6]

## MISCELLANEOUS

### II.5

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

No other relevant information.

[1] <http://www.en.parlamento.pt/StateBudgetPublicAccounts/index.html>

[2] Article 112.º n.º 3 of the Constitution defines laws of enhanced value as those (...) “besides organic laws, the laws that are approved by two thirds majority, as well as those that the Constitution defined as a normative prerequisite for the approval of other laws or that by the latter must be respected”.

[3] See: [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2012/pdf/ocp91\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp91_en.pdf)

[4] <http://www.cfp.pt/>

[5] The quotations indicate a free translation of articles 214 of the Constitution and 12º-I of Law nº 52/2011, 13 October 2011, respectively.

[6] On the record rectifications of the budget

<http://www.publico.pt/economia/noticia/governo-de-passos-bate-recorde-nas-alteracoes-de-orcamento-1667701>

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# III - Changes to Constitutional Law

## NATURE NATIONAL INSTRUMENTS

### III.1

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

The measures implementing the guidelines of the Memorandum of Understanding assume, in their majority, the shape of ordinary legislation. In what concerns the measures implementing the Six-Pack, however, they have been mostly enshrined in the recently altered framework budget law, hence gaining the statute of law of enhanced value.

## 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?

According to articles 159 and 285 of the Constitution only members of parliament can present amendments.

In June 2014, Members of Parliament from PPD/PSD Madeira presented a proposal for Constitutional amendments. In July 2014 Members of Parliament of CDS/PP Madeira presented a proposal too.

Proposed amendments include the extinction of the Constitutional Court (turning it into a specialised section of the Supreme Court of Justice), the extinction of the figure of the Portuguese Republic's Representative, introduced by the constitutional amendment of 2004, the extinction of the National Electoral Commission, as well as the Regulatory Authority for Media and Communications, extension of the mandate of the President of the Republic to ten years (currently 5 years), the independency of the fiscal and financial system, the creation of regional parties and reduction of the number of members of the Parliament, amongst others.

Parliament has created a commission to analyse and discuss the proposed amendments in late September 2014. The Commission will work for 90 days. It is composed by 23 Members of Parliament: 11 MP from PPD/PSD, 7 PS, 2 CDS/PP, 1 Communist Party (PC), 1 Left Bloc (BE) and 1 Ecologist Party (PEV).

These amendments do not seem to have been proposed as a reaction to the Euro-crisis. Neither PPD/PSD nor CDS/PP have expressed support to neither of the projects. After several failed attempts to create momentum towards a Constitutional revision this particular project will not allow for a

deep reform as envisaged by Passos Coelho (see question X.1).

According to the Portuguese Constitution the Parliament can amend the Constitution only every five years counting from the date of publication of the last ordinary reform.<sup>[1]</sup> Before the 5 years term any changes must take place under the auspices of an extraordinary amendment, which requires 4/5 of the MP to vote positively for its approval.

## **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?

Art. 105<sup>o</sup>/4 of the Portuguese Constitution already enshrines a 'balanced budget' rule. It is the most important budgetary rule in terms of substance, both for planning purposes and for purposes of enforcing financial control of the Central Administration. It is nevertheless a substantive - rather than formal - balance budget rule. It means that, in abstract, the planning and implementation of public financial management, the predicted and effective costs must be covered by the predicted and effective revenue provided for in the Budget. This rule was present already in the first version of the Constitution, in 1976.

Moreover, article 167<sup>o</sup>/2 of the Constitution enshrines, for the purposes of budgetary stability and balance, a 'break-rule': MPs, parliamentary groups, the Legislative Assemblies of the autonomous regions and groups of voters may not submit legislative proposals which would involve, in the current financial year in question, increased spending or reduced revenues, as opposed to the ones provided in the Budget. This rule was introduced during the fourth constitutional amendment, in 1997.

The Government did push for a constitutional amendment that would enshrine the "golden-rule" in the Constitution rather than an alteration to the LOE. However, PS made it clear that it would never support it. On the implementation of the Fiscal Compact vis-à-vis article Art. 105<sup>o</sup>/4 of the Portuguese Constitution see question VII.6.

## **PURPOSE CONSTITUTIONAL AMENDMENT**

### III.4

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

See question III.2.

## **RELATIONSHIP WITH EU LAW**

### III.5

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

See question III.2.

## **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?

See question VII.6. Shortly before the agreements on the Six-Pack, Portugal had made a change to the law (LEO) establishing the framework for the budgetary procedure (Law 22/2011, 20th May). There were further changes to the LEO, still in 2011 (Law 52/2011, 13th October, and Law 64-C/2011, 30th December. Due to the intense controversy raised by the 'golden-rule', its introduction was postponed until the beginning of 2013. The government's intention was to inscribe the so-called 'golden-rule' directly in the Constitution, so that its amendment would also require a qualified majority; however, it was enshrined instead in the amendment to the law establishing the framework for the budgetary procedure. This Framework law is one of enhanced value, according to article 112<sup>o</sup>/3 of the Constitution.

## **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?

There was no ordinary legislation adopted in conjunction with a constitutional amendment.

## **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?

Between 2011-2013, ordinary law instruments discussed and approved were seen, in their great majority, as mere consequences of the obligations resulting from the MoU and therefore "Euro-crisis" law.

Parliamentary debates on ordinary legislation are noticeable about MPs interpretation of the MoU. The elimination of golden shares<sup>[2]</sup>, labour law reviews,<sup>[3]</sup> cancelling intercity railway investments,<sup>[4]</sup> these were among the very first measures to be discussed right after elections in 2011. However, hundreds of parliamentary debates on approval and alterations of ordinary legislation followed and they all either invoked - as a legal basis -, or discussed - as if to clarify -, the terms in which the MoU bound Portugal to alter its laws. Discussions were heated. The MoU was often referred to as "pact of aggression" by left-wing party PCP.<sup>[5]</sup> PS, the opposition party with biggest representation in the parliament, rarely agreed on austerity measures.

The Constitutional Court became, since 2011, the centre of public attention (including of the media) having been awarded “national figure of the year” in 2013 by Newspaper “Expresso”. Its decisions have been broadly discussed by the Prime Minister, members of government, opposition parties, economists and the general public. Open criticism by the government has been labelled as defiant of separation of powers.<sup>[6]</sup> To its rulings have been attributed macroeconomic effects and fiscal alterations – especially the ones on Budget Law. It has deeply influenced the relations between Portugal and the troika. “Idolized and hated” it created Crisis-Jurisprudence, with its rulings sometimes pointing even to alternative political solutions.<sup>[7]</sup> It created a movement pro and against the Court and ignited passionate discussions on the Constitution amongst scholars in the public sphere.<sup>[8]</sup>

In terms of public opinion, it is quite clear that the changes in legislation are perceived as direct consequence of the Troika’s “intervention” (on related public demonstrations see question X.7).<sup>[9]</sup>

## MISCELLANEOUS

### III.9

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

No other relevant information.

<sup>[1]</sup> The last reform was in 2005. See: <http://www.tribunalconstitucional.pt/tc/crp-revisoes.html>

<sup>[2]</sup> Parliamentary debate 3 August 2011, available at <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n11-0066&type=texto&q=troika&sm=p>.

<sup>[3]</sup> Parliamentary debate 31 August, 2011, available at <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n13-0056&type=texto&q=troika&sm=p>

<sup>[4]</sup> Parliamentary debate 9 September, 2011, available at <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n17-0057&type=texto&q=troika&sm=p>.

<sup>[5]</sup> As an example Parliamentary debate 8 March 2012, available at <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n82-0046&type=texto&q=troika&sm=p>.

<sup>[6]</sup> Jorge Reis Novais, “Em defesa do Tribunal Constitucional, Resposta aos críticos”, Almedina, 2014, page 7-17.

<sup>[7]</sup> Alexandre Sousa Pinheiro, “Jurisprudência de Crise: Tribunal Constitucional (2011-2013) in Observatório

<sup>[8]</sup> For a view on the clash over the Constitutional Court rulings “O Tribunal Constitucional e a Crise, Ensaios críticos”, Almedina, 2014 and “Em defesa do Tribunal Constitucional, Resposta aos críticos”, Jorge Reis Novais, Almedina, 2014.

[9]

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112s11n66-0008&type=texto&q=troika&sm=p>

# IV - Early Emergency Funding

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

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

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

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

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

([http://www.efsf.europa.eu/attachments/20111019\\_efsf\\_framework\\_agreement\\_en.pdf](http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf) and [http://www.efsf.europa.eu/attachments/faq\\_en.pdf](http://www.efsf.europa.eu/attachments/faq_en.pdf))

## NEGOTIATION

### IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID PORTUGAL 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?

Law n.º 8-A/2010, of 10 May was approved in parliament to enable Portugal's participation in the programme of financial assistance to Greece. Article 1 and 2 define its object: to allow the government to decide on the concession of loans to Eurozone Member States, in the context of EU coordinated efforts to guarantee the economical and financial stability of the euro.[1]

At the time this law was debated in parliament (7 May 2010) no EU mechanism/framework existed yet. It was debated in parliament as part of a "European solution" - which was already underway.

It was adopted with the votes in favour of PS, PPD/PSD, CDS/PP and BE. Against were PCP and PEV. PCP and PEV voted against because of the terms in which the "solidarity" mechanisms were being approved. MP Bernardo Soares' stated that the conditions of the loan "favoured big enterprises and banks" while "fostering the unaccountability of financial markets"; the MP added that the loan represented a "condemnation [of Greece] to stagnation, recession and poverty" and that it could not accept it was "the only way".[2]

The parliamentary plenary debate on the Law n.º 8-A/2010, 10 May, marks the beginning of a new era of debates on the Euro crisis. In the words of Carlos Costa Pina, Secretary of State of Treasury and Finance “never before the EU and the euro had been under such great threat”.

A few days later an agreement was concluded with Greece to coordinate a series of bilateral loans to that country. Immediately afterwards, the Council adopted a Regulation establishing a European financial stabilization mechanism (EFSM), which could be used in future situations similar to that of Greece. In addition, the ministers adopted a Decision in which they committed to support a separate and additional loan and credit mechanism, a European Financial Stability Facility (EFSF).

Under article 1 of Law n.º 8-A/2010, 10 May, the Minister of Finance is responsible for independently negotiating and deciding on Portugal’s (terms of) participation in EFSM and EFSF.

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

Law n.º 8-A/2010, of 18 May gives full power to the Minister of Finance to negotiate and decide on Portugal’s (terms of) participation in EFSM and EFSF (or in any coordinated effort) to guarantee the economical and financial stability of the euro through the concession of loans to Eurozone Member States (MS).

Alike other MS Portugal guaranteed the issue of bonds by EFSF by contemplating the transfer in the State budget law. Although the State Budget Law is approved in parliament the government alone is competent to decide to finance another Eurozone MS. The Government merely has to inform parliament of its decision and keep parliament informed on the progress (article 7, Law n.º 8-A/2010, of 18 May).

## GUARANTEES

### IV.3

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

The approval of the issuance of guarantees under EFSF took place in parliament through the approval of law n.º 8-A/2010, of 18 May. This law approves the framework that enables the government to finance Eurozone MS in the sequence of the launch of the European Financial Stability Fund.<sup>[3]</sup> Alike other MS Portugal guaranteed the issue of bonds by EFSF. Portugal guaranteed 11 035, 384 million euros, the same as its quota in ECB. Guarantees issued under EFSF, and Lei n.º 8-A/2010, accounted for 92% of the total of guarantees issued by Portugal that year.<sup>[4]</sup> In practice, the first and only time Portugal guaranteed the issuance of debt by EFSF was in early 2011 to support Ireland. Soon after the Portuguese government asked to “step out” – request accepted by EU MS.<sup>[5]</sup>

## ACTIVATION PROBLEMS

### IV.4

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

Discussions in parliament did not compromise the entry into force of the EFSF Framework. Portugal was – at the time – on the recipient side (see question IV.3).

