



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

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# I POLITICAL CONTEXT

## POLITICAL CHANGE

### 1.1

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

Elected on May 6, 2007<sup>1</sup>, President Nicolas Sarkozy's right wing party "UMP" could rely on a center and right-wing coalition majority in both Houses of Parliament until September 2011, when partial elections took place in the Senate<sup>2</sup>. These elections resulted in a majority shift in the Senate<sup>3</sup>, benefiting a left, far left and greens coalition led by current President François Hollande's left party "PS". The PS and its allies subsequently won the Presidential elections (May 6, 2012)<sup>4</sup>, and the Legislative elections at the National Assembly (Assemblée Nationale, June 17, 2012)<sup>5</sup>.

The ratification of the Fiscal Compact was arguably the first of the Euro-zone crisis instruments to be politicized on a large scale, with a notable and mediatized opposition between the two main parties of the political spectrum: the UMP and the PS. It became one of the political issues of the presidential elections. As a candidate to the Presidency of the Republic, François Hollande promised that if he were elected, he would renegotiate the Fiscal Compact and introduce a growth and employment dimension in the European anti-crisis instruments design. After the victory of François Hollande, the Fiscal Compact was ratified<sup>6</sup> but reinterpreted in terms allowing for the vote of an organic law<sup>7</sup> instead of the

<sup>1</sup> <http://www.elysee.fr/la-presidence/nicolas-sarkozy/>

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<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000815090&dateTexte=&categorieLien=id>

<sup>3</sup> [http://www.interieur.gouv.fr/Elections/Les-resultats/Senatoriales/elecresult\\_senatoriales\\_2011/%28path%29/senatoriales\\_2011/index.html](http://www.interieur.gouv.fr/Elections/Les-resultats/Senatoriales/elecresult_senatoriales_2011/%28path%29/senatoriales_2011/index.html) ; <http://www.vie-publique.fr/actualite/alaune/senatoriales-2011-consulter-resultats-ligne.html> ; [http://www.lemonde.fr/politique/article/2011/09/25/pour-la-premiere-fois-de-son-histoire-le-senat-basculer-a-gauche\\_1577644\\_823448.html](http://www.lemonde.fr/politique/article/2011/09/25/pour-la-premiere-fois-de-son-histoire-le-senat-basculer-a-gauche_1577644_823448.html)

<sup>4</sup> [http://www.interieur.gouv.fr/Elections/Les-resultats/Presidentielles/elecresult\\_PR2012/%28path%29/PR2012/FE.html](http://www.interieur.gouv.fr/Elections/Les-resultats/Presidentielles/elecresult_PR2012/%28path%29/PR2012/FE.html)

<sup>5</sup> [http://www.interieur.gouv.fr/Elections/Les-resultats/Legislatives/elecresult\\_LG2012/%28path%29/LG2012/FE.html](http://www.interieur.gouv.fr/Elections/Les-resultats/Legislatives/elecresult_LG2012/%28path%29/LG2012/FE.html)

<sup>6</sup> Loi autorisant la ratification du traité sur la stabilité, la coordination et la gouvernance au sein de l'Union économique et monétaire (23 octobre 2012): <http://www.senat.fr/dossier-legislatif/pj112-021.html>

<sup>7</sup> <http://www.senat.fr/dossier-legislatif/pj112-043.html>

Constitutional amendment sought after by former President Sarkozy. (See also question 53). However, the fact that the Treaty was eventually signed prompted the opposition of the far left<sup>8</sup>.

The idea to enshrine a “Golden Rule” limiting budgetary deficits had already been supported by President Sarkozy before the debates on the Fiscal Compact. In March 2011, his government already proposed such a constitutional amendment<sup>9</sup>. However, it lacked the parliamentary majority<sup>10</sup> necessary on the basis of Article X Constitution for the final adoption of the amendment (3/5<sup>th</sup> of both Houses of Parliament gathered in Congress)<sup>11</sup> (see also question III.2). The right-wing government had then envisaged to by-pass the Congress and pass the amendment through referendum, were Nicolas Sarkozy re-elected<sup>12</sup>.

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<sup>8</sup> <http://lepartidegauche38.org/?q=content/manifestation-contre-le-tscg>

<sup>9</sup> <http://www.senat.fr/dossier-legislatif/pjl110-499.html>

<sup>10</sup> <http://tempsreel.nouvelobs.com/politique/20110830.OBS9484/regle-d-or-accoyer-deconseille-a-sarkozy-de-convoquer-le-congres.html>

<sup>11</sup> <http://www.assemblee-nationale.fr/connaissance/revision.asp>

<sup>12</sup> <http://www.lefigaro.fr/politique/2012/02/14/01002-20120214ARTFIG00669-regle-d-or-sarkozy-et-fillon-veulent-un-referendum.php> (February 2012)

## II CHANGES TO THE BUDGETARY PROCESS

### BUDGETARY PROCESS

#### II.1

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

#### Instruments:

In several instances in this Report, the term “**financial Acts**” is used to refer more generally to a diversity of instruments.

The French Parliament (both the National Assembly and the Senate) adopts annually **Budget Acts**<sup>13</sup> and **Social Security Financing Acts**<sup>14</sup> (SSFAs), which are submitted in autumn, either by the Government (“*projet de loi*”) or by Members of Parliament (“*propositions de loi*”) <sup>15</sup>.

“**Amending**” Budget Acts<sup>16</sup> (“*lois de finances rectificatives*”) occurring later may modify provisions of the “Initial” Budget Act (“*lois de finances initiales*”). “**Amending**” SSFAs<sup>17</sup> may also be passed.

**Accounting Acts**<sup>18</sup> (“*lois de règlement*”) present the yearly results of public accounts.

**Programming Acts**<sup>19</sup> (“*lois de programmation des finances publiques*”) set out multiannual guidelines for public finances - including both SSFAs, Budget Acts and amending Acts - with a

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<sup>13</sup> [http://www.senat.fr/role/fiche/loi\\_fin.html](http://www.senat.fr/role/fiche/loi_fin.html)

<sup>14</sup> [http://www.senat.fr/role/fiche/loi\\_secsoc.html](http://www.senat.fr/role/fiche/loi_secsoc.html)

<sup>15</sup> See **articles 39, 45, 47 and 47-1 of the Constitution**, as well as the organic laws pertaining to the Budget Acts and the SSFAs (more details below). Guy Carcassonne notes that **article 40 of the Constitution** constrains the power of initiative the Parliament, as it forbids that an Act proposal or amendment either increases public spending or leads to a diminution of public resources: “*Private Members' Bills and amendments introduced by Members of Parliament shall not be admissible where their enactment would result in either a diminution of public revenue or the creation or increase of any public expenditure*”. Guy Carcassonne, *La Constitution*, Editions du Seuil, onzième édition (2013), §316.

<sup>16</sup> [http://www.senat.fr/role/fiche/loi\\_fin.html](http://www.senat.fr/role/fiche/loi_fin.html)

<sup>17</sup> [http://www.senat.fr/role/fiche/loi\\_secsoc.html](http://www.senat.fr/role/fiche/loi_secsoc.html)

<sup>18</sup> [http://www.senat.fr/role/fiche/loi\\_fin.html](http://www.senat.fr/role/fiche/loi_fin.html).

<sup>19</sup> <http://www.vie-publique.fr/decouverte-institutions/finances-publiques/ressources-dependences-etat/budget/0405-qu-est-ce-qu-loi-programmation-finances-publiques.html>

It should be noted that Programming acts are a fairly new kind of financial acts since they were introduced by the constitutional reform of July 2008.

view to steer budgetary balance. The Programming Acts do not have a higher status than the other financial Acts in the hierarchy of norms, and are therefore not binding on them. Moreover, a Programming Act can be replaced by a new one before the end of its initially allocated period<sup>20</sup>.

Finally, special “**Article 45 Acts**” (in reference to article 45 of the LOLF) can be adopted in exceptional cases where no budget has been adopted within the time limits, under precise conditions<sup>21</sup>.

Under **article 34 of the Constitution**, Budget Acts “*shall determine the revenue and expenditure of the State in the conditions and with the reservations provided for by an Institutional Act*” (“*loi organique*”)<sup>22</sup>. This Institutional Act is the **Organic Law on Budget Acts** (*Loi organique n° 2001-692 du 1 août 2001 relative aux lois de finances*, also called **LOLF**)<sup>23</sup>.

Article 34 of the Constitution also states that “*Social Security Financing Acts shall lay down the general conditions for the financial equilibrium thereof, and taking into account forecasted revenue, shall determine expenditure targets under the conditions and with the reservations provided for by an Institutional Act*”. This Institutional Act is the **Organic Law on Social Security Financing Acts** (*Loi organique n° 2005-881 du 2 août 2005 relative aux lois de financement de la sécurité sociale*)<sup>24</sup>.

The same article of the Constitution provides that “*Programming Acts<sup>25</sup> shall determine the objectives of the action of the State. The multiannual guidelines for public finances shall be established by Programming Acts. They shall be part of the objective of balanced accounts for public administrations*”.

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<sup>20</sup> *Idem*.

<sup>21</sup> These acts are considered to be rarely used. For more information, see C. Waline, P. Desrousseaux and S. Godefroy, *Le Budget de l'Etat*, La Documentation Française, Direction de l'information légale et administrative, Paris, 2012, pp.58-59.

<sup>22</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html>

<sup>23</sup> <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005631294&dateTexte=vig>. For a summary of the main features of the Organic Law, see also (in French): <http://www.performance-publique.budget.gouv.fr/le-budget-et-les-comptes-de-letat/le-cadre-organique-des-lois-de-finances.html>

<sup>24</sup>

[http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=236CDE83C52CCC4298BAB6ECE8F61677.tpdjo16v\\_2?cidTexte=JORFTEXT000000813423&dateTexte=20131118](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=236CDE83C52CCC4298BAB6ECE8F61677.tpdjo16v_2?cidTexte=JORFTEXT000000813423&dateTexte=20131118). For a summary of the main features of the Organic Law on Social Security Financing Acts, see also (in French): <http://www.performance-publique.budget.gouv.fr/les-enjeux-des-finances-publiques/le-financement-de-la-securite-sociale/lessentiel/le-pilotage-des-finances-sociales.html>

<sup>25</sup> <http://www.vie-publique.fr/decouverte-institutions/finances-publiques/ressources-depenses-etat/budget/0405-qu-est-ce-qu-loi-programmation-finances-publiques.html>

The much debated **Organic Law on the Programming and Governance of Public Finances**<sup>26</sup> (*Loi organique n° 2012-1403 du 17 décembre 2012 relative à la programmation et à la gouvernance des finances publiques*) redefines the function of Programming Acts and aims at fulfilling the requirements of the Fiscal Compact as interpreted by the Constitutional Council (see also section IX on the Fiscal Compact), as well as parts of the requirements of the Six-Pack<sup>27</sup> (see also section VII on the Six-Pack).

### **Adoption procedure:**

Budget Acts and SSFAs are to be adopted after one reading by both Houses of the Parliament, after submission by the Prime Minister or by members of Parliament, within constraining time limits<sup>28</sup>. The Committee in charge of examining Budget Acts in both the National Assembly and in the Senate is the Finance Committee. The Committee in charge of examining SSFAs in both Houses is traditionally the Social Affairs Committee, advised by the Finance Committee<sup>29</sup>. The vote of the project is undertaken by each of the Houses, starting with the National Assembly. If one reading is not enough for an agreement on the proposal in the same terms by both Houses, a conciliation process in the form of a “joint committee” (*“commission mixte paritaire”*) is set in motion to reach an agreement<sup>30</sup>.

For **ordinary laws**, joint committees are formed only after two readings in both Chambers fail to produce an identical text. The financial procedure is therefore similar to the **“accelerated procedure”** available for ordinary laws, as it reduces to one the number of readings in each House before resorting to joint committees<sup>31</sup>.

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<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026785259&dateTexte=&categorieLien=id>. See also, for a synthesis: <http://www.performance-publique.budget.gouv.fr/le-budget-et-les-comptes-de-letat/les-lois-de-finances/approfondir/lactualite/la-loi-organique-relative-a-la-programmation-et-a-la-gouvernance-des-finances-publiques.html>

<sup>27</sup>

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024833359&dateTexte=&fastReqId=1240780889&fastPos=1&oldAction=rechExpTransposition>. *Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States* is said to be partially transposed in the Organic Law in its articles 1 to 5 and 11 to 23. However, it is not always clear which provisions of the Organic Law should be referred to the requirements of Directive 2011/85 or to those of the Fiscal Compact. Only article 5(7) of the Organic Law mentions explicitly Directive 2011/85, in order to clarify the meaning of the requirements pertaining to the inclusion of the projections of the government on public finances in the informational reports annexed to the Programming Acts.

<sup>28</sup> Guy Carcassonne, *La Constitution*, Editions du Seuil, onzième édition (2013), §§ 316 and 321.

<sup>29</sup> [http://www.senat.fr/role/fiche/loi\\_secsoc.html](http://www.senat.fr/role/fiche/loi_secsoc.html) ; [http://www.assemblee-nationale.fr/connaissance/fiches\\_synthese/septembre2012/fiche\\_41.asp](http://www.assemblee-nationale.fr/connaissance/fiches_synthese/septembre2012/fiche_41.asp)

<sup>30</sup> *Idem*.

<sup>31</sup> Guy Carcassonne, *La Constitution*, Editions du Seuil, onzième édition (2013) p.316.

Under **article 47 of the Constitution**: *“Parliament shall pass Finance Bills in the manner provided for by an Institutional Act.*

*Should the National Assembly fail to reach a decision on first reading within forty days following the tabling of a Bill, the Government shall refer the Bill to the Senate, which shall make its decision known within fifteen days. The procedure set out in article 45 shall then apply.*

*Should Parliament fail to reach a decision within seventy days, the provisions of the Bill may be brought into force by Ordinance.*

*Should the Finance Bill setting out revenue and expenditure for a financial year not be tabled in time for promulgation before the beginning of that year, the Government shall as a matter of urgency ask Parliament for authorization to collect taxes and shall make available by decree the funds needed to meet commitments already voted for.*

*The time limits set by this article shall be suspended when Parliament is not in session.”*

Under **article 47-1 of the Constitution**: *“Parliament shall pass Social Security Financing Bills in the manner provided by an Institutional Act.*

*Should the National Assembly fail to reach a decision on first reading within twenty days of the tabling of a Bill, the Government shall refer the Bill to the Senate, which shall make its decision known within fifteen days. The procedure set out in article 45 shall then apply.*

*Should Parliament fail to reach a decision within fifty days, the provisions of the Bill may be implemented by Ordinance.*

*The time limits set by this article shall be suspended when Parliament is not in session and, as regards each House, during the weeks when it has decided not to sit in accordance with the second paragraph of article 28.”*

The Parliament may propose Acts or amend proposals of Acts. However, **article 40 of the Constitution** constrains this power by forbidding that an amendment either increases public spending or leads to a diminution of public resources: *“Private Members' Bills and amendments introduced by Members of Parliament shall not be admissible where their enactment would result in either a diminution of public revenue or the creation or increase of any public expenditure.”* This interdiction has become more flexible since the approval of the Organic Law on Budget Acts in 2001 since it allows for Parliament to increase public expenditure of one program as long as it equally diminishes the expenditure of another program pertaining to the same mission<sup>32</sup>.

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<sup>32</sup>C. Viessant and L. Philip, *La loi organique de 2001 relative aux lois de finances*, La Documentation Française, Direction de l'information légale et administrative, Paris, 2014, p.4.

### The Organic Law on the Programming and Governance of Public Finances:

This Organic Law does not so much impact directly on Budget Acts or SSFAs but rather on Programming Acts, which are now to integrate in French law the requirements of budgetary balance laid down in the Fiscal Compact (in particular, setting **Medium Term Objectives**, defining a **Reduction Deficit Trajectory**, in a multiannual perspective)<sup>33</sup> and parts of the requirements of the Six-Pack<sup>34</sup>.

However, Budget Acts, SSFAs, their amending Acts, and Accounting Acts have also undergone changes under the Organic Law, which was accompanied with changes in the LOLF. Additional elements of information are now required of Budget Acts concerning their impact on and the evolution of structural and real budgetary balance. Modes of calculation for such information are also required, as well as an explicit consistency between the calculations and targets included in the financial acts over time, as well as with the calculations and targets set out in their multiannual objectives<sup>35</sup>.

The Organic Law also creates a **High Council of Public Finance**<sup>36</sup> (HCPF), another requirement of the Fiscal Compact. The HCPF assesses the macroeconomic forecasts projected by the Government in financial acts. It evaluates the compliance of the objectives of budgetary balance set out in financial acts with the objectives of budgetary balance (Medium Term Objectives and Reduction Deficit Trajectory) laid out in the Programming Acts in a multiannual perspective. The coherence of the budgetary objectives and of the modes of calculation used throughout the financial acts is also scrutinized.

