



## ***CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: CYPRUS***

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# I POLITICAL CONTEXT

## POLITICAL CHANGE

### I.1

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

The impact of the financial crisis on Cyprus was the shift of the public's and politicians' attention from the 'Cyprus dispute' <sup>1</sup> to the economic condition and the public finance of the country. Cyprus 'experienced' three elections during this very unstable period: One presidential election in 2008, one parliamentary in 2011 and one presidential in February 2013 – all of them scheduled to take place in the respective dates.

The governmental system of Cyprus is presidential democracy. The executive power is exercised by the President and the Vice-President of the Republic,<sup>2</sup> as well as the Council of Ministers of the Republic of Cyprus, as provided in Art. 46 and 54 of the Constitution.<sup>3</sup> The

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<sup>1</sup> The 'Cyprus dispute' refers to the ongoing conflict between the Republic of Cyprus and Turkey, over the Turkish occupied northern part of Cyprus.

<sup>2</sup> The position is currently vacant as it is reserved for a Turkish Cypriot.

<sup>3</sup> Article 46 of the Constitution of the Republic of Cyprus reads as: "The executive power is ensured by the President and the Vice-President of the Republic.

The President and the Vice-President of the Republic in order to ensure the executive power shall have a Council of Ministers composed of seven Greek Ministers and three Turkish Ministers. The Ministers shall be designated respectively by the President and the Vice-President of the Republic who shall appoint them by an instrument signed by them both. The Ministers may be chosen from outside the House of Representatives.[...] The Council of Ministers shall exercise executive power as in Article 54 provided.[...]"

Art. 54 of the Constitution of the Republic of Cyprus reads as: "Subject to the executive power expressly reserved, under Articles 47, 48 and 49, to the President and the Vice-President of the Republic, acting either separately or conjointly, the Council of Ministers shall exercise executive power in all other matters other than those which, under the express provisions of this Constitution, are within the competence of a Communal Chamber, including the following:

- (a) the general direction and control of the government of the Republic and the direction of general policy;
- (b) foreign affairs as in Article 50 set out;
- (c) defence and security, including questions thereof as in Article 50 set out;
- (d) the co-ordination and supervision of all public services;
- (e) the supervision and disposition of property belonging to the Republic in accordance with the provisions of this Constitution and the law;
- (f) consideration of Bills to be introduced to the House of Representatives by a Minister;
- (g) making of any order or regulation for the carrying into effect of any law as provided by such law;
- (h) consideration of the Budget of the Republic to be introduced to the House of Representatives.

(translation

from:

[http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY\\_Constitution.pdf](http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf))

legislative power is vested in the House of Representatives and is exercised by the House of Parliament (or House of Representatives) in accordance with Art. 61 of the Constitution of the Republic.<sup>4</sup> The Communal Chambers may also have legislative powers with regard to specific matters, as stipulated in Art. 87 of the Constitution of the Republic.<sup>5</sup>

In Cyprus, there are two different types of elections, which take place every five years. The one is the 'presidential election' through which the President of the Republic, head of the state and of the government, is elected directly from the people of Cyprus. Amongst his other powers, the President of the Republic appoints (and dismisses) the members of the Council of Ministers of the Republic (thus forming the government) as well as the independent state officials and judges of the Supreme Court and he has the right to veto any draft bills from becoming laws of the Republic. President Christofias of the AKEL party (adjacent to the left political ideology) won the presidential elections of 2008, while the Pro European and liberal conservative party DESI (Democratic Rally) and its president Nicos Anastasiades won the presidential elections of 2013, right before the signing of the 'Loan

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<sup>4</sup> Article 61 of the Constitution of the Republic of Cyprus reads as: "The legislative power of the Republic shall be exercised by the House of Representatives in all matters except those expressly reserved to the Communal Chambers under this Constitution." (translation from: [http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY\\_Constitution.pdf](http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf))

<sup>5</sup> Art. 87 of the Constitution of the Republic of Cyprus reads as: "1. The Communal Chambers shall, in relation to their respective Community, have competence to exercise within the limits of this Constitution and subject to paragraph 3 of this Article, legislative power solely with regard to the following matters: (a) all religious matters; (b) all educational, cultural and teaching matters; (c) personal status; (d) the composition and instances (βαθμούς δικαιοδοσίας - dereceleri) of courts dealing with civil disputes relating to personal status and to religious matters; (e) in matters where the interests and institutions are of purely communal nature such as charitable and sporting foundations, bodies and associations created for the purpose of promoting the well-being of their respective Community; (f) imposition of personal taxes and fees on members of their respective Community in order to provide for their respective needs and for the needs of bodies and institutions under their control as in Article 88 provided; (g) in matters where subsidiary legislation in the form of regulations or bye-laws within the framework of the laws relating to municipalities will be necessary to enable a Communal Chamber to promote the aims pursued by municipalities composed solely of members of its respective Community; (h) in matters relating to the exercise of the authority of control of producers' and consumers' co-operatives and credit establishments and of supervision in their functions of municipalities consisting solely of their respective Community, vested in them by this Constitution: Provided that (i) any communal law, regulation, bye-law or decision made or taken by a Communal Chamber under this sub-paragraph (h) shall directly or indirectly be contrary to or inconsistent with any by which producers' and consumers' co-operatives and credit establishments are governed or to which the municipalities subject, (ii) nothing in paragraph (i) of this proviso contained shall be construed as enabling the House of Representatives to legislate on any matter relating to the exercise of the authority vested in Communal Chamber under this sub-paragraph (h): (i) in such other matters as are expressly provided by this Constitution. (translation from: [http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY\\_Constitution.pdf](http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf))

Agreement'. Despite the 'left' parties' pleas, no referendum has, so far, taken place, with reference to the crisis. The parliamentary (legislative) elections also take place every 5 years – with the last one taking place in May 2011. Among the many responsibilities of the Parliament figure the amendment of the Constitution, the enactment of legislation and the parliamentary scrutiny and control.<sup>6</sup> The House of Parliaments further influences the formulation of the economic and the financial policy of the Republic and is responsible for the investiture of the President of the Republic.<sup>7</sup>

In the 2011 Parliament elections the Democratic Rally (DISY) party (adjacent to the conservative political ideology) concentrated 34,28 % of the votes and won the elections. AKEL party was allocated 19 seats in the parliament, as opposed to the 20 of DISY, whereas DIKO (the Democratic Party, adjacent to the liberal political ideology) received 9 seats, EDEK 5 seats, the European party 2 seats and the Ecological Party 1 seat.<sup>8</sup> AKEL and DIKO formed a coalition government. The coalition collapsed in August 2011 following policy disagreements, leaving AKEL in a minority government.<sup>9</sup>

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<sup>6</sup> From the official website of the Parliament of the Republic of Cyprus: <http://www.parliament.cy/easyconsole.cfm/id/146/lang/en/>

<sup>7</sup> Ibid.

<sup>8</sup> See also: [http://www.nsd.uib.no/european\\_election\\_database/country/cyprus/](http://www.nsd.uib.no/european_election_database/country/cyprus/)

<sup>9</sup> <http://thecommonwealth.org/our-member-countries/cyprus/constitution-politics>

## II CHANGES TO THE BUDGETARY PROCESS

### BUDGETARY PROCESS

#### II.1

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

Until 2012 Cyprus was among a handful of Member States that had neither fiscal rules nor a binding medium-term budgetary framework (MTBF), while it also lacked a fiscal council (see also questions 31 and 34).<sup>10</sup> Although Cyprus announced in 2007 that it would introduce a three-year medium-term budgetary framework (MTBF) with the aim to better control public sector employment growth and contain other current expenditures,<sup>11</sup> this budgetary framework was eventually introduced only in 2012.

Details on the budget procedure are provided in Art. 81, 167 and 168 of the Constitution of the Republic of Cyprus. The Budget of the Republic of Cyprus undergoes the same procedure as described under Question 2 for the adoption of ordinary laws; that is the Parliamentary Committee of Finance submits for discussion the Budget Draft Bill, which is then discussed in the Parliament, sitting in plenary session, and approved (or rejected) by simple majority as an ordinary law. The Budget Law of Cyprus for 2013, Law 59 (II) of 2012 was published in the Official Gazette on 31 December 2012.<sup>12</sup> Following this publication the Minister of Finance issues a payment order which he addresses to the General Accountant of the State (Γενική Λογίστρια) and with which he authorizes the carrying out of the payments, as provided in the Budget Law.

The method and the form of drafting the budget is laid down by the Minister of Finance, in accordance with Art. 167 of the Constitution of Cyprus which provides that:

1. The Minister of Finance shall, upon receipt of the estimates of each Ministry and of each independent Office of the Republic, cause to be prepared in respect of every financial year a comprehensive Budget of the Republic for that year which, when approved by the Council of Ministers, shall be laid before the House of Representatives.
2. The estimates of expenditure in the Budget shall show separately

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<sup>10</sup> 'Fiscal Frameworks across Member States. Commission Services Country Fiches from the 2011 EPC Peer Review', Occasional papers 91, February 2012, p. 9.

<sup>11</sup> [http://ec.europa.eu/economy\\_finance/db\\_indicators/fiscal\\_governance/documents/1-a5a\\_analysis\\_en.pdf](http://ec.europa.eu/economy_finance/db_indicators/fiscal_governance/documents/1-a5a_analysis_en.pdf), p. 9

<sup>12</sup> Official Gazette of the Republic of Cyprus, Issue 4229 (31 December 2012).

(a) the total sums required to meet expenditure charged on the Consolidated Fund; and (b) the sums respectively required to meet other expenditure.

3. The said Budget shall also show, so far as is practicable, the assets and liabilities of the Republic at the end of the last completed financial year, the manner in which those assets are invested or held and particulars in respect of outstanding liabilities.

4. The expenditure to be met from the Consolidated Fund but not charged thereon shall be submitted to the House of Representatives for adoption and if adopted shall be included in the Budget in respect of that financial year.

5. If in respect of any financial year it is found that the amount adopted by the House of Representatives for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been adopted a supplementary budget showing the sums required shall be laid before the House of Representatives for adoption and if adopted by the House of Representatives shall be included in the Budget in respect of that financial year.

6. The House of Representatives may approve or refuse its approval to any expenditure contained in a supplementary Budget but may not vote an increased amount or an alteration in its destination.<sup>13</sup>

Eventually the Budget for every year is debated during the Parliament's plenary session and approved by simple majority as an ordinary Law.

Under Article 81 of the Constitution, the budget then has to be brought before in the House of Representatives at least three months before the commencement of the financial year, i.e., by September 30 of each year, and it is to be voted upon by the House not later than December 31 of each year. The budget circular outlines the various parameters for the preparation of the budget and provides guidelines to all ministries. A separate, parallel circular is issued by the Planning Bureau for the development expenditure component of the budget, within the ambit of a five year strategic development plan drawn up by the Planning Bureau. The budget is presented on a line item basis. The budget and accounts classification are consistent and mainly based on an administrative classification, whereas a classification a classification by economic category of expenditures is also presented.<sup>14</sup>

The Budget preparation process and the relevant legal basis is provided in the following table, as provided by the Stability Programme of the Republic of Cyprus 2012-2015,<sup>15</sup>

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<sup>13</sup>

Translation

from:

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<sup>14</sup> Stability Programme of the Republic of Cyprus 2012-2015, Ministry of Finance, April 2012, p. 65

<sup>15</sup> Stability Programme of the Republic of Cyprus 2012-2015, Ministry of Finance, April 2012, p. 65 - 66

prepared by the Ministry of Finance in April 2012. No change in the budgetary process has been observed since then.