## CASE LAW

### IV.5

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

There is no constitutional court judgment concerning the EFSF.

## 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?

Law n.º 8-A/2010, of 18 May gives ample power to the Minister of Finance to negotiate and decide on Portugal’s (terms of) participation in EFSM and EFSF (or in any other coordinated effort) to guarantee the economical and financial stability of the euro through the concession of loans to Eurozone Member States.



This law was swiftly adopted to enable the participation of Portugal in the bail-out of Greece (May 2010). Although successive mechanisms and instruments have been adopted since then Law n.º 8-A/2010, of 18 May has not been revoked or altered.

## IMPLEMENTING PROBLEMS

IV.7

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

See above questions IV.1, IV.2, IV.3, IV.4.

## BILATERAL SUPPORT

IV.8

IN CASE PORTUGAL 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?

Portugal did not provide funding on a bilateral basis.

## MISCELLANEOUS

IV.9

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

Not other relevant information.

[1] Free translation of articles 1 and 8 of Law n.º 8-A/2010, 18 May.

[2] See <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheDiplomaAprovado.aspx?BID=15920>

[3] Relatório de Orçamento de Estado, Diário da República 16 de Outubro 2010, II Série A, n.º 17, XII Legislatura, 1.ª Sessão legislativa (2011-2012) available at

[4] In Conta Geral do Estado 2010, page 205, Diário da Republica 7 de Julho de 2011, II Série A, n.º 8, XII Legislatura, 1.ª Sessão legislativa (2011-2012) available at <http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679626d56304c334e706447567a4c31684a5355786c5a79394551564a4a5353394551564a4a5355467963585670646d38764d634b714a5449775532567a63384f6a627955794d45786c5a326c7a6247463061585a684c314e31596e504471584a705a5355794d454576524546534c556c4a4c5545744d4441344c6e426b5a673d3d&fich=dar-ii-a-008.pdf&inline=true>

[5] Proposta de Lei n.º 27/XII (1.º) Orçamento de Estado para 2012, Diário da República, 17 de Outubro de 2011, II Série A n.º 47, XII Legislatura, 1.ª Sessão Legislativa (2011-2012).

# 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 PORTUGAL ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

See question V.3.

## APPROVAL

V.2

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

The approval of the 136 TFEU Treaty in Portugal followed the procedure of ratification of an international treaty. The procedure of ratification of an international treaty in Portugal is part of the Parliament's political and legislative competence, as is stated on Article 161 of the Constituição da República Portuguesa (hereafter CRP). In what concerns the type of document adopted, accordingly with Article 166 (5) CRP, in the case of an international treaty the Parliament adopts a Resolution.<sup>[1]</sup> Following the approval of the Parliament's the resolution, by simple majority, in this case about the ratification of the 136 TFEU amendment, the document was signed by the President in accordance with Article 135 b) CRP. Resolution n.º 9/2012 was approved by the Parliament on the 9<sup>th</sup> December 2011, ratified by the President and published on the 2<sup>nd</sup> February 2012 and finally the ratification of the amendment was notified to the EU Council on the 6<sup>th</sup> February 2012.<sup>[2][3]</sup>

The power of the Portuguese Parliament during the ratification

According to Article 161 (i) Const. the Parliament authorises the ratification of international treaties entailing Portugal's participation in international organisations, friendship, peace, defence, the rectification of borders or military affairs, as well as international agreements that address matters which are the exclusive responsibility of the Assembly, or which the Government deems fit to submit to the Assembly for consideration.

The power of the President and of the Constitutional Court during ratification

In accordance with the wording of Article 135 (b) CRP, the President of the Republic ratifies international treaties once they have been duly passed by the Parliament if so provided for by the Constitution (Article 161 (i) Const.). Nevertheless before the ratification the President may take one of the two following actions: the first is to request a prior review of constitutionality within 8 days, as is stated in Article 278 (1) CRP. The Constitutional Court takes on average 25 days to decide and if it declares the unconstitutionality of any rule laid down by an international treaty, the President cannot enact it and the document has to be returned to the body that passed it. The ratification finally takes place if the unconstitutional norms are expunged from the revised text passed by the Parliament; or if a majority at least equal to two thirds of the members of the Parliament present and higher than the absolute majority of the Parliament's components authorizes this ratification in spite of the Court's ruling.

The second possibility is the veto, which is part of the President's powers, to be exercised within 20 days (in the case of Parliament's documents) if the Constitutional Court has not declared the unconstitutionality of that document. The veto is relative that means that it can be overcome by the Assembly of the Republic by an absolute majority and the President is then obliged to enact the it within 8 days. (see Article 136 (2) CRP).

## **RATIFICATION DIFFICULTIES**

### V.3

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

Resolution n.º 9/2012 approved Council's Decision of 25 March 2011 that amended article 136 of TFEU. The decision was approved with the favourable votes of three parties (PSD, PS, CDS-PP) and the votes against of the three remaining parties (PCP, BE, PEV) - December 9th, 2011.[\[4\]](#)[\[5\]](#)

BE argued for a referendum on this matter (see the answers to questions IV.1 and IX.2).[\[6\]](#) The amendment was described, by the BE, as out-dated and inefficient; for that reason, both in Germany and France alternatives had been discussed. Instead of ESM, BE suggested the adoption of a mechanism of cooperation that would curb the pressure from speculative markets over sovereign debt. BE reaffirmed that this mechanism interferes with national sovereignty and the approval of national budgets by imposing exogenous constraints - which do not result from public election. In the same line, an amendment to the Treaties that define the Union, and that modify the ways and rules by which Portugal participates, should be submitted to a national referendum. The BE proposal was rejected by Parliament on the 9<sup>th</sup> of December with votes against by PSD, PS and CDS -PP and favourable votes by PCP, BE and PEV.[\[7\]](#)

## **CASE LAW**

### V.4

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

No.

## **MISCELLANEOUS**

### V.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO PORTUGAL AND THE 136 TFEU TREATY

AMENDMENT?

No other relevant information.

[1] See: DR\_136 (3). Pdf.

[2] See: DR\_136 (3).pdf.

[4] See: Debate\_136TFEU.pdf.

[5] See: <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=36531>

[6] See BE\_referendum\_136.

[7] See: <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=365>

# VI - Euro Plus Pact

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

([http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/120296.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf))

## NEGOTIATION

### VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID PORTUGAL 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.

On 23 March 2011, Prime-Minister José Socrates resigned after the parliament rejected the document that came to be known as PEC IV (SGP 2011-2014).<sup>[1]</sup> Request for external financial assistance followed shortly after.<sup>[2]</sup> Amidst the political turmoil it is not possible to identify a parliamentary debate specifically on the Euro Plus Pact.

As to parliamentary debates that took place later in 2011 and the years that followed, as in other issues, debates in parliament very often alluded to very different measures as part of the same set of mechanisms.<sup>[3]</sup> Criticism multiplied indistinctly too: the Euro-Plus-Pact was a threat to national budgetary sovereignty as much as the six-pack or the TSCG; the terms of the reform of EU's "economic governance" would attribute the commission the power to indicate what public policies to pursue.

Taking into consideration the overlapping nature and substance of the measures contained in the Euro Plus Pact the government considered that both the adoption of resolution n.º 84/2012, of 3 July, that approved the TSCG (also known as fiscal compact) and resolution 9/2012, of 9 December 2012 that approved the treaty on the ESM "[provided] a more solemn framework to the set of EU coordinated initiatives such as the Euro Plus Pact, European Semester and the Six-Pack".<sup>[4]</sup>

## MISCELLANEOUS

### VI.2

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

No other relevant information.

[1] See: [http://www.parlamento.pt/OrcamentoEstado/Documents/pec/21032011-PEC2011\\_2014.pdf](http://www.parlamento.pt/OrcamentoEstado/Documents/pec/21032011-PEC2011_2014.pdf)

[2] See: [http://ec.europa.eu/economy\\_finance/articles/financial\\_operations/2011-04-06-portugal\\_en.htm](http://ec.europa.eu/economy_finance/articles/financial_operations/2011-04-06-portugal_en.htm)

[3] See <http://debates.parlamento.pt/search.aspx?cid=r3.dar>

[4] See

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n95-0003&type=texto&q=six-pack&sm=p>

# VII - Six-Pack

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

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

([http://ec.europa.eu/economy\\_finance/economic\\_governance/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/index_en.htm))

## NEGOTIATION

### VII.1

WHAT POSITIONS DID PORTUGAL 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?

Portugal did not oppose to the six-pack within the EU.

The Budget/Finance/Public Administration Parliamentary Committee, the European Affairs Committee and the Portuguese Public Finance Council issued opinions on the Six-Pack. These opinions were not issued as a bulk.<sup>[1]</sup> The Six-Pack is a set of five regulations (1173/2011, 1174/2011, 1175/2011, 1176/2011 and 1177) - which are all directly applicable; and a directive (2011/85/UE) - which requires transposition (and is dealt with in questions VII.2 and VII.5). These issues are at the national level dealt with separately.

On the "Alert Mechanism" - part of the six-pack and forming part of the European Semester and merely as an example - the European Affairs Committee was critical of the "asymmetrical treatment given to external deficits and surpluses" affirming that it "lacks adequate justification. There seems to be a desire to establish that the EU should produce a surplus compared to the rest of the world. However, it is the Commission itself - and indeed the G20 - which states that correcting macroeconomic imbalances is not only a European but also international goal; As stated in the report itself, one of the causes of excessive indebtedness in some Member States was closer financial integration in the EU and the cut in interest rates. A proper diagnosis of macroeconomic imbalances and their subsequent correction must analyse the role of the financial sector and the ECB in the dynamics of indebtedness and flows before and during the crisis, especially among the euro zone countries".<sup>[2]</sup>

Regardless of the opinions issued by parliamentary committees or CFP it is not possible to assess exactly what was the government's position assumed, in the exercise of its powers, during the Council meetings - in relation to the six-pack or other measures. <sup>[3]</sup> In general, the government assumed a positive posture towards the successive packs and pacts; at worst it would often affirm it was the "possible consensus" and reaffirmed Portugal's diminished leverage to negotiate.

Taking into consideration the overlapping nature and substance of the "six-pack" the government



considered that both the adoption of resolution n.º 84/2012, of 3 July, that approved the TSCG (also known as fiscal compact) and resolution n.º 9/2012, of 9 December that approved the treaty on the ESM “[provided] a more solemn framework to the set of EU coordinated initiatives such as the Euro Plus Pact European Semester and the Six-Pack”.[\[4\]](#)

## **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)?

Directive 2011/85/EU was transposed through the adoption of Law n.º 37/2013, 14 June that altered the budgetary framework law; it was proposed on January 10<sup>th</sup>, 2013 and finally approved, after a long list of reports stemming from different entities, in June 2013.[\[5\]](#) It should be noted that the Portuguese Public Finance Council (CFP) made a report stating that it does not consider that the contemplated measures configure a clear implementation of the Directive, for the predictions relating to a contraction of the deficit do not seem to be realistic, and asks for more consultation from the Parliament.[\[6\]](#) It should be noted, however, that the amendments made are especially focused on a medium-term approach to the budget and mechanisms for correction of potential deviations (amendments were made to articles 12<sup>o</sup>-C, 12<sup>o</sup>-D, 36<sup>o</sup> and 68<sup>o</sup>; additions count articles 10<sup>o</sup>-D to -G and 72<sup>o</sup>-B to -D.)[\[7\]](#)

See question II.2.