The HCPF's assessment of the proposals of financial acts takes place before the proposal is transmitted to the Council of State and to the Parliament, so that it is joined to the proposals of Acts submitted to them<sup>37</sup>. The HCPF also examines the government projections stated in the Stability Programs, before they are sent to the Council of the EU and to the European Commission<sup>38</sup>.

Importantly, the HCPF is key to the **Correction Mechanism** established with the Fiscal

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<sup>33</sup> *Idem.*

<sup>34</sup>

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024833359&dateTexte=&fastReqId=1240780889&fastPos=1&oldAction=rechExpTransposition> .

<sup>35</sup> *Idem.*

<sup>36</sup> <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026785259&dateTexte=&categorieLien=id> . See also : <http://www.hcfp.fr/>

<sup>37</sup> *Idem.* This correction mechanism was activated in May 2014.

<sup>38</sup> However, in this case its role is rather limited since it only checks the liability of the Government's proposal, not the trajectory of public finance itself.

Compact, requiring the Government to give justifications and to lay down correction measures for significant gaps (0,5% or 0,25% of GDP) identified by the HCPF between budgetary results and the multiannual orientations defined in the Programming Acts<sup>39</sup>.

### **Main other instruments for budget scrutiny:**

The provisions presented above strengthen already existing principles of budgetary balance. Thus, **Article 34 of the Constitution** already provided that "(...) *Social Security Financing Acts shall lay down the general conditions for the financial equilibrium thereof (...)*". Moreover, the "*multiannual guidelines for public finances*", which are to be "*established by Programming Acts*", "*shall be part of the objective of balanced accounts for public administrations*". However, these provisions have been analyzed as setting objectives rather than obligations, and generally as lacking constraining force<sup>40</sup>.

The **Court of Auditors** (*Cour des Comptes*) is composed of independent magistrates. The tasks of the Court of Auditors are defined in **article 47-2 of the Constitution**:

*"The Cour des Comptes shall assist Parliament in monitoring Government action. It shall assist Parliament and the Government in monitoring the implementation of Finance Acts [=Budget Acts] and Social Security Financing Acts, as well as in assessing public policies. By means of its public reports, it shall contribute to informing citizens.*

*The accounts of public administrations shall be lawful and faithful. They shall provide a true and fair view of the result of the management, assets and financial situation of the said public administrations."*

Over the past years, the public reports issued by the Court of Auditors increasingly insisted on reducing public deficit<sup>41</sup>.

The **Parliament** has set up its own procedures, in each of the Houses – and in relation with their Finance Committees – dedicated to the examination of public accounts and the evaluation of the projects of financial Acts.

The government is committed under the **Stability and Growth Pact** to issue periodically

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<sup>39</sup> *Idem.*

<sup>40</sup> Guy Carcassonne, *La Constitution*, Editions du Seuil, onzième édition (2013) §§232-233.

<sup>41</sup> <http://www.ladocumentationfrancaise.fr/rapports-publics/104000325/index.shtml>;  
<http://www.ladocumentationfrancaise.fr/rapports-publics/114000083/index.shtml>;  
<http://www.ladocumentationfrancaise.fr/rapports-publics/114000546/index.shtml>;  
<http://www.ladocumentationfrancaise.fr/rapports-publics/124000069-rapport-public-annuel-de-la-cour-des-comptes-2012> ; <http://www.ladocumentationfrancaise.fr/rapports-publics/124000316-rapport-sur-la-situation-et-les-perspectives-des-finances-publiques-juillet-2012> ; <http://www.ladocumentationfrancaise.fr/rapports-publics/124000590-etat-des-lieux-du-financement-de-la-protection-sociale> ; <http://www.vie-publique.fr/actualite/alaune/negociations-emploi-accord-flexicurite-20130116.html>;

National Reform Programs and Stability and Coordination Programs, monitored at European level. One important development brought by the **European Semester** is that the government and Parliament sought, as soon as 2010, to modify the budgetary calendar in order to allow the Parliament to take a stance on the Stability Programs before their transmission to the Commission. This reform was supposed to be made constitutional in the failed attempt at Constitutional revision in 2011; however, this practice seems to have been put in place anyway.

## GENERAL CHANGE

### II.2

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

See also question II.1.

The two main changes came arguably from the adoption of an Organic Law on the Programming and Governance of Public Finances (“the Organic law”), on the one hand, and of the European Semester, on the other hand (see also question II.1). **The Organic law** provided for the creation of a new institution, the High Council of Public Finance<sup>42</sup>, which started producing opinions on the economic forecasts and assessments made by the government in its financial Acts. It should be noted that the government has already started to refer publicly to the works of HCPF to add credibility to its economic assessments<sup>43</sup>.

Information of the Parliament (and beyond) was thus reinforced, also because new elements of information on economic forecasts and assessments had to be included in or associated to the financial acts proposed by the government.

Programming Acts were given new functions, the most important of which pertained to setting multiannual objectives of budgetary balance within the meaning of the Fiscal compact.

However, the Constitutional Council has not shown yet if these new elements would dramatically change its review of financial acts, in particular on the basis of the principle of faithfulness (see annexes I.1-4). This could partly be explained by the fact that no Programming Act has yet been adopted after the creation of the High Council of Public Finance. Hence, it has not yet had the opportunity to provide an assessment on such law that could eventually be used by the Constitutional Council when assessing the respect of the principle of faithfulness. A new Programming Act will be adopted in Autumn 2014 and will be subject to such control for the first time.

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<sup>42</sup> <http://www.hcfp.fr/>

<sup>43</sup> See for instance: <http://discours.vie-publique.fr/notices/136002523.html>

The **European Semester** has accentuated the monitoring of France's budgetary and economic policies. One of its effects was to allow for Parliament to be transmitted the Stability Programs before they be sent to the European Commission (see section VII on the Six Pack).

## INSTITUTIONAL CHANGE

### II.3

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

See also question II.1

Overall, one may arguably consider that information and involvement of the Parliament increased compared to the pre-crisis era. The Organic Law on the Programming and Governance of Public Finances ("the Organic law"), in particular, obliges the government to include more information on its economic forecasts and assessments when a financial Act is proposed to Parliament<sup>44</sup>.

However, in other respects it is unclear if the powers of Parliament have not been reduced in budgetary matters, compared to the ones of the government. Parliament has several times only ratified or voted decisions engaging the guarantee of the State for considerable amounts of money, often already promised by the government in European and intergovernmental fora. Under the pressure of the crisis, these votes and ratifications were arguably difficult to deny. The Parliament also enjoyed a very limited role in the negotiation of the instruments benefiting from these guarantees, and in the use made by it once the guarantee was voted.

The Constitutional Council declines to review French law on the basis of the international commitments of the State, and authorized that the Fiscal Compact be ratified without amendment of the constitution<sup>45</sup>. The main route for constitutional review of Budget Acts, already tried twice<sup>46</sup> by the political opposition in Parliament, appears to rely on the principle of faithfulness of public accounts – which never led until now to declaring a financial act unconstitutional. In this way, the government and Parliament keep a margin of maneuver in budgetary matters in respect with the Constitutional Council.

The Court of Auditors (*Cour des Comptes*) assists the Parliament in the scrutiny of public

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<sup>44</sup> This further reinforces a tendency of a stronger role for Parliament started in 2001 with the adoption of the Organic Law on Budget Acts in 2001.

<sup>45</sup> Decision 2012-653 DC of 9 August.

<sup>46</sup> Decision 2002-464 DC of 27 December and Decision 2011-644 DC of 28 December.

accounts, and issues independent assessments of the state of France's economy and budget. It is now shouldered by the High Council of Public Finance, whose assessments determine the triggering of the correction mechanism (see also question II.1).

## 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?*

See questions II.1 and II.3.

## MISCELLANEOUS

*II.5*

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

Not applicable.

### 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)?*

No constitutional amendment has taken place to implement Euro-crisis law in French national law, despite two attempts by the former right-wing government to introduce a “Golden Rule” in the Constitution, either through Constitutional amendment (in March 2011 – see also question III.2) or following the ratification of the Fiscal Compact. Therefore, only ordinary legislation and organic laws were used throughout the period.

It is to be noted that the main effects of the organic law implementing the requirements of the Fiscal Compact bore on multiannual Programming Acts that are not, by themselves, superior to Budget Acts and Social Security Financing Acts in the hierarchy of norms (see also question II.1).

#### 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?*

President Sarkozy proposed to amend the Constitution in order to comply with the Fiscal Compact Treaty. The new majority, however, interpreted the Treaty as not requiring a Constitutional amendment (see section IX).

#### 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?*

Please see question II.1.

#### 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?*

An Organic Law for the Programming and Governance of Public Finances was adopted pursuant to the ratification of the Fiscal Compact Treaty, as well as relatively minor changes to the Organic Law on Budget Acts (see also question II.1, and section IX on the Fiscal Compact).

## CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

### III.7

*IF ORDINARY LEGISLATION WAS ADOPTED IN CONJUNCTION WITH A CONSTITUTIONAL AMENDMENT, WHAT IS THE RELATIONSHIP BETWEEN THE TWO?*

Not applicable.

## PERCEPTION SOURCE OF LEGAL CHANGE

### III.8

*IN THE PUBLIC AND POLITICAL DISCUSSIONS ON THE ADOPTION OF ORDINARY LEGISLATION, WHAT WAS THE PERCEPTION ON THE APPROPRIATE LEGAL FRAMEWORK? WAS THE ORDINARY LEGISLATION SEEN AS IMPLEMENTING NATIONAL CONSTITUTIONAL LAW, OR EURO-CRISIS LAW?*

The parliamentary debates tend to show that this question is linked to the perception of the role of France as one of the driving forces of the creation of Euro-crisis law. As long as France is said to have proposed substantial parts of the crisis measures (especially for the EFSF and part of the ESM), the debates do not focus so much on the distinction between Euro-crisis law and national (constitutional) law.

Moreover, the French governments consistently tended to present the need for budgetary balance as national rather than being imposed by European commitments. For instance, the proposal for ratification of the Fiscal Compact only came after President Sarkozy attempted (but failed) to introduce a “golden rule” in the Constitution in 2011. Later, President Hollande would affirm that the reduction of public deficit was not so much a European

obligation but rather a national necessity<sup>47</sup>.

Alternatively, criticism on crisis management in Europe could be interpreted, in several instances of the discourse of the far left, along lines of division that are also relevant in the national debate – in particular, between orthodox and unorthodox economic policies in times of crisis and the relevance of austerity measures.

This entanglement between European and national issues and objectives is most vivid in France on the point of the Fiscal Compact. Indeed, the “golden rule” had been a proposal by former President Sarkozy for a reform of the Constitution as soon as 2011. However, it failed to gather the required majority in Parliament. Thus, with the Fiscal Compact, a Treaty appeared for a time to allow for a circumvention of this lack of majority, and for the introduction of the “golden rule” through another route<sup>48</sup>.

## MISCELLANEOUS

### III.9

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

Not applicable.

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<sup>47</sup> <http://discours.vie-publique.fr/notices/127001260.html>

<sup>48</sup> Eric Oliva, « Le pacte de stabilité devant les juridictions constitutionnelles », *RFDA 2013*, p.1043.

## 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 FRANCE 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?*

One amending Budget Act proposed altogether to give the French guarantee to the EFSF and to increase the French contribution to the IMF resources<sup>49</sup> (*Loi n° 2010-606 du 7 juin 2010 de finances rectificative pour 2010 (1)*, articles 3 and 4). It was presented to Parliament by the government as the part played by France in the stabilisation of the Eurozone – together with the adoption of the EFSM at EU level – and the next step to tackle the crisis after the bilateral approach taken to grant loans to Greece<sup>50</sup>.

The government also stressed that the contribution to the EFSF to be agreed to by France (111 billion euros) might have no impact on the national budget, as the primary aim was to create an instrument dissuasive enough to be never used<sup>51</sup>. Although some doubts were

<sup>49</sup> <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022318021> (See Question II.1 for more information on amending Budget Acts).

<sup>50</sup> <http://discours.vie-publique.fr/notices/106001130.html>

<sup>51</sup> *Idem*. See also Question IV.3 for more details on the position of the government during the debates in Parliament.

raised, a considerable majority of MPs voted the government proposal (see question IV.3 for more details on the debates at Parliament).

The government has presented the EFSM, the EFSF, and the increase of the resources of the IMF, together with the bilateral loans to Greece, as “stabilisation instruments” – and as the first of three kinds of developments in the management of the crisis. The second one was the strengthening of the European economic governance and budgetary discipline. Then French Minister for European Affairs, Pierre Lellouche<sup>52</sup>, said this second development in particular was, to a large extent, the result of President Sarkozy’s leadership<sup>53</sup>. The third development pertained to fighting speculation and regulating finance. Overall, Pierre Lellouche insisted on the important role played by France and Germany, who were said to have shared a joint position during the negotiations that led to these developments. The EFSF itself was presented as similar to an already existing French instrument refinancing banks, the SFEF (*Société de financement de l’économie française*)<sup>54</sup>.

Thus, the way the government presented these instruments – as “French-led” for a significant part – made less salient the issues of difficulties having taken place during the negotiation, or concerns over national sovereignty. Moreover, sovereignty appeared, in the debates, more threatened by the state of the public debt on financial markets, than by the responses to this threat.

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

Under article 61 of the Organic Law on Budget Acts (*Loi organique relative aux lois de finance of 1<sup>st</sup> August 2001 - “LOLF”<sup>55</sup>*), State guarantees are authorised by a Budget Act voted by the Parliament<sup>56</sup> (see also question II.1 on the legislative process applicable for

<sup>52</sup> Hearing of the Minister for Foreign Affairs at the Commission for European Affairs of the Senate on 18 May 2010. <http://www.senat.fr/europe/r18052010.html>

<sup>53</sup> « Sur ce point, le Président de la République a fixé le cap ».

<sup>54</sup> : <http://www.assemblee-nationale.fr/13/cr-cfiab/09-10/c0910071.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cr-cfiab/09-10/c0910071.pdf>)

<sup>55</sup>

[http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=A66320193C5E585C67BBCC5544239979.tpdjo14v\\_1?cidTexte=JORFTEXT000000394028&dateTexte=20130616](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=A66320193C5E585C67BBCC5544239979.tpdjo14v_1?cidTexte=JORFTEXT000000394028&dateTexte=20130616)

<sup>56</sup> The proposal of Act presented by the government to the Finance Committees is explicitly based on this reasoning: « *L’entité ad hoc est un dispositif de précaution qui n’aura d’impact budgétaire qu’en cas d’appel effectif de la garantie. Il est toutefois nécessaire qu’une disposition de loi de finances autorise l’octroi de la garantie de l’État et fixe son régime, conformément aux dispositions de la loi organique relative aux lois de finances du 1<sup>er</sup> août 2001 (article 34-II-5°), qui rattachent cette matière au domaine exclusif de la loi de finances* ». <http://www.assemblee-nationale.fr/13/projets/pl2518.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/projets/pl2518.pdf>)

Budget Acts). Article 34-II-5° of the LOFL reads that the Budget Act of the year authorizes the State to give its guarantee and establishes its “regime”<sup>57</sup>. The French guarantee to the EFSF was authorised by Parliament in an amending Budget Act<sup>58</sup> (*Loi n° 2010-606 du 7 juin 2010 de finances rectificative pour 2010 (1)*, article 3).

## GUARANTEES

### IV.3

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

See also question IV.2.

The guarantees were authorized by an amending Budget Act adopted on 7 June 2010<sup>59</sup>. They constituted the last development in a chain of measures taken to tackle the crisis since 2008, and members of Parliament noted the stress imposed by financial markets on national legislatures (as well as an accelerated pace for lawmaking)<sup>60</sup>.

The amending Budget Act followed the normal legislative process (see question II.1 on the legislative process for Budget Acts), and was adopted by a considerable majority<sup>61</sup>. This majority included the parliamentary groups of the right-wing party in power (UMP), of centrists, and of the main party of the opposition: the centre-left-wing Socialist Party (PS)<sup>62</sup>. After one reading in both Houses of Parliament (as is the rule for Budget Acts, see also question II.1), the Act was swiftly<sup>63</sup> adopted.

Three amendments were adopted by the National Assembly, two of which were only

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[nationale.fr/13/pdf/projets/pl2518.pdf](http://www.assemblee-nationale.fr/13/pdf/projets/pl2518.pdf) ).

<sup>57</sup> « Dans la deuxième partie, la loi de finances de l’année... autorise l’octroi des garanties de l’Etat et fixe leur régime »

<sup>58</sup> <sup>58</sup> <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022318021>

<sup>59</sup> Loi n° 2010-606 du 7 juin 2010 de finances rectificative pour 2010, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022318021>

<sup>60</sup> <http://www.assemblee-nationale.fr/13/cr/2009-2010/20100206.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cr/2009-2010/20100206.pdf> ). See for instance the position of Gilles Carrez, general Rapporteur at the Finance Committee of the National Assembly (UMP).

<sup>61</sup> Votes at the Assemblée Nationale : <http://www.assemblee-nationale.fr/13/scrutins/jo0569.asp> ; votes at the Senate : <http://www.senat.fr/scrutin-public/2009/scr2009-219.html>

<sup>62</sup> Socialist MPs have argued that such kind of mechanism was asked for, all over Europe, by other socialist parties.