<b>Box 3. The Budget Preparation Calendar</b>		
Due dates	Activities	Legal basis
The fiscal year is set on a calendar-year basis by the Constitution. The main steps in the process are as follows:		
End-March	Budget circular issued to ministries detailing the basic parameters	Administrative instructions of the Ministry of Finance
20 May	Line ministries submit budget proposals to Ministry of Finance	Administrative instructions of the Ministry of Finance
June to late September	Budget discussion between line ministries and Ministry of Finance	Administrative instructions of the Ministry of Finance
Early September	Submission to the Council of Ministers for discussion and approval	

Due dates	Activities	Legal basis
30 September	Ministry of Finance submits budget proposals approved by the Council of Ministers to the House of Representatives	Art. 81 of the Constitution
October to December	Discussion of the proposed budget in the Parliamentary Committee of Finance and Budgets and in plenary session; budget approval	
1 January (next year)	Commencement of budget approved by the House of Representatives	Art. 81 of the Constitution

The drafting of the Budget is based on the fiscal targets –as these arise from the results and the estimations of previous years – as they are provided in the Governance programme and strategy of the government, the Stability programme of the Republic of Cyprus for 2008-2012, the National Reform Programme pursuant to the Lisbon strategy, as well as the

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guidelines and fiscal frameworks that were defined by the Encyclicals of the Minister of Finance according to the MTO and the MTBF.

## GENERAL CHANGE

### II.2

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

The main change in the budgetary process since the beginning of the Eurozone crisis relates to the implementation of a binding Medium-Term Budgetary Framework (MTBF), which finally institutionalizes expenditure rules. As such greater emphasis is placed on multi-annual planning, via the medium term budgetary objective as laid out in the Stability Programme as an ‘anchor’ in budgetary policy.

The Ministerial Encyclical of the Ministry of Finance (for instance, Number 1478 of 29 May 2013) on the Strategic Framework of Fiscal Policy 2014 – 2016 – Budget 2014<sup>16</sup> provides for a separate chapter/section where the innovations in the drafting of the budget are summarized. The main changes can be found in the substance of the budget itself and much less in the process.

One first change concerns the preparation of the Strategic Framework of Fiscal Policy (SFFP)<sup>17</sup> which is from 2013 drafted by taking into account not only the government’s commitments and programme but also the commitments undertaken in the framework of the MoU. Consequently, since the signature of the MoU the budget includes and incorporates all the measures prescribed in the MoU in relation to fiscal and structural measures.

As part of the budgetary reform process it is further required that line ministries and other government spending agencies will enter into a process of progressively redesigning their annual budgets, reflecting a new approach based on Programme and Performance Budgeting (PPB).<sup>18</sup> The new PPB approach will become the official (and only) budget method from the financial year 2015 onwards.

## INSTITUTIONAL CHANGE

### II.3

*WHAT INSTITUTIONAL CHANGES ARE BROUGHT ABOUT BY THE CHANGES IN THE BUDGETARY PROCESS, E.G.*

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[http://www.mof.gov.cy/mof/mof.nsf/All/967B393837E6A4FBC2257BFF0037546A/\\$file/%CE%95%CE%93%CE%9A%CE%A5%CE%9A%CE%9B%CE%99%CE%9F%CE%A3%20%CE%A0%CE%A1%CE%9F%CE%AB%CE%A0%CE%9F%CE%9B%CE%9F%CE%93%CE%99%CE%A3%CE%9C%CE%9F%CE%A5%202014%20-%202016.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/967B393837E6A4FBC2257BFF0037546A/$file/%CE%95%CE%93%CE%9A%CE%A5%CE%9A%CE%9B%CE%99%CE%9F%CE%A3%20%CE%A0%CE%A1%CE%9F%CE%AB%CE%A0%CE%9F%CE%9B%CE%9F%CE%93%CE%99%CE%A3%CE%9C%CE%9F%CE%A5%202014%20-%202016.pdf)

<sup>17</sup> The Medium Term Objective Framework is renamed into the ‘Strategic Framework of Fiscal Policy’.

<sup>18</sup> Stability Programme of the Republic of Cyprus 2012-2015, Ministry of Finance, April 2012, p. 41.

*RELATING TO COMPETENCES OF PARLIAMENT, GOVERNMENT, THE JUDICIARY AND INDEPENDENT ADVISORY BODIES?*

No institutional changes have taken place as a result of the changes in the budgetary process. The establishment of the Fiscal Council, as prescribed by Law 194 (I) of 2012 is foreseen to be established at the beginning of 2015.

What is more, it is anticipated by the end of December 2013 that a new Law on the ‘fiscal responsibility and budget systems’ will be submitted for discussion to the Parliament in order to address any remaining inconsistencies between the MTBF law and existing legislation, include supplementary secondary legislation and address other existing legal shortcomings.<sup>19</sup> The new law will further provide an enabling framework for a medium-term Public Financial Management (PFM) reform program.<sup>20</sup>

The Fiscal Responsibility and Budget Systems Law is expected to contribute to improving Cyprus’ fiscal position by setting out a broad framework of fiscal rules, fiscal discipline and fiscal transparency. “It will set the budget process in a medium-term framework consistent with a strategic approach to planning both domestic as well as EU and other externally financed resources. And it will allow line ministries to play a greatly enhanced role in planning and executing the budget in the policy areas for which they are responsible.”<sup>21</sup>

## CHANGE OF TIME-LINE

### II.4

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

No major changes have been observed in the time-line of the budgetary cycle (see also questions V.8 and IX.1-IX.3).

## MISCELLANEOUS

### II.5

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

Not applicable.

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<sup>19</sup> IMF Country Report No. 13/125 (May 2013) , Cyprus: Request for Arrangement under the Extended Fund Facility, p. 61

<sup>20</sup> *Ibid.*

<sup>21</sup> G. Panteli, A New PFM Reform Strategy for Cyprus, [http://www.mof.gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/\\$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf)

### III CHANGES TO NATIONAL (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 'Euro-crisis' law was transposed into the national legal order by means of ordinary legislation. The great majority of the instruments was adopted under Art. 169 (2) on 'treaties, conventions and international agreements' that requires simple majority at the Parliament, with the exception of the Fiscal Compact which was adopted under Art. 169 (1) (see also questions II.1, VI.2 and VII.2).

For example:

- the EFSF was implemented in Cyprus through Law 13 (III) of 2010 with the title 'The law on the participation of the Republic of Cyprus in the European Financial Stability Facility' (see question IV.2);
- the amendment of Article 136 TFEU approved by Law 13 (III) of 2012 (see question V.2);
- the "Six-Pack" was implemented through Law 194 (I) of 2012 on the Medium Term Budgetary Framework and the Fiscal Rules (see questions VII.2 and VII.7);
- the ESM Treaty ratified through Law 14 (III) of 2012 (see question IX.2);
- and the MoU and FFA were ratified through Law 1 (III) of 2013 (see question X.2).

#### CONSTITUTIONAL AMENDMENT

##### III.2

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

So far no constitutional amendments have taken place or have been proposed in relation to the Euro - crisis. Yet constitutional amendments are being discussed in order to implement the 'golden rule' of the Fiscal Compact<sup>22</sup> (see also question IX.5).

#### 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?*

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<sup>22</sup> See the report of the Parliamentarian Committee of Finance and Budget :

[http://www2.parliament.cy/parliamentgr/008\\_05e/008\\_05\\_3858.htm](http://www2.parliament.cy/parliamentgr/008_05e/008_05_3858.htm) as well as the debate in the Parliament;

Prior to the Eurozone crisis Cyprus lacked a solid fiscal framework and it is now in the process of building it. The main provisions in the Constitution of Cyprus that contain elements relating to the fiscal framework of Cyprus are Articles 165-168. These Articles mainly provide that the Minister of Finance is competent to draft the yearly budget, which upon the Cyprus Ministerial Council's approval is submitted to the Houses of Parliament (Art. 167). No elements of a balanced budget rule or independent budgetary councils exist in the constitution. Elements of the budgetary process and other procedural issues regarding the allocation of expenditures and revenue appear on other provisions of the Constitution such as Art. 80, 81, 91 and 139 which, however, provide only for deadlines and exceptions from the standard procedure.

## PURPOSE CONSTITUTIONAL AMENDMENT

### III.4

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

Not applicable.

## RELATIONSHIP WITH EU LAW

### III.5

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

Not applicable.

## ORGANIC LAW

### III.6

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

No such changes have taken place.

## 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 is no recent constitutional amendment, relating to the Euro-crisis measures.

## PERCEPTION SOURCE OF LEGAL CHANGE

### III.8

*IN THE PUBLIC AND POLITICAL DISCUSSIONS ON THE ADOPTION OF ORDINARY LEGISLATION, WHAT WAS THE*

CYPRUS

*PERCEPTION ON THE APPROPRIATE LEGAL FRAMEWORK? WAS THE ORDINARY LEGISLATION SEEN AS IMPLEMENTING NATIONAL CONSTITUTIONAL LAW, OR EURO-CRISIS LAW?*

As there has not been any constitutional amendment, the general perception in both the public and the Parliament was *clearly* that ordinary legislation was implementing Euro-crisis law. In fact after the receipt of financial assistance, at least the majority of the public perceived the 'Euro-crisis law', as 'austerity law' imposing the Troika's demands that further, went against the national sovereignty of Cyprus and the overall constitutional order. Along the same line of argument, the leftish parties of the Parliament, in the famous plenary session of the 30th of April 2013 had argued that the acceptance of the MoU and the FFA would seriously undermine the national sovereignty of Cyprus (see question IX.2).

## MISCELLANEOUS

*III.9*

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

Not applicable.

## IV. EARLY EMERGENCY FUNDING

*Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 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 CYPRUS ENCOUNTER IN THE NEGOTIATION OF THE EFSF AND THE EFSM, IN PARTICULAR IN RELATION TO (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?*

The Draft Bill on the ratification of the EFSF was discussed at the Cypriot Parliament on 24 June 2010, under the 'urgency procedure', after it had been discussed by the Parliamentarian Committee of Finance and Budget on 14 and 21 June 2010.<sup>23</sup> The Committee<sup>24</sup> recommended to the Parliament the enactment of the Bill under discussion in law, by simple majority.<sup>25</sup> The 'democratic Party', the 'leftish' coalition 'AKEL- Left- Nees Dynameis' together with the member of the Social Democrats' Movement (EDEK) agreed on the enactment of the Bill in law. The main objections did not relate to issues of (budgetary) sovereignty or the constitutionality of the EFSF but rather on the capacity/ability of Cyprus to meet its financial obligations as to the guarantees. In this respect, the representatives of the Ministry of Finance had to stress that the contribution of Cyprus in guarantees would

<sup>23</sup> For the procedure see Art. 73 of the Constitution of the Republic of Cyprus.

<sup>24</sup> [http://www2.parliament.cy/parliamentgr/008\\_05d/008\\_05\\_3094.htm](http://www2.parliament.cy/parliamentgr/008_05d/008_05_3094.htm)

<sup>25</sup> Art. 78 of the Constitution of the Republic of Cyprus.

not exceed 5% of the GDP of Cyprus, a manageable amount, considering in particular the many benefits Cyprus would gain from its participation in the EFSF, such as the more favourable interest rates, the stricter application of the SGP, the better control of the statistical data, and the improvement of the budgetary position of many Member States.