## **IMPLEMENTATION DIFFICULTIES**

### VII.3

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

See questions VII.1, VII.2, VII.4.

## **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 Ministry of Finance produces the macroeconomic and budgetary forecasts but it's the Portuguese Public Finance Council (hereinafter CFP) that conducts an independent evaluation of these forecasts.

CFP's legal regime satisfies all the conditions established in the European legislation - Regulation

(EU) no. 473/2013 and the Directive 2011/85/EU.

The CFP is an independent body established by the Article n.12.I of the Law n. 91/2001, of 20 August (Budget Framework Law), with wording that was given by the Law n. 22/2011, of 20 May. The Statute of CFP was approved by the [Law no. 54/2011](#) of 19 October, as amended by [Law no. 82-B/2014](#) of 31 December.

According to article 4 of its Statutes, the mission of the CFP is to undertake an independent assessment of the consistency, compliance and sustainability of fiscal policy. The CFP carries out its mission by performing the tasks defined in article 6 of the Statutes: a) assessment of the macroeconomic scenarios adopted by the Government and the consistency of budget projections with these scenarios; b) assessment of whether the fiscal rules laid down are complied with; c) analysis of the dynamics of the public debt and its sustainability; d) Analysis of the dynamics of existing commitments, with special emphasis on the pensions and health systems and on public-private partnerships and concessions, including an assessment of their implications for the sustainability of the public finances; e) assessment of the financial position of the autonomous regions and local governments; f) assessment of the economic and financial situation of public enterprises, and their potential impact on the consolidated public accounts and their sustainability; g) analysis of tax expenditures; h) monitoring of the budget outturn.

The CFP presents reports on: the Stability and Growth Programme and other procedures within the regulatory European framework of the Stability and Growth Pact; the Multiannual budgetary framework programming; the State Budget draft. The CFP produces also regular reports concerning public finances' sustainability and others that may consider relevant, including on the budget outturn of the previous year. All reports produced by the CFP are sent to the President of the Republic, to the Assembly of the Republic, to the Government, to the Tribunal de Contas (Court of Auditors) and to the Banco de Portugal (Bank of Portugal).

See also question II.3.

## FISCAL COUNCIL

VII.5

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

The Portuguese Public Finance Council (CFP). See question VII.4.

## 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 PORTUGAL 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?

In September 2011, shortly before the enactment of the abovementioned Regulation, Portugal had made a change to the law establishing the framework for the budgetary procedure ( i.e. the framework budget law cited above, see question VII.2). This naturally led to the creation of a new proposal, post-Regulation, so as to encompass the changes required by the Six-Pack.

The new proposal would end up being made only in January 2013 and approved in June 2013 (see above, question VII.2); it was heavily debated due to the inclusion of the Balanced Budget Rule (so-called 'golden rule'): this rule provides that the structural deficit (different from the budget deficit for it excludes the impact of extraordinary measures and adjusts the indicators to the evolution of the economic cycle) may not exceed 0.5% of the GDP and the debt ratio must not exceed 60% of GDP.

See also question IX.4.

## **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?

The terms in which the MTO was included in the national budgetary framework result first from the goals established in the Stability and Growth Pact SGP/BDS, from the financial assistance programme obligations and later on from the inclusion of the balanced budget rule in the framework budget law.[\[8\]](#)

## **EUROPEAN SEMESTER**

### VII.8

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

The analysis of the impact of the European Semester in national economic policy coordination is

limited by the fact that Portugal was under financial assistance. The assisted country does not have, for instance, to submit NPRs. Portugal has nonetheless produced an updated version. As a follow-up the Commission recommended pursuing the commitments “established in 2011/344/EU and detailed in the MoU”[\[9\]](#) - which prevail over the provisions and instruments of the European Semester.

Nevertheless it should be noted that both the Budget/Finance/Public Administration Parliamentary Committee and the European Affairs Committee play a prominent role in debating and issuing opinions on European Semester related instruments[\[10\]](#): the NRP is debated in the European Affairs Committee; the SCP is debated in the budget/finance/Public Administration Committee; the Annual Growth Survey (AGS) is discussed in 5 different parliamentary Committees, with the European Affairs issuing the final opinion.[\[11\]](#)

## **MTO DIFFICULTIES**

### VII.9

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

No political or legal difficulties were encountered nor were there debates specific to Regulation 1175/2011/EU outside the general debate on the six pack.

## **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)?

The medium term budgetary objective was initially incorporated through references in the framework budget law, but more specifically through the Growth and Stability Pact and the national Budgetary Strategy Documents (SGP/BSD). It is now in article 12.<sup>9</sup> C of the framework budgetary law.

## **CURRENT MTO**

### VII.11

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

In the SGP/BDS of 2011-2014 (March 2011) the MTO was of 0% GDP.

Currently the Medium-Term budgetary objective for Portugal is to reach a structural deficit of 0.5% GDP by 2017 (year in which the structural primary balance would be circa 0.4% GDP).[\[12\]](#)

According to the Ministry of Finance, this would require the implementation of measures resulting in approximately 2,800 million euro in 2014, 700 million euro in 2015 and 1,200 million euro in 2016. .

It is expected that already in 2015 the excessive deficit can be corrected in the light of the so far achieved objectives.

The MTO is revised every year with the adoption of a new updated SGP/BDS. Moreover, the SGP establishes the requirement for a subsequent correction whenever deviations from the budget balance rule occur.

## **ADOPTION MTO**

VII.12

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

The medium term budgetary objective is adopted through the Growth and Stability Pact and the Budgetary Strategy Documents (BSD). It is also yearly included in the State Budget Law.

The GSP/BDS is discussed and approved in parliament. Hearings include members of government, the Economic and Social Council and the Portuguese Public Finance Council (CFP). In addition, opinions are also issued by the parliamentary committee on European affairs, the Budget/Finance/Public Administration parliamentary Committee and the Budgetary Technical Support Unit (UTAO).[\[13\]](#)

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

No political or legal difficulties were encountered nor were there debates specific to Regulation 1177/2011/EU outside the general debate on the six pack.

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

No legal or political difficulties were encountered nor did any significant debates specific to Regulation 1173/2011/EU arise outside the general debate on the six pack.

## 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?

There were no further changes to the rules on budgetary process to comply with the Six-Pack rules.

## MISCELLANEOUS

### VII.16

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

No other relevant information.

[1] See: <http://www.ipex.eu/IPEXL-WEB/scrutiny/CNS20100276/ptass.do> and

<http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20100281/ptass.do>

[2] See <http://debates.parlamento.pt/search.aspx?cid=r3.dar>

[3] Written opinion of the Portuguese parliament

<http://www.ipex.eu/IPEXL-WEB/scrutiny/COM20120068/ptass.do>

[4] See

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112s11n95-0003&type=texto&q=six-pack&sm=p>

[5] The seventh amendment to the framework budget law was published on 14th July 2013. See

<http://www.dgo.pt/legislacao/Paginas/default.aspx>

[6] See the report of the CPF, available at: <http://www.cfp.pt/wp-content/uploads/2012/11/1356109000.pdf>

[7] Budgetary Framework Law <http://www.en.parlamento.pt/Legislation/LeiEnquadramentoOrçamental.pdf>

[8] See Documento de Estratégia Orçamental 2013-2017 (BDS)

[http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=95126&A\\_CT\\_TP=PEC](http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=95126&A_CT_TP=PEC) and the Documento de Estratégia Orçamental 2014-2018 (BDS)

[http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=97647&A\\_CT\\_TP=PEC](http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=97647&A_CT_TP=PEC)

[9] See: [http://ec.europa.eu/europe2020/pdf/nd/swd2012\\_portugal\\_pt.pdf](http://ec.europa.eu/europe2020/pdf/nd/swd2012_portugal_pt.pdf)

[10] See:

[http://www.parlamento.pt/sites/COM/XIILEG/5COFAP/Paginas/XIIL1S\\_SemestreEuropeu.aspx?t=553256745a584e30636d5567525856796233426c645341794d44457a&Path=6148523063446f764c324679626d56304c334e706447567a4c31684a5355786c5a793944543030764e554e50526b46514c30467963585670646d39446232317063334e686279394562334e7a61575679637955794d46526c6253566a4d7956684d5852705932397a4a544a6d553256745a584e30636d556c4d6a424664584a76634756314c314e6c6257567a64484a6c49455631636d39775a5855674d6a41784d773d3d](http://www.parlamento.pt/sites/COM/XIILEG/5COFAP/Paginas/XIIL1S_SemestreEuropeu.aspx?t=553256745a584e30636d5567525856796233426c645341794d44457a&Path=6148523063446f764c324679626d56304c334e706447567a4c31684a5355786c5a793944543030764e554e50526b46514c30467963585670646d39446232317063334e686279394562334e7a61575679637955794d46526c6253566a4d7956684d5852705932397a4a544a6d553256745a584e30636d556c4d6a424664584a76634756314c314e6c6257567a64484a6c49455631636d39775a5855674d6a41784d773d3d)

[11] See:

<http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679626d56304c334e706447567a4c31684a5355786c5a793944543030764e554e50526b46514c30467963585670646d39446232317063334e686279394562334e7a61575679637955794d46526c62634f6864476c6a62334d76553256745a584e30636d556c4d6a424664584a76634756314c314e6c6257567a64484a6c4a544977525856796233426c645355794d4449774d544d7651584e7a5a584e7a6257567564455631636d39775a574675553256745a584e305a58496c4d6a41744a5449775a584e30645752764c6e426b5a673d3d&fich=AssessmentEuropeanSemester+-+estudo.pdf&Inline=true>

[12] See <http://www.parlamento.pt/OrcamentoEstado/Paginas/ProgramaEstabilidadeCrescimento.aspx>

[13] See:

[http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=97647&ACT\\_TP=PEC](http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=97647&ACT_TP=PEC)

# 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 PORTUGAL 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.

Portugal did not oppose the ESM within the EU.

At the time in which ESM started being discussed in parliament, Prime-Minister José Socrates was still in office. Foreign Affairs Minister Luís Amado presented both the ESM and the amendment to article 136.<sup>9</sup> TFEU as an important step towards the stability of the euro. Discussions in parliament in December 2010 and January 2011 reveal that there was an overall agreement over the ESM. However, PPD/PSD raised serious concerns about what would be the consequences of non-complying with the commitments imposed by the new mechanism; whether resorting to the IMF would be the “solution”.<sup>[1]</sup>

In July 2011, the Minister of Finance signed the Treaty approving the ESM. Portugal was both a member and a beneficiary of ESM. At that point a new government, composed by a PPD/PSD and CDS/PP coalition was already in power too. Pedro Passos Coelho was Prime-minister. A modified version of the Treaty, incorporating amendments aimed at improving the effectiveness of the mechanism, was signed in Brussels on 2 February 2012.