<sup>63</sup> The proposal of Act was submitted to Parliament on 19 May and adopted on 3 June 2010.

redactional. The third one importantly required that the Finance Committees of both Houses of Parliament be informed whenever the EFSF granted financing or loans<sup>64</sup>. The modified text went through to the Senate and was eventually voted without further modification<sup>65</sup>.

More amendments were proposed by the parliamentary groups of the far left CRC (GDR at the National Assembly, CRC at the Senate), which constituted the main opponent to the EFSF in the debates. These amendments were all rejected.

Wide ranging debates took place, dealing with the general management of the crisis and not limited to the EFSF. Overall, there was a broad majority in favor of the creation of the EFSF, which was understood as a step forward in European solidarity and a necessary tool for the stabilization of the Eurozone, in a context of tightening access to financial markets for Greece, Ireland, Portugal, Spain and Italy<sup>66</sup>.

However, several voices in Parliament, including the Socialist Party, regretted that the mechanism was limited in time<sup>67</sup>. Some MPs (including allies of the majoritarian right-wing party) argued in favour of rescheduling the debt of countries that are not likely to be able to reimburse the loans in too short an amount of time<sup>68</sup>.

The question why Greece should not see its debts “restructured” rather than financed was also raised by several MPs across the political spectrum. The Government answered essentially that such restructuring would eventually lead to the destruction of the euro<sup>69</sup> (see also question IV.8 on the debates that occurred when France granted a bilateral loan to Greece).

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<sup>64</sup> <http://www.assemblee-nationale.fr/13/amendements/2518/251800003.asp> See *Loi n° 2010-606 du 7 juin 2010 de finances rectificative pour 2010 (1)*, article 3-IV : « *Lorsqu'il octroie la garantie de l'Etat en application du présent article et lorsque l'entité ad hoc mentionnée au I apporte un financement ou consent des prêts, le ministre chargé de l'économie informe les commissions de l'Assemblée nationale et du Sénat chargées des finances.* ». The amendment was proposed by the general Rapporteur at the Finance Committee of the National Assembly, Gilles Carrez (UMP). <http://www.assemblee-nationale.fr/13/cr-cfiab/09-10/c0910076.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cr-cfiab/09-10/c0910076.pdf>). The process of information of Parliament would later be modified and become semestrial rather than every time the EFSF was used (see also Question IV.6).

<sup>65</sup> <http://www.senat.fr/dossier-legislatif/pil09-511.html>

<sup>66</sup> <http://www.assemblee-nationale.fr/13/projets/pl2518.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/projets/pl2518.pdf>)

<sup>67</sup> <http://www.senat.fr/compte-rendu-commissions/20100531/fin.html#toc4>

<sup>68</sup> <http://www.assemblee-nationale.fr/13/cr-cfiab/09-10/c0910076.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cr-cfiab/09-10/c0910076.pdf>) See for instance interventions by center-right wing Charles de Courson.

<sup>69</sup> *Idem.*

The interest rate of the loans to Greece was criticized, too, as too high by several MPs from the far left to the UMP<sup>70</sup>. The government answered by comparing it to the even higher interest rates demanded of Greece on the financial markets, and stressing that such rates were an expression of the risk taken by the lender. Also, the rate was set so as to align it with IMF rates<sup>71</sup>.

Several members of parliament, PS included, also raised doubts and expressed skepticism about the assertion that granting the guarantee of the State would not modify the budgetary balance<sup>72</sup> as long as the mechanism was left unused<sup>73</sup>. The main discourse from the government was, indeed, that the design of the mechanism could make its actual use unnecessary. UMP senator Serge Dassault, for instance, stressed the risk that the outlook of the French debt by rating agencies could be negatively impacted by its participation in the EFSF<sup>74</sup>. Minister of the Economy Christine Lagarde did not share his worries for the French outlook.

The main criticisms came from the far left. First, they argued that the EFSF was yet another manifestation of the conformation of European governments to the requirements of financial markets, rather than “breaking” the power of the latter over governments.

They also expressed their doubts about the justifications given for the creation of the EFSF. It was compared to the bilateral aid to Greece and presented as another example of how richer European countries try to actually save their own banks exposed in Greece, and to help their own weapon industry under contract with Greece<sup>75</sup>.

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<sup>70</sup> <http://www.senat.fr/compte-rendu-commissions/20100531/fin.html#toc4> ; <http://www.assemblee-nationale.fr/13/cri/2009-2010/20100206.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100206.pdf> ).

<sup>71</sup> <http://www.senat.fr/compte-rendu-commissions/20100531/fin.html#toc4> , answer by Christine Lagarde to [Roland du Luart](#).

<sup>72</sup> MP Moscovisci (PS): “ MP Moscovisci (PS): « *on ne peut que s'étonner de la décision du Gouvernement de laisser inchangé le calcul des conditions de l'équilibre financier de l'État figurant dans le projet de loi de finances initiale. Permettez-moi donc, monsieur le ministre – et je souhaiterais que vous me répondiez sur ce point – d'exprimer quelques doutes sur la sincérité des comptes publics.* » (31 May 2010, public examination at the National Assembly, <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100206.pdf> ).

<sup>73</sup> The right-wing majority would later see Eurostat recommend that the State contributions to the EFSF be written down in public accounting as debt. However, the Commission would not consider these contributions as debt for the purposes of monitoring excessive deficit. [http://www.assemblee-nationale.fr/13/rapports/r3718.asp#P229\\_48701](http://www.assemblee-nationale.fr/13/rapports/r3718.asp#P229_48701)

<sup>74</sup> <http://www.senat.fr/compte-rendu-commissions/20100531/fin.html#toc4>

<sup>75</sup> <http://www.assemblee-nationale.fr/13/cri/2009-2010/20100206.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100206.pdf> ). See in particular the position taken by Jean-Pierre Brard (GDR, far left).

The provisions regarding the “conditionality” to be imposed on the countries that would benefit from the EFSF were criticized as well. Indeed, as no precision was given regarding this conditionality, power on the matter would be given to the European Commission and the IMF, institutions presented as not easy to situate by the public on the political spectrum, and not directly accountable to the people<sup>76</sup>.

Far left Martine Billard (GDR) also underlined what she presented as an inconsistency: article 122-2 TFEU now appeared to allow action on financial markets while, a few weeks before, article 123 seemed to forbid it<sup>77</sup>.

She also regretted that the debate took place on a Monday afternoon (most of the members of parliament are usually still visiting their home constituencies at that moment of the week)<sup>78</sup>. The “solemn vote” of the amending Budget Act, however, would take place the following day – apparently at the insistence of the GDR<sup>79</sup>.

## ACTIVATION PROBLEMS

### IV.4

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

The EFSF Framework Agreement met relatively few difficulties to enter into force (see question IV.3 for the debates in Parliament). The increase of the French guarantee from 111 billion euros to 159 billion euros in September 2011 was also voted rather swiftly by the Parliament.

Yet, the amending Budget Act providing for this increase faced more opposition than the amending Budget Act authorizing the EFSF in 2010 (see also question IV.6). Moreover, the government felt the need to seek counsel from the Council of State on the legal need for France to have Parliament ratify the EFSF Framework Agreement. The Council of State concluded that ratification was unnecessary, provided certain conditions of information of Parliament were met (see also question IV.5).

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<sup>76</sup> *Idem.*

<sup>77</sup> *Idem.*

<sup>78</sup> *Idem.*

<sup>79</sup> <http://www.assemblee-nationale.fr/13/cri/2009-2010/20100208.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100208.pdf>) . Martine Billard: « *La dépendance à ces marchés est telle que nous aurions voté ce plan à la sauvette si le groupe GDR n'avait demandé un vote solennel* ».

## CASE LAW

### IV.5

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

There is no decision of the Constitutional Council on the EFSM, nor, apparently, of the Council of State. There is also no Constitutional Council decision on the EFSF.

However, the government sought the advice of the Council of State (*Conseil d'Etat*) at the occasion of the increase of the French guarantee to the EFSF, during the summer of 2011. The Council of State is the highest French administrative jurisdiction, with two main roles: jurisdictional and advisory. In its advisory role, the Council of State describes its own role as to control the quality of the documents presented to it, their coherence, and their suitability to obtain the stated objectives. It aims at ensuring the legal certainty of these documents, their respect for the hierarchy of norms, and for the great principles of competence allocation<sup>80</sup>.

The *Rapport public 2012* gives some information on the advice sought and given on the EFSF, but the complete version of the advice does not seem to be accessible to the public<sup>81</sup>. The short summary available reveals that the Council of State was consulted on the proposal of Act that would become the second amending Budget Act for 2011 (*Loi n° 2011-1117* of 19 September 2011), which purpose was to authorise an increase in the guarantee given by the State to the EFSF (from 111 billion to 159 billion euros).

The question asked by the government to the Council – following an accelerated procedure called “*saisie d’extrême urgence*” – appears to have regarded the need for the Executive to seek ratification by Parliament of the agreement promising the French guarantee to the EFSF, in order to conform to the requirements of article 53 of the Constitution.

Under article 53 of the French Constitution: “*Peace Treaties, Trade agreements, treaties or agreements relating to an international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament*”. As the EFSF may be said to be an international agreement pertaining to a “commitment of the resources of the State” for up to 159 billion euros, the government may indeed have feared that the absence of a process of ratification was a possible violation of the Constitution.

However, the Council of State issued a measured advice: “[n]oting that the project of amending Budget Act for 2011 authorizing that the guarantee of the French Republic be

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<sup>80</sup> Conseil d’Etat, *Rapport public 2012*, p.13. <http://www.ladocumentationfrancaise.fr/rapports-publics/124000492-conseil-d-etat-rapport-public-2012-volume-1-activite-juridictionnelle-et>

<sup>81</sup> *Ibid.* p.145.

*granted to the EFSF had for sole objective to grant the guarantee of the State to an organ created by an intergovernmental agreement, and that this agreement, taking the form of an agreement under international private law and according to which the signatory States have decided to create a financial body under private law, the mission of which consists in intervening on the financial markets according to the procedures and instruments ordinary to these markets, the Council of State has considered that prior ratification of this agreement, within the forms required under article 53 of the Constitution, was not necessary.<sup>82</sup>* It is difficult to infer from this sole summary whether the reasoning of the Council of State, to declare ratification unnecessary, was that the amending Budget Act authorised a guarantee to an organ that had been created through a separate agreement; or if it was that this agreement existed under private international law and established a body under private law.

The Council of State however considered necessary that the government transmitted to the Parliament, *“for its complete information at the time of the debate on the project of amending Budget Act, a consolidated version, in official French translation, of the terms of the agreement taken on 7 June 2010”* between 17 Eurozone members States, as well as of *“the modifying decisions taken on 11 March and 21 July 2011 by the Heads of State or Government of the same States”<sup>83</sup>.*

## 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?*

State guarantees and their increases are authorized by Parliament through Budget Acts (see also question IV.2). As for the EFSF, the French Parliament introduced an amendment in the

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<sup>82</sup> Own translation from French : *« Constatant que le projet de loi de finances rectificative 2011 autorisant l’octroi de la garantie de la République française avait pour seul objet d’autoriser l’octroi de la garantie de l’Etat à un organisme créé par un accord intergouvernemental et que cet accord, pris sous la forme d’un accord de droit international privé par lequel les Etats signataires ont décidé de créer un établissement financier de droit privé, dont la mission consiste à intervenir sur les marchés financiers selon des procédures et instruments ordinaires de ces marchés, le Conseil d’Etat a considéré que la ratification préalable de cet accord, dans les formes requises par l’article 53 de la Constitution, n’était pas nécessaire ».*

<sup>83</sup> *« Toutefois, [le Conseil d’Etat] a appelé l’attention du Gouvernement sur la nécessité de transmettre au Parlement, pour sa complète information lors du débat sur ce projet de loi de finances rectificative, une version consolidée, en traduction française officielle, des termes de l’accord passé le 7 juin 2010 entre 17 Etats membres de l’Union européenne dont la monnaie est l’euro et des décisions modificatives prises les 11 mars et 21 juillet 2011 par les chefs d’Etat ou de Gouvernement des mêmes Etats ».* Idem.

act authorizing the first guarantee of the State to the new instrument<sup>84</sup>, and obtained the right to be informed every time the EFSF would grant financing and loans.

Following a summit of Heads of State and Government of the Euro Area on July 21, 2011, State contributions to the EFSF were increased, and new modalities governed its use. Like before, the authorization to give additional French guarantees to the EFSF (from 111 billion to 159 billion euros) was to be achieved through an amending Budget Act voted by Parliament<sup>85</sup> (*Loi n° 2011-1117* of 19 September 2011) (see also question IV.2).

The new Act introduced a change in the information of the Parliament as regards the EFSF. Article 3-IV of *Loi n° 2010-606 du 7 juin 2010 de finances rectificative pour 2010* was amended in a way that Parliament would no longer be informed every time the EFSF granted financing and loans<sup>86</sup>. Instead, the government would only need to inform the committees of both Houses of Parliament in a report, every semester, on the use made of the EFSF.

The changes in the modalities of use of the EFSF, decided by the European heads of States and governments on July 21, 2011, were also acknowledged.

The main party of the opposition – the Socialist Party (PS) – continued to support the principle of the EFSF as well as the need to increase the guarantees given to it by France. However, the PS also criticized more vocally this instrument as coming too late and doing too little, and argued in favour of a mutualisation of debts through the creation of Euro-bonds<sup>87</sup>.

The far left continued to criticize the EFSF as a way to provide State guarantee to speculators, and continued to manifest its opposition to austerity measures imposed on Greece, presented as brutal and counter-productive<sup>88</sup>.

Although the far left voted against the amending Budget Act, as well as most of the PS (with the notable exception of François Hollande and Jérôme Cahuzac), the Act was adopted with

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<sup>84</sup> Article 3-IV of *Loi n° 2010-606 du 7 juin 2010 de finances rectificative pour 2010*

<sup>85</sup> <http://www.senat.fr/dossier-legislatif/pjl10-786.html>

<sup>86</sup> Article 8-I-2 of *Loi n°2011-1117* : « *Le IV est ainsi modifié :*

a) *Les mots : ''et lorsque l'entité ad hoc mentionnée au I apporte un financement ou consent des prêts'' sont supprimés ;*

b) *Est ajoutée une phrase ainsi rédigée :*

*''Il transmet chaque semestre aux commissions un état récapitulatif des interventions mises en œuvre par le fonds mentionné au I.'' »*

<sup>87</sup> <http://www.assemblee-nationale.fr/13/cri/2010-2011-extra2/20112001.asp> See in particular the position held by Elizabeth Guigou.

<sup>88</sup> *Idem.* See in particular the position held by Jean-Pierre Brard

a center and right-wing majority<sup>89</sup>. It is to be noted that the Act did not pertain to the EFSF only, and that it was opposed also on other provisions contained in it.

## IMPLEMENTING PROBLEMS

### IV.7

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

The EFSF was again at the centre of debate in Parliament at the occasion of the increase of France's guarantee to the scheme, in September 2011 (see also question IV.6). In this context, debates on the Greek aid package, decided by heads of States and governments on 21 July 2011, gave rise to increasingly diverging views between the two main parties of the political spectrum, regarding to the most adequate way out of the crisis.

Neither the right wing majority (UMP) nor the main, centre-left-wing party in opposition (PS) challenged the idea that a Greek default would cause a domino-effect on the other fragile States of the Eurozone.

However, the PS deplored that the German Chancellor Angela Merkel and the French President Nicolas Sarkozy buried the option of a mutualisation of debt through Euro-bonds, at the Elysée summit of 17 and 18 August 2011<sup>90</sup>. Without this option, the PS argued, the EFSF would never suffice to appease the markets once and for all. Moreover, the PS argued that renouncing to euro-obligations had the effect of worrying the markets as much as a Greek default would have, while not yet having the upside of relieving the Greek State from a part of its debt.<sup>91</sup> Involvement of the private sector in the relief of the Greek debt, also, was criticised by the Socialist Party for the voluntary form it took<sup>92</sup>.

## BILATERAL SUPPORT

### IV.8

*IN CASE FRANCE 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?*

France participated in the funding of Greece on a bilateral basis. The Member States of the Eurozone set, on April 11, 2010, the technical conditions for the granting of a possible loan to Greece, for a maximum of 30 billion euros the first year. France announced its

<sup>89</sup> <http://www.assemblee-nationale.fr/13/scrutins/jo0792.asp> ; <http://www.senat.fr/scrutin-public/2010/scr2010-278.html>

<sup>90</sup> <http://www.assemblee-nationale.fr/13/cri/2010-2011-extra2/20112001.asp> , in particular the intervention of Jerome Cahuzac; [http://www.senat.fr/seances/s201109/s20110908/s20110908\\_mono.html](http://www.senat.fr/seances/s201109/s20110908/s20110908_mono.html) , in particular the intervention of Nicole Bricq.

<sup>91</sup> *Idem*.