## 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 CYPRUS AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?*

The EFSF Framework Agreement was implemented in Cyprus as an ordinary piece of legislation, Law 13 (III) of 2010 with the title ‘The law on the participation of the Republic of Cyprus in the European Financial Stability Facility’. According to the accounting Laws 112 (I) of 2002 and 22 (I) of 2004 on the management of the revenue and expenditure of the Republic of Cyprus, any loan agreement has to be ratified by law in order to be valid.<sup>26</sup> The standard procedure for the adoption of laws in Cyprus is described in Art. 73, 78 and 80 of the Constitution of the Republic of Cyprus. In brief, the Draft Bill is brought before the House of Parliament where it is presented and discussed (the procedure commonly known as ‘first’ and ‘second reading’) and approved or rejected by simple majority. The relevant Draft Bill is then brought before a specialised Parliamentary Committee, in the present case the Parliamentarian Committee of Finance and Budget, which discusses, amends and finalizes the Draft Bill. For the preparation of the Draft Bill on the EFSF the Committee was convened twice, on 14 (with the presence of the Minister of Finance) and 21 June 2010. Following the procedure, the Committee prepared an explanatory report, which was distributed before the discussion at the House of Parliament (sitting in plenary session). The discussion at the House of Parliament (known also as the ‘third reading of the Draft Bill), sitting in plenary session, took place on 24 June 2010. The Draft Bill was discussed and approved by the House of Parliament by simple majority.

Upon the increase in the lending capacity of the EFSF, Cyprus passed the new Law 22 (III) of 2011 ratifying the Agreement regarding Cyprus’ participation in the EFSF (Official Gazette of the Republic of Cyprus No. 4151) incorporating these amendments.<sup>27</sup>

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<sup>26</sup> Preamble of Law 13 (III) of 2010

<sup>27</sup>

[http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/D4D70A41C37B0580C225791F002EF428/\\$file/4151%20%2030%209%202011%20%20PARARTIMA%2010%20%20MEROS%20%20III.pdf](http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/D4D70A41C37B0580C225791F002EF428/$file/4151%20%2030%209%202011%20%20PARARTIMA%2010%20%20MEROS%20%20III.pdf)

## GUARANTEES

### IV.3

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

No budgetary sovereignty or constitutional issues were raised neither in the report of the Parliamentarian Committee of Finance and Budget, nor during the plenary session at the Parliament. The main issue that was raised was the *financial capacity of Cyprus* to meet its obligations/guarantees.<sup>28</sup> (See also question I.1)

## ACTIVATION PROBLEMS

### IV.4

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

No significant difficulties were encountered during the national procedures relating to the entry into force of the EFSF Framework Agreement. Neither in the Report of the Parliamentarian Committee nor during the discussion in the House of Parliament are any debates observed, besides the questions and doubts earlier raised on the *financial capacity of Cyprus* to meet its obligations/guarantees.<sup>29</sup>

## CASE LAW

### IV.5

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

No such judgment exists on the (constitutionality of) the EFSM or 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?*

The Parliament has no formal role in the application of the EFSF.

<sup>28</sup> [http://www2.parliament.cy/parliamentgr/008\\_05d/008\\_05\\_3094.htm](http://www2.parliament.cy/parliamentgr/008_05d/008_05_3094.htm)

<sup>29</sup> [http://www2.parliament.cy/parliamentgr/008\\_05d/008\\_05\\_3094.htm](http://www2.parliament.cy/parliamentgr/008_05d/008_05_3094.htm)

## IMPLEMENTING PROBLEMS

### IV.7

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

No political or legal difficulties have arisen with regard to the application of the EFSF.

## BILATERAL SUPPORT

### IV.8

*IN CASE CYPRUS 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?*

In the framework of the 1<sup>st</sup> and 2<sup>nd</sup> adjustment programme for Greece, €80 billion was pooled through the Greek Loan Facility (GLF), which consists of pooled bilateral loans from the Euro Area Member States. Cyprus' contribution amounted to €110million.

## MISCELLANEOUS

### IV.9

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

As a result of the financial difficulties it was facing, Cyprus decided to request – on 8 April 2013 – to have its commitment to provide further guarantees suspended. In view of the fact that Cyprus was experiencing severe financial difficulties and had requested financial assistance, its request to step out as a guarantor of the EFSF, was approved by the Eurogroup Working Group (EWG) on 29 April 2013. The liability of Cyprus as a guarantor for notes issued prior to its stepping out is not affected.

## V TREATY AMENDMENT ARTICLE 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 CYPRUS ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?*

The Minister of Foreign Affairs of Cyprus and the Cypriot government were favourable of the creation of a permanent stability mechanism and a Treaty amendment, as a last resort (necessary) solution. The Minister of Foreign Affairs in 2010, Mr. Markos Kyprianou had noted that ‘it is a reasonable suggestion, yet the possibility of creating a permanent assistance mechanism should be first evaluated under a scenario without a Treaty amendment. If this is deemed impossible, then we should consider all possibilities’.<sup>30</sup>

The Parliamentary Committee on Foreign and European Affairs evaluated the relevant Draft Bill (‘Law on the amendment of the TFEU 2012’) in a meeting held on 25 May 2012,<sup>31</sup> where delegations of the Ministry of Foreign Affairs, Economics and the Office of the General Attorney of the Cypriot Republic participated. The goal of the act under discussion was the approval of Decision 2011/199/EU of the European Council, which amends Article 136 TFEU, in accordance with Art. 169 (2) of the Cypriot Constitution.

Amongst the other issues the Parliamentary Committee took into account in the preparation of the act; was the pressing need for the creation of the ESM. After the Committee ascertained that the amendment at issue did not increase the competences attributed to the EU by the Treaties, the representative of the Ministry of Foreign Affairs notified the Committee that the approval of the Decision was necessary for the (subsequent) ratification of the ESM Treaty.

<sup>30</sup> <http://www.kathimerini.com.cy/index.php?pageaction=kat&modid=1&artid=30433&show=Y>

<sup>31</sup> [http://www2.parliament.cy/parliamentgr/008\\_05e/008\\_05\\_3692.htm](http://www2.parliament.cy/parliamentgr/008_05e/008_05_3692.htm)

All the participants agreed with the objectives of the suggested Act, whereas a few ‘leftish’ parties, both in government and opposition (‘Democratic Party’, the ‘leftish’ coalition ‘AKEL-Left- Nees Dynameis’ together with the member of the Social Democrats’ Movement (EDEK)) reserved their right to take position on the matter during the discussion of the Act at the House of Parliament. The aforementioned parties eventually voted in favour of the new Draft Bill, after pointing out, however, that they disagreed with the way the decision on the Treaty amendment and the creation of a permanent stability mechanism was taken at a European level, in particular in light of the disregard of the voices of the ‘peoples of Europe’ and the lack of a referendum.

During the discussion in the House of Parliament no objections were raised by any of the Parliamentarians as to the Act. As such all the relevant Articles (1-5) were approved and the (ratification) ‘Law on the Amendment of the TFEU 2012’ was submitted for vote in the Parliament, where it was eventually enacted.

## APPROVAL

V.2

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

The approval Law of the Treaty amendment (Article 136 TFEU) is Law 13 (III) of 2012, as published in the Official Gazette of the Republic of Cyprus (Issue 4164/ 15 June 2012). The ‘Law on the Amendment of the TFEU 2012’ (Article 136 TFEU) was approved by simple majority by the House of Representatives on 31 May 2012, after it was discussed in the Full House of Assembly. No objections arose during the discussion as the representative of the Ministry of Foreign Affairs pointed out that the Treaty amendment does not increase the powers of the EU and is absolutely necessary for the establishment of the ESM. The legal basis for the ratifying Law is Article 169 (2) of the Constitution of the Republic of Cyprus, according to which:

‘Subject to the provisions of Article 50 and paragraph 3 of Article 57- [...]

(2) any other treaty, convention or international agreement shall be negotiated and signed under a decision of the Council of Ministers and shall only be operative and binding on the Republic when approved by a law made by the House of Representatives whereupon it shall be concluded;’<sup>32</sup>

<sup>32</sup>

Translation drawn from:  
[http://www.presidentcy.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY\\_Constitution.pdf](http://www.presidentcy.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf) <accessed on 12 December 2013>. See also the relevant Article 169 (3): ‘Treaties, conventions and agreements concluded in accordance with the foregoing provisions of this Article shall have, as from their publication in the official Gazette of the Republic, superior force

The ratification was notified to the EU Council on 3 July 2012 (for more on Article 169 (2) of the Constitution of the Republic of Cyprus, see Question VIII.2).

## RATIFICATION DIFFICULTIES

V.3

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

In view of the fact that the Cypriot government (together with the majority of the political parties) was particularly favourable of the creation of the European Stability Mechanism, no debate arose during the ratification procedure. The House of Representatives approved the amendment of Article 136 TFEU and the ESM Treaty on 30 May 2012. The amendment of Article 136 TFEU was ratified by Law 13 (III)/2012 (Official Journal of the Republic of Cyprus 4164/ 15 June 2012) and the ratification was completed on the 3<sup>rd</sup> July 2012. (See also Question II.1)

## CASE LAW

V.4

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

No constitutional judgment on the 136 TFEU amendment exists.

## MISCELLANEOUS

V.5

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

Not applicable.

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to any municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto.'

## 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 CYPRUS ENCOUNTER IN THE NEGOTIATION OF THE EURO-PLUS-PACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE PACT FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.*

No information known.

### MISCELLANEOUS

#### VI.2

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

Not applicable.

## VII SIX-PACK

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

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

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

### NEGOTIATION

#### VII.1

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

The transposition of the Six- Pack into the Cypriot legal order was discussed in Parliament on the 12<sup>th</sup> of December 2012<sup>33</sup>, after the Parliamentarian Committee of Finance and Budget had studied the Draft Bill during the period April – December 2012.

The issues that arose in the Parliamentarian Committee of Finance and Budget, where because of the participation of delegators of all parties the discussion is concentrated, pertain mostly to budgetary issues and a new framework of the management of public debt.

#### Law 194(1) 2012

According to the report of the Committee one of the objectives of the new Law 194(1) 2012 (see Question VII.2) was the regulation of the evaluation of the budgetary danger that is inherent in the granting of guarantees and the assumption of loan agreements by Cyprus.<sup>34</sup> The report submitted by the Parliamentarian Committee further stressed the need for the drafting and implementation of a modernized legal framework for the management of public debt, which could be attained via the institutionalization of the Office of Public Debt Management (Γραφείο Διαχείρισης Δimosίου Χρέους – Γραφείο Διαχείρισης Δημοσίου Χρέους). Such an office would be entrusted with the materialization of the new public debt

<sup>33</sup> [http://www2.parliament.cy/parliamentgr/008\\_01\\_01/008\\_01\\_IB.htm](http://www2.parliament.cy/parliamentgr/008_01_01/008_01_IB.htm)

<sup>34</sup> [http://www2.parliament.cy/parliamentgr/008\\_05e/008\\_05\\_3847.htm](http://www2.parliament.cy/parliamentgr/008_05e/008_05_3847.htm)

management, notably the preparation of the annual financial plan, the formulation of the strategies to be followed, the management of cash and the risk assessment of government guarantees and loans.

The debate during the preparation of the Draft Bill focused on the need to make the Office more independent and resistant to political pressures. Some members of the Committee stressed that there is an increased need to allow as much independence as possible to the Office as experience has shown that there is no clear demarcation/separation between the budgetary targets of the state budget and the management of the public debt. Such a lack in earlier years jeopardises the debt sustainability.<sup>35</sup>

### Draft Bill

The Draft Bill<sup>36</sup> aimed at producing legislation transposing the Six Pack Directive under which (the Draft Bill), the executive, based on prior commitments to the European Union, must submit to the House of Representatives balanced budgets and not adopt or propose any Draft bill or regulation that would alter the ceiling deficit for 2012, or that would disrupt the (balanced) fiscal balance for the years to come.