## RATIFICATION

### VIII.2

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

The procedure of ratification of an international treaty in Portugal is part of the Parliament’s political and legislative competence, as is stated on Article 161 of the CRP. <sup>[2]</sup>In what concerns the type of document adopted, accordingly with Article 166 (5) CRP, in the case of an international treaty the Parliament adopts a Resolution. Following the approval of the Parliament’s the resolution, by simple majority, in this case about the ESM Treaty, the document was signed by the President in accordance with Article 135 b) CRP. The Resolution on the ESM Treaty ratification was approved by



the Parliament on the 13<sup>th</sup> of April with votes against of PCP, BE, PE, abstention of Pedro Delgado Alves (PS), Rui Pedro Duarte (PS) and favorable votes of PSD, PS, CDS-PP, which were the same votes of the approval of the Fiscal Compact. [3]

The ESM Treaty was approved first by Resolução da Assembleia da República n.º 80/2012 and finally ratified by the Decree of the President of the Republic n.º 93/2012 (published on the Diário da República I, n.º 117, 19 June 2012). The ratification then was notified to the EU Council on the 4<sup>th</sup> of July 2012. [4]

## RATIFICATION DIFFICULTIES

### VIII.3

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

Resolução da Assembleia da República n.º 80/2012 (see question VIII.2) was approved with votes against of PCP, BE, PE, abstention of Pedro Delgado Alves (PS), Rui Pedro Duarte (PS) and favorable votes of PSD, PS, CDS-PP. Overall, the Parliament approved it by 204 votes (PSD, PS and CDS-PP) to 24 (PEV, PCP, BE), with 2 abstentions (two PS MP against 96 MP PS). [5]

Most of the political and legal quarrels during the debate coincide with those of the ratification of the TSCG (see question IX.1 onwards). On the same day (13 April 2012) the parliament discussed/voted two proposals of resolutions on the ratification of two international treaties (respectively on ESM and TSCG); three projects of resolution proposing a referendum about the TSCG and finally one project proposing new rules on a renewed national consensus about the EU (TSCG-related). Specifically on the negotiation of the ESM, the government was criticised for not having pushed for a higher financing capacity during negotiations - beyond the 500 000 millions euros. [6]

The Socialists regretted that the discussion and approval of all these initiatives was taking place at the same time therefore preventing a deeper analysis of implications. PS accused the government of being too hasty - Portugal would be the first EU MS to ratify the TSCG. [7] The Prime-Minister highlighted the importance of the swift approval for the external credibility of the State; the stability of the Eurozone and the maintenance of the single currency. The will to be the first Member State to ratify the Treaties was reiterated several times during the debate, as a way to “show that Portugal is compromised with its own recovery and that of the EU”.

Other several negative aspects were also raised: the fiercest critiques were directed to the lack of a social agenda accompanying the Treaties, to combat the increase in unemployment rates. The PS put forward the possibility of creating an additional protocol to the Treaties, which would add a ‘social dimension’ - mainly focused on the correlation between economic growth and combating unemployment. The BE was particularly fierce in criticising the lack of ‘democratic participation’ in the whole process, with the denial of a referendum (see the answer to question IX.2). The PCP, on

the other hand, claimed that the process presented a threat to the national sovereignty in political, economic and budgetary terms, adding that even the Constitutional Court was menaced and subdued to the Court of Justice of the European Union. The 'golden rule' was seen as a way to violate the Constitution, by imposing budgetary rules with a permanent and mandatory character, which will lead to the impoverishment of the country and loss of the democratic and free exercise of the people's will. This party proposed no additional protocol, but rather a clear rejection of the ratification - and a referendum (see the answer to question IX.2).

The Prime Minister replied that the Government had the democratic legitimacy to present the ratification proposals, since it was elected by the people, and, as such, a discussion in the Parliament would amount to the most transparent way of ratifying the Treaties.

## 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?

The payment of the first instalment required by the ESM is part of the law approving the Budget for 2013.<sup>[8]</sup> The procedure to approve the Budget is posited in Article 161 g) of the CRP, which states that the Parliament passes into law the laws on the most important options of national plans and the Budget, after proposal of the Government. Concerning the particular issue of the payment of part of the capital of the ESM, Article 130 of the Lei 66B 2012 (budgetary law) determines that the Government is authorized to proceed to it until the limit of € 803 000 000.<sup>[9]</sup>

## 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?

Article 1 and 2 of Law n.º 8-A/2010, of 18 May gives full power to the Minister of Finance to negotiate and decide on Portugal's (terms of) participation in any EU coordinated effort to guarantee the economical and financial stability of the euro through the concession of loans to Eurozone Member States. Parliament only has to be informed and updated (article 7).

## APPLICATION DIFFICULTIES

VIII.7

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

See questions VIII.1, VIII.2, VIII.3.

## 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?

See question VIII.5.

## MISCELLANEOUS

VIII.9

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

No relevant information available to report.

[1]

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1111sl2n31-0059&type=texto&q=Mecanismo%20Europeu%20de%20Estabilidade&sm=p>

[2] Same procedure mention on question V.2.

[3] <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=36836>.

[4] See: DR\_ESM.pdf and Ratification Tables. Pdf.

[5] See: <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=36836>

[6]

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n95-0020&type=texto&q=regra%20de%20ouro>, and

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1111sl2n34-0048&type=texto&q=Mecanismo%20Europeu%20de%20Estabilidade&sm=p>

[7]

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n95-0020&type=texto&q=regra%20de%20ouro>

[8] See: LEI-66B-2012\_OE2013\_DR.pdf.

[9] See: Article 130 of LEI-66B-2012\_OE2013\_DR.pdf, also, [http://debates.parlamento.pt/page.aspx?cid=r3.dar\\_s2&diary=s2a112sl2n16-0103&type=texto&q=mecanismo%20europeu%20de%20estabilidade&sm=p](http://debates.parlamento.pt/page.aspx?cid=r3.dar_s2&diary=s2a112sl2n16-0103&type=texto&q=mecanismo%20europeu%20de%20estabilidade&sm=p)



# 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 PORTUGAL 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.

As previously mentioned, the parliamentary debates about both the Fiscal Compact and the ESM took place at the same time. This per se raised much confusion and did not allow the parliament to tackle distinctively the implications that each instrument raised by itself. Nevertheless, it was possible to identify five main issues debated in parliament: 1) the loss of parliamentary sovereignty and submission of the national courts to the European courts;<sup>[1]</sup> 2) Governments' (PSD/CDS-PP) willingness to amend the Constitution in order to include the Balanced Budget Rule vis-à-vis PS proposal to amend the framework budgetary law instead; 3) the clear disagreement with the 0,5% rule by the BE, PCP and the PEV, 4) the referendum proposals (discussed below) and 5) the additional protocol to the Fiscal Compact and a conditional ratification of the treaty by the government, in particular the Minister of foreign affairs.<sup>[2]</sup>

## I

## RATIFICATION

### IX.2

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

Portugal was the first countries to ratify the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.<sup>[3]</sup> Resolution n.º 84/2012, 3 July was approved by the Parliament on the 13<sup>th</sup> of April with votes against of PCP, BE, PE, abstention of Pedro Delgado Alves (PS), Rui Pedro Duarte (PS) and favorable votes of PSD, PS, CDS-PP. Overall, the Parliament approved it by 204 votes (PSD, PS and CDS-PP) to 24 (PEV, PCP, BE), with 2 abstentions (two PS MP against 96 MP PS).<sup>[4]</sup>

The procedure of ratification of an international treaty in Portugal is part of the Parliament's political and legislative competence, as is stated on Article 161 of the CRP.<sup>[5]</sup> According with Article

166 (5) CRP, in the case of an international treaty, the Parliament adopts a Resolution. Following the approval of the Parliament's the resolution, by simple majority, the document is signed by the President in accordance with Article 135 b) CRP.

Three proposals for a referendum on the approval of the Fiscal Compact were presented by BE, PCP and PEV (left-wing parties). All of them based their proposal on article 295 of the Portuguese Constitution which predicts the realisation of referendums on the ratification and approval of a treaty that deals with the construction and integration of the EU.

The proposed "question" was: Do you agree with the ratification of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union?[\[6\]](#)

The Portuguese Constitution provides the possibility of a referendum in Article 115 (1) CRP stating that citizens may be asked to answer directly on matters of competence of the Parliament and the Government. The procedure of referendum starts with the parliament or the government presenting a proposal of the question to be asked for the President's approval. The referendum may only relate with topics of national interest. In addition, the question object of referendum has to be a question that needs to be decided by the parliament or government through the approval of international convention or a legislative act. [\[7\]](#) In case there is a referendum its outcome is binding only when the number of people who voted is superior to half of the electorate.[\[8\]](#)

All proposals were rejected by PSD (central right), CDS (right wing) and PS (central left) votes. PS voted against after PSD and CDS-PP backed-down from their initial position and agreed to, following ratification, amend the framework budget law and not the Constitution (see question IX.1).

Arguments from the different parties for a referendum:

1. BE referendum proposal:

A budget deficit with a invariant ceiling of 0.5% consequently results in economic disaster, unemployment and social cuts in public protection, especially in times of crisis. The sanctions for non-compliance, the fees and the persecution of Member State against Member State at the ECJ and the loss of national parliamentary sovereignty, were arguments presented in favour of the referendum and not ratifying the treaty.

## 2. PEV

The Fiscal Compact is a treaty that fits perfectly in the cases contemplated by article 295 CRP. In PEV's views the treaty affects strongly the sovereign power of Member States and implies the submission to rules drafted and imposed by Germany with extremely direct impact in the Portuguese economy and society. The fact that Fiscal Compact establishes ceilings for the budget deficit, which are possible for some of the Member States, but not for other in different development stages with sanctions of non-compliance that might compromise the future of a particular Member State, justifies the need for referendum.

## 3. PCP

The PCP considered the Fiscal Compact an unacceptable imposition against countries like Portugal serving only the interests of capital and potencies like Germany. It was also by the PCP defended that this imposition is part of a economic blackmail that constitutes a serious threat to national sovereignty and independence and it also represents the institutionalization of austerity measures and colonial type relationships within the EU. The PCP affirmed that not only by its content but also by the way the Portuguese government is imposing it, there is not in accordance with the Constitution and the principles of sovereignty protection and national independence, legitimacy to ratify this submission pact.

Thirdly, the PSD, the CDS-PP and the PS presented the arguments against referendum. The PS did not agree with the proposals of referendum, but that did not prevent them to present to the Parliament an additional protocol to the Fiscal Compact, which was not approved, for being considered a conditional ratification of the treaty.<sup>[9]</sup> The government defended that the Fiscal Compact would promote the conditions leading to stronger economic growth in the European Union, which is, in fact, essential for closer coordination of economic policies and safeguard financial stability. In the PSD's view the Treaty answers the need for governments to maintain sound and sustainable public finances and avoid excessive government deficits, to preserve the stability of the entire euro area. Consequently, in line with the management of fiscal policy, it was defended by the PSD the necessity for the introduction of specific rules, including a balanced budget rule and an automatic mechanism for the adoption of corrective measures in case of deviation.

## **RATIFICATION DIFFICULTIES**

### IX.3

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

See the answers to questions IX.1 and IX.2.

## **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 PORTUGAL? 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 Portuguese Constitution was not amended in order to implement the Balanced Budget Rule.

The Balanced Budget Rule was included in the budgetary framework law in 2013.<sup>[10]</sup> The Lei 37/2013 is an alteration to the budgetary framework that concretizes in the national law what was imposed by EU law in the area of budgetary framework and public finances, in particular the transposition of the Directive 2011/85 EU and the internal implementation of the Fiscal Compact.<sup>[11]</sup> New rules of quantitative nature were included, which are the concretization of the Balanced Budget Rule.

The fact that this change was introduced in the Framework law is especially relevant, for this law has a special status, or "enhanced value"; it's an organic law that prevails over others ordinary laws according to article 112<sup>o</sup>/3 of the Constitution.