<sup>92</sup> *Idem*, see in particular the intervention of Nicole Bricq at the Senate.

participation to the scheme for an amount of 3,9 billion euros, with a maximum lending authorization of 6,3 billion euros for Greece in 2010<sup>93</sup>. The total lending capacity made available to Greece was soon raised to 16,3 billion euros over three years. The government assured that, as a financial operation, the loan would not appear as a deficit on public accounts<sup>94</sup>. The Parliament authorized the loan, promised to Greece by the right-wing government, in the amending Budget Act of May 7, 2010<sup>95</sup> (*Loi n° 2010-463*), with an overwhelming majority<sup>96</sup>. The far left constituted the main opposition to the Act.

The main reason advanced by the right-wing majority for granting the loan to Greece was a principle of financial solidarity between European states in times of crisis. Greece and other indebted Eurozone States being under attack on the financial markets, not showing this financial solidarity would give substance to the threat of a collapse of the Eurozone. Comparatively, the exposure of France and French banks to the Greek economy, estimated at around 53 billion euros, was said to be important, but not decisive in the decision to help the country. Moreover, financial assistance to Greece was considered in conformity with European law by the right-wing majority despite articles 123 and 125 of the TFEU, as long as it took the form of a loan, and on the basis of article 122 and 148 of the Treaty<sup>97</sup>.

The vote in favour of the loan was justified, by the main party of opposition (PS, left), by the need to act quickly in the face of worsening conditions for Greece and other European countries on financial markets, and to make clear the financial support of France to Greece<sup>98</sup>.

However, the discussions held at the Parliament showed questions and reservations on several issues (especially on the part of the centre-left and the far left)<sup>99</sup>.

First, the 5% interest rate was considered by several members of Parliament as shockingly high, considering the vocabulary of “solidarity” surrounding the loan. France could itself

<sup>93</sup> Announcement made by French Minister to the Economy and the Finances Christine Lagarde on April 21, 2010: <http://discours.vie-publique.fr/notices/106000864.html>

<sup>94</sup> <http://www.assemblee-nationale.fr/13/cr-cfiab/09-10/c0910062.asp>

<sup>95</sup> [http://www.assemblee-nationale.fr/13/dossiers/deuxieme\\_collectif\\_2010.asp](http://www.assemblee-nationale.fr/13/dossiers/deuxieme_collectif_2010.asp) ; <http://www.senat.fr/dossier-legislatif/pjl09-424.html>

<sup>96</sup>For the votes, see: National Assembly: <http://www.assemblee-nationale.fr/13/cr/2009-2010/20100175.asp#ANCR201000000164-00811> ; Senate: <http://www.senat.fr/scrutin-public/2009/scr2009-198.html>

<sup>97</sup> <http://www.assemblee-nationale.fr/13/rapports/r2460.asp>

<sup>98</sup> <http://www.assemblee-nationale.fr/13/cr-cfiab/09-10/c0910062.asp> ; <http://www.assemblee-nationale.fr/13/cr/2009-2010/20100174.asp> ; <http://www.assemblee-nationale.fr/13/cr/2009-2010/20100175.asp> ; <http://www.senat.fr/compte-rendu-commissions/20100503/finances.html#toc2>

<sup>99</sup> [http://www.assemblee-nationale.fr/13/dossiers/deuxieme\\_collectif\\_2010.asp](http://www.assemblee-nationale.fr/13/dossiers/deuxieme_collectif_2010.asp)

borrow on the financial markets at a much lower interest rate, and would therefore make a profit from the loan. If this fact were to be known by the Greek people, it could result in its revolt and distrust towards Europe<sup>100</sup>.

Second, the conditionality imposed on Greece in exchange for the loan was deemed unfair and excessively painful on the Greek people, as it would entail a series of reforms and cuts in the Greek public sector. It was also said that the Greek people could not be held responsible for the decisions of the political and financial elite that caused the crisis. There again, revolt against Europe could be the outcome. Moreover, austerity conditions, combined with a 5% interest rate, would make it more difficult for the Greek authorities to repay public debts and reassure financial markets<sup>101</sup>.

Third, the three-year plan for debt reduction was considered excessively optimistic by several Members of Parliament, both right and left wing. Instead of a three-year plan, the government was asked why it did not agree on a longer-term loan (20 to 30 years were mentioned), more gradual conditions, and a restructuring of the Greek debt. Members of Parliament also questioned why a Greek exit from the euro would be unthinkable<sup>102</sup>.

The Minister of the Budget, François Baroin, and the Minister of the Economy, the Industry, and Employment Christine Lagarde, answered to these questions in several ways.

The 5% interest rate on the loan was presented as pressure put on Greece to reform quickly its public sector, in order to enable itself to repay the loan. Low rates would also give bad incentives to European States in the adoption of virtuous measures of debt control. Moreover, the rate had to be the same for all lenders, some of them benefiting from less interesting rates than France or Germany on financial markets<sup>103</sup>.

Also, the form of the loan granted to Greece was all the more justified, according to the then French Government, considering that Greek authorities had led inadequate policies and lied regarding the public debt of the country<sup>104</sup>.

Both the 5% interest rate and the conditionality imposed on Greece were presented as a mere copy of the practices of the IMF to deal with such cases. In particular, it was stressed

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<sup>100</sup> *Idem.*

<sup>101</sup> *Idem.*

<sup>102</sup> *Idem.*

<sup>103</sup> *Idem.*

<sup>104</sup> Minister to the Budget François Baroin thus said to the Finances Committee of the National Assembly : “*On ne peut pas, d’un côté, annoncer une aide à un pays en difficulté, qui a mené des politiques inappropriées et menti sur ses déficits et, de l’autre, se voir reprocher que cette aide revête la forme d’un prêt.*”. It was also repeated in several instances that the country’s officials had lied and falsified their public accounts.

<http://www.assemblee-nationale.fr/13/cr-cfiab/09-10/c0910062.asp>

that the interest rate imposed by the European leaders should be as similar as possible to the one available under an IMF scheme<sup>105</sup>.

Finally, the measures conditioning the disbursement of the loan were deemed necessary, by the right-wing government, for the long-term viability of Greek finances and economy<sup>106</sup>, as well as for the eventual reimbursement of the loan. A more gradual or lengthy scheme would not have prompted dynamic responses on the part of the Greek government, and the risk would have arisen to never see significant structural changes happen in the country<sup>107</sup>.

The General Rapporteur on the proposal of Act at the Finance Committee of the Senate, Philippe Marini (UMP, the ruling party), accepted the situation of conditionality imposed on Greece as that of a “financial protectorate”, enacting the alienation of its independence. Yet, this alienation was qualified as “juridical”, one that was agreed to by the Greek authorities<sup>108</sup>.

As regards the issues of a possible restructuring of the Greek debt or a Greek exit from the euro, the government answered that these options had been rejected at the level of the heads of States and governments, and were non-negotiable in Parliament. A restructuring was deemed too dangerous if it led to a chain-reaction on the financial markets over the sovereign debts of the weakest Eurozone-States, and an exit from Greece would lead to a collapse of the whole Eurozone.

The loan to Greece also led to broader discussions over European economic governance, its failures and its perspectives. The idea of a European Monetary Fund was advanced by many, from the right to the far left. The importance of disposing of a European tool (as opposed to one being international or American) was put forward. The role of the European Central Bank (ECB) was questioned, especially concerning the unconventional measures it took to stabilise the Greek debt<sup>109</sup>. Members of the right-wing majority considered it was important to debate the role of the ECB regarding inflation, the coordination of fiscal systems, labour costs, and budgetary policies; yet they also considered these points as out of reach at the present stage of response to the crisis<sup>110</sup>.

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<sup>105</sup> <http://www.assemblee-nationale.fr/13/cr-cfiab/09-10/c0910062.asp> ; <http://www.assemblee-nationale.fr/13/cri/2009-2010/20100174.asp> ; <http://www.assemblee-nationale.fr/13/cri/2009-2010/20100175.asp> ; <http://www.senat.fr/compte-rendu-commissions/20100503/finances.html#toc2>.

<sup>106</sup> *Idem.*

<sup>107</sup> *Idem.*

<sup>108</sup> <http://www.senat.fr/compte-rendu-commissions/20100503/finances.html#toc2>

<sup>109</sup> *Idem.*

<sup>110</sup> <http://www.senat.fr/compte-rendu-commissions/20100503/finances.html#toc2>

## MISCELLANEOUS

### IV.9

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

The increase of the participation of the Eurozone countries to the IMF was understood as complementary to the creation of the EFSM/EFSF. The French Parliament voted this increase in article 4 of the same amending Budget Act as that authorising the first guarantee to the EFSF. In later debates, the centre-left (Socialist Party, PS) general rapporteur for the Finances Commission of the Senate underlined that the increase of the States' participation to the IMF and the use of this money to aid European countries could be seen as a form of money printing outside of the control of the ECB<sup>111</sup>.

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<sup>111</sup> Senator Nicole Bricq (PS, opposition), General rapporteur to the Finances Commission of the Senate, on 21 February 2012: "Parmi les mesures censées contribuer à la stabilisation de la zone euro vient, au premier chef, le relèvement de 31,4 milliards du plafond des prêts de la France au FMI. Une création monétaire, en somme, où la BCE n'aura pas son mot à dire" <http://www.senat.fr/compte-rendu-commissions/20120220/fin.html#toc2>

## 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 FRANCE ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?*

The process of negotiation of the amendment of article 136 TFEU appears to have been led by the executive with relatively little involvement of the Parliament – which was regretted by the opposition<sup>112</sup>.

Initially, French President Nicolas Sarkozy was against a reform of the EU Treaties. He eventually agreed to amending article 136 TFEU in a compromise reached with German Chancellor Angela Merkel in Deauville, on 18 October 2010<sup>113</sup>. France thus respected the German concerns – emphasised by the German Constitutional Court – over the legality

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<sup>112</sup> See for instance the position of Rapporteur Elizabeth Guigou (PS, opposition) in the Compte rendu de la Commission des Affaires européennes de l'Assemblée nationale, 7 February 2012 : « *Mes chers collègues, je vais vous présenter une proposition de résolution européenne du groupe Socialiste relative à la relance économique et au renforcement du contrôle démocratique. Pourquoi est-il utile de présenter un tel texte ? Parce que trois projets de traité vont nous être présentés pour ratification, et que les négociations se sont déroulées jusqu'à présent sans association des parlements nationaux alors que leur souveraineté budgétaire est affectée.* » [...] « *Les parlements nationaux vont être saisis de trois projets de traité au seul stade de la ratification. Ce n'est pas acceptable, compte tenu de leur objet. Il est indispensable que les parlements soient beaucoup plus impliqués* ». The three « proposals of treaties » referred to are the amendment of article 136 TFEU, the ESM, and the Fiscal Compact. [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0239.asp#P20\\_1253](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0239.asp#P20_1253) (pdf : [www.assemblee-nationale.fr/13/pdf/europe/c-rendus/c0239.pdf](http://www.assemblee-nationale.fr/13/pdf/europe/c-rendus/c0239.pdf))

<sup>113</sup> [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0170.asp#P11\\_550](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0170.asp#P11_550) ; [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0172.asp#P7\\_304](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0172.asp#P7_304) ; [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0180.asp#P16\\_378](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0180.asp#P16_378) ; [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0181.asp#P22\\_585](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0181.asp#P22_585) ; <http://www.euractiv.com/future-eu/merkel-sarkozy-agree-eu-treaty-c-news-498902> ; [http://www.liberation.fr/economie/2010/10/29/merkel-sarkozy-pacte-d-instabilite\\_689979](http://www.liberation.fr/economie/2010/10/29/merkel-sarkozy-pacte-d-instabilite_689979) ; <http://www.presseurop.eu/en/content/article/365691-merkel-sarkozy-hijack>

under EU law of the anti-crisis stability mechanisms.

As part of the compromise, France obtained that sanctions for States that would not comply with the rules of the EMU should not be automatic, but that it would remain a political decision taken at the Council<sup>114</sup>.

Another point of the compromise regarded the contribution of the private sector in the resolution mechanism. The French position on this topic appears to have been cautious, arguably in order not to upset investors, leaving the details of this participation to later measures<sup>115</sup>.

## APPROVAL

### V.2

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

The approval of the 136 TFEU Treaty amendment was submitted as an Act, through an “accelerated procedure”, by the President of the Republic Nicolas Sarkozy to the vote of both Houses of Parliament. The same Act authorised the ratification of the ESM Treaty<sup>116</sup>. The government submitted the proposal of Act to Parliament for approval/ratification, as required under article 53 of the Constitution<sup>117</sup>. Under article 53 of the Constitution, “*Peace Treaties, Trade agreements, treaties or agreements relating to an international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act*

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<sup>114</sup>See MP Christophe Caresche (PS), member of the European Affairs Committee at the National Assembly, on 27 October 2010 : « *La déclaration de Deauville est très importante car elle marque un accord entre la France et l’Allemagne. Il en ressort tout d’abord que la majorité qualifiée inversée n’est pas retenue par les gouvernements français et allemand : la France a obtenu l’accord de l’Allemagne pour que dans le nouveau système le Conseil n’ait pas simplement le pouvoir de bloquer une sanction, mais dise, à la majorité qualifiée, s’il engage une procédure de sanction ou pas ; on s’éloigne ainsi du système quasi-automatique de la Commission.* » [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0170.asp#P11\\_550](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0170.asp#P11_550)

<sup>115</sup> See the position taken by State Secretary of European Affairs Pierre Lellouche before the European Affairs Committee at the National Assembly on 10 November 2010 : « *un débat va s’ouvrir sur la contribution du secteur privé et du Fonds monétaire international à ce mécanisme pérenne de gestion de crises. Le sujet est extrêmement sensible ; il ne me revient pas de le trancher devant vous aujourd’hui mais, comme le disent nos collègues allemands, il ne me semble pas anormal de « convier » ceux qui spéculent sur les dettes souveraines à participer au fonds commun de garantie, car on ne saurait envisager une situation telle que les profits sont privatisés et les dettes nationalisées. Toutefois, la mise en œuvre de ce principe doit être très soigneusement pensée pour éviter des effets négatifs sur les marchés* ». .

<sup>116</sup> <http://www.senat.fr/dossier-legislatif/pj111-393.html>.

<sup>117</sup><http://www.assemblee-nationale.fr/13/projets/pl4337.asp>; <http://www.senat.fr/rap/111-395/111-3954.html#toc182>

of Parliament”.

An “accelerated procedure” (see annex II) was used which shortens the procedure of adoption of the Act, in particular by limiting the number of readings of the Act to one in each Houses<sup>118</sup>. Adopted by both Houses after one reading, the Act authorising the approval of the amendment of article 136 TFEU was published in the Official Journal on March 8, 2012<sup>119</sup>.

## RATIFICATION DIFFICULTIES

V.3

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

**The debates** which arose during the process of approval of the amendment of article 136 TFEU were tightly intertwined with more general arguments over the French and European response to the crisis, in particular over the ESM Treaty and the Fiscal Compact. The context of ratification facilitated this connection.

First, the proposal of Act authorizing the approval of the amendment of article 136 TFEU was examined jointly with the proposal of Act authorizing the ratification of the ESM Treaty, and voted immediately one after the other.

Second, the participants underlined that the ESM Treaty contained a political commitment to make the benefit of the Stability Mechanism depend on the ratification of the Fiscal Compact. Therefore, debates over the amendment of article 136 TFEU and the ESM Treaty also involved considerations over the Fiscal Compact. This explains how justifications given for abstention votes (mainly PS and associates) and votes against (mainly far left GDR<sup>120</sup> and CRC<sup>121</sup>, and ecologists) the approval of the amendment of article 136 TFEU drew on more varied and comprehensive issues. These included: the opportunity to renegotiate the Fiscal Compact; the focus on austerity of the current instruments in comparison with concerns over growth; the brutality of the conditionality imposed on bail-out countries, in a process leading to the subordination of sovereign States to other States or bureaucrats; sovereignty and democratic issues, in particular the role of the national and European Parliament(s); wishes for more ambitious EU Treaty reforms; the Franco-German relationship, and different assessments of the German role in the management of the Eurozone crisis.

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<sup>118</sup> [http://www.assemblee-nationale.fr/connaissance/fiches\\_synthese/septembre2012/fiche\\_32.asp](http://www.assemblee-nationale.fr/connaissance/fiches_synthese/septembre2012/fiche_32.asp)

<sup>119</sup>

[http://www.legifrance.gouv.fr/jopdf/common/jo\\_pdf.jsp?numJO=0&dateJO=20120308&numTexte=8&pageDebut=04314&pageFin=04314](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=20120308&numTexte=8&pageDebut=04314&pageFin=04314)

<sup>120</sup> [http://www.assemblee-nationale.fr/14/tribun/xml/effectifs\\_groupes.asp](http://www.assemblee-nationale.fr/14/tribun/xml/effectifs_groupes.asp)

<sup>121</sup> <http://www.senat.fr/grp/index.html>

These more comprehensive issues constituted the background to the **main obstacles** to the draft law in both Houses of Parliament. The PS and its associates abstained from voting the Act, in both Houses – including the Senate where a PS led coalition had won a small majority in September 2011 (see question I.1 on the political context for more information on majority changes). The far left and ecologists voted against the Act. A prior “rejection proposal” was introduced before the National Assembly, as well as an “objection of inadmissibility” in the Senate. Both had been lodged by the far left, and both were rejected. In the end, the draft law was adopted after the first reading by both Houses<sup>122</sup>, with centre and right-wing votes, in virtue of an “accelerated procedure” that had become common use under President Sarkozy even before the crisis<sup>123</sup>. The parliamentary debates show that it was **important to the French government to be the first to ratify** these instruments, so as to set an “example” and give momentum to a process of ratifications that could face difficulties across Europe<sup>124</sup>.