The President and the Committee stressed during the plenary session, that the 'new law' should acquire 'constitutional status', so that it is ensured that the law becomes supreme against any other law, it applies and it cannot get amended or circumvented in the near future by a simple majority, very likely to be formed. The idea behind the granting of 'constitutional force' to the law is that no budget that does not fulfill the requirements of the Medium Budgetary Framework can be examined, debated and decided before the Parliament. As such, the Parliament cannot be susceptible to any pressure while deciding on the coming year's budget.

The main relevant provisions of the Six Pack Directive and Regulation 1466/97/EC were then listed, during the plenary session (relating in particular to the Medium Budgetary Framework, the guarantees and targets, as well as the general budgetary policy of Cyprus).

For that reason the opinion of the Legal Service of the Republic of Cyprus was requested (not publically available, but referred to in the Parliamentary Committee's report and in the plenary), in order to process the Constitutional amendment which will ensure the aforementioned guarantees and implement the aforementioned provisions. The representative of the Ministry of Finance argued that the aforementioned provisions (relating to the implementation of the Six Pack Framework) in the Draft Bill might raise

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<sup>35</sup> The reference to previous years is made because in previous years the management of public debt was conducted by the (independent) Central Bank of Cyprus. This responsibility was however transferred to the Ministry of Finance.

<sup>36</sup> See: [http://www2.parliament.cy/parliamentgr/008\\_01\\_01/008\\_01\\_IB.htm](http://www2.parliament.cy/parliamentgr/008_01_01/008_01_IB.htm) under 12-12-2012.

constitutional problems. The bill/law has not yet entered into force, nor acquired constitutional status.

## DIRECTIVE 2011/85/EU

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

### IMPLEMENTATION

#### VII.2

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

The Cypriot government prepared a draft Bill entitled 'Law on the Medium-Term Budgetary Framework and Fiscal Rules' which was submitted to parliament for adoption in mid-2012.

Law 194 (I) of 2012 on the Medium Term Budgetary Framework and the Fiscal Rules (published in the Official Journal of the Cyprus Republic on 21/12/2012<sup>37</sup> implemented Directive 2011/85/EU and provides that the budgetary policy is based, among others, on the adoption of a horizon of multi-year budgetary planning, aiming at maintaining the medium-term budgetary Objective.

Besides the necessary budgetary amendments that had to be incorporated into the yearly budgetary laws, no amendments in national legal sources were necessary, as Article 20 of Law 194 (I) of 2012 provides that the provisions of the law at issue, apply independently of the provisions of any other law, more general or more specific, previous or subsequent laws. As such, although Law 194 (I) of 2012 bears the title of a 'normal' Law, in fact it has a special status. According to Art. 19 of the same Law, however, the Ministerial Council is responsible to issue regulations for the better application of the provisions of Law 194 (I) and for the regulation of issues, in particular of a 'technical nature'.

### IMPLEMENTATION DIFFICULTIES

#### VII.3

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

See Question VII.1.

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[http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/5FCCEDC39F30D0CBC2257ADB0027310B/\\$file/4372%202021%2012%202012%20%20PARARTIMA%20%201o%20%20MEROS%20%20I.pdf](http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/5FCCEDC39F30D0CBC2257ADB0027310B/$file/4372%202021%2012%202012%20%20PARARTIMA%20%201o%20%20MEROS%20%20I.pdf)

## 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)?*

According to the preamble of the Law 194 (I) of 2012, the ‘Fiscal Council’ is an independent institution with consultancy/consulting powers that is competent/responsible to evaluate, produce and adopt the *macroeconomic and budgetary forecasts*. The ‘Fiscal Council’ is to be formed/established pursuing the decision of the Cyprus Ministerial Council, which is formed by all Ministers of the Republic of Cyprus.

Article 167 of the Cypriot Constitution provides that it is the responsibility of the Minister of Finance to compile the budget for each financial year. After the budget has been approved by the Council of Ministers it is submitted to the House of Parliament where it is discussed, and if approved adopted as a law.

According to Article 12 of Law 194 (I) of 2012, it is the responsibility of the Minister of Finance to ensure that the budgetary planning and the fiscal policy are based on realistic macroeconomic and budgetary forecasts. To this end, the budgetary planning has to be compared to the most recent forecasts of the Commission, and possibly, the forecasts of other independent institutions, like the Central Bank and/or the Fiscal Council.<sup>38</sup> In case there are big differences between the selected macroeconomic scenario and the forecasts of the Commission, they have to be described in a substantiated/justified way.<sup>39</sup>

## FISCAL COUNCIL

### VII.5

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

According to the preamble of the Law 194 (I) of 2012, the ‘Fiscal Council’ is an independent institution with consultancy/consulting powers that is responsible to evaluate, produce and adopt the *macroeconomic and budgetary forecasts*. The ‘Fiscal Council’ is to be formed/established pursuing the decision of the Cyprus Ministerial Council, which is formed by all Ministers of the Republic of Cyprus.

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<sup>38</sup> Art. 12 of Law 194 (I) of 2012 (under γ)

<sup>39</sup> Art. 12 of Law 194 (I) of 2012 (under δ).

Following the suggestion of the Nobel Laureate in Economics, Christoforos Pissaridis, the current President of Cyprus, Nikos Anastasiades, announced before the presidential elections that he would advocate the creation of a 'Fiscal Council' that would in principle 'control and advise the Government' with regard to the impact its measures and political decisions might have to the economy.<sup>40</sup>

However, despite this political announcement, no decision of the Council of Ministers has been taken yet, to establish a 'Fiscal Council'. According to Mr. Panteli, a senior economic officer at the Ministry of Finance of Cyprus, the independent Fiscal Council with three members will be established at the beginning of 2015. The Council will be responsible for overseeing the implementation of fiscal rules, analyzing fiscal policy developments, and evaluating the macro-economic and fiscal forecasts prepared by the government.<sup>41</sup>

## **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 CYPRUS ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?*

No particular political or legal difficulties were encountered outside the general debate on the implications of the six-pack (see question VII.1).

## **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?*

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<sup>40</sup> <http://www.inews.gr/2/kypros-protasi-gia-dimiourgia-symvouliou-dimosionomikis-politikis.htm>, <http://www.kerdos.gr/default.aspx?id=1811055&nt=103>, <http://www.sigmalive.com/simerini/business/news/529788>

<sup>41</sup> G. Panteli, A New PFM Reform Strategy for Cyprus: [http://www.mof.gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/\\$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf), p. 2

The annual Budget Bill has to comply with the Medium-Term Budgetary Framework (MTBF) and the Medium-Term Budgetary Objective (MTO) (Art. 9 of the Law 194 (I) of 2012).

The MTO procedure is described under Art. 5 – 7 of the Law 194 (I) of 2012. Art. 6 stipulates that the procedures of the MTO are issued by the Minister of Finance under a Ministerial Circular/Regulation

Until 2012 Cyprus was among a handful of Member States that had neither fiscal rules nor a binding Medium-Term Budgetary Framework (MTBF), while it also lacked a fiscal council (see also question 34).<sup>42</sup> Although Cyprus announced in 2007 that it would introduce a three-year medium-term budgetary framework (MTBF) with the aim to better control public sector employment growth and contain other current expenditures,<sup>43</sup> this budgetary framework was eventually introduced in 2012.

In order to accommodate the new *Medium-term Budgetary Objective (MTO) Procedure* as provided in Regulation (EU) No 1175/2011 the new 'Budget Law' for 2013 (Law 59 (II) of 2012, Art. 5) included special reference to the MTBF 2013-2015 where the horizontal expenses 'ceilings' for each Ministry are laid down and cannot be exceeded under any circumstances.<sup>44</sup>

This means that the new Law 194 (I) of 2012 has introduced a new/novel budget procedure which finally incorporates and is based on the MTBF and the MTO. The general procedure of drafting the budget is laid down by the Minister of Finance, in accordance with Art. 167 of the Constitution of Cyprus (see question IX.1).

## EUROPEAN SEMESTER

### VII.8

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

According to Art. 3(1) of Law 194 (I) of 2012 every Ministry and every Independent Agency have to send to the Minister of Finance (on the date the Minister dictates) the revenue and expenditure forecasts of their Ministry (or Agency) for the next 3 financial years in accordance with the Ministerial Encyclical which sets out the budgetary provisions (always compliant with the MTO and the MTBF).

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[w.mof.](#)

[gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/\\$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf](http://gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf), p. 2

## MTO DIFFICULTIES

### VII.9

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

Neither political nor legal difficulties were encountered with regard to the implications of Regulation 1175/2011/EU outside the general debate on the six-pack (see question VII.1).

## 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)?*

Until 2012 Cyprus was among a handful of Member States that had neither fiscal rules nor a binding medium-term budgetary framework (MTBF), while it also lacked a fiscal council.<sup>45</sup> In order to comply with the relevant EU Six-Pack measures (including the amended Regulation 1466/97), the Cypriot government prepared a draft Bill entitled 'Law on the Medium-Term Budgetary Framework and Fiscal Rules' which was submitted to parliament for adoption in mid-2012. Law 194 (I) of 2012 on the Medium Term Budgetary Framework and the Fiscal Rules (published in the Official Journal of the Cyprus Republic on 21/12/2012). The new law includes a rolling three-year budget framework with a view of enhancing fiscal discipline.

In consultation with the EC/ECB/IMF, through regulations in the form of an expanded budget circular, Cyprus will ensure that the MTBF will be fully effective starting with the 2014 budget.

Article 9 of Law 194 (I) of 2012 provides that the Law approving the yearly budget (Budget Law) of Cyprus should be construed in accordance with the provisions laid out in the Medium Term Budgetary Framework. In specific, Art. 9 provides that the estimates of income and expenditure as well as the priorities set out in the Medium Term Budgetary Framework should constitute the basis for the preparation of the budget.

Furthermore, Art. 13 (6) of Law 194 (I) of 2012 provides that (Cyprus') fiscal policy is premised on the following fiscal rules:

- a) The fiscal position of the government has to be balanced or in surplus: It is deemed that this (provision) is ensured if the yearly structural balance of the government corresponds to the specific medium-term budgetary objective, as set out in the

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<sup>45</sup> 'Fiscal Frameworks across Member States. Commission Services Country Fiches from the 2011 EPC Peer Review', Occasional papers 91, February 2012, p. 9.

Stability and Growth Pact, by setting the lower limit for the structural deficit to 0.5% of Gross Domestic Product at market prices.

- b) compliance with the reference values for the ceilings of the budget deficit and the public debt of the general government at 3% of Gross Domestic Product and 60% of the Gross Domestic Product respectively.
- c) the adoption of a multiannual fiscal planning horizon, aimed at keeping the medium-term budgetary objectives.<sup>46</sup>

In the context of a broad review of the Cypriot Public Finance Management (PFM) system which was completed in late June 2013, the Cypriot government is planning to develop a new comprehensive Law on Fiscal Responsibility and Budget Systems including supplementary secondary legislation to address any remaining inconsistencies between the MTBF law and existing legislation, which will be submitted to parliament by end-December 2013 (structural benchmark).<sup>47</sup> The law is expected to be submitted for discussion in the Parliament by the end of December 2013 (see also question 88).

Until now in order to meet the MTBO, there have been several 'spending cuts' in the 2012 and 2013 budgets. These cuts have been implemented through 'amending' Laws (of the main Budgetary (yearly) law) such as (Amending of the Budget Law) Law 2 (II) of 2013, 3 (II) of 2013 (as published in the Official Gazette of the Republic of Cyprus Issue 4231/ 1 February 2013), (Amending of the Budget Law) Law 22 (II) of 2013 (as published in the Official Gazette of the Republic of Cyprus Issue 4238/ 30 April 2013), (Amending of the Budget Law) Law 29 (II) of 2012 (as published in the official Gazette of the Republic of Cyprus Issue 4212/ 6 April 2012).