The LEO states that the medium-term budgetary objectives (3-5 years) will be defined according to the Stability and Growth Pact (SGP) for the euro area. The structural balance can never be lower than the annual goal set in the SGP. While these goals are not met, annual adjustments will have to be of at least 0.5% of the GDP, and the growth rate of public expenditure, net of extraordinary measures on the revenue side, must not exceed the reference rate of the medium-term growth of potential GDP, as defined in the SGP. The Public Administration is subject to the principle of sustainability, being able to fund all commitments with respect for the rule of structural budget balance and the public debt limit. The limit of public debt (ratio of debt to GDP) is set at 60% - as agreed in the SGP -; the State is forced to cut the value above 60% at average of one-twentieth per year, in an average of three years. The new law predicts as well that the payment of interests and amortization of debt takes priority over other expenses.

Article 10<sup>o</sup> G as revised - Limits of the Public Debt (Free translation from the original text of the law)

1 - When the ratio of government debt to gross domestic product (GDP) exceeds the reference value of 60%, the Government is obliged to reduce the amount of the debt, on the excess at a rate of one twentieth per year, measured an average of three years.

2 - For the purposes of determining the amount of the reduction in debt is considered the influence of the economic cycle, in accordance with EU Regulation 1177/2011 of 8 November. 3 - The annual



debt is adjusted for the effects of a change of the perimeter of the Public Administrations performed by statistical authorities, in accordance with paragraph 5 of Article 2.

## 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.

On 12 April 2012 the Prime Minister Pedro Passos Coelho argued in Parliament for the need to ratify the Fiscal Compact and the ESM.<sup>[12]</sup> It was stressed that the Balance Budget Rule guarantees a principle of balance for generations since the lack of budgetary balance and excessive debt accumulation are caused by the choices made by one generation, which consequently binds the next ones. In favour of the Fiscal rules Pedro Passos Coelho added some points. Firstly, these rules do not betray any government's identity nor do they betray its program. Secondly, it was defended that the Balance Budget Rule - (the golden rule), is a realist rule that differentiates what is temporary and what is structural a rule which corrects structural problems, but it is compatible with a reasonable accommodation to business cycle fluctuations. Thirdly, the government added that the Balance Budget Rule and the provisions related to debt have more than just financial consequences and play a determinant role in enhancing the quality of Portugal's democracy. The Prime Minister clarified that in Portuguese democracy the golden rule is not an ideological rule and it will solely contribute to raise the transparency of the public debate.

The opposition party (PS) started by affirming full support to the ratification of the treaties, in order to keep their tradition of protection and encouragement of the European project.<sup>[13]</sup> However, António José Seguro MP added that, although the ESM and the Fiscal Compact might answer to the markets, they do not answer the essential problems that the Portuguese people is living, such as the need to fight unemployment. As a way of overcoming this flaw the PS proposed an additional protocol to the treaty then debated with the purpose of giving a social and economic dimension to the Fiscal Compact.<sup>[14]</sup>

See questions VII.6 and IX.4 for further information on the Balanced Budget Rule (also known as the golden rule).

## 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 budgetary interdependence between the balanced budget rule, the TSCG and the MTO has been clarified through the successive alterations of the budgetary framework law since 2011. Article 12.<sup>o</sup> C/1 presently stipulates that the MTO is the one defined in the SGP/BDS (see question VII.10).

Article 12.<sup>o</sup> C/3 stipulates that the structural balance cannot be inferior to the MTO so as to respect the Balanced Budget Rule.

## CASE LAW

IX.7

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

No.

## NON-EUROZONE AND BINDING FORCE

IX.8

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

Not applicable.

## MISCELLANEOUS

IX.9

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

No other relevant information.

[1] <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112s1n95-0017&type=texto&q=regra%20de%20ouro>

[2] <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112s1n95-0035&type=texto&q=regra%20de%20ouro>.and AdditionalProtocol\_PS.pdf.

[3] See: <http://www.bbc.co.uk/news/world-europe-17700059>

[4] See: <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=36873><http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=36873>.

[5] Same procedure mentioned on question V.2.

[6] See: pev\_referendum, be\_referendum, pcp\_referendum and referendum notes pdfs.

[7] See. Article 115 (3).

[8] See: Article 115 (11).

[9] See question IX.1.

[10] Article 10<sup>o</sup> C and G and H of the Lei n.o 37/2013 de 14 de junho que procede à sétima alteração à lei de enquadramento orçamental, aprovada pela Lei n.o 91/2001, de 20 de agosto, e transpõe para a ordem jurídica interna a Diretiva n.o 2011/85/UE, do Conselho, de 8 de novembro, que estabelece requisitos aplicáveis aos quadros orçamentais dos Estados membros.(See: [http://www.crup.pt/images/documentos/Financiamento/Lei\\_37-2013.PDF](http://www.crup.pt/images/documentos/Financiamento/Lei_37-2013.PDF))

[11] [http://www.ideff.pt/xms/files/Iniciativas/varios\\_2013/Apresentacao\\_Prof.\\_Dr.\\_NCC.pdf](http://www.ideff.pt/xms/files/Iniciativas/varios_2013/Apresentacao_Prof._Dr._NCC.pdf)

[12] See PM declarations\_FC. pdf and also:

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n95-0005&type=texto&q=regra%20de%20ouro> and

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n95-0025&type=texto&q=regra%20de%20ouro>

[13]

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n95-0006&type=texto&q=regra%20de%20ouro>

[14]

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n95-0009&type=texto&q=regra%20de%20ouro>

# X - Financial Support

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

([http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm))

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

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

## CONTEXT

### X.1

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

The event that triggered the request for international financial assistance was the rejection in parliament of what came to be known as “PEC IV” (SGP/BDS 2011-2014)[1] in March 2011. At the same time ECOFIN’s reform of SGP was up for debate in parliament too. The package included measures such as the freezing and cutting in pensions and the review and limitation of benefits and tax deductions on IRS and IRC.[2] These measures had been previously negotiated with Germany, the Commission and the ECB. [3] Later on, former Finance Minister Teixeira dos Santos affirmed that the approval of PEC-IV and SGP would have allowed the ECB to buy Portugal’s sovereign debt, helping it to finance itself and alleviating the pressure of the markets; it would have enabled Portugal to benefit of similar conditions that permitted Spain to avoid a bail-out of the economic sector.[4] Instead, its rejection left Prime Minister José Socrates without legitimacy or mandate to represent Portugal in ECOFIN’s meeting of 23 March – during which SGP ought to be approved. This conduced to his resignation; on the same day Portuguese debt interests rate went from 7% to 14%. In 16 April 2011 Portugal’s inability to finance itself led to the request for financial assistance.

Nevertheless, and regardless of the series of events that in early 2011 precipitated the request for financial assistance, already in early 2009, close to the end of term of José Socrates’ first government, Portugal’s overall economic performance was classified as “poor”. That year, the GDP was expected to contract by 3.5%, rising unemployment by 8.5%. Eurobarometer also showed that 92% of the Portuguese saw the economy as “bad” and 95% were depressed about their job situation. A decade of slow growth and the economic and financial crisis exposed Portugal’s frailties

To tackle the escalation of the deficit the government had put into practice a series of public reforms in the sectors of social security, public administration, health, amongst others. These reforms proved hard to impose and most of them did not go through. In attempt to increase competitiveness the government had also pushed for other measures already in 2006 such as the adoption of the “Technological Plan”, [5] “Simplex”, [6] and pushing for greater investment in renewable energies. On renewable energies, Portugal was described as “a model of how to stimulate the economy and

fight climate change". Portugal was expected to create 22.000 new jobs in 2020, by producing over 60% of its electricity.[\[7\]](#)

However, the elections, in late 2009, created a minority PS government (with only 36,55% of the votes). Lack of political consensus and popular support either froze or cancelled the reforms that had been planned or initiated. It must be highlighted that the minority government had little margin of manoeuvre to approve what were already identified as austerity measures aimed at avoiding that Portugal would become the third EU country under financial assistance. Opposition challenged measures presented by the Government to combat the financial crisis; the deficit continued rising and as the measures applied were mostly connected with an increase in taxes their approval was also accompanied of public discontentment.

On 11 March 2011, the Left Block (BE) presented a motion against the government. BE opposed any austerity measures, manifested concern over growing unemployment, potential recession and argued that elections were the "democratic answer" to the crisis.[\[8\]](#) With the support of centre-right wing party PPD-PSD the motion was approved.

A few days later it becomes clear that PEC IV, will be rejected. BE repeatedly accused the government of wanting the parliament to approve a package of measures that put Portugal closer to the "IMF recipe", closer to Greece and Ireland.[\[9\]](#) MPs from PPD-PSD accused the government of presenting yet another "brutal package" of austerity measures and inquired that if after the first PEC came another and another when would it end.[\[10\]](#) Passos Coelho, at the time leader of PPD-PSD announced that PDS would not legitimise PEC IV.

On 23 March, the Parliament adopted five resolutions rejecting PEC IV, coming from PSD, CDS-PP, PCP, BE and Os Verdes. These resolutions blocked the approval of PEC IV and hence left the Government without a mandate to represent Portugal towards EU institutions. As a consequence the President announces that the Prime Minister has presented his resignation. In public declarations the Prime Minister states that "what happened today in Parliament has nothing to do with [him] or the Government but with the country - the country has lost". The following day, Angela Merkel underlines that the PEC IV was about the "stability of the euro", for which any government must be responsible, and regrets that the Portuguese parliament did not support the reforms proposed by Socrates'.[\[11\]](#)

In the end of March, the President announced anticipated parliamentary elections for June 5<sup>th</sup>. Pressure for requesting financial aid increases amidst political turmoil: left wing parties state they will not legitimize the request for financial aid, which they consider a "threat" and "aggravation of circumstances"; Government stated that any request for external aid entailed the negotiation of conditions that exceed the powers of a caretaker government; PSD disputed the latter and stated its support for a request of financial aid - Pedro Passos Coelho ensured that, if he were to be elected prime minister, he would not hesitate to request external aid.

Portugal's banks were threatening a "bond-buyers' go-slow" unless the caretaker government sought financial help from other European Union countries.[\[12\]](#) On 6 April 2011 the ratings agency

Moody's lowered the 'rating' of the bonds of six Portuguese banks,[\[13\]](#) following the lowering of Portugal's rating in three levels by Fitch. The State put on the market 1,005 million euros in debt maturing in October 2011 and March 2012, the latter paying an interest rate 5.902%, 1.571 percentage points more than the last similar issue.[\[14\]](#) On the same day, José Sócrates announces he has addressed a request for financial assistance to the European Commission; the request was formalized on 7 April 2011.

## NEGOTIATION

### X.2

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

The period during which the MoU was negotiated was politically complex: there was an outgoing government and no agreement even between opposition parties. International press labelled it an "undemocratic bailout", advocating rather for the concession of a temporary bridge loan and for waiting for a new government, with full legitimacy to be elected.[\[15\]](#) Instead, the Memorandum was agreed within a 'mixed' team of experts pertaining to the former government and the opposition - there is, however, little information available on these debates. MoU was signed on 17<sup>th</sup> May 2011.

A slightly different version of the MoU had been signed on 3<sup>rd</sup> May 2011 between the Government and the main parties of the opposition (PPD/PSD and CDS/PP). As the government was outgoing this resulted from a demand of the EU and Eurogroup that claimed that negotiations should involve all parties calling for a broad spectrum of agreement among all political parties particularly on the measures of fiscal consolidation and structural reforms. Of course this demand, that took place before elections, can be interpreted as an intervention on national affairs.[\[16\]](#)

Following the elections that took place on 5 June, the newly elected prime-minister Pedro Passos Coelho (leader of PSD) vowed to be "more ambitious" than the MoU, outlining plans for social security, health and education reforms that would go beyond the rescue package.[\[17\]](#) Passos Coelho intended to forge a "social contract" between government, employers and unions, some say following a neo-liberal agenda rather than an economic recovery plan. Its programme for government was described as embracing all measures contained in PEC IV, the MoU and going much beyond[\[18\]](#) But he faced growing resistance from Unions, opposition and public in general.