While the approval procedure of the 136 TFEU amendment implied wide-ranging debates over the Euro-zone crisis as a whole, the focus will here be on the arguments dealing directly with the amendment itself (for the other parts of the debate see also questions VIII.3 and IX.3).

**Concern was raised over the simplified procedure** used by the European Council to adopt the decision to amend art.136 TFEU. A parliamentary question to the government raised this issue as soon as January 2011<sup>125</sup>, arguing that substantial changes to the organisation of the powers of the EU should have triggered the ordinary procedure for Treaty modification, considered less intrusive on **sovereignty** and **democracy**. The answer given by the right-wing government was twofold: first, the amendment **does not expand competences of the EU**, the ESM being an international organisation, based on a treaty that would need to be **ratified** by the Parliament; second, the 136 TFEU amendment would also need to be **approved** by the Parliament<sup>126</sup>.

However, this criticism was maintained throughout the debate in February 2012 in both Houses. The far left, especially, considered that **using the simplified revision procedure was**

<sup>122</sup>For the details of the votes: <http://www.assemblee-nationale.fr/13/scrutins/jo0860.asp>; <http://www.senat.fr/scrutin-public/2011/scr2011-108.html>; <http://www.senat.fr/scrutin-public/2011/scr2011-109.html>

<sup>123</sup> [http://www.lemonde.fr/politique/article/2009/03/04/assemblee-le-gouvernement-abuse-t-il-de-la-procedure-d-urgence\\_1163251\\_823448.html](http://www.lemonde.fr/politique/article/2009/03/04/assemblee-le-gouvernement-abuse-t-il-de-la-procedure-d-urgence_1163251_823448.html)

<sup>124</sup> <http://www.assemblee-nationale.fr/13/rapports/r4348.asp>; <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120120133.asp>

<sup>125</sup> <http://questions.assemblee-nationale.fr/q13/13-98186QE.htm>; [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html) intervention of Nicole Bricq (PS)

<sup>126</sup> *Idem.*

**illegal under art. 48(6) TFEU**, as the art.136 TFEU amendment would de facto enhance the competences of the European Commission, of the ECB and of the European Court of Justice, through their participation in the European Stability Mechanism<sup>127</sup>. The “objection of inadmissibility” lodged at the National Assembly by the far left (CRC)<sup>128</sup> put forward that the amendment of article 136 TFEU was a key element in a mechanism jeopardizing greatly **budgetary sovereignty**. It also read that the amendment was illegal under EU law, as the simplified procedure would not be fit for a disposition leading to an expansion of the competences of the EU. However, this objection was voted down by center and right wing MPs, Socialist Party MPs abstaining from the vote.

Regarding the broader issue of the **diminution of the role of the parliaments**, the Report by a PS-led left coalition for the European Affairs Committee at the National Assembly, presented by socialist MP Elizabeth Guigou, stressed that recourse to the simplified procedure ruled out the use of a **Convention** to modify the Treaty, and *de facto* deprived national parliaments of the role that would have been theirs in that forum. According to the Report, it participated in a more **general trend of marginalisation of both European and national parliaments**<sup>129</sup>.

More generally, it was argued that **national parliaments should be involved more closely in the negotiations on budgetary coordination**, as such issues lied at the heart of their prerogatives<sup>130</sup>. However, the proposition of a European resolution “on European recovery and the strengthening of democratic control”, put to the vote in the National Assembly by the centre-left coalition, was defeated by the right wing majority.

The president of the Foreign Affairs Committee at the Senate, Jean-Louis Carrère (PS), criticised the repeated use (19 times since October [2011]) of “**accelerated procedures**” by the French government to deal with the crisis, thus constraining the role of the Parliament.<sup>131</sup>

Opacity of the intergovernmental process, even for parliaments, was criticised by the centre-left<sup>132</sup> and the far left<sup>133</sup>. According to them, the government viewed the **Parliament**

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<sup>127</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp>, both interventions of Jean-Pierre Brard and Martine Billard; also at the Senate intervention of MRC “sovereignist” Jean-Pierre Chevènement, and of CRC Eliane Assasi: [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html)

<sup>128</sup> [http://www.senat.fr/amendements/2011-2012/393/jeu\\_classe.html](http://www.senat.fr/amendements/2011-2012/393/jeu_classe.html)

<sup>129</sup> <http://www.assemblee-nationale.fr/13/rapports/r4328.asp>

<sup>130</sup> *Idem.*

<sup>131</sup> [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html)

<sup>132</sup> [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html) Intervention of PS Nicole Bricq.

<sup>133</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp>, intervention of Jean-Pierre Brard, for the

as simple “Houses of registration”, while its Constitutional role as well as the 1789 French Declaration of the Rights of Man and the Citizen made it “Houses of decision”.<sup>134</sup>

By contrast, UMP senator Marie-Hélène Des Esgaulx **opposed the view** that parliamentary control was undermined by the activity of the Executive branch in the European forum. Instead, she argued for an institutional re-balancing in the EU in favour of more inter-governmentalism, understood as more fit to State sovereignty and Parliaments’ rights<sup>135</sup>.

The far left deplored also that the **French Constitutional Court was not consulted** by the Government or the right wing majority on these amendments and treaties, while core budgetary power issues were at stake<sup>136</sup>. At the Senate, CRC Eliane Assassi unsuccessfully invited the PS<sup>137</sup> to use article 54 of the French Constitution allowing 60 senators or 60 members to ask the Constitutional Court if the adoption or the ratification of an international undertaking was contrary to the Constitution, in which case authorization to adopt or ratify the undertaking would be subject to prior amendment of the Constitution<sup>138</sup>.

One leading justification in favour of the amendment of art.136 TFEU was that it would **enhance legal certainty** over the relationship between the ESM Treaty and the “no bail-out” clause enshrined in art.125 TFEU. Still, it was generally specified at the same time that such amendment was **adopted on German insistence**<sup>139</sup>. At the National Assembly, Jean-Marc Roubaud (UMP) considered that, even if useful, it was not a necessary amendment<sup>140</sup>. However, senator Nicole Bicq (PS) underlined in a Report for the Finances Commission that a possible incompatibility between the ESM and art.125 TFEU could have important consequences, according to the interpretation of the German Constitutional Court regarding the conformity of the ESM to the EU Treaties<sup>141</sup>.

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GDR.

<sup>134</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp> intervention of Martine Billard for the far left Front de Gauche; see also intervention of Eliane Assassi at the Senate: [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html)

<sup>135</sup> [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html)

<sup>136</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp>; see also intervention of MRC senator Jean-Pierre Chevènement: [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html)

<sup>137</sup> [http://www.senat.fr/seances/s201202/s20120228/s20120228\\_mono.html](http://www.senat.fr/seances/s201202/s20120228/s20120228_mono.html)

<sup>138</sup> [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/constiution\\_anglais\\_oct2009.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_oct2009.pdf)

<sup>139</sup> <http://www.assemblee-nationale.fr/13/rapports/r4348.asp>; <http://www.assemblee-nationale.fr/13/projets/pl4337-ei.asp>

<sup>140</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp>

<sup>141</sup> <http://www.senat.fr/rap/l11-395/l11-395.html>

Arguments from the PS implied however that the process of approval of an amendment of art.136 TFEU would also contribute to a “**climate of uncertainty**”<sup>142</sup> on the markets and for the citizens regarding the European responses to the crisis, as it would need to be ratified by all EU Member States, including the **UK** – an outcome considered uncertain.

Developing further on the role of the French and German governments in the adoption of the amendment, the President of the Foreign Affairs Committee at the National Assembly, Axel Poniatowski (UMP) argued that the approval/ratification of both the 136 TFEU amendment and ESM Treaty, as well as the Fiscal Compact (TSCG), sealed and **founded anew the Franco-German alliance**, in a constructive relationship where no-one imposed its views on the other. He also mentioned how France had convinced Germany to accept the principle of a “European IMF” such as the ESM<sup>143</sup>. In this perspective, these treaties would constitute a **salutary inflexion in the history of the construction of the EU**, with the idea more and more broadly accepted of a **multiple speed Europe**, where differentiated cores of countries would be allowed to take integration further<sup>144</sup>.

The turn taken by European integration was however not accepted by all, especially by the far left. **The conditionality** enshrined in art.136 was perceived by GDR Jean-Pierre Brard as interfering with European States’ **sovereignty**, and its manifestations in the practice of the bail-outs considered **brutal**. UMP Pascale Gruny’s answered that conditionality was only a counterpart for solidarity and financial help, and a duty of the lender to see how the money is used and if it can be reimbursed<sup>145</sup>.

On a more technical account, the Rapporteur to the Foreign Affairs Committee at the National Assembly on the draft law authorising the approval of the 136 TFEU amendment – and the ratification of the ESM Treaty – underlined that there was **no calendar difficulty** in setting up the ESM before the 136 TFEU amendment enters into force, as the amendment was not necessary to *habilitate* the government to create the mechanism, but only to *recognise* that it could do so<sup>146</sup>.

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<sup>142</sup> <http://www.assemblee-nationale.fr/13/rapports/r4328.asp>

<sup>143</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp>

<sup>144</sup> *Idem.*

<sup>145</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp>

<sup>146</sup> <http://www.assemblee-nationale.fr/13/rapports/r4348.asp>

## CASE LAW

V.4

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

There is no decision by the Constitutional Council on the amendment of article 136 TFEU. However, the French Government has sought and received advice from the Council of State (*Conseil d'Etat*), the highest administrative court in the French legal system, on the legality of the article 136 TFEU Treaty amendment<sup>147</sup> (see also question VIII.4).

## MISCELLANEOUS

V.5

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

Not applicable.

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<sup>147</sup><http://www.conseil-etat.fr/fr/dossiers-thematiques/finances-publiques-red.html>. However, I was not able to find the text of this advice online: see <http://www.conseil-etat.fr/fr/se-procurer-les-actes-du-conseil-d-etat/#4>, where the Council of State explains that his advice is not public, and the government decides to make it public or not.

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

The French government presented the Euro-Pact as the result, for a great part, of its own leadership – but in cooperation with Germany<sup>148</sup>. The government thus emphasised relatively enthusiastically, before Parliament, its novelty and necessity. It stressed how the Euro-Pact mentioned for the first time the notion of a “European economic government” as the counterpart of the single currency. Beyond the balancing of public finances, the government praised the introduction of concerns for more “offensive competitiveness” through investment and facilitation of youth employment; the association of the social partners to the economic government; and the talks about more fiscal convergence and harmonisation of part of corporate tax law.

### MISCELLANEOUS

#### VI.2

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

Not applicable.

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<sup>148</sup> Comptes rendus de la Commission des Affaires européennes du Sénat, 22 Mars 2011:

<http://www.senat.fr/compte-rendu-commissions/20110322/2011-03-22.html>

## 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 FRANCE 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 Six Pack<sup>149</sup> entered into force in the middle of the French Presidential campaign. Nicolas Sarkozy's party and the main opposition party, the socialist party, had diverging understandings regarding the pace that had to be followed in reaching again a financial balance<sup>150</sup> but not regarding the need to adopt the Six Pack itself. At that point in time, France did not experience financial difficulties and tried, on the contrary, to be an example for the rest of Member States. Indeed, as it was also the case with other crisis instruments, the Franco-German tandem was very active in this matter. President Sarkozy and Chancellor Merkel sent a letter to the Presidents of the European Council and of the EU Commission on 6 May 2010 affirming the need to 'reinforce the economic governance of the Eurozone' and drawing three main areas in which intervention was needed:

1. 'reinforcement of the budgetary surveillance within the Eurozone with a strengthening of the sanctions in case of excessive public debt and reinforcement of the coherence between the national budgetary procedures and the Growth and Stability Pact'
2. 'Enlargement of the surveillance to structural and competitiveness issues and to

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<sup>149</sup> As mentioned above, it is often difficult to differentiate which elements of the public debates referred specifically to the Six Pack since discussions took place simultaneously on the other crisis measures.

<sup>150</sup> Indeed, while President Sarkozy claimed that delaying this change of one year to 2017 would have a negative impact, socialist senator Nicole Bricq considered such a delay to be safer for the economic growth. Information report on the Government's stability programme. 17 April 2012, p.28.

unbalances and reinforcement of the efficiency of the political economic recommendations of the Commission'

3. 'For the future, the options to create a solid framework for crises resolution respecting the principle of budgetary responsibility of each Member State'<sup>151</sup>.

This Franco-German commitment is further noticeable in the publication by finance ministers Lagarde and Schäuble on 21 July 2010 of a paper on the 'European economic government'<sup>152</sup>. This paper contained concrete proposals developing the three main ideas above mentioned. These were most similar to those prepared by the working group led by Herman van Rompuy and those prepared by the EU Commission.

Two Senators, Pierre Bernard-Raymond (UMP at the time) and Richard Yung (PS) also prepared an information report<sup>153</sup>. Generally, they considered the reform of the Stability and Growth Pact to be necessary but they argued for other criteria, such as the investments made by a Member State for research and development, to be taken into account<sup>154</sup>.

Still before the Six Pack entered into force, but later in time, the Socialist group of the Senate made a resolution proposal which, however, was rejected by the finances Committee. This resolution was very critical of the Six Pack, which was said to be insufficient and not taking into account the priorities defined in the strategy EU 2020 that were deemed to have become unreachable in this 'context of generalized austerity policies'. Furthermore, the introduction of the reverse majority voting mechanism was said to result in a loss of power for the French state. This resolution proposal was rejected because it arrived too late both in the European and the national time-frame<sup>155</sup>.

On the other hand, the EU affairs committee of the National Assembly organized a joint

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<sup>151</sup> '1°) « un renforcement de la surveillance budgétaire dans la zone euro, comportant des sanctions plus efficaces pour les procédures de déficit public excessif et renforçant la cohérence entre les procédures budgétaires nationales et le Pacte de stabilité et de croissance » ;

2°) « l'élargissement de la surveillance aux questions structurelles et de compétitivité et aux déséquilibres et le renforcement de l'efficacité des recommandations de politique économique de l'Union européenne »;

3°) « pour l'avenir, les options pour créer un cadre robuste pour la résolution des crises respectant le principe de la responsabilité budgétaire de chaque État membre ».

Letter quoted in the information report prepared by Senators Pierre Bernard-Raymond and Richard Yung on behalf of the EU affairs committee on the economic European governance, 19 October 2010, p.32.

<sup>152</sup> Ibidem.

<sup>153</sup> Ibidem.

<sup>154</sup> Ibidem, p.38.

<sup>155</sup> The proposal was made on 20 June 2011 though the Six pack proposal had already been examined by the Senate in Autumn 2010.

meeting with the members of the EU affairs committee of the Senate and the French MEPs on 30 March 2011 on the economic governance but no resolution was adopted<sup>156</sup>.

## **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 implementation of Directive 2011/85/EU – and of the Six Pack in general - is strongly intertwined with the implementation of the TSCG (hence, see also part IX.4 ).

Directive 2011/85/EU was implemented by several laws and a decree.

The Decree on public budgetary and accounting management (Decree 2012-1246 of 7 November)<sup>157</sup>, contains very detailed rules related to the public budget and its control, hence giving compliance to the European requirements in this domain. It updates and replaces provisions previously contained in several legal documents which now are all gathered in the Decree.

The Organic Law on Programming and Governance of Public Finances and the Programming Act for 2012-2017 also served the implementation of this Directive as mentioned in Part II.1. Indeed, Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States is said to be partially transposed in the Organic Law in its articles 1 to 5 and 11 to 23. However, it is not always clear which provisions of the Organic Law should be referred to the requirements of Directive 2011/85 or to those of the Fiscal Compact. Only article 5(7) of the Organic Law mentions explicitly Directive 2011/85, in order to clarify the meaning of the requirements pertaining to the inclusion of the projections of the government on public finances in the informational reports annexed to the Programming Acts. In fact, this article contains the requirement anchored in Directive

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<sup>156</sup> Meetings with different institutional actors have been regularly organized by the National assembly in the framework of the crisis. For example, a round table was organized by the Foreign affairs Committee on 14 October 2013 regarding the introduction of the new agenda by the Two pack with the French executive, the European parliament and the French parliament.

<sup>157</sup> Although it does not make any direct reference to the European Directive and only refers to the Organic Law on Public Finance of 2001, this Decree does indeed contain provisions that permit the implementation of the Directive.