## CURRENT MTO

### VII.11

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

Since Cyprus is under financial assistance, the MoU sets as an objective for Cyprus the emergence of primary deficit up to 2.4% of GDP for 2013, whereas the Medium-Term

<sup>46</sup> Free translation Art. 13 (6) of Law 194 (I) of 2012.

<sup>47</sup> «The Economic Adjustment Programme for Cyprus», Occasional Papers 149, May 2013, p. 144 and G. Panteli, A New PFM Reform Strategy for Cyprus, [http://www.mof.gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/\\$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/8D5A50938A96AA6BC2257BA20035E774/$file/%CE%91%CF%81%CE%B8%CF%81%CE%BF%20%CE%93.pdf)

Objective sets as a primary objective the achievement of a primary surplus of 4% of GDP until 2017.<sup>48</sup>

## ADOPTION MTO

### VII.12

*BY WHAT INSTITUTION AND THROUGH WHAT PROCEDURE IS CYPRUS' 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 (MTBO) is adopted and incorporated in the stability programme by the Minister of Finance.

According to Art. 5 (1) of Law 194 (I) the Minister of Finance drafts an efficient Medium-Term Budgetary Framework (MTBF) which guarantees the adoption of a national fiscal planning for at least three years. According to Art. 6 of the same law the procedures included in the MTBF pertain to, among other issues, the MTBO which are defined in an Encyclical of the Minister of Finance. In case of no compliance the Automatic Correction mechanism is set off as provided under Art. 14 of the same law.

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

Neither political nor legal difficulties were encountered with regard to the implications of Regulation 1177/2011/EU outside the general debate on the six-pack (see question VII.1).

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

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<sup>48</sup> <http://www.mof.gov.cy/mof/mof.nsf/final%20MOUf.pdf>

Neither political nor legal difficulties were encountered with regard to the Regulation 1173/2011 outside the general debate on the six-pack (see question VII.1).

## 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?*

No further changes are needed in order to comply with the six-pack rules.

## MISCELLANEOUS

### VII.16

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

In view of the very recent developments in Cyprus, the Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding (MoU) signed by Cyprus on 29 April 2013 precipitates the structural and institutional changes. The MoU thus provides for the important changes to be undertaken within the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2013. With regard to the budgetary framework the measures to be implemented include:

*'The establishment of a Fiscal Council with a statutory regime, functions, nomination procedures for its governing body and funding arrangements grounded in law by Q2-2013; complete the adoption of the law transposing Council Directive 2011/85/EU on requirements for budgetary frameworks, and provisions pertaining to the fiscal compact of the Treaty on Stability, Coordination and Governance (TSCG) on the basis of the Common Principles for national fiscal correction mechanisms laid down in Commission Communication COM(2012)342, with implementing texts ensuring that adopted measures are fully effective by Q2-2013. In particular, integrate the presentation of the existing multi-annual budgetary objectives (MoU fiscal targets and the rolling three-year expenditure ceilings) into a comprehensive Fiscal Strategy Statement in compliance with MTBF requirements in the sense of Directive 2011/85/EU to guide the preparation of the 2014 budget by Q2-2013; and submit to the House of Representatives a draft high-level Fiscal Responsibility and Budget System Law applicable to the entire general government sector. The draft law will encompass, inter alia, macro-fiscal policy-making, and budget formulation and approval. It will address remaining gaps and inconsistencies and codify existing good budget practices by Q4-2013.'*<sup>49</sup>

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<sup>49</sup> Memorandum of Understanding on Specific Economic Policy Conditionality, version of 12 April 2013.

## 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 CYPRUS 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.*

The Minister of Foreign Affairs of Cyprus and the Cypriot government were favourable of the creation of a permanent stability mechanism and a Treaty amendment, as a last resort (necessary) solution.

All the participating parties at the plenary session of the Parliament agreed with the objectives of the ESM Treaty, whereas a few 'leftish' parties, both in government and opposition ('democratic Party', the 'leftish' coalition 'AKEL- Left- Nees Dynameis' together with the member of the Social Democrats' Movement (EDEK) ') reserved their right to take position on the matter during the discussion of the Act at the House of Parliament. The aforementioned parties eventually voted in favour of the new Draft Bill, after pointing out, however, that they disagreed with the way the decision on the Treaty amendment and the creation of a permanent stability mechanism was taken at a European level, in particular in light of the disregard of the voices of the 'peoples of Europe' and the lack of any referenda that would express these voices (see also Question VI.3).

### RATIFICATION

#### VIII.2

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

The ratifying Law for the ESM Treaty is Law 14 (III) of 2012 approved by the House of Representatives on 31 May 2012 and published in the Cypriot Official Gazette on 15 June 2012 (Number 4164/15 June 2012, p. 3820). According to the Constitution of Cyprus, the ratification procedure follows simple majority voting in the parliament (Art. 169(2)); whereas the President and the Council of Ministers can veto the parliaments' decision (Art.

50(1) a). If a constitutional amendment is required the majority of 2/3 of members of parliament is required (Art. 182 (2), (3)). This however was not the case here.

The ratification was notified to the EU Council on 28/06/2012. The ratifying procedure for international agreements is provided in Article 169 (2) of the Constitution of Cyprus. Article 169 of the Cypriot Constitution stipulates that provided that Article 50 and Article 57 (3) of the Cypriot Constitution are met:<sup>50</sup>

- (1) Any international agreement among other states or any other international organization that concerns commercial issues, economic cooperation, payments and credits and *modus Vivendi* inclusive, is concluded following a Decision of the Ministerial Council.
- (2) The negotiation of any other Treaty, Convention, or International Agreement as well as the conclusion of them takes place following the Ministerial Council's decision. They can only, however, acquire legal value and bind the Cypriot Republic if they are ratified by Law, which is enacted by the House of Parliament, upon which they are considered concluded.
- (3) Treaties, Conventions and Agreements agreed in accordance with the aforementioned provisions of the present Article are from their publication in the Official Gazette of the Cypriot Republic superior to any other national law, on condition that these Treaties, Conventions and Agreements apply respectively to the other party.
- (4) The Cypriot Republic can exercise every choice and discretion stipulated in the EC Treaty and the EU Treaty and any other Treaty the Republic concludes, that amends or replaces them (the Treaties).<sup>51</sup>

## RATIFICATION DIFFICULTIES

### VIII.3

#### *WHAT POLITICAL/LEGAL DIFFICULTIES DID CYPRUS ENCOUNTER DURING THE RATIFICATION OF THE ESM TREATY?*

The Cypriot Parliamentary Committee of Economics and the Budget conducted a study on the suggested Draft Bill on the ratification of the ESMT. The relevant discussion took place

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<sup>50</sup> Art. 50 of the Constitution of Cyprus provides that the President and the Vice-President of the Republic of Cyprus, separately or conjointly, shall have the right of final veto on any law or decision of the House of Representatives or any part thereof concerning, among other issues relating to 'foreign affairs', the conclusion of international treaties, conventions and agreements. Art. 57 (3) of the Constitution of Cyprus provides the deadline for the exercise of this veto which is within four days of the date when the decision has been transmitted to the President's and Vice-President's respective offices.

<sup>51</sup> Free translation of Article 169 of the Constitution of the Republic of Cyprus.

on 21 and 28 May 2012 with the participation of the Minister of Finance and representatives of the respective Minister.<sup>52</sup>

The report of the Committee after reminding the purposes and the functions of the ESM, notes that the participation of Cyprus will be approximately €1.373 billion, a part of which will be disposed in installments as paid-in capital, while another will take the form of 'blocked capital' .

During the discussions in the Parliament for the ratification of the ESMT, AKEL's<sup>53</sup> representative Mr. Evagorou, asked for an intervention. Among other issues, Mr. Evagorou, noted that despite the AKEL- Aristera- Nees Dinameis reservations and concerns as to the way the decision about the ESM and the ESM's content was made at a European level, the party will vote in favour of the Draft Bill, after having taken into account the international and national facts. He, nevertheless, criticised the fact that following the Decision of the European Council, the preparations for the Treaty amendment as well as its new content were neither debated before the peoples of each State nor subject to a referendum by the peoples' of Europe. He continued by reminding that the Treaty amendment on Art. 136 TFEU is the result of the existing differences within the EU, whereby a certain group of States interprets solidarity differently and applies it following its own special economic interests. This is particularly reflected in the countries of the South and has as a result huge deficits, differences in competitiveness among the Member States and most importantly, inability to grow, inability to create new employment posts, unemployment and poverty.

According to Mr. Evagorou (and AKEL), what the EU needs at the moment is a new Agreement for growth, which will be premised on qualitative and social criteria and will take into account the particular characteristics of each country and economy. In Mr. Evagorou's and AKEL's view the austerity imposed cannot possibly generate growth for the peoples' of Europe. In the same line of argument, Mr. Evagorou notes that under the new reality decisions are not taken anymore by the peoples' of Europe, but instead by the technocrats, such as the IMF or the European Commission. However, as Mr. Evagorou – speaking on behalf of the AKEL- concludes, if the 'monitoring framework' in the EU was really strict and was implemented to the benefit of the public interest and interest of the 'workers', it could set out the framework for an 'equal development' of the states.

Mr. Papadopoulos, from the opposition Democratic Party, took the floor and noted that he was convinced by Mr. Evagorou's argument, and that he also endorsed the view that this

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<sup>52</sup> [http://www2.parliament.cy/parliamentgr/008\\_05e/008\\_05\\_3692.htm](http://www2.parliament.cy/parliamentgr/008_05e/008_05_3692.htm)

<sup>53</sup> AKEL is a 'left-wing' party that at the time was in government. It was succeeded in government after the presidential elections of 2013 by the 'Dimokratikos Synagermos' (Democratic Rally) party. The presidential election in Cyprus leads to a new government, as the President appoints and dismisses the members of the Ministry of Councils of the Republic (see also Question I.1) .

Draft Bill goes against the interests of the peoples of Cyprus. He, hence, asked to change his vote (as not being in favour of the ratification).

Mr. Mitsopoulos of the opposition Democratic Rally (Dimokratikos Synagermos) continued, by reminding that both the Treaty amendment and the creation of the ESMT were discussed and unanimously adopted at the European Council. Thus, he pointed out, that if the AKEL party wished a referendum, it could and should have raised the issue of the adoption or rejection of the ESM before the European Council.

Mr. Perdikis, of the opposition Ecologists' party, tabled an amendment to the Draft Bill that aimed at democratizing the participation of Cyprus in the ESM. Mr. Perdikis referred to the provision of the ratifying Law on the appointment of an administrator and a deputy administrator. Mr. Perdikis suggested that this appointment takes place through a consensus procedure within the Parliament and in addition that a cooperation mechanism is established between the Ministry of Finance and the Parliamentarian Committee for Finance.

The relevant amendment was approved by the Parliament (30 votes in favour and 18 against) on 31 May 2013 and the Draft Bill was enacted into Law.

## CASE LAW

### VIII.4

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

No such Court judgment exists with reference to the ESM Treaty.

## 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?*

According to the Preamble of Law 14 (III) of 2012 the Minister of Finance is delegated by the Council of Ministers of Cyprus to 'debit' the national budget with the relevant amounts.

## APPLICATION & PARLIAMENT

### VIII.6

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

The Parliament does not have any formal role in the activities of the ESM or in determining the actions of the Minister for Finance when acting as a member of the Board of Governors

of the ESM. The only obligation of the Minister of Finance is to notify every 6 months the Parliamentarian Committee of Finance and Budget on the progress or any new developments on the ESM, in accordance with Recital 4 of the Preamble of Law 14 (III) of 2012.