The government's plans for a "pragmatic constitutional revision" to ease reforms would have needed support from the Socialist opposition, which did not happen.

Prime-Minister Passos Coelho's ambitions to go further than the established in the MoU were partly

intended to demarcate Portugal from Greece.[\[19\]](#) But his election manifesto carried an element of liberal thinking that was new to the dominant political consensus, based on a strong welfare state.[\[20\]](#) He wanted to see the private sector run national health clinics, for example, and to allow companies to offer alternatives to publicly financed social security. Passos Coelho was often accused of using the IMF/EU bail-out as a pretext for putting forward the most conservative right-wing programme in Portugal since 1974.

In parliamentary debates the MoU is often – and early into the new government’s term – referred to as “pact of aggression” by opposition MPs.[\[21\]](#) Also as early as June 2011 left wing opposition accuses the PPD/PSD and CDS/PP coalition government – that had voted against PEC IV, and therefore overthrowing the previous government – of now putting forward what materially could be described as “PEC V” and “PEC VI” (see question X.1).[\[22\]](#) In mid-2012 parliamentary debates around the MoU already focused on the consequences of the MoU in Portuguese society.[\[23\]](#) PCP stated that the recession was deeper than before because Portugal now counted 1,2 million unemployed; and the salaries of those that remained employed were cut, as were holiday and Christmas subsidies, all accompanied by sequential tax increases. CDS-PP intervened to say that the situation was not derived from external financial aid, but a mere product of the previous years’ excessive fiscal weight of the State. It added that the Government was, however, taking measures to protect the poorer, by creating the Social Emergency programme (see question X.12). Counter-accusations included the potential destruction of middle class, replacing welfare state for charity and the deep recession.[\[24\]](#) Verdes (PEV) noted that, since the Troika’s intervention, the economy had receded 3,3% and that the results relating to GDP and deficit would not be attained. The PSD intervened stating that the MoU was being respected and successful, noting the legislative measures taken in the areas of Competition, Labour and Insolvency, the successful transposition of EU Directives, the reform of the law relating to local and regional financing and the privatizations of EDP and REN; it further underlined the enhancement of social protection and support to enterprises, as well as measures to combat unemployment.

Overall, parliament debates all through the present government’s term are strongly marked by exchange of accusations on whose responsibility is it for the signing of the MoU, over who negotiated the MoU and who has been responsible for the aggravation of its demands after each troika mission.

In the end of 2012 Prime Minister Pedro Passos Coelho initiated a campaign for the “refoundation” of the MoU and the “refoundation” of the (Welfare) State. This was as an attempt to again use the MoU to push for Constitutional amendment. In October 2013 a “Script for State Reform was approved in Council of Ministers”.[\[25\]](#) Despite efforts, it did not find any echo among opposition parties or popular support. All parties in opposition blocked the creation of a Parliamentary Commission for State Reform – blocking the reform itself – by refusing to indicate MPs to integrate it.[\[26\]](#)

## STATUS INSTRUMENTS

### X.3

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

On 5 May 2011, the Council of Ministers approved, through a resolution, both the Memorandum of Understanding on Specific Economic Policy Conditionality, negotiated with the EC in collaboration with the ECB,[\[27\]](#) and the Memorandum of Economic and Financial Policies negotiated with IMF[\[28\]](#). In the same resolution the Council of Ministers delegated on the Ministry of Finance the competence to sign the Memorandums and any other instruments deemed necessary for the implementation of these instruments. The legal basis for the approval were articles 186<sup>o</sup>, n.º 5 and 199.º of the Constitution (Council of Ministers Resolution - nº8/2011, 17 May 2011).[\[29\]](#) Both documents were sent respectively to the EU and the IMF by letters signed by the Minister of Finance and the Governor of the Bank of Portugal. The letter to the IMF solicited for financial support from the Extended Fund Facility. Moreover, throughout public debate these two instruments are almost always referred to as one single Memorandum of Understanding (MoU). Their legal status in the national legal order is also not necessarily the same.

Their internal approval procedure would suggest their strict political nature but this is far from being unchallenged in the national legal order.[\[30\]](#) For starters, the Constitutional Court has considered them to be “legally binding acts”.[\[31\]](#) In addition, most scholars are inclined to support this view by classifying them as International Treaties. Yet others consider that the one with IMF consists of two unilateral acts and the one with the EU consists of some version of EU law, but both with merely political obligations.[\[32\]](#) In addition, there are those that consider that the instruments cannot be considered neither International Treaties nor unilateral acts but international contracts; these scholars also consider that this has been the interpretation of the Constitutional Court.[\[33\]](#) In reality, there is a plurality of views on the nature of the MoU.[\[34\]](#)

The Memorandum of Economic and Financial Policies negotiated with IMF can be considered “a sui generis agreement with both legal and political commitments more suitable to have been approved as an international treaty rather than a mere political agreement”, an international treaty between a State and an International Organization whose object is a loan, which is dependent of a fixed-term and a condition precedent [\[35\]](#) The international growing trend to consider it as a set of two unilateral acts was rejected by several scholars based on the assumption that both parties are legally bound to its execution, even if it contains political obligations. Among other considerations, neither Portugal could unilaterally decide not to pay back the loan nor could IMF unilaterally alter conditions under which the loan would be granted. Both actions would be a basis for exception of compliance.

Nevertheless, the parties (PT and IMF) do seem to have tried to keep it as a mere political agreement i.e. it was never signed by the IMF; And in addition, IMF defines it as an unilateral act of acceptance of the request and IMF also explicitly defines that contractual language is to be avoided in MoU.[\[36\]](#) The above mentioned scholars have labelled these efforts as “fictional”. Adding that the non-compliance of this agreement by one of the parties would always have legal consequences i.e. if conditions were not met IMF would not continue to transfer the loan and if IMF would stop transferring Portugal would stop pursuing the execution of the political commitments previously



assumed. Oddly enough it seems to be exactly in the interested of flexibility that IMF has fostered its nature of unilateral act, so that deadlines and measures could be easily adapted to the ever changing conditions in bailed-out countries. In PT, an aggravating economical recession accompanied the implementation of the MoU. As previously mentioned this is a highly controversial issue and other scholars are more conservative and consider IMF's financing to be what IMF says it is "the result of an unilateral decision by IMF", the MoU working strictly as a sort of "loan guarantee".[\[37\]](#)

Similar considerations have been subject of debate on the Memorandum of Understanding on Specific Economic Policy Conditionality, negotiated with the EC in collaboration with the ECB. The later is however less controversial as to its legal nature. First, it was also signed by the counterpart, in this case the EC. Second, it is easier to identify it as legally binding because its text invoques legally binding European Law, it uses language used by ECOFIN such as the elements of "strict conditionality" and makes systematic reference to the existence of an "agreement". In addition, because many of its provisions are budgetary they can be interpreted as deriving from the SGP and the excessive deficit procedure. The non-compliance with the later would of course result in the application of legal sanctions. [\[38\]](#)

(see questions IV.6, X.1 and X.2)

## **TRANSPOSITION NATIONAL LEGAL ORDER**

### X.4

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

At the national level, and as it was mentioned above, it has been subject of great discussion the terms in which the MoU was drafted and approved. Some scholars consider it to have been adequately approved by the government within its contractual and therefore administrative competences.[\[39\]](#) Many doubt the extent to which its approval respected the Constitution (see question X.3 and question X.8). A few describe its approval as a "clear proof of how reality's brutality disrupted the law and Constitution".[\[40\]](#)

A strict interpretation would prevent any Portuguese court from applying it or for it to have effects in the national legal order.[\[41\]](#) Notwithstanding, this would not per se be a basis for challenging it in international courts. There is an undeniable strong political commitment behind the approval of the MoU. For these reasons, it is widely accepted that in reality it does produce effects in national legal order.

The MoU was approved by a caretaker government within its residual administrative powers - article 186.<sup>o</sup>, n.<sup>o</sup> 5 and article 199.<sup>o</sup>, g) of the Constitution. For the purpose of clarification, and if we accept that the MoU is a sui generis agreement between a State and an International organization, that includes political obligations of legal consequences (see question X.3), then it should have followed the regime of approval of international treaties. Even if we would abstract from the fact that it was a caretaker government approving it, the MoU could have only been approved within its political powers - articles 197.<sup>o</sup>, c) and j) as well as 200.<sup>o</sup>, n.<sup>o</sup> 1, f) of the Constitution.

Notwithstanding, in the present case, as the obligations included in the MoU fall into Parliament

competences, it should have been actually approved by the Parliament - as to validate special "general conditions" of the agreement - article 161.<sup>o</sup>, h).[\[42\]](#) Even if the parliament had been dissolved on 7 April, MPs mandate was still valid and the powers of the Parliament's permanent commission remained intact - article 172.<sup>o</sup> n.<sup>o</sup> 3 of the Constitution.[\[43\]](#) It is therefore doubtful that it could have been merely approved by the Council of Ministers.

In perspective, and as a question to pose to those that do consider the MoU to have been appropriately approved by the government: how would it be justifiable that the SGP and various PECs require parliament approval but not an instrument that contains more grave consequences to the legal order such as the MoU (Ruling n.<sup>o</sup> 396/2011, 353/2012, 187/2013: see the Annex).[\[44\]](#)

In addition, it is arguable whether it should have been adopted as an International Treaty or in the form of International "Agreement".[\[45\]](#) In the Portuguese national legal order there is a difference between International Treaty and International "Agreement". This is irrelevant for International Public Law, as both are, for all possible purposes, an International Treaty.[\[46\]](#) This difference amounts only to who is competent for its approval at domestic level. While the treaty is ratified by the President of the Republic, the "Agreement" (in Portuguese "Acordo") is signed by the President of the Republic (according to article 161, i) and 197, 1, c) of the Constitution.). After its approval in the Council of Ministers the MoU was only signed by the Minister of Finance (the latter under Law Decree n.<sup>o</sup> 321/2009, 11 of December).[\[47\]](#)

## ROLE PARLIAMENT

### X.5

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

Parliament's role is to legislate within the powers conferred by the Constitution in the terms described in articles 161.<sup>o</sup> to 170 of the Constitution. Therefore it discussed, approved/disapproved bills intended to implement the measures agreed in the MoU (i.e., every bill which transposes the measures in the MoU is discussed in the Parliament and therein approved or rejected).

In addition, in the scope of the parliamentary discussions and legislative work, inquiry commissions were created to accompany not only the application of the MoU per se, but also the implementation of some of the measures provided for in the instrument (i.e., the Parliament creates specialized inquiry commissions designed to make sure the MoU is duly implemented in general - that is, that the measures taken are effectively transposing the MoU - and also to accompany the implementation of these measures).

In reference to the latter, several parliamentary committees were created: inquiry committee to analyse the facts that led to the financial crisis; committee to accompany the financial assistance programme;[\[48\]](#) inquiry committee on the process of nationalization, management and sale of BPN bank (bailed-out bank); inquiry committee on public-private partnerships; inquiry committee on

high-risk activities by public companies, committee on the reform of the Portuguese Central Bank amongst others.

As to role the Parliament should have assumed in the adoption of financial assistance instruments see question X.4.

## ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

The Memorandum of Understanding was signed on 6 May 2011 by the European Commission, the International Monetary Fund and the European Central Bank and for Portugal by the Minister of Finance after having been approved by the Council of Ministers. It consists of a series of measures, amongst which the following can be counted:[\[49\]](#)

- Numerous reductions, the first one being that of the deficit. The Government debt-to-GDP ratio is to be decreased as of 2013, with reductions of the deficit to 5.9% GDP in 2011, 4.5% GDP in 2012 and 3.0% GDP in 2013. These reductions will also reflect in the reorganisation of the local government municipalities and civil parishes, as well as in what refers to positions in the central administration. This should be accompanied by a decrease in the staff admissions for that same central administration, together with constraints in both wages and promotions, with mobility being encouraged.
- In what concerns health benefits, systems such as ADSE, ADM and SAD (the so-called public employment schemes) will see their budgets constrained; the National healthcare system fees will be increased.
- The pensions of the public sector which amount is above 1500€ will be reduced according to progressive rates and indexation rules are not to be applied.
- Public enterprises, ie which owner is the State, will suffer a number of changes in order to decrease the operating costs and increase revenues. Their tariff structure is to be reviewed so as to reduce any subsidies.
- The tax deductions in the corporate system, together with personal income tax benefits, will be reduced. Different caps will be applied to the existing categories. Cash social transfers will now be subject to individual taxes. As for the VAT revenues, they shall be raised, with a correspondent reduction of exemptions and modifications to the current categories.
- As regards the banking system, Caixa Geral de Depósitos (CGD) will reduce the activities outside the country and focus on reduction of the subsidiaries and investments in the insurance arm of the group. Banco Português de Negócios (BPN) is to be sold.
- ANA, TAP and the freight branch of CP, in transports, GALP, EDP and REN, in energy, and Caixa de Seguros, in insurance, will be subject to an accelerated privatisation process.

- Golden shares and other special rights are to be eliminated.
- Gas and electricity tariffs will be phased out by January 2013.
- There shall be no increase in the minimum wage, unless justified by notable exceptions.
- In what concerns the judicial system, new court management models are to be applied, amongst which an encouragement of settlement mechanisms.

## MISSIONS

### X.7

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

The main structure created to accompany troika review missions was the ESAME (Estrutura para o Acompanhamento da Execução do Memorando de Entendimento). ESAME integrated the cabinet of the Deputy State Secretary to the Prime-Minister, its mission was to monitor, in conjunction with the Ministry of Finance, the full and timely compliance of the measures agreed at the signing of the MoU. It also enabled permanent communication and collaboration between the Government, the representatives of the European Union, International Monetary Fund and European Central Bank, on all matters relating to the technical implementation of the agreed measures.[\[50\]](#) ESAME was extinct in 30 June 2014.

All Troika missions were anticipated of great public uproar and programmatic discussions.

As to public demonstrations, protests were leaded both by short-lived anti-austerity organizations and unions and started as early as 2010/2011. On 12 March 2011, around 300.000 people demonstrated in Lisbon and 80.000 in Oporto. The demonstration was organized by "Geração à Rasca" ("Desperate Generation"), an organization similar to Spanish Indignados. The following month, the organizers of the Geração à Rasca demonstration created the platform M12M: Movimento 12 de Março ('12 March Movement'). The platform Que se Lixe a Troika ("Screw the Troika") organized subsequent series of protests that lasted until late 2013, early 2014 most of them in anticipation of Troika mission. These type of organizations got a lot of media attention but - lacking clear ideology and long term goals - their ability to mobilize declined.

Between 2011 and 2014 there has been a revival of icons of the 1974 revolution such as the song of "Grândola Vila Morena", "FMI" (IMF) and "Vampiros". Production of resistance music has peaked - such as "Parva que sou" of the band "Deolinda", or the Eurovision satirical song "Homens da Luta".[\[51\]](#) Contemporary artists have used the public space to create crisis-related artwork. As an example, a painting portraying Prime-Minister Passos Coelho and Vice-Prime Minister Paulo Portas as Angela's Merkel puppets has become a symbol, not only making the headlines upon its creation but from then on many times accompanying crisis-related news. It has, as others, come to incorporate the visual memory of the crisis.[\[52\]](#)

In the parliament, troika and troika missions were mentioned in respect to the adoption of legislation. In addition, the parliamentary commission created for accompanying the implementation of the programme (CEAMPAFP) would meet before/after each troika evaluation. Government often met with social partners and unions<sup>[53]</sup> Lengthy discussions touched upon which measures were being adopted to comply with the MoU, the deficit, or the overall state-of-play regarding the budget.<sup>[54]</sup>

Support for the present government declined. Public demonstrations of discontent were organised gathering thousands of people. Troika missions became associated with institutional democratic deficit, impoverishment of the population and the country's long-term economical decline.

In general, public debates started focusing on how the successive changes of the programme (as a consequence of every troika mission) felt to be aimed at PT paying back the loan - at the cost -, and not towards boosting its economy. Tension within the government also grew as CDS-PP for more than once manifested publicly its availability to re-negotiate the MoU in terms less damaging for PT.

On the legal change see also the annexes about the case law.

## **CASE LAW INTERNATIONAL INSTRUMENTS**

X.8

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

There have been no direct challenges against the financial instruments. In its rulings 396/2011, 353/2012, 187/2013, 494/2013 and 602/2013 the Constitutional Court takes note of the MoU and acknowledges its "legally binding nature". The Constitutional Court recognizes that the financial assistance programme establishes "firm commitments" for Portugal; that these commitments are "more binding than the SGP"; and that "Portugal should adopt a set of measures and legislative initiatives, including structural ones, in connection with public finance, financial stability and competitiveness, during 3 years" - Ruling n. ° 396/2011<sup>[55]</sup>. As mentioned above, the Constitutional Court considers the MoU to be legally binding as their legal basis are international treaties - ruling n.° 396/2011, 353/2012, 187/2013, 494/2013, 602/2013.

The Constitutional Court did not, at any point in time, pronounce itself on the MoU constitutionality. Could the Constitutional Court have recognized its legally binding nature with pronouncing itself on its constitutionality? Some scholars have stated that it is a far too serious breach of the Constitution to have been ignored. Besides not having declared that the MoU would not have been applicable in the national legal order the Court has also been criticised for not pronouncing on the clear breach of rules of form and competence under which the MoU should have been approved (see questions X.3, X.4 and X.5). However, as it was a *fait accompli* - and as the MoU was binding in the international legal order - the same scholars consider that the Constitutional Court should acknowledge that too - without, nevertheless, disregarding the breaches to the Constitution by "the political system".<sup>[56]</sup> Scholars that do not consider the MoU should have been approved as an International Treaty also do not consider the Constitutional Court had any reason to pronounce on its conformity with the Constitution.<sup>[57]</sup>

All scholars, regardless of their views on the actual nature of the MoU are unanimous on the extent to which the executive, the political parties and the political system as a whole was, at the time, constrained by “the reality of the facts and the “control of the global financial capitalism system”.[\[58\]](#)

Please check also the annexes with the description of relevant case law of the Portuguese Constitutional Court.

## **CASE LAW IMPLEMENTING MEASURES**

X.9

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

For more information see the description of rulings n.º 396/2011, n.º 353/2012, n.º 187/2013, n.º 474/2013, n.º 602/2013, n.º 862/2013 and n.º 413/2014 in the annexes regarding case law.

## **BOND PURCHASES ECB**

X.10

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

The ECB bought bonds under the SMP during 2010 and 2011. Information about the level of ECB's exposure is almost non-existent. In 2013, the ECB declared that in the Portuguese case it was up to 22800 million euros. [\[59\]](#)

In September 2012 it was announced that the ECB would buy bonds from the Portuguese Republic in the scope of OMT (outright monetary transactions); however, due to the fact that the Portuguese crisis was being held under the IMF/temporary emergency funds, the ECB made clear that such would be expected to happen only when the country regained access to the markets.

Portugal has in the meantime exited the financial assistance programme and OMT was so far never used by the ECB.

## **CONDITIONALITY BOND PURCHASES ECB**

X.11

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

See question X.10.

## MISCELLANEOUS

X.12

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

According to official data from the European Commission Portugal is now under post-Programme surveillance (PPS) until at least 75% of the financial assistance received has been repaid. PPS may last at least until 2026.[\[60\]](#)

[\[1\]](#) PEC is the acronym for the Stability Programme in Portuguese and it sets set of national measures to try to curb the crisis. In previous years PEC I, II and III had already been approved.

[\[2\]](#) “Behold PEC IV” by Pedro Carvalho, 10 December 2010, in Económico available at [http://economico.sapo.pt/noticias/eis-o-pec-iv\\_106885.html](http://economico.sapo.pt/noticias/eis-o-pec-iv_106885.html)

[\[3\]](#) For further details on the negotiation v. Interview with José Socrates in Revista Expresso, 19.10.2013, p.24ss

[\[4\]](#) Intervention of Finance Minister Teixeira dos Santos in Parliament available at [http://www.tsf.pt/PaginaInicial/Economia/Interior.aspx?content\\_id=2989526](http://www.tsf.pt/PaginaInicial/Economia/Interior.aspx?content_id=2989526). See also “Teixeira dos Santos states proposals of the government for OE 2014 go too far”, 24 October 2013 available at [http://www.jornaldenegocios.pt/economia/politica/detalhe/teixeira\\_dos\\_santos\\_diz\\_que\\_propostas\\_do\\_governo\\_para\\_o\\_oe2014\\_vao\\_longe\\_demais.html](http://www.jornaldenegocios.pt/economia/politica/detalhe/teixeira_dos_santos_diz_que_propostas_do_governo_para_o_oe2014_vao_longe_demais.html)

[\[5\]](#) For more information on the “Technological Plan”, see <http://www.cnel.gov.pt/en/technological-plan/about-the-plan/list.aspx>.

[\[6\]](#) For more information on “Simplex” see <http://www.simplex.pt/english.html> and <http://www.oecd.org/regreform/policyconference/46312938.pdf>.

[\[7\]](#) “Socratic Method”, 1 July, 2009, available at <http://www.economist.com/node/14560974>.

[\[8\]](#) Parliamentary debate of 16 March 2011, available at <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1111sl2n64-0009&type=texto&q=moção%20de%20censura>

[\[9\]](#) Parliamentary debate of 16 March 2011, at <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1111sl2n64-0009&type=texto&q=moção%20de%20censura>

[\[10\]](#) Parliamentary debate 16 March 2011 <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1111sl2n64-0014&type=texto&q=moção%20de%20censura>

[\[11\]](#) “Portugal’s Crisis Hijacks EU Summit” 23 March 2011, available at <http://www.nytimes.com/video/business/100000000741912/crisis-o.html> and “The death of Socrates”, 23

March 2011, available at [http://www.economist.com/blogs/newsbook/2011/03/portugals\\_government\\_collapses](http://www.economist.com/blogs/newsbook/2011/03/portugals_government_collapses)

[12] “Banks 1 Portugal 0”, 6 April 2011, Financial Times, available at <http://www.ft.com/intl/cms/s/0/a52a5c16-6085-11e0-9fcb-00144feab49a.html?siteedition=intl#axzz3FyPVxBO> W.