2011/85/EU for Member States to prepare a medium-term budgetary framework that contains projections of each major expenditure and revenue item for the budget year and beyond, based on unchanged policies.

As regards the Programming Act for 2012-2017, it provided the first multiannual framework in respect with the European rules.

## IMPLEMENTATION DIFFICULTIES

### VII.3

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

The need for a multiannual framework was not particularly difficult to implement since Programming Acts had existed since the constitutional reform of 2008. The Organic Law for the Programming and Governance of Public Finances modified their content by requiring that they also specify the trajectory of the effective and structural balances of public administrations in order to reach the Medium Term Objective. The other provisions of the Directive did not provoke any further implementation difficulties.

The Constitutional Council issued a decision on the Organic Law for the Programming and the Governance of the Public Finances but none of its declarations of unconstitutionality or its reserves of interpretation regarded financial measures. Of interest in the implementation of Directive 2011/85 is the freedom this decision guaranteed to Parliament at the time of approving annual Financial Acts and the protection of the Government's prerogatives guaranteed in article 20 of the Constitution ('The Government shall determine and conduct the policy of the Nation') in spite of the existence of the Programming Act. (See also parts IX.4.).

## MACROECONOMIC AND BUDGETARY FORECASTS

### VII.4

WHAT INSTITUTION WILL BE RESPONSIBLE FOR PRODUCING MACROECONOMIC AND BUDGETARY FORECASTS (ARTICLE 4(5) DIRECTIVE 2011/85/EU)? WHAT INSTITUTION WILL CONDUCT AN UNBIASED AND COMPREHENSIVE EVALUATION OF THESE FORECASTS (ARTICLE 4(6) DIRECTIVE 2011/85/EU)?

The *Direction générale du Trésor* (Treasury Direction general) of the Ministry of Finance and economy produces macroeconomic and budgetary forecasts.

The High Council of Public Finance, created by the law on the Programming and the Governance of Public Finances, is in charge of conducting an unbiased and comprehensive evaluation of these forecasts (see Part VII.5.).

It is worth noting that disagreements exist between the DG Treasury of the Ministry of Finance and Economy, Eurostat, the IMF, the EU Commission and the OECD regarding the value of the output gap as a result of different calculation methods of the structural balance. In her Information report prepared before the Debate of orientation in preparation of the budget for 2015, PS deputy Valérie Rabault underlined these differences and asked for a common definition between the Government, the parliamentarians and the EU Commission to be found.

## FISCAL COUNCIL

### VII.5

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

France decided to create an independent fiscal council, the High Council of Public Finance (HCFP) created by the Organic Law 2012-1403 on the Programming and the Governance of Public Finances.

This Council is an independent body created within the *Cour des Comptes* (Court of Auditors - art. 11). Both organs assume complementary functions since the *Cour des Comptes*, among others, responsible for the control of public expenditure and its certification and the High Council of Public Finance has to give opinions (*avis*) on the potential GDP and the macroeconomic provisions used as bases for the proposal of Programming Act and on the macroeconomic provisions at the basis of the proposal for yearly Budget Act and Social Security Financing Act.

Furthermore, article 17 of the organic law 2012-1403 foresees the intervention of the High Council of Public Finance after the Government has elaborated its Stability program and at least two weeks before the Stability program is submitted to the Commission. Its opinion is attached to the Stability program<sup>158</sup>. When the HCFP assesses the Stability programme, though, it takes the content of the Programming Act into account but its analysis is limited to the macroeconomic provisions used by the Government to present its Stability Programme.

It also intervenes after the proposal of each yearly Accounting Act (see below).

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<sup>158</sup> The obligation for Member States to submit a yearly Stability program has not been introduced by the Six Pack but the Six Pack has modified the date of its presentation. Hence the mention of this provision in this part of the report.

This intertwinement between both organs (HCFP and Court of Auditors) is further reinforced by the fact that the President of the Court of Auditors is also the President of the High Council of Public Finance. In fact, the High Council of Public Finance is composed of ten members in addition to its President: four judges of the Court of Auditors, four members nominated respectively by the President of the National Assembly, the President of the Senate, the Presidents of the finance committees of each assembly 'because of their competences in the domain of macroeconomic provisions and public finances' (art. 11(2)). These four last members are nominated after a joint public hearing by the committees of finance and the committee of social affairs of the designating assembly<sup>159</sup>.

Another member is nominated by the President of the economic, social and environmental Council because of his or her competences in the domain of macroeconomic provisions and public finance; this member cannot have any elected public function at the time either. Finally, the General Director of the *Institut national de la statistique et des études économiques* (INSEE - National institute of statistics and economic research) is also a member.

All members – apart from the General Director of the National institute of statistics and economic research – are nominated for a mandate of five years, renewable once for the judges only<sup>160</sup>. Half of them are to be designated every 30 months. Furthermore, they all have to provide the President with a declaration of interests upon their designation.

The independence of the HCFP is essential and required by the European norms. The independence of the General Director of the INSEE was subject to discussion. Indeed, the INSEE is associated to the Ministry of Finance but the criterion of independence was considered to be fulfilled since this independence is recognised by the EU Commission due to the existence of European rules that guarantee it<sup>161</sup>. Furthermore, in spite of the fact that the independence of the other members is guaranteed by the incompatibility with any elective function and by the fact that none of the members are remunerated, the political balance between majority and opposition is secured since the president of the finance committee is always a member of the political opposition of each assembly<sup>162</sup>.

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<sup>159</sup> The original Organic Law proposal foresaw that also the nomination of the four judges and the member nominated by the president of the Economic, social and environmental Council should depend on a parliamentary hearing. However, the Constitutional Council struck down this provision in order to protect the separation of powers: such hearings cannot be introduced by an organic law but have to be contained in constitutional provisions. Constitutional Council 13 December 2012, 2012-658 DC and Romain Bourrel, "La validation par le Conseil constitutionnel de la "nouvelle Constitution financière" de la France », *AJDA*, 2013, p. 478, 2013, p. 479.

<sup>160</sup> Some exceptional rules have however been defined for the first functioning period of five years of the High Council, during which some members were only designated for a period of 30 months.

<sup>161</sup> Michel Lascombe, « La nouvelle gouvernance financière », *AJDA* 2013 p.228, 2013, p.7..

<sup>162</sup> Ibidem.

As regards the independence of the Council itself, it is guaranteed by two elements: first of all, it is created within the Court of Auditors and, secondly, it was attributed a special budget deduced from that of the Court of Auditors in order not to increase the overall expenditure. Finally, its independence is further ensured by its rules of procedures: its meetings take place upon a call of its President, it can organise hearings of any representative of an administration competent in the domain of public finances, statistics and economic forecast and it can call on any body or person outside of the public administration to assess the prospects for fiscal revenue, expenditure, balance or debt of the public administration. Additionally, the Government must answer any information request addressed to it while the HCFP prepares its opinion.

The HCFP is obliged to transparency, for example when it takes into account provisions on growth issued by bodies other than the EU Commission and the Government. Whenever it takes into account this external data, it must publish the list of the bodies which authored them.. Its members ought to keep any detail regarding its deliberations secret and are not allowed to publish any dissenting opinion. As was to be expected, the HCFP can only publish opinions when the Organic Law on the Programming and the Governance of Public Finances so foresees.

It is interesting to note that a rule guaranteeing equal numbers of men and women has been inserted in the Organic Law 2012-1403 whose article 11(4), par. 2 defines the modalities of the system for its respect. This innovative provision was added on a proposal by Senators André Gattolin and Jean-Vincent Placé.

The High Council of Public Finance has so far (August 2014) issued seven opinions and declared the activation of the correction mechanism (see Part II.1.).

The correction mechanism was included in the Organic Law 2012-1403 of 17 December 2012 on the Programming and Governance of Public Finances. Its Chapter IV defines that the High Council of Public Finance will issue an opinion on the *Loi de règlement* (Accounting Act) of the previous year in which it will compare the results of the execution of the previous year with the structural balance of the pluriannual orientations contained in the Law on the Programming of Public Finances. If it notes that an important deviation – as defined in the TSCG – exists, this observation will be stated in the opinion which is, in any case, always made public and transmitted to Parliament together with the act proposal. It should also take the existence of exceptional circumstances into account.

When such deviation exists, the Government has to explain the reasons for it when the project of Accounting Act is examined by each Chamber. It must also present the proposed corrective measures in a report mentioned in article 48 of LOLF. The Government should take account of this important gap in the Budget Act and the Social Security Financing Act of the next year by latest (it can also do so in an Amending Budget Act or an amending Social

Security Financing Act)<sup>163</sup>.

A report appended to the projects of the Budget Act and the Social Security Financing Act of the following year analyses the proposed correcting measures - which may affect all public administrations or some sub-sectors only – in order to respect again the multiannual orientations of structural balance defined in the Programming Act. This report will justify, if required, the differences between the content of the Programming Act in terms of the extent and the calendar of the proposed measures.

The Government may request the HCFP to state whether the exceptional circumstances defined in article 3 TSCG are met or have ceased to be.

## **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 FRANCE 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?

The adoption of Regulation 1176/2011 on the prevention and correction of macroeconomic imbalances has not provoked any particular difficulties in France and, generally, the political debate focused on the Six Pack or even on the European economic governance as a whole. As mentioned in part VII.1., France had been very much in favour of the Six Pack. Even the critical resolution proposal made by Nicole Bricq and other members of the Socialist Group of the Senate (see VII.1.) – which was not adopted – considered this novelty positively, though warning about the potential risks depending on the parameters chosen to determine the existence of imbalances.

However, in her report on the Amending Budget Act for 2012, PS senator Nicole Bricq considered for instance that it did not bring ‘anything particularly new’ compared to what existed before, this being due, according to her, to the fact that the legal basis provided by article 121 TFEU is rather weak. This question was also discussed during the joint meeting organised by the EU affairs committee of the National Assembly with the members of the EU affairs committee of the Senate and the French MEPs on 30 March 2011 on the economic governance already mentioned. PS deputy Christophe Caresche highlighted the fact that it is absolutely

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<sup>163</sup> Note that the expression ‘take account’ may seem a bit weak.

necessary that macroeconomic indicators are also taken into account.

It should furthermore be noted that the EU Commission considers that France suffers from macroeconomic imbalances. In its 2014 in-depth review<sup>164</sup>, it concluded that ‘France continues to experience macroeconomic imbalances, which require specific monitoring and decisive policy action.[...and that] The need for decisive action so as to reduce the risk of adverse effects on the functioning of the French economy and of the euro area is particularly important given the size of the French economy and potential spillovers onto the functioning of the euro area.’ It further concluded that ‘Given the need for policy action already called in the 2013 IDR, the Commission will put in motion a specific monitoring of the policies recommended by the Council to France in the context of the European Semester, and will regularly report to the Council and the Euro Group.’

France necessity to reform its economy is at the centre of the political debate since the publication of this review and the observation that the aim of the 3% deficit will not be matched in 2015. President Hollande launched a ‘*pacte de responsabilité et de solidarité*’ (responsibility and solidarity agreement) in January 2014 in order to remedy to the economic problems France is currently facing and further reforms are expected in autumn 2014. Furthermore, the majority (PS) is divided since spring 2014 and some of its members urge the President to change the orientation of his economic policy.

## **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?

As mentioned in Part II.1., the requirement to define a medium-term budgetary objective (MTO) procedure has been included in the Organic Law 2012-1403 of 17 December 2012 on the Programming and Governance of Public Finances.

Its article 1 states that ‘In the respect of the aim of account balance of public administrations contained in article 34 of the Constitution, the Programming Act defines the medium term objective of public administrations mentioned in article 3 of the treaty on stability, coordination and governance in the economic and monetary union, signed in on 2 March 2012, in Brussels.’

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<sup>164</sup> COM(2014) 150 final.

The current medium-term budgetary objective of France foresees that France will reach structural balance by 2016 (see Part VII.11. for more information on this point).

## EUROPEAN SEMESTER

### VII.8

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

The new rules on a European semester for economic policy coordination have led both assemblies to follow up and prepare communications, resolutions and reports at the different stages of the European Semester since its introduction in 2011.

For instance, the National Assembly has started following up intensively the procedure of the European Semester, publishing communications and reports on the recommendations of the Commission on the Stability Programme for example. It also repeatedly insists on the necessity to imply the French Parliament further by allowing it to present amendments on the stability programme for example. A similar evolution is visible in the Senate where 'the 'moments' of the European semester are linked to publications by the finance committee on the programming – or the execution – of public finances: in consequence the European semester is perfectly integrated to its activities'<sup>165</sup>. The opinions of the Commission and/or the Council are commented on during the Debate on the Orientations of Public Finances in June, allowing the deputies and senators to take them into account when discussing in the view of the preparation of the Budget Act of the following year.

Additionally, art. 14 of the Programming act for 2011 (law 2010-1645 of 28 December 2010) contained the obligation for the Government to provide the Parliament with its project of Stability program at least two weeks before its transmission to the EU Commission. It foresaw that Parliament would debate on this project and express its opinion through a vote<sup>166</sup>. This possibility for parliamentary participation has been widened by the organic law 2012-1403 whose article 10 now provides for the possibility to organise debates in the National assembly and the Senate 'when European Union law institutes coordination procedures of the economic and budgetary policies that require the exchange and

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<sup>165</sup> Answer provided by the French Senate to the questionnaire of the COSAC in preparation of its 21<sup>st</sup> bi-annual report.

<sup>166</sup> In 2011 for example, the Senate Finances Committee first adopted an information report, then the Government made a declaration that was followed by a vote. Finally, a European resolution was approved in reaction to the Commission's recommendations on the Stability and Reform programs. In 2012, elections disturbed this process and a debate with the ministers in charge could only be organized within the Finance Committee which also adopted an information report.

examination, at periodic intervals, of documents produced by the Government and the European institutions'<sup>167</sup>. Although the content of this article is rather vague in its reference to 'documents produced by the Government and the European institutions' exchanged 'at periodic intervals', a reference to the documents exchanged during the European Semester introduced by the Six Pack should surely be seen here, although this article provides a basis for parliamentary debates on documents sent in the framework of the Two pack arrangements too.

Furthermore, article 50-1 of the French constitution that foresees that 'The Government may, before either House, upon its own initiative or upon the request of a political group, as set down in article 51-1, make a declaration on a given subject, which leads to a debate and, if it so desires, gives rise to a vote, without making it an issue of confidence' was also used in 2011 in the Senate regarding the Stability programme.

In spite of the change in the scheduling of the presentation of the stability programmes (previously, multiannual programs were presented in December and covered a period of three years starting from the following year whereas the stability program presented in spring in the framework of the European Semester contains provisions that start the following year), according to the President of the *Haut Conseil des Finances Publiques* 'the new European rules adopted in 2011 did not substantially modify the conditions in which the Government prepares and presents its stability program.'<sup>168</sup>

## MTO DIFFICULTIES

### VII.9

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

Regarding the need for a MTO itself, it was generally accepted<sup>169</sup>. The need for healthy public finances was presented as a national necessity as well given the deficit France has been suffering from for a decade, and given the fact that the reimbursement of the French debt amounted to a large part of the budget<sup>170</sup>.

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<sup>167</sup> Own translation. Article 10 (full text) : 'Lorsque le droit de l'Union européenne institue des procédures de coordination des politiques économiques et budgétaires qui comprennent l'échange et l'examen, à échéances périodiques, de documents produits par le Gouvernement et par les institutions européennes, des débats peuvent être organisés à l'Assemblée nationale et au Sénat aux dates qui permettent la meilleure information du Parlement.'

<sup>168</sup> Hearing before the National assembly finances committee, 16 April 2013, p.4

<sup>169</sup> In fact, in their information report on the European economic governance, deputies Herbillon and Caresche simply mentioned the fact that the pre-existing OMT system was maintained.

<sup>170</sup> For instance, in its note accompanying the project of Programming Act for 2012-2017, the Government

## RESPECT MTO

### VII.10

HOW IS RESPECT OF THE MEDIUM-TERM BUDGETARY OBJECTIVE INCLUDED IN THE NATIONAL BUDGETARY FRAMEWORK (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)?

The High Council of Public Finance checks the coherence between the Programming Act and the Medium-Term Budgetary Objective and the European commitments towards the European institutions of the French State.

Since the adoption of the Organic Law on the Programming and Governance of Public Finances in 2012, each proposal for a Budget Act must contain a '*article liminaire*' (preliminary article) in which a table will state the prevision of structural and effective balance for all public administrations for the year of the Budget Act (that is, the following year). This table should also contain the same information regarding the previous year and the expected figures for the current year. This preliminary article is common to the initial Budgetary Act and Social Security Financing Act but in the event of the proposal for an amending Budget Act or Social Security Financing Act, each proposal will contain its own preliminary article. This preliminary article facilitates the Parliament's task since it now has an overview of the financial situation in one document.