## APPLICATION DIFFICULTIES

### VIII.7

#### *WHAT POLITICAL/LEGAL DIFFICULTIES DID CYPRUS ENCOUNTER IN THE APPLICATION OF THE ESM TREATY?*

The only debate that arose in the Cypriot Parliament with regard to the application of the ESM Treaty concerned the application for financial assistance to Cyprus (see also question VIII.2).

The debate in the Parliamentarian Committee of Finance and Budget, as well as the discussion in the Parliament's plenary session, summarize the debates that arose before Cyprus officially asked for the ESM's financial assistance.

In the Parliamentarian Committee which convened on 29 April 2013,<sup>54</sup> the Minister of Finance of Cyprus noted first that the reasons that led to the imperative need to conclude the loan agreement was the exclusion of the Republic of Cyprus from the markets in May 2011 and the Greek Private Sector Involvement that brought about 'damages' of €4,5 billions to the Cypriot banks. He then, continued by pointing out that the Republic of Cyprus has lost part of its sovereignty from that point (ie the point of the exclusion and the damages to the banks), without however resorting to financial assistance as other countries did (ex. Ireland, Portugal and Greece). The Minister of Finance observed that this delay which was due to the efforts and attempts to find alternative lending possibilities proved to be particularly harmful, leaving Cyprus – at the (that) moment without any bargaining power and choices. At this point, he added, the main priority was the restart of the Cypriot economy through the removal of all bureaucracies and obstacles so that the country can benefit from the increased revenue from taxation. The amount of €3,4 billion from a total of €10 billion which constitutes the amount of the FFA will be used for purposes of state financing and growth. Consequently, the Minister concluded, if the State does not prove capable of raising this revenue, it will have at some point to take new fiscal consolidation measures, since the revenue will not be adequate to cover the state spending.

In the same line of argument, the Minister of Foreign Affairs pointed out that the Eurozone Member States, including Cyprus, have voluntarily delegated part of their sovereignty to the EU by becoming a member. The Minister further observed that Cyprus constitutes a different case than Greece.

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<sup>54</sup> [http://www2.parliament.cy/parliamentgr/008\\_05f/008\\_05\\_3956.htm](http://www2.parliament.cy/parliamentgr/008_05f/008_05_3956.htm)

The delegate of the Central Bank of Cyprus noted that at that point the first priority was the strict adherence to the fiscal target of the MoU and in particular curbing the projected fall in GDP, since otherwise the economy would enter a vicious circle of recession (see also question VIII.2).

## 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?*

Besides the relevant ratifying and implementing law of the ESMT there have been no other legislative changes in order to implement or comply with the requirements of the ESMT (except after Cyprus signed the MoU and the FFA for which see question X.7).

## MISCELLANEOUS

*VIII.9*

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

Not applicable.

## 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 CYPRUS 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.*

The government's (at the time AKEL – leftish/communist party) agreement to the Fiscal Compact was often contradicted by AKEL's sporadic criticism of the 'Europe of austerity and fiscal discipline' in the parliament of Cyprus and public speeches.<sup>55</sup> The Fiscal Compact was not brought for discussion before the Parliament as it was ratified through a governmental decree without the involvement of the Parliament.

### RATIFICATION

#### IX.2

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

The Fiscal Compact was approved and agreed under Article 169(1) of the Cypriot Constitution, by an Act of the Council of Ministers (governmental decree) on 20 April 2012, without a vote in the Parliament. It was later ratified and published in the Official Journal of the Republic of Cyprus (Official Journal of the Republic of Cyprus 4157/ 29 June 2012) upon the Cypriot Council of Ministers' decision, in accordance with Article 169 (3) of the Constitution, in Greek and in English. The ratification was completed by the notification to the Council of the EU on 3 July 2012.

Article 169 of the Cypriot Constitution stipulates that :

Subject to the provisions of Article 50 and paragraph 3 of Article 57-(1) every international agreement with a foreign State or any International Organisation relating to commercial

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<sup>55</sup> See also G. Charalambous, *European Integration and the Communist Dilemma: Communist Party Responses to Europe in Greece, Cyprus and Italy* (Ashgate 2013), p. 110 ff.

matters, economic co-operation (including payments and credit) and modus vivendi shall be concluded under a decision of the Council of Ministers;

(2) any other treaty, convention or international agreement shall be negotiated and signed under a decision of the Council of Ministers and shall only be operative and binding on the Republic when approved by a law made by the House of Representatives whereupon it shall be concluded;

(3) treaties, conventions and agreements concluded in accordance with the foregoing provisions of this Article shall have, as from their publication in the official Gazette of the Republic, superior force to any municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto.<sup>56</sup>

## **RATIFICATION DIFFICULTIES**

### *IX.3*

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

Neither political nor legal difficulties were encountered as the Fiscal Compact was agreed and approved by an Act of the Council of Ministers and was later ratified by the Cypriot Council of Ministers' decision, and thus without the involvement of the Parliament in accordance with Art. 169 (1) of the Constitution of the Republic of Cyprus (see also questions VII.1 and VII.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 CYPRUS? 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 previous government, led by the AKEL party,<sup>57</sup> has been contemplating already since April 2012 a constitutional amendment in order to comply with the implementing 'constitutional provision' the Fiscal Compact prescribes.

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<sup>56</sup>

Translation

from:

[http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY\\_Constitution.pdf](http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf)

<sup>57</sup> AKEL was succeeded in government by the party 'Democratic Rally/Democratikos Synagermos' on 28 February 2013.

Currently the balanced budget rule is incorporated in the Law 194 (I) of 2012 on the regulation of the Medium Budgetary Framework and Budgetary Rules, under Art. 13 (5) – (9) (see also under Question 57 on the discussion of the Constitutional amendment).

## **DEBATE BALANCED BUDGET RULE**

### *IX.5*

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

The main issue debated in the Parliament in relation to the Fiscal Compact and the Balanced Budget Rule was the need to proceed to a constitutional amendment in order to transpose the Balanced Budget Rule.

Before the discussion in the Parliament, in the Parliamentary Committee of Finance and Budget the same issue arose.<sup>58</sup> During the discussion of the Draft Bill (eventually Law 194(I) of 2012) in the Parliamentarian Committee on 11 December 2012 the president of the Committee, Nikolas Papadopoulos, and some members noted that the supremacy of the relevant law over any other laws should be safeguarded. For that reason it should be vested with constitutional power. Such a power would function, in these members of the Committee's view, as a shield against any potential pressures to the Parliament that would be exercised before the examination and discussion of each Budget Bill. The delegate of the Ministry of Finance noted that he had been informed by the representative of the Republic's Legal Service (also present at the discussion) that such an inclusion in the Constitution could result in constitutional problems. The representative, following also the Legal Service representative's suggestion, added that the Parliament maintains its alienable right to reject any budget (bill) that does not comply with the provisions and aims of the Draft Bill and as such prescribing constitutional status to the Bill not only would it create constitutional problems, but it would also be redundant.<sup>59</sup>

The representative of the Legal Service continued in the framework of the discussion on the Draft Bill before the Parliamentarian Committee that any immediate attempt to amend the Constitution in such a tight time framework might lead to mistakes, as has happened in the past. As such the plenary session concluded that any constitutional amendment remains a highly political issue that has to be preceded by serious and long discussion and should be left for the future.

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<sup>58</sup> For the report of the Parliamentarian Committee's discussion see: [http://www2.parliament.cy/parliamentgr/008\\_05e/008\\_05\\_3858.htm](http://www2.parliament.cy/parliamentgr/008_05e/008_05_3858.htm)

<sup>59</sup> Free translation from the report of the Parliamentarian Committee's discussion: [http://www2.parliament.cy/parliamentgr/008\\_05e/008\\_05\\_3858.htm](http://www2.parliament.cy/parliamentgr/008_05e/008_05_3858.htm)

In the plenary session of 12 December 2012, in the House of Parliament,<sup>60</sup> it was noted that the representative of the Legal Service of the Republic of Cyprus (whose opinion is not publically available, but was referred to during the discussion) suggested that the Troika gave more emphasis to the immediate enactment of the Draft Bill (i.e. eventually Law 194 (I) of 2012 transposing the Balanced Budget rule and the Fiscal Compact) – which was sent to both the European Commission and the IMF for observations, and not to an immediate constitutional amendment. A constitutional amendment, according to the Legal Service of the Republic of Cyprus, does not constitute a condition by the Troika for a (later) financial assistance to Cyprus.

The fact that the ratification of the Fiscal Compact was a prerequisite for a Member State to be considered eligible to apply for financial assistance from the European Stability Mechanism in conjunction with the fact that Cyprus was already contemplating such assistance from mid-2012, facilitated the implementation of the Fiscal Compact/Balanced Budget 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 V.10)?*

Not applicable.

## CASE LAW

### IX.7

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

No such judgment exists so far.

## NON-EUROZONE AND BINDING FORCE

### IX.8

*HAS CYPRUS 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?*

Cyprus is a Eurozone Member State.

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<sup>60</sup> [http://www2.parliament.cy/parliamentgr/008\\_01\\_01/008\\_01\\_IB.htm](http://www2.parliament.cy/parliamentgr/008_01_01/008_01_IB.htm), under the plenary session of 12-12-12.

## MISCELLANEOUS

IX.9

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

Not applicable.

## X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL ASSISTANCE

*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.*

Since May 2011 the Cypriot Republic, following continuous downgrades of its credit worthiness by the International Rating Agencies was excluded from the international financial markets. In October 2011 the Greek bonds got impaired, a fact that affected the capital base of the Bank of Cyprus as well as the Laiki (Popular) Bank.

On 25 June 2012 the Cypriot Government, following the very serious and long term structural and financial problems<sup>61</sup>, submitted a request for stability support to the President of the Eurogroup. Following a two-week troika visit to Cyprus in November 2012, the government said that a preliminary agreement on the terms of a Memorandum of Understanding (MoU) with the official lenders was reached.<sup>62</sup> A troika statement released shortly after read that significant progress was indeed made in the negotiations with domestic authorities. The preliminary MoU was signed in November 2012.<sup>63</sup> The terms of the MoU have however been altered since the preliminary MoU in order to reflect developments since a new centre-right government (Democratic Rally) came to power in February 2013.<sup>64</sup> As a result of the election of the new government the internal political

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<sup>61</sup> In addition to these problems one can consider also the inability of Cyprus to finance and recapitalize its banks (Laiki Bank and Bank of Cyprus)

<sup>62</sup> See Eurobank Research, <http://www.eurobank.gr/Uploads/Reports/New%20EuropeFocus%20CYPRUS%20Jan2013.pdf>

<sup>63</sup> <http://www.sigmalive.com/files/manual-uploads/Cyprus.pdf>

<sup>64</sup> See EU Observer: <http://euobserver.com/economic/119649>

dynamics changed making an end to the persisting deadlock within Cyprus which was created by the previous governing party (AKEL) unwilling to sign the agreement.

Before being forced to resort to financial assistance from the ESM, Cyprus sought assistance from Russia. Cyprus asked for a *new* loan of €5 billion from Russia<sup>65</sup>, in addition to the 5 year extension and the lowering of interest rates of the existing loan of € 2,5 billion.<sup>66</sup> Another scenario that was popular at the time was that Russia had suggested buying Cypriot banks (especially the Cyprus Popular Bank), which, however, was denied both by the government's delegate and the bank.<sup>67</sup> Even though Russia agreed to extend the maturity and reduce the interest on its loan to Cyprus,<sup>68</sup> the recourse to the ESM was inevitable.