[13] See *Economia Expresso* of 6<sup>th</sup> April 2011, <http://expresso.sapo.pt/moodys-baixa-iratingi-de-7-bancos-portugueses=f642082>

[14] Source: [http://www.tsf.pt/PaginaInicial/Economia/Interior.aspx?content\\_id=1823753&page=1](http://www.tsf.pt/PaginaInicial/Economia/Interior.aspx?content_id=1823753&page=1)

[15] <http://www.nytimes.com/2011/04/15/opinion/15fri2.html?module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22RI%3A5%22%7D>

[16] Francisco Pereira Coutinho, “A natureza jurídica dos memorandos da “troika”” in *Themis*, ano XIII, n.ºs 24/25, 165..

[17] A grim inheritance, 9 June 2009, *The Economist* at <http://www.economist.com/node/18805349>, “Politicians battle over Portuguese bail-out”, 16 May 2011, *Financial Times*.

[18] Parliamentary debate 19 May, 2011, <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1111sl2n75-0012&type=texto&q=memorando%20de%20entendimento&sm=p>

[19] As an example on why the PM considered that it was necessary to go “beyond” the MoU, parliamentary debate 30 June 2011, available at <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n3-0027&type=texto&q=memorando%20de%20entendimento&sm=p>.

[20] Parliamentary debate 1 July 2011 on which the “restructuring of the State” in the scope of the MoU is discussed <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n3-0012&type=texto&q=memorando%20de%20entendimento&sm=p>. “A grim inheritance”, 9 June 2011 available at <http://www.economist.com/node/18805349>.

[21] Parliamentary debate 20 October 2011. <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n34-0036&type=texto&q=memorando%20de%20entendimento&sm=p>

[22] Parliamentary debate 30 June 2011, <http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n3-0027&type=texto&q=memorando%20de%20entendimento&sm=p>

[23] Report of Parliament intervention of March 21<sup>st</sup>, 2012 - [http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=92411&ACT\\_TP=ITG](http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheActividadeParlamentar.aspx?BID=92411&ACT_TP=ITG)

[24] As examples of interventions in Parliament in which the government was accused of replacing rights with



charity see debate of 30 June 2011,

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl1n3-0055&type=texto&q=caridade&sm=p>

and debate of 14 February 2014

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl2n54-0005&type=texto&q=caridade&sm=p>

[25] Document entitled “A Better State”

<http://www.portugal.gov.pt/media/1228115/20131030%20guiao%20reforma%20estado.pdf>

[26] Merely as an example see parliamentary debate 30 January 2013, during which CDS/PP MP insists that restructuring of the Welfare State results from the MoU, available at

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl2n47-0006&type=texto&q=memorando%20de%20entendimento&sm=p>. In June 2014 a parliamentary debate during which the government insists on the

“State reform” and alluding to the refusal of the opposition to integrate a Commission to discuss it

<http://debates.parlamento.pt/page.aspx?cid=r3.dar&diary=s1112sl3n93-0031&type=texto&q=reforma%20do%20estado&sm=p>.

[27] [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2011-05-18-mou-portugal\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf)

[28] <http://imf.org/external/np/loi/2011/prt/051711.pdf>

[29] <https://dre.pt/application/dir/pdf2sdip/2011/05/095000000/2116421164.pdf>

[30] Eduardo Correia Baptista in “Natureza Jurídica dos memorandos de FMI e a UE”, Revista da Ordem dos Advogados, 71, 2, 2011, p. 480.

[31] Acórdão do Tribunal Constitucional n.º 353/2012, de 5 de Junho.

[32] Francisco Pereira Coutinho, “A natureza jurídica dos memorandos da “troika”” in Themis, ano XIII, n.ºs 24/25, 147-179.

[33] Francisco Pereira Coutinho in “A natureza jurídica dos memorandos da Troika”, Themis, 24/25, pag. 147 ss. Carlos Blanco de Moraes in “Curso de Direito Constitucional, Teoria da Constituição em Tempo de Crise do Estado Social” Coimbra Editora, 2014, 724-726.

[34] For an overview of the plurality of views on the MoU see “O Memorando da Troika em análise”, da Revista de Finanças Públicas e Direito Fiscal, 4, 2, 2011, pp. 15-70 and “Troika Ano II. Uma avaliação de 66 cidadãos”, Edições 70, 2013, coordinated by Eduardo Paz Ferreira.

[35] Eduardo Correia Baptista in “Natureza Jurídica dos memorandos de FMI e a UE”, Revista da Ordem dos Advogados, 71, 2, 2011, pág. 483. Of the same opinion Filipa Lemos Caldas and Tomás Arantes e Oliveira, “A vinculatividade do Memorando de Entendimento da Troika”, Revista de Direito Público e Finanças, 4, 4, 2011, pp. 173-176, André Moz Caldas, “A desinteressantíssima Trindade ou a Troika revisitada”, Eduardo Paz Ferreira (coord.), “Troika Ano II. Uma avaliação de 66 cidadãos”, Edições 70, 2013, pp. 88 e 89, and Nuno Cunha Rodrigues, “O memorando da Troika em análise - precisão geral”, Revista de Finanças Públicas e Direito Fiscal, 4, 2, 2011, p. 16, que considera ser discutível se o memorando configura “um acordo internacional ou um contrato de direito privado”.

[36] Guidance etc, ECB calls it “fictional” due to intensive negotiations that translate into a contract to which

both parties are bound.

[37] Francisco Pereira Coutinho, “A natureza jurídica dos memorandos da troika”, p. 161.

[38] Eduardo Correia Baptista, pp. 489. Similarly, Francisco Pereira Coutinho called it “a non-typified act of European Union Law” pp. 167. However, the later also concludes that both MoU are not legally binding instruments, adding that whether they are or not legally binding is “irrelevante” vis-à-vis the social, political and economical consequences if PT would not comply with their terms; the regular functioning of state institutions depends on the loan transfers what transforms the country, for all practical purposes, into a “international protectorate”.

[39] Such as Carlos Blanco de Moraes in “Curso de Direito Constitucional, Teoria da Constituição em Tempo de Crise do Estado Social” Coimbra Editora, 2014, 724-726.

[40] José de Melo Alexandrino in “Jurisprudência da Crise. Das questões prévias às perplexidades” in “O Tribunal Constitucional e a Crise, ensaios críticos, Almedina, 2014, pp. 53.

[41] ECB does not consider it to fulfill article 8/2 of the Constitution; it would not produce effects in the national legal order.

[42] Eduardo Correia Baptista in “Natureza Jurídica dos memorandos de FMI e a UE”, Revista da Ordem dos Advogados, 71, 2, 2011, pág. 485 and José de Melo Alexandrino in “Jurisprudência da Crise. Das questões prévias às perplexidades” in “O Tribunal Constitucional e a Crise, ensaios críticos, Almedina, 2014, pp. 54.

[43] José de Melo Alexandrino in “Jurisprudência da Crise. Das questões prévias às perplexidades” in “O Tribunal Constitucional e a Crise, ensaios críticos, Almedina, 2014, pp. 55.

[44] José de Melo Alexandrino in “Jurisprudência da Crise. Das questões prévias às perplexidades” in “O Tribunal Constitucional e a Crise, ensaios críticos, Almedina, 2014, pp. 55.

[45] Eduardo Correia Baptista in “Natureza Jurídica dos memorandos de FMI e a UE”, Revista da Ordem dos Advogados, 71, 2, 2011, pág. 485.

[46] Overall, Determining whether the government or the parliament are competent to bind Portugal to International Treaties, as well as if whether the appropriate form is Treaty or “Agreement” depends of the combined analysis of articles 161.<sup>o</sup>, 164.<sup>o</sup>, 197.<sup>o</sup>, 198.<sup>o</sup> and 200.<sup>o</sup> of the Constitution.

[47] Eduardo Correia Baptista in “Natureza Jurídica dos memorandos de FMI e a UE”, Revista da Ordem dos Advogados, 71, 2, 2011, pág. 485.

[48] <http://www.parlamento.pt/sites/com/XIILeg/CEAMP/AFP/Paginas/default.aspx>

[49] These measures result from a reading and free translation of the measures contained in the explanations to the MoU, in its Portuguese version.

[50] Resolução de Conselho de Ministros n.º 112/2011, 11 Julho 2011, defined its mission and composition. For more information see

<http://www.portugal.gov.pt/pt/os-ministerios/primeiro-ministro/secretarios-de-estado/secretario-de-estado-adjunto-do-primeiro-ministro/sobre-o-secretario-de-estado-adjunto-do-primeiro-ministro.aspx>

[51] European Parliament MP Rui Tavares on Deolinda's song in Blitz, 4 February 2011, available at <http://blitz.sapo.pt/ainda-os-deolinda-depois-da-geracao-rasca-a-geracao-parva=f70478> . "Deolinda, the band that gives voice to Geração à rasca" in Diário de Notícias, 12 March 2011, available at [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=1804652](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1804652). On the song "Luta is Alegria" by "Homens da Luta" in Blitz, 11 March 2011, <http://blitz.sapo.pt/jel-responde-a-miguel-sousa-tavares-os-homens-da-luta-sao-muito-mais-que-demagogicos=f71591>. See "Old songs return to the streets" in Público, 10 April 2011, available at <http://www.publico.pt/sup-publica/jornal/as-velhas-cancoes-voltaram-a-rua-21740426>

[52] Diário de Notícias, 24 October 2012, available at [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=2844550](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=2844550) Jornal de Notícias, 26 October 2012, available at [http://www.jn.pt/PaginaInicial/Politica/Interior.aspx?content\\_id=2849539](http://www.jn.pt/PaginaInicial/Politica/Interior.aspx?content_id=2849539)

[53] For more information on the CEAMPAPF (2011-07-06 a 2014-09-25) and reports of its meetings see <http://www.parlamento.pt/sites/com/XIIILeg/CEAMPAPF/Paginas/default.aspx>. Diário de Notícias, 11 July 2011, available at [http://www.dn.pt/inicio/portugal/interior.aspx?content\\_id=1903989](http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1903989).

[54] Merely as an example see Jornal i, 11 September 2013, available at <http://www.ionline.pt/artigos/dinheiro/programa-cautelar-segundo-resgate-sao-factos-antagonicos>.

[55] José de Melo Alexandrino in "Jurisprudência da Crise. Das questões prévias às perplexidades" in "O Tribunal Constitucional e a Crise, ensaios críticos, Almedina, 2014, pp. 51-68.

[56] José de Melo Alexandrino in "Jurisprudência da Crise. Das questões prévias às perplexidades" in "O Tribunal Constitucional e a Crise, ensaios críticos, Almedina, 2014, pp. 51-68.

[57] Carlos Blanco de Moraes in "Curso de Direito Constitucional, Teoria da Constituição em Tempo de Crise do Estado Social" Coimbra Editora, 2014, 724.

[58] José de Melo Alexandrino in "Jurisprudência da Crise. Das questões prévias às perplexidades" in "O Tribunal Constitucional e a Crise, ensaios críticos, Almedina, 2014, pp. 51-68. Constitutional Court Ruling n.º 65/2002 and the circumstances of "necessity" and "urgency" vis-à-vis "financial rupture" legitimize its approval by a caretaker government, in this sense Carlos Blanco de Moraes in "Curso de Direito Constitucional, Teoria da Constituição em Tempo de Crise do Estado Social" Coimbra Editora, 2014, 725.

[59] In Jornal de Negócios, 28 February 2014 available at [http://www.jornaldenegocios.pt/mercados/detalhe/bancos\\_voltam\\_a\\_apostar\\_na\\_divida\\_nacional\\_apos\\_fotografia\\_do\\_bce.html](http://www.jornaldenegocios.pt/mercados/detalhe/bancos_voltam_a_apostar_na_divida_nacional_apos_fotografia_do_bce.html)

[60] For more information see [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/portugal/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/portugal/index_en.htm)