When the Budget Act proposal (or amending Act proposal) is submitted to the HCFP, it assesses two elements. The first one is the macroeconomic previsions at the basis of the proposal and the second one consists in the assessment of the coherence between the preliminary article and the structural balance pluriannual orientations contained in the Programming Act in order to reach the MTO. For example, in its opinion on the Budget Act proposal and Social Security Financing Act proposal for 2014, it clearly indicated the lack of respect of the orientations contained in the Programming Act in terms of structural deficit and warned the Government that the correction mechanism could be activated in May 2014. And so it was. (See Part VII.5. on the activation procedure). Furthermore, according to article 9 of the Programming Act, the Government has to provide the Parliament with a report before the Debate on the orientations of Public Finances organised in June (this is the preparatory debate before the Budget Act proposal is debated after the summer). In this report, the Government has to justify any potential gap between the Programming Act in force and the last Stability Programme transmitted to the Commission.

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declared '*Alors que la charge de la dette est aujourd'hui le premier poste du budget de l'Etat, la France doit retrouver des marges de manoeuvre pour assurer son avenir et son indépendance face aux marchés financiers*' (At a time when the cost of the debt is the first item of the State budget, France must regain margins of manoeuvre to ensure its future and its independence vis a vis financial markets.'). Furthermore, the constitutional reform conducted in 2008 inserted an '*objective of balanced budget*' in article 24 of the Constitution.

## CURRENT MTO

### VII.11

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

France's current medium-term budgetary objective is contained in the Law 2012-1558 of 31 December 2012 on the Programming of Public Finances for 2012-2017 and it foresees that France will reach structural balance by 2016. It should however be reminded that the Programming Act are ordinary laws in France and are not fully binding neither on the Government nor on the Parliament when they elaborate the annual Budget Act and of the Social Security Financing Act (see Part VII.3.).

Although this law covers a 5-year period ending in 2017<sup>171</sup>, it will be revised in autumn 2014: the French Government has announced that it will present a proposal in September 2014, in spite of the fact that the previous law was only adopted in December 2012. As stated in part II.1., the Programming Acts can be revised at any point in time, the condition of a change in government foreseen in article 11 of Directive 2011/85/EU has not been introduced in the National law. This is a consequence of the interpretation made by the Constitutional Council in its decision of 13 December 2012<sup>172</sup> (on this point, see question VII.2. as well).

Arguably, this possibility to adopt a new law at any point in time might, in the long run, undermines the efficiency of the corrective measures created in implementation of the European norms.

## ADOPTION MTO

### VII.12

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

France medium-term budgetary objective is incorporated in the Programming Act adopted by Parliament. The Programming Act also contains the trajectory that will permit the achievement of this Objective.

The stability programme is prepared by the *Direction générale du Trésor* of the Ministry of Finance and Economy. In this programme, details as to how the Objective will be achieved are given. For example, in the latest Stability Programme (2014-2017), there is a chapter

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<sup>171</sup> In reality, only part of the law indeed covers a five-year period (this is the case of the OMT indeed). Some of its provisions only contain pluriannual orientations for a three-year period, which is the minimal period this law has to cover. For instance, the State participation to the financing of territorial entities (*collectivités territoriales*) is only defined for three years in the law in force.

<sup>172</sup> Constitutional Council 13 December 2012, 2012-658 DC.

dedicated to the global strategy and the medium-term objective in which the French Government explains the actions it intends to take and how they will permit the achievement of the Objective.

According to article 9 of the Programming Act, the Government has to provide the Parliament with a report before the Debate on the orientations of Public Finances organised in June (this is the preparatory debate before the Budget Act proposal is debated after the summer). In this report, the Government has to justify any potential gap between the Programming Act in force and the last Stability Programme transmitted to the Commission.

In January 2014, a new Council, the *Conseil stratégique de la dépense publique* (Strategical Council of Public expenditure) was established by a Decree in order to propose and follow up the programme of development of structural savings presented in the stability programme. This Council is chaired by the President of the Republic and composed of the Minister of Finance, Minister of Economy, Minister of Social Affairs and Health, Minister of Employment, Minister in charge of the Reform of the State, decentralization and public service and the Secretary of State in charge of the Budget. For instance, in 2014, they analysed – at the highest possible level - all potential sources of economy, including the local and social expenditure.

The decisions made by the Council will be put into place and taken into account in the next Programming Act.

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

During the debates that took place before the regulation proposal was made, France defended a semi-automatic sanction mechanism so that politicians would still have a say on its activation and it would not be let to experts<sup>173</sup>.

When discussing about the Six Pack proposals, the members of the EU affairs committee of the Senate did not question the lack of legitimacy of the reformed Excessive deficit procedure, rather they pointed at the inefficiency of the preexisting system and the

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<sup>173</sup> Information report prepared by Senators Pierre Bernard-Raymond and Richard Yung on behalf of the EU affairs committee on the economic European governance. 19 October 2010. p.53.

potential inefficiency of the reinforced one for some of them. They considered the possibility to introduce political sanctions instead of monetary ones.

France is additionally particularly impacted by the excessive deficit procedure since its excessive deficit was declared by the Commission in 2009. France was given until 2015 to correct this excess but the latest economic forecasts indicate that respecting this deadline might be difficult. In fact, PS secretary Jean-Christophe Cambadélis considered it 'inevitable' to change the criterion of 3% defined before crisis and there are hints that the 1% growth the Government foresaw for 2014 will not be reached<sup>174</sup>.

## GENERAL CHANGES

VII.15

WHAT FURTHER CHANGES HAVE TO BE MADE TO THE RULES ON THE BUDGETARY PROCESS IN ORDER TO COMPLY WITH THE SIX-PACK RULES?

Not applicable

## MISCELLANEOUS

VII.16

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

Not applicable.

## 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 FRANCE 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.

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<sup>174</sup> GDP growth has been of 0% both during the 1<sup>st</sup> and the 2<sup>nd</sup> trimester of 2014 making it difficult to reach the 1% objective defined for 2014.

France and Germany appear to have been the initiators of the acceleration of the process leading to an earlier adoption of the ESM, out of concern for a worsening of the rating of France's debt<sup>175</sup>.

The French government declared that a consensus existed among European leaders over the replacement of the EFSF by the new mechanism. The government said it pushed for and obtained, in particular, three elements during the negotiations. First, an association of the national and European parliaments in the mechanism, through their organisation in a "conference" of parliaments<sup>176</sup>. Second and third, the introduction of two complementary parts of the ESM Treaty: on the strengthening of economic governance in the Eurozone, and on coordination of economic policies aiming at growth<sup>177</sup>.

One main disagreement between the heads of states and governments appears to have born on the introduction or not, in the ESM Treaty, of a disposition requiring that the Fiscal Compact be signed by any State asking to benefit from the Mechanism. France was in favour of keeping a margin of manoeuvre on the matter and it obtained, with the support of other Member-States, that this requirement be mentioned only as a political one in the preamble of the ESM Treaty<sup>178</sup>.

## RATIFICATION

### VIII.2

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

The ratification of the ESM Treaty was submitted as an Act, through an "accelerated procedure", by the President of the Republic Nicolas Sarkozy to the vote of both Houses of Parliament. The same Act authorised the approval of the amendment of article 136 TFEU.<sup>179</sup> The government submitted the proposal of Act to Parliament for ratification, as required under article 53 of the Constitution<sup>180</sup>.

Under article 53 of the Constitution, "*Peace Treaties, Trade agreements, treaties or*

<sup>175</sup> <http://www.senat.fr/rap/111-395/111-3953.html#toc178>

<sup>176</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120122.asp>.

<sup>177</sup> <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120122.asp> Minister of the Economy François Baroin (UMP): « *Avec l'implication des parlements nationaux, la France a œuvré pour l'ajout de deux volets complémentaires au traité. Ils sont consacrés, d'une part au renforcement de la gouvernance économique au sein de la zone euro, d'autre part à la coordination des politiques économiques vers la croissance.* »

<sup>178</sup> <http://www.senat.fr/rap/111-395/111-3953.html#toc178>.

<sup>179</sup> <http://www.senat.fr/dossier-legislatif/pj111-393.html>

<sup>180</sup> <http://www.assemblee-nationale.fr/13/projets/pl4337.asp> ; <http://www.senat.fr/rap/111-395/111-3954.html#toc182>

*agreements relating to an international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament”..*

An “accelerated procedure” (see annex II) was used, which shortens the procedure of adoption of the Act, in particular by limiting the number of readings of the Act to one in each Houses<sup>181</sup>. Adopted by both Houses after one reading, the Act authorising the ratification the ESM Treaty was published in the Official Journal on March 8, 2012 (the same day as the approval of the article 136 TFEU amendment)<sup>182</sup>.

## RATIFICATION DIFFICULTIES

### VIII.3

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

See also question V.3.

**The debates** which arose during the ratification process of the ESM Treaty were tightly intertwined with more general arguments over the French and European response to the crisis, in particular the Fiscal Compact.

The context of ratification facilitated this connection. The participants to the debates underlined that the ESM Treaty contained a political commitment to make the benefit of the Stability Mechanism dependent on the ratification of the Fiscal Compact, debates over the ESM Treaty also involved considerations over the Fiscal Compact. Thus, justifications given for abstention votes (mainly PS and associates) and votes against (mainly far left GDR<sup>183</sup> and CCRC<sup>184</sup>, and ecologists) the ratification of the ESM Treaty drew on more varied and comprehensive issues.

These issues included: the opportunity to renegotiate the Fiscal Compact; the focus on austerity of the current instruments in comparison with concerns over growth; the brutality of the conditionality imposed on bail-out countries, in a process leading to the subordination of sovereign States to other States or bureaucrats; sovereignty and democratic issues, in particular the role of the national and European Parliament(s); wishes for more ambitious EU Treaty reforms; the Franco-German relationship, and different

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<sup>181</sup> [http://www.assemblee-nationale.fr/connaissance/fiches\\_synthese/septembre2012/fiche\\_32.asp](http://www.assemblee-nationale.fr/connaissance/fiches_synthese/septembre2012/fiche_32.asp)

<sup>182</sup>

[http://www.legifrance.gouv.fr/jopdf/common/jo\\_pdf.jsp?numJO=0&dateJO=20120308&numTexte=8&pageDebut=04314&pageFin=04314](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=20120308&numTexte=8&pageDebut=04314&pageFin=04314)

<sup>183</sup> [http://www.assemblee-nationale.fr/14/tribun/xml/effectifs\\_groupes.asp](http://www.assemblee-nationale.fr/14/tribun/xml/effectifs_groupes.asp)

<sup>184</sup> <http://www.senat.fr/grp/index.html>

assessments of the German role in the management of the Eurozone crisis.

These more comprehensive issues constituted the background to the **main obstacles** to the Act in both Houses of Parliament. The PS and its associates abstained from voting on the Act, in both Houses – including the Senate where a PS led coalition had won a small majority in September 2011 (see question I.1 on the political context for more information on majority changes). The far left and ecologists voted against the Act. A prior “rejection proposal” was introduced before the National Assembly, as well as an “objection of inadmissibility” in the Senate. Both had been lodged by the far left, and both were rejected. In the end, the draft law was adopted after the first reading by both Houses<sup>185</sup>, with the support of centre and right-wing votes, in virtue of an “accelerated procedure” that had become common use under President Sarkozy even before the crisis<sup>186</sup>. The parliamentary debates show that it was **important to the French government to be the first to ratify** these instruments, so as to set an “example” and give momentum to a process of ratifications that could face difficulties across Europe<sup>187</sup>.

While the ratification procedure of the ESM Treaty implied wide-ranging debates over the Euro-zone crisis as a whole, the focus will here be on the arguments dealing directly with the ESM itself (for the other parts of the see also questions V.3 and IX.3).

The main opponents to the ESM were MPs from the far left, who voted against the Law proposal. They argued that the ESM Treaty actually increased the powers of the EU, at the expenses of national sovereignty. To the argument that the intergovernmental nature of the ESM Treaty empowered individual Member States, it was answered that the involvement of the European Commission, of the ECB and of the European Court of Justice actually enhanced EU powers and pertained to a disguised federalism<sup>188</sup>.

The absence of accountability of the ESM before the European Parliament and national parliaments was criticised by the far left. Article 35 of the ESM Treaty was also targeted, underlying the immunity of the ESM officials against prosecution, which was perceived as insulating them from the peoples of Europe and undermining the legitimacy of the

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<sup>185</sup>For the details of the votes: <http://www.assemblee-nationale.fr/13/scrutins/jo0860.asp>; <http://www.senat.fr/scrutin-public/2011/scr2011-108.html>; <http://www.senat.fr/scrutin-public/2011/scr2011-109.html>

<sup>186</sup> [http://www.lemonde.fr/politique/article/2009/03/04/assemblee-le-gouvernement-abuse-t-il-de-la-procedure-d-urgence\\_1163251\\_823448.html](http://www.lemonde.fr/politique/article/2009/03/04/assemblee-le-gouvernement-abuse-t-il-de-la-procedure-d-urgence_1163251_823448.html)

<sup>187</sup> <http://www.assemblee-nationale.fr/13/rapports/r4348.asp>; <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120120133.asp>

<sup>188</sup> Public Session of the Assemblée Nationale, 21 February 2012 - <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120120133.asp>

instrument<sup>189</sup>.

People's sovereignty was also said to be encroached upon by the involvement, in the case of France, of 16 billion euros and potentially 142 additional billion euros in the Mechanism. Indeed, the "offshoring" of the control of such amounts of public money appeared as a renunciation of budgetary control by the Parliament<sup>190</sup>.

The Socialist Party also criticised the ESM, but only abstained from voting on the ratification Act<sup>191</sup>. Given that, at that time, the left had a potential majority at the Senate, it seems that the choice of a simple abstention allowed the Act to be finally adopted by the Senate on the basis of support by the right-wing MPs and their allies.

The PS criticised more generally the architecture of the Euro-crisis measures, arguing that they were not balanced, too much focused on fiscal discipline and did not take enough into account growth and steering measures for the economy. The political link between the ESM and the Fiscal Compact was especially criticised as enshrining the mechanism of stabilisation in this discipline-only perspective. The toughness of the conditionality imposed on Greece and its social consequences were presented as an example of the wrong outcomes entailed by such perspective, and as harming European cohesion<sup>192</sup>.

The link between the ESM and the Fiscal Compact was also criticised as it was considered less certain that every relevant Member State would find the political resources to ratify the Fiscal Compact and introduce changes in its Constitutional law<sup>193</sup>.

Moreover, the intergovernmental nature of the ESM was criticised by the PS as it escaped a framework where the European Parliament and national parliaments could have a substantial role<sup>194</sup>.

Although the principle of a permanent stability mechanism was not put into question, the PS also considered that the ESM should be able to access the liquidities of the ECB in order to be fully efficient<sup>195</sup>. The government answered that the ECB was already playing an

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<sup>189</sup> *Idem.*

<sup>190</sup> *Idem.*

<sup>191</sup> *Idem.*

<sup>192</sup> *Idem.*

<sup>193</sup> <http://www.senat.fr/rap/111-395/111-39510.html#toc374>

<sup>194</sup> Public Session of the Assemblée Nationale, 21 February 2012 - <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120133.asp>.

<sup>195</sup> *Idem.* Intervention of Marietta Karamanli (PS). See also <http://www.assemblee-nationale.fr/13/cri/2011-2012/20120130.asp>, where MP Elizabeth Guigou (PS) suggested that the ESM could be guaranteed by the ECB.

important role of stabilisation, although it was not yet directly linked with the ESM – but that such a development would however be conceivable in the future<sup>196</sup>. The PS also stressed that France's participation to the ESM would still have an impact on public finances, even though it would not be accounted as a public deficit for the purposes of budgetary balance<sup>197</sup>.

Finally, the PS raised concerns over the compatibility with the Constitution of what could be considered as a State guarantee granted outside a Budget Act (see also question VIII.4)

## CASE LAW

### VIII.4

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

There is no decision by the Constitutional Council on the ESM Treaty. However, the French Government has sought and received advice from the Council of State (*Conseil d'Etat*), highest administrative court in the French legal system, on the legality of the ESM Treaty<sup>198</sup>.

The point of possible constitutional difficulty evaluated by the Council of State, and which was raised<sup>199</sup> by the main party of opposition at the time (PS), bore on the non-inscription, in a Budget Act, of [the “paid in capital” and ] “on call capital”<sup>200</sup> allocated to the ESM. Yet, as such allocation could in certain cases be assimilated to a form of guarantee of the State, it could appear to violate the Organic Law on Budget Acts (the LOLF; see also question II.1), which provided that guarantees from the State must be authorized by the vote of a Budget Act.

In other words, the issue at stake seems to have been that the amending Budget Act for 2012<sup>201</sup> (that would become *Loi n° 2012-354 du 14 mars 2012*), examined in Parliament

<sup>196</sup> *Idem*, answer by Minister of European Affairs Jean Leonetti.

<sup>197</sup> Comptes-rendus de la Commission des Finances du Sénat, 21 February 2012: <http://www.senat.fr/compte-rendu-commissions/20120220/fin.html#toc2>

<sup>198</sup> <http://www.conseil-etat.fr/fr/dossiers-thematiques/finances-publicques-red.html>. However, I was not able to find the text of this advice online.