The Emergency Liquidity Assistance (ELA) by the Central Bank of Cyprus that was already financing Laiki Bank was extended in February 2013 to the Bank of Cyprus. On 16 March 2013 the Cypriot *government* reached political agreement with the Eurogroup, in the framework of a financial assistance programme that included the provision of financial assistance of €10 billion from the Eurogroup and a possible contribution by the IMF. In the same framework the Cypriot governance undertook the commitment to take budgetary and political measures, a one –off stability levy on all bank accounts (insured and uninsured) included. To this end, the Cypriot government presented a Draft Act to the Parliament which was rejected by the Parliament on 19 March 2013.<sup>69</sup>

The Draft Act had not incorporated the governor's of the Central Bank of Cyprus suggestion with regard to the insured deposits, who argued that the insured deposits (the biggest part of the population are secured depositors according the governor), that is deposits of up to €100.000, should be exempted from the Draft Bill in order to protect the Cypriot banking system.

<sup>65</sup> Russia had lent Cyprus 2.5 billion euros in 2011 for five years, with an annual interest rate of 4.5 percent. See: [http://www.reuters.com/places/russia?lc=int\\_mb\\_1001](http://www.reuters.com/places/russia?lc=int_mb_1001)

<sup>66</sup> <http://www.iefimerida.gr/news/96112/%CE%B3%CE%B9%CE%B1%CF%84%CE%AF-%CE%B7-%CF%81%CF%89%CF%83%CE%AF%CE%B1-%CE%B5%CE%AF%CF%80%CE%B5-%C2%AB%CE%BF%CF%87%CE%B9%CF%82%BB-%CE%B3%CE%B9%CE%B1-%CE%B2%CE%BF%CE%AE%CE%B8%CE%B5%CE%B9%CE%B1-%CE%BA%CE%B1%CE%B9-%CE%B4%CE%AC%CE%BD%CE%B5%CE%B9%CE%BF-%CF%83%CF%84%CE%B7%CE%BD-%CE%BA%CF%8D%CF%80%CF%81%CE%BF>; <http://news.in.gr/economy/article/?aid=1231240390>

<sup>67</sup> <http://news.in.gr/economy/article/?aid=1231240390>

<sup>68</sup> <http://www.reuters.com/article/2013/05/06/us-russia-cyprus-idUSBRE9450AK20130506>; <http://cyprus-mail.com/2013/08/30/final-decision-reached-on-restructuring-of-russian-loan/>

Under the new repayment terms, the loan will be repaid in the form of eight equal payments every six months starting in 2016 and the interest rate has also been favourably decreased from 4.5 per cent to 2.5 per cent.

<sup>69</sup> [http://www2.parliament.cy/parliamentgr/008\\_01\\_01/008\\_01\\_IB.htm](http://www2.parliament.cy/parliamentgr/008_01_01/008_01_IB.htm) (under 19-03-2013)

All parties in the Cypriot parliament voted against the haircut, with the exception of the governing party, Democratic Rally, which abstained from voting. The main arguments justifying the negative voting could be summarized to the infringement of the right to property and the 'shameful behavior' of the European partners which contravenes the basic premise of the EU construction, that of solidarity among the peoples of Europe (Z. Koulias, independent member of Parliament); the possibility of restructuring the banking sector from 'within Cyprus' and not following orders that will cause a tremendous disrupt in the financial system of Cyprus (Perdikis – Ecologists' Party); the unsuccessful programme suggested and implemented by the troika in Cyprus and other countries (Syllouris, European Party); the catastrophic repercussions of the haircut decision for Cyprus as a financial center as well as the 'blackmail' behavior of the Eurogroup towards Cyprus (Omirou, Socialist Party EDEK); the blackmailing and solidarity lacking behavior of the Eurogroup as well as the possibility of seeking for financial solutions outside the EU, for instance in Russia and China (M. Karogian, Democratic Party); the possibility of finding other solutions outside the EU [ie the possibility of issuing a national solidarity bond] as well as the catastrophic repercussions of a potential haircut (Kyprianou, AKEL).<sup>70</sup>

The ECB decided on 21 March 2013 to maintain the (extraordinary) liquidity provision via the ELA only until the 25 March 2013, unless an EU and IMF special scheme applied, that would ensure the financial solvency of the banks.<sup>71</sup> In light of these developments, the possibility of an immediate bankruptcy of the Laiki Bank was in sight, with very likely domino effects for the Bank of Cyprus, the whole banking system but also the Cypriot Republic<sup>72</sup> who had acted as a guarantor of the Cypriot bonds. Such a development would have repercussions for all account holders (secured and unsecured).

On 22 March 2013 the Cypriot Parliament passed the Law 17 (I)/2013 on the Consolidation of the Banks, which was published on the official Journal the same day. The key elements for a macroeconomic adjustment programme were agreed by the Eurogroup on 25 March 2013. The programme addressed Cyprus's financial sector imbalances including an appropriate downsizing of the country's financial sector, fiscal consolidation, structural reforms and privatisation. (See also the Eurogroup statement on Cyprus:

<http://eurozone.europa.eu/newsroom/news/2013/03/eg-statement-cyprus-25-03-13/>

The programme also provided for 'haircuts' in the saving accounts of uninsured depositors, rendering them part of the bail in. The new scheme for financial assistance was fiercely

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<sup>70</sup> [http://www2.parliament.cy/parliamentgr/008\\_01\\_01/008\\_01\\_IB.htm](http://www2.parliament.cy/parliamentgr/008_01_01/008_01_IB.htm) (under 19-03-2013)

<sup>71</sup> <https://www.ecb.europa.eu/press/pr/date/2013/html/pr130321.en.html>

<sup>72</sup> For the purposes of enhancing Laiki Bank's liquidity, the Cypriot Republic had provided a guarantee

of €1.000.000.000 for the issuance of bonds by the former.

debated in the Parliament on April 30 2013, and it was eventually ratified by a very small majority (29 votes in favour of the ratifying law of the FFA and the MoU and 27 votes against)<sup>73</sup> (as to the debate see questions X.2 and X.3).

## 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 political differences regarding the negotiations of the MoU and the FFA were fiercely debated in the plenary session of the Parliament on 30 April 2013. The rejection of the Eurogroup's proposed programme after the first Eurogroup meeting on the 15<sup>th</sup> of March 2013 was celebrated by the majority of both the public and the political parties. The decisions of the second Eurogroup meeting were now put before the Parliament with the government trying to convince the majority to pass the ratification of the MoU and FFA law (eventually Law 1 (III) of 2013).

As anticipated the main positions of the representatives of the 5 political parties, as well as one independent Parliamentarian's (Z. Koulias), revolved around the acceptance of the MoU, the loss of sovereignty of Cyprus, the repercussions of the acceptance of financial assistance by Cyprus and the subsequent MoU commitments, the impact such a decision would have on the two Cypriot banks as well as the alternatives to the MoU as a way out of the crisis (see also question 50 for the discussion in the Parliamentarian Committee).

The government (Democratic Rally) together with the European Party voted in favour of the MoU, while stressing that although it is not the ideal solution, it is definitely the most feasible one for the time being as well as the one that will give Cyprus the opportunity to proceed to structural changes.

In favour of the MoU voted 29 parliamentarians, while 27 voted against. The Ecologists' Party (but not the Member of the party N. Koutsou), the European Party– with the exception of its Member N. Koutsou , the Democratic Rally and the Democratic Party voted in favour, whilst the previous government 'AKEL', as well as the social Democratc (ΕΔΕΚ) together with the independent Parliamentarian Z. Koulia voted against the MoU (or they supported its (re)negotiation). The AKEL party, in particular, suggested, among other propositions, the exit of Cyprus from the Eurozone, while several parties that voted against the MoU stressed the pre-election statements of the government, i.e. that no haircuts to the depositors will be imposed.

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<sup>73</sup> [http://www2.parliament.cy/parliamentgr/008\\_01/008\\_02\\_IB/praktiko2013-04-30.pdf](http://www2.parliament.cy/parliamentgr/008_01/008_02_IB/praktiko2013-04-30.pdf)

Besides the MoU, the Parliament was called to vote in favour or against 3 more Draft Bills that related to the commitments the Cypriot government would undertake if it signed the MoU. The first Draft Bill, is the ratifying Law of the MoU and the FFA (eventually Law 1 (III) of 2013); the second one relates to the transposition of the Directive for the long term residents in the Republic of Cyprus and the restriction of their access to allowances the third one to a Draft Bill on the revision of the Republic's housing policy, as agreed with the troika, in order to save funds.

## STATUS INSTRUMENTS

### X.3

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

Based on the Eurogroup's assessment, on 24 April 2013 the ESM Board of Governors decided to grant, in principle, stability support to Cyprus. On 8 May 2013 the ESM Board of Directors approved the financial assistance facility agreement (FFA), including the 'ESM FAFA Specific Terms', and 'ESM FAFA General Terms'. The FFA agreement is signed between the ESM and the Republic of Cyprus (as the beneficiary member) and the Central Bank of Cyprus (as the Central Bank). According to the terms of the FFA, the first tranche of financial assistance will be provided to Cyprus in two separate disbursements. The first disbursement of €2 billion was transferred on 13 May 2013, and the second disbursement was transferred on 26 June 2013 in an amount of around €1 billion.<sup>74</sup>

Pursuing the FFA, a Memorandum of Understanding was signed between the European Commission (on behalf of the ESM and with the approval of its Board of Governors) and the Beneficiary Member State. The financial assistance provided to the Beneficiary Member State under the Financial Assistance Agreement, shall be dependent upon compliance by the Beneficiary Member State with the measures set out in the Memorandum of Understanding.<sup>75</sup>

The Memorandum of Understanding (MoU) prepared by the European Commission, in liaison with the ECB, as well as the IMF, and approved by the Board of Governors on 24 April 2013, specifies the conditions to be met for the first and subsequent disbursements of ESM financial assistance, which include measures related to revenue, public expenditure, as well as pension and health care reform.<sup>76</sup>

The (preliminary) Memorandum of Economic and Financial Policies (MEFP), which was approved by the Council of Ministers on 3 April 2013, outlines the economic and financial policies that the Cypriot government and the Central Bank of Cyprus will implement during

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<sup>74</sup> <http://www.esm.europa.eu/pdf/ESM%20FFA%20Cyprus%20publication%20version%20final1.pdf>

<sup>75</sup> Ibid.

<sup>76</sup> <http://www.esm.europa.eu/assistance/cyprus/index.htm>

the next three years to restructure Cyprus' financial system and ensure fiscal sustainability.<sup>77</sup>

The FFA and the MoU were incorporated into the ratifying Law 1 (III) of 2013, as published in the Official Gazette of the Republic of Cyprus (Issue 4173, 30 April 2013, p. 9) and it could thus be concluded that they were considered international treaties. The relevant discussion on the MoU, the FFA and the financial assistance Cyprus applied for, took place in the House of Parliaments on 30 April 2013 (same day as the voting and publication of the ratifying Law).

The discussion as to the ratification of the relevant Bill attracted 19 (!) interventions in the plenary session, on April 30 2013 (see Question X.2 as to the debate).

## 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?*

The MoU and the FFA were transposed into the national legal order in accordance with Article 169 (2) of the Constitution (Law 1(III) of 2013) (as opposed to governmental decree on the basis of Article 169(1) Constitution). According to the opinion of the Attorney General of the Republic of Cyprus, issued on 19 February 2013, these two agreements fall within the category of "agreement, convention or international agreement" as provided in Article 169(2) of the Constitution of the Republic of Cyprus, and they should, therefore, be ratified by Law in the House Parliaments, voted under the simple majority procedure.

## ROLE PARLIAMENT

### X.5

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

The role of the Parliament is restricted to the adoption of the relevant Laws (the MoU/FFA Law) and the other Laws that transpose the subsequent agreements and programmes with the Troika. A simple majority is required for the enactment of these Laws (see also question VIII.4).

## ADJUSTMENT REQUIREMENTS

### X.6

*DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.*

The agreement on the macroeconomic adjustment programme opened the way for members of the euro area to decide on a package of financial assistance for Cyprus of up to

<sup>77</sup> <https://www.imf.org/external/np/loi/2013/cyp/042913.pdf>

€10 billion. The ESM will provide up to €9 billion, and the International Monetary Fund (IMF) is expected to contribute around €1 billion.

In its Statement of 25 March, the Eurogroup stated that financial assistance to Cyprus is in principle warranted to safeguard financial stability in Cyprus and the euro area as a whole. The Eurogroup statement summarized the pillars upon which the macroeconomic adjustment programme for Cyprus would be built:

‘Following the presentation by the Cyprus authorities of their policy plans, which were broadly welcomed by the Eurogroup, the following was agreed:

1. Laiki will be resolved immediately - with full contribution of equity shareholders, bond holders and uninsured depositors - based on a decision by the Central Bank of Cyprus, using the newly adopted Bank Resolution Framework.
2. Laiki will be split into a good bank and a bad bank. The bad bank will be run down over time.
3. The good bank will be folded into Bank of Cyprus (BoC), using the Bank Resolution Framework, after having heard the Boards of Directors of BoC and Laiki. It will take 9 bn Euros of ELA with it. Only uninsured deposits in BoC will remain frozen until recapitalisation has been effected, and may subsequently be subject to appropriate conditions.
4. The Governing Council of the ECB will provide liquidity to the BoC in line with applicable rules.
5. BoC will be recapitalised through a deposit/equity conversion of uninsured deposits with full contribution of equity shareholders and bond holders.
6. The conversion will be such that a capital ratio of 9 % is secured by the end of the programme.
7. All insured depositors in all banks will be fully protected in accordance with the relevant EU legislation.
8. The programme money (up to 10bn Euros) will not be used to recapitalise Laiki and Bank of Cyprus.

The Eurogroup is convinced that this solution is the best way forward for ensuring the overall viability and stability of the Cyprus financial system and its capability to finance the Cyprus economy.<sup>78</sup>

Based on the MoU and the FFA, on 24 April 2013 the ESM Board of Governors decided to grant, in principle, stability support to Cyprus. On 8 May 2013 the ESM Board of Directors approved the financial assistance facility agreement (FFA).<sup>79</sup> According to the terms of the FFA, the first tranche of financial assistance will be provided to Cyprus in two separate disbursements. The first disbursement of €2 billion was transferred on 13 May 2013, and

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<sup>78</sup> From the Eurogroup statement on Cyprus, 25.03.2013: <http://eurozone.europa.eu/newsroom/news/2013/03/eg-statement-cyprus-25-03-13/>

<sup>79</sup> <http://www.esm.europa.eu/pdf/ESM%20FFA%20Cyprus%20publication%20version%20final1.pdf>

the second disbursement on 26 June 2013 in an amount of around €1 billion. Both disbursements will be made in cash, and will be used for the general financing needs of the public sector (roll-over of maturing debt) and fiscal needs.

“The financial assistance facility is designed to cover Cyprus’s financing needs after the inclusion of proceeds from burden-sharing measures adopted by the Cypriot government. These needs include budgetary financing, the redemption of medium and long-term debt, and the recapitalisation of financial institutions except the country’s two largest banks (Bank of Cyprus and Cyprus Popular Bank, which were subject to restructuring and resolution measures by the Cypriot government).”<sup>80</sup>

“The Memorandum of Understanding (MoU) prepared by the European Commission, in liaison with the ECB, as well as the IMF, and approved by the Board of Governors on 24 April 2013, specifies the conditions to be met for the first and subsequent disbursements of ESM financial assistance, which include measures related to revenue, public expenditure, as well as pension and health care reform.”<sup>81</sup>

In accordance with the decisions taken by the Eurogroup on 25 March 2013, Cyprus will receive assistance of up to €10 billion during the next three years. The ESM is expected to provide up to €9 billion and the International Monetary Fund is to contribute around €1 billion, subject to approval by its Executive Board.

The MoU together with the FFA advanced, as a condition for the release of the first tranche, the recapitalisation of the entire financial sector while accepting a closure of the Laiki bank, the implementation of the anti-money laundering framework in Cypriot financial institutions, fiscal consolidation to help bring down the Cypriot governmental budget deficit, structural reforms to restore competitiveness and macroeconomic imbalances, privatization programme.

With reference to the closure of the Laiki Bank in the case of Cyprus, for the first time in the EU, uninsured depositors became part of the bail-in. Given the large banking recapitalisation needs, as well as the acute public finance problems, it became necessary to include uninsured depositors in the bail-in in order to ensure the sustainability of public debt. Imposing losses only on shareholders and bondholders was not sufficient to finance the restructuring of Cyprus’s two largest banks (Bank of Cyprus and Laiki).

Pursuant to the MoU, Cyprus undertakes the commitment to follow the economic adjustment programme to address the short- and medium-term financial, fiscal and structural Cyprus is facing. The key programme objectives are:

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<sup>80</sup> <http://www.esm.europa.eu/pdf/ESM%20FFA%20Cyprus%20publication%20version%20final1.pdf>

<sup>81</sup> <http://www.esm.europa.eu/about/assistance/cyprus/index.htm?lang=-en>

- A) “to restore the soundness of the Cypriot banking sector by thoroughly restructuring, resolving and downsizing financial institutions, strengthening of supervision, addressing expected capital shortfall and improving liquidity management”;<sup>82</sup>
- B) “to continue the on-going process of fiscal consolidation in order to correct the excessive general government deficit, in particular through measures to reduce current primary expenditure, and maintain fiscal consolidation in the medium-term, in particular through measures to increase the efficiency of public spending within a medium-term budgetary framework, enhance revenue collection and improve the functioning of the public sector”,<sup>83</sup> and
- C) “to implement structural reforms to support competitiveness and sustainable and balanced growth, allowing for the unwinding of macroeconomic imbalances, in particular by reforming the wage indexation system and removing obstacles to the smooth functioning of services markets”.<sup>84</sup>

So far, by reference to point A) (the restoration of the soundness of the Cypriot Banking Sector) Cyprus adopted Law 17 (I)/2013 on credit institutions’ restructuring/consolidation on 22 March 2013 which was amended by Law 38 (I)/2013 on 17 May 2013. The ‘Credit Institutions’ Restructuring/Consolidation Law’ establishes a framework for the restructuring of the banks, following the European Commission’s Consultation on a possible framework for the recovery and resolution of financial institutions other than banks.

Following this new legal framework, the Cypriot government advanced the Laiki (Popular) Bank’s consolidation and the absorption of parts of its assets and liabilities by the Bank of Cyprus, the recapitalization of the Bank of Cyprus via the conversion of debt into equity and without the use of any state aids. This resulted in a substantial curtailment of the Cypriot banking sector.

The aforementioned actions took place via a series of decrees that were issued by the Central Bank of Cyprus, it being the Consolidation Authority, in accordance with Law 17 (I)/2013:

- A) Decree 93/2013 (25.03.2013) on the sale of the operations of the Bank of Cyprus Public Company Ltd;
- B) Decree 94/2013 (25.03.2013) on the sale of the operations of the Cyprus Popular Bank Public Co Ltd;
- C) Decree 96/2013 (26.03.2013) on the sale of the operations in Greece of the Bank of Cyprus Public Company Ltd ;

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<sup>82</sup> <http://www.mof.gov.cy/mof/mof.nsf/final%20MOUf.pdf>

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

- D) Decree 97/2013 (26.03.2013) on the sale of the operations in Greece of the Cyprus Popular Bank Public Co Ltd;
- E) Decree 103/2013 (29.03.2013) on the rescue by own means of the Bank of Cyprus Public Company Ltd;
- F) Decree 104/2013 (29.03.2013) on the sale of some operations of the Cyprus Popular Bank Co Ltd;
- G) Decree 105/2013 (01.04.2013) on the sale to the United Kingdom of some operations of the Cyprus Popular Bank Public Co Ltd.

Legal actions were brought before the Supreme Court of Justice of Cyprus (revision branch) against all these Decrees by the depositors of the Laiki (Popular) Bank and the Bank of Cyprus (see Question X.9).

## MISSIONS

X.7

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

No legal changes have been made to accommodate the troika review missions. (regarding the debate see the arguments developed in the ESM/ financial assistance framework).

## CASE LAW INTERNATIONAL INSTRUMENTS

VIII.8

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

No such legal challenge exists, although see under Question VIII.9 the High Court's judgment with reference to the legality of the haircut of the uninsured bank account holders in Cyprus.

## CASE LAW IMPLEMENTING MEASURES

X.9

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

Although there was no direct judgment as to the MoU, the Supreme Court of the Republic of Cyprus (revision branch) was called to decide on the constitutionality of the participation of the uninsured bank depositors in the bail-in, regarding Article 146 of the Constitution of the Republic of Cyprus.

1. Supreme Court of Cyprus (revision jurisdiction/branch), Full House, 7 June 2013.<sup>85</sup>
2. Parties: In view of the fact that the case is based on several joined cases it is difficult to list all the names of the plaintiffs (approximately 15 pages). However all the legal actions were directed against (jointly) the Central Bank of Cyprus, the Governor of the Central Bank of Cyprus and the Minister of Finance, who were the defendants in the present case.
3. Legal actions were brought before the Court by the depositors of two Banks (Laiki Bank and Bank of Cyprus) against these Banks and against the legal decrees that were issued by the Central Bank of Cyprus in accordance with Law 17 (I) /2013 (see Question X.6). The plaintiffs argued in particular that 'by selling part of the operations of the Laiki (Popular) Bank to Greece and to the UK, the depositors of the Bank in Greece and the UK enjoy better treatment than the depositors in Cyprus, and are not, thus, affected by the consequences of the Laiki's consolidation'<sup>86</sup>.
4. The Court rejected the case as *inadmissible*, on grounds that a) the Court has no jurisdiction to adjudicate on issues of (private) civil law, which is the law that governs the present legal dispute (the rights of the depositors derive from the contractual relationship between the Bank and the depositor), and as a result b) the plaintiffs did not have a legal interest to bring this legal action before the Court, since there are no grounds for revising the legality of the aforementioned decrees on the basis of public 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).*

Not applicable to Cyprus.

## CONDITIONALITY BOND PURCHASES ECB

### X.11

*WHAT NATIONAL POLICY MEASURES HAVE BEEN REQUESTED BY THE ECB IN EXCHANGE FOR THE ACQUISITION OF*

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<sup>85</sup> For a summary on the case see: <http://www.supremecourt.gov.cy/judicial/sc.nsf/All/ADC518816A38904DC2257B830035B8A2?OpenDocument>

<sup>86</sup> The relevant Article at present is Article 3 (2) (δ) of Law 17 (I)/2013 which stipulates that the creditors (cc. including the depositors) of the financial institution under consolidation are not in a worse financial position as a result of the implementation of the consolidation measures, in comparison to their position in (the hypothetical) case the financial institution was put into liquidation alternatively .

*GOVERNMENT BONDS ON THE SECONDARY MARKET? HOW HAVE THESE REQUESTS BEEN SUBJECT TO DEBATE IN LIGHT OF THEIR IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?*

Not applicable to Cyprus.

## **MISCELLANEOUS**

X.12

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO CYPRUS AND FINANCIAL ASSISTANCE?*

Not applicable.