<sup>199</sup> <http://www.senat.fr/compte-rendu-commissions/20120220/fin.html#toc2>

<sup>200</sup> Senator Nicole Bricq (PS, opposition), General rapporteur to the Finances Commission of the Senate, on 21 February 2012: “*Je souhaite que vous nous éclairiez sur une difficulté constitutionnelle portant sur le MES : il est question d'un capital libéré et d'un capital callable, qui s'apparente dans certains cas à une garantie d'État. La Lof dispose que seule une loi de finances peut autoriser l'octroi d'une garantie dans le cadre d'engagements internationaux. Que vous ne l'ayez pas inscrite dans le projet de loi de finances rectificative pourrait donc poser un problème de constitutionnalité.*” - <http://www.senat.fr/compte-rendu-commissions/20120220/fin.html#toc2> ; see also : <http://www.senat.fr/rap/111-395/111-3958.html#toc335>

<sup>201</sup> <http://www.senat.fr/dossier-legislatif/pj111-389.html>

around the same time in February 2012, only provided for authorization by Parliament of the “paid-in capital” (up to 16 billion euros for France, with a first installment of 6 billion euros)<sup>202</sup>, and not for France’s commitment on the “on call” capital (of 142 billion euros)<sup>203</sup>.

The answer from the Council of State, drawing on precedent, apparently meant that, as long as Parliament was informed on the “on-call capital” commitment, its formal acceptance in a Budget Act was not necessary<sup>204</sup>. This analysis was then endorsed by the government.

## 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?*

See also question VII.4.

Parliament voted the first instalment of paid-in capital in an amending Budget Act (*Loi n° 2012-354* of 14 March 2012). Debates were similar to the more general ones that took place at the occasion of the ratification of the ESM Treaty: the Socialist Party welcomed the principle of the Mechanism but considered it should have come earlier and with lending capacity<sup>205</sup>. The far left called for a referendum on the main crisis instruments and condemned firmly the course taken by the crisis management. It criticised the ESM in the broader landscape of measures (especially the Fiscal Compact) that, they argued, abusively limited the social function of the States, placed France under tutelage, and durably imposed austerity on Europe<sup>206</sup>.

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<sup>202</sup> The proposal of amending Budget Act « *permet, en application du traité instituant le Mécanisme européen de stabilité (MES) du 2 février 2012, dont la ratification est soumise au Parlement dans un projet de loi distinct déposé ce 8 février 2012, l’engagement de la dotation en capital apportée par la France, soit 16,3 Md€ (total du capital appelé), dont 6,5 Md€ décaissés en 2012. Ce dispositif est complété d’un article assurant le relèvement du plafond des prêts accordés par la France au FMI.* » <http://www.assemblee-nationale.fr/13/projets/pl4332.asp>

<sup>203</sup> [http://www.assemblee-nationale.fr/13/projets/pl4332.asp#P1210\\_94061](http://www.assemblee-nationale.fr/13/projets/pl4332.asp#P1210_94061)

<sup>204</sup> M. Ramon Fernandez (Director General of the General Direction of the Treasury), at the Finances Commission of the Senate, on 21 February 2012 : « *Lorsqu’il a examiné ce texte, le Conseil d’État a estimé que si le capital callable devait être porté à la connaissance du Parlement, son approbation formelle n’était pas exigée. Il y a des précédents, comme le capital callable des banques régionales de développement. Nous nous sommes fondés sur l’analyse juridique du Conseil d’État.* » - <http://www.senat.fr/compte-rendu-commissions/20120220/fin.html#toc2>

<sup>205</sup> <http://www.assemblee-nationale.fr/13/cr/2011-2012/20120130.asp>

<sup>206</sup> <http://www.assemblee-nationale.fr/13/cr/2011-2012/20120126.asp>

However, if the amending Budget Act was opposed by both the PS and the far left, it was mainly because of its other provisions. The Act was eventually adopted despite the opposition of the Senate (now with a left-wing majority), because of the prevalence of the National Assembly (still dominated by the right-wing coalition) in cases of disagreement between the Houses of Parliament<sup>207</sup>.

## APPLICATION & PARLIAMENT

### VIII.6

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

The ESM Treaty provided for national parliaments (and the European parliament) to be informed by annual reports on the activities and accounts of the Mechanism. According to the government, it is France that obtained that both the European parliament and national parliaments would be associated to the ESM, by setting up a parliamentary conference<sup>208</sup> - although they would not have decisional powers<sup>209</sup>. Instalments for the ESM are voted by Parliament in Budget Acts, as was the case with the amending Budget Act of 14 March 2012 (*Loi n° 2012-354*)<sup>210</sup>. However, it seems that the commitment on “on call capital” made by the government for the ESM, did not require a ratification by Parliament – only that it be informed (see question VIII.4).

## APPLICATION DIFFICULTIES

### VIII.7

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

It seems first of all that rather than difficulties the application of the ESM has encountered enthusiasm in France. Indeed, its ever growing importance was underlined and positively

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<sup>207</sup> <http://www.senat.fr/dossier-legislatif/pj111-389.html>

<sup>208</sup> <http://www.assemblee-nationale.fr/13/rapports/r4348.asp> See intervention of Jean Leonetti, Minister of European Affairs : « *Enfin, la France a insisté – le président de l'Assemblée nationale au premier chef – pour que les parlements nationaux participent au contrôle du dispositif. Nous avons obtenu à cet effet la création d'une conférence parlementaire associant des membres des commissions compétentes du Parlement européen et des parlements nationaux* ».

<sup>209</sup> *Idem.* Jean Leonetti : « *On n'envisage pas que l'association des membres des commissions compétentes du Parlement européen et des parlements nationaux soit délibérante ni qu'elle vote une décision sanctionnant ou validant des décisions prises par les chefs d'État et de gouvernement. Pour autant, cette association est une étape, qui doit nous conduire à nous demander si, au-delà des missions de délibération et de vote, le parlement n'est pas surtout une instance de contrôle – l'indépendance d'esprit des parlementaires étant précieuse à cet égard ?* »

<sup>210</sup> <http://www.senat.fr/dossier-legislatif/pj111-389.html>

assessed by the Finances Committee of the Senate in June 2013<sup>211</sup>, while its possibility to recapitalize banks directly was also welcomed<sup>212</sup>.

In fact, the French contribution to the ESM was used as an argument for good administration since during the debate on the Accounting act (*loi de règlement*) for 2013 the fact that France had reduced its public expenditure in spite of its contribution to the ESM was assessed positively.

The positive reaction provoked by the ESM can seem somewhat surprising given the fact that the French parliament is in no strong position in the application of the ESM Treaty: it does receive a letter from the Minister for Finances on the financial situation of the ESM every three months<sup>213</sup> but its only intervention takes place when the yearly Financial Act is approved. At that point, the Parliament is led to vote on the financial participation of the French State to the ESM<sup>214</sup>. As a consequence, debates regarding the use of the ESM only take place during hearings organized by the Finances Committee at their request so that the political attention is not much attracted on this issue.

When the ESM was used to rescue the Cypriot banks, though, several parliamentary questions were submitted to the Government. A written question was posed by deputy Jacques Bompard (not registered to any particular group) as to whether European and French taxpayers' money had not been used to save money which lawful origins could be doubted<sup>215</sup>. The foreign minister answered repeating its engagement to fight for transparency and against money laundering and stating that an external audit on this question had been requested for Cyprus. GDR deputy Jean-Jacques Candelier also strongly criticized the blackmailing dynamic vis a vis the Cypriot people<sup>216</sup> and RDSE senator Jean-Pierre Chevènement questioned the way in which the restructuration of Cyprus was

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<sup>211</sup> <http://www.senat.fr/commission/fin/pjlf2014/np/np32/np324.html>

A Senator even saw there in June 2013 «les prémisses d'une direction générale du Trésor de la zone euro » (the premises of a DG Treasury for the eurozone), although some improvements are still needed.

<sup>212</sup> Debate on a resolution proposal addressing the progress of the banking union and the economic integration. Plenary session. National Assembly, 30 January 2014.

<sup>213</sup> Compte rendu n°76 de la Commission des Finances, de l'économie générale et du contrôle budgétaire. Thursday, March 28 2013, p.2. Unfortunately, these letters are not made public.

<sup>214</sup> In 2012 and 2013, the French Republic opted to pay the amount corresponding to two years into the System and in 2014 it paid the last 5th of its contribution so that already in 2014 the French State had paid what it had to pay by 2017.

<sup>215</sup> Question published on 21 May 2013.

<sup>216</sup> Written question published on 2 April 2013.

achieved<sup>217</sup>.

There has not been any particular legal difficulty in the application of the ESM Treaty: the Treaty was regularly ratified after the approval of an act authorizing such ratification of 8 March 2012 and credits were regularly approved in Finance Acts.

## 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?*

It doesn't seem so, except for the changes pertaining to the ratification of the Fiscal Compact as part of the same architecture as the ESM Treaty (see section IX on the Fiscal Compact).

## MISCELLANEOUS

### VIII.9

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

France, together with other European and non European States, continued to raise its contribution to the IMF while setting up the ESM<sup>218</sup>.

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<sup>217</sup> Question to the government published on 29 March 2013.

<sup>218</sup> [http://www.assemblee-nationale.fr/13/projets/pl4332.asp#P1323\\_107854](http://www.assemblee-nationale.fr/13/projets/pl4332.asp#P1323_107854)

## 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 FRANCE 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 Fiscal Compact was arguably the most controversial of the anti-crisis instruments in France.

The discussions linked to the negotiation and ratification of the Fiscal Compact have known two main lines of development in France, as Presidential elections and a change of majority in the Parliament modified the dynamics of adoption of this instrument in between the time of its signature and the time of its ratification. The fact appears to be of particular relevance to the discussions on the Fiscal Compact, as the ratification of this Treaty became an issue in the Presidential elections, taking place between April and May 2012. Left candidate and future President François Hollande (PS) promised to renegotiate the Fiscal Compact if elected against his right-wing opponent (UMP), then- President Nicolas Sarkozy (see also question I.1). Thus, the discussions of the Treaty should be differentiated as to under which Presidency they took place. During the Sarkozy Presidency, the Fiscal Compact was presented by the government as one of the two pillars of a twofold approach combining, on the one hand, “solidarity” with the ESM, and on the other hand “discipline” and insurance that reforms are made for fiscal consolidation, with the Fiscal Compact<sup>219</sup>. The Fiscal Compact was also presented as a balanced instrument, as it included in its article 9 references to “growth”, “employment” and “competitiveness”.

#### ***The Sarkozy Presidency***

The right-wing Government favoured the idea of amending the Constitution, in order to introduce the “golden rule” required by the Fiscal Compact, rather than writing it down in

<sup>219</sup> Compte rendu de la Commission des Affaires européennes de l’AN, 7 février 2012 : [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0239.asp#P20\\_1253](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0239.asp#P20_1253)

an organic law<sup>220</sup> (see also question IX.4). It was also stressed that France was the one that authored the proposition of a golden rule at national level<sup>221</sup>. However, it is likely that France's endorsement of the idea of a national golden rule was also the result a compromise between, on the one hand, the German position in favour of facilitating sanctions to enforce fiscal discipline as well as a stronger role given to the CJEU; and, on the other hand, the position that President Sarkozy appears to have taken at the European Council, in favour of more intergovernmental solutions, favouring national modes of enforcement of budgetary discipline<sup>222</sup>.

Thus, in the discussions and the presentation of the text by the right-wing majority, the emphasis was put on the national dimension of the golden rule: national constitutional courts should be able to review the balance of the national budgets; the European Court of Justice should only be able to review whether or not the golden rule had been introduced into national law<sup>223</sup>.

Stricter measures against excessive structural deficit were presented by the right-wing majority as having been proven necessary by the past practices of both France and Germany, which overlooked their commitments under the Stability and Growth Pact<sup>224</sup>.

However, the debates on the Fiscal Compact crystalized much of the criticism regarding the handling of the euro-zone crisis so far – especially on the point of the emphasis put on fiscal discipline (“austerity”) in comparison with concerns over growth and stimulation of the economy. In this regard, the refusal of the Fiscal Compact constituted one of the core elements of criticism towards the ESM Treaty as well, because of the “political link” existing between the two treaties (see also Section 5 on the ESM Treaty).

The main points of criticism from the centre-left (PS), when it was still in the opposition, followed these lines. They were set out, in particular, in a proposal for a Parliamentary resolution that was eventually rejected by the then-majority<sup>225</sup>. In the document, the Fiscal Compact was depicted as un-balanced, with insufficient reference to growth and no teeth regarding fiscal and social harmonisation.

The Fiscal Compact was also described as presenting a democratic deficit: an intergovernmental instrument, it was established outside the framework for EU Treaty

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<sup>220</sup> *Idem*. The following centre-left-wing Government, however, decided to take the option of an organic law for its implementation.

<sup>221</sup> *Idem*.

<sup>222</sup> <http://www.assemblee-nationale.fr/14/rapports/r0205.asp>

<sup>223</sup> [http://www.assemblee-nationale.fr/13/europe/c-rendus/c0239.asp#P20\\_1253](http://www.assemblee-nationale.fr/13/europe/c-rendus/c0239.asp#P20_1253).

<sup>224</sup> *Idem*.

<sup>225</sup> AN, Commission for European Affairs, « Proposition de resolution europeenne (n° 4196) de M. Jean-Marc Ayrault, M<sup>me</sup> Elisabeth Guigou et M. Christophe Caresche et les membres du groupe Socialiste, Radical, Citoyen et Divers Gauche et apparentés, sur la relance européenne et le renforcement du contrôle démocratique », 7 February 2012 - <http://www.assemblee-nationale.fr/13/rapports/r4328.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/rapports/r4328.pdf>)

revision, which provided defined roles to the EU institutions and the national parliaments. Moreover, national parliaments were said to be given an insufficient role as regards the budgetary competences to be governed by common rules. A threat was perceived that intergovernmental instruments constituted a regression, when compared to the existing safeguards to the role of both the European and national parliament(s) set out in the “Six-pack”<sup>226</sup>.

Finally, the need for the Fiscal Compact was contested, as a golden rule already existed in the Stability and Growth Pact; and as a Constitutional revision in 2008 already equipped France with Programming Acts setting multiannual guidelines for public finances.

### ***The Hollande Presidency***

The election of centre-left-wing François Hollande to the Presidency led to a shift in the interpretation of the Fiscal Compact, which was shouldered by a decision of the *Conseil Constitutionnel* (Decision n° 2012-653 DC of 9 August 2012<sup>227</sup>, see annex I.1) enabling a flexible reading of article 3 of the Fiscal Compact on the “golden rule” requiring balanced budgets. According to this reading, the option was open to write this requirement down in an organic law (“institutional law”), rather than through constitutional amendment (see also question IX.7). Overall, the new majority undertook to set out the elements of the Fiscal Compact allowing for a flexible reading of its requirements of fiscal discipline<sup>228</sup> (see also question IX.3).

Renegotiation of the Fiscal Compact was a promise made by candidate Hollande during the presidential elections. Once elected, he appears to have negotiated with his European partners that the Fiscal Compact be complemented and thus rebalanced with other instruments and measures. Presented as the outcome of these discussions, four elements of the negotiations at the European Council on 28 and 29 June 2012 were brought forward by the new majority as a more acceptable overall normative setting, allowing for the ratification of the Fiscal Compact – under its new and more flexible interpretation. First, a Growth and Jobs Pact, focusing on stimulating the economy, in particular through the reallocation of unused European structural funds (55bn euros) and a raise of the lending capacity of the European Investment Bank (10bn euros). Second, steps were taken towards the creation of a tax on financial transactions, through an initiative for strengthened cooperation involving several European Member States. Third, progress was made towards the creation of a Banking Union, starting with banking supervision. Finally, President Hollande argued in favour of a more flexible use of the EFSF/EMS in order to aid States and

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<sup>226</sup> *Idem*. Regulation n° 1175 of 16 November 2011 is mentioned.

<sup>227</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-653-dc/decision-n-2012-653-dc-du-09-aout-2012.115444.html>

<sup>228</sup> <http://www.assemblee-nationale.fr/14/rapports/r0205.asp> ; <http://www.senat.fr/rap/112-022/112-022.html>

European banks facing financing difficulties, with a view to deepen European solidarity<sup>229</sup>.

If the right-wing opposition continued to support the adoption and ratification of the Fiscal Compact, praising especially the absence of competence for the European Court of Justice to control national budgets, it however deplored that the option was taken not to enshrine the “golden rule” in the Constitution, but in an organic law; it also considered as of little actual significance the new developments achieved by the new President at the European Council, considering the Growth and Jobs Pact as an insufficient instrument regarding the stimulation of the economy<sup>230</sup>. This last analysis was shared and held even more strongly by the ecologists and the far left, who voted eventually against the ratification of the Fiscal Compact (see question IX.3).

## RATIFICATION

### IX.2

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

Signed on March 2, 2012 by former President Sarkozy, the Fiscal compact Treaty was submitted to the French Constitutional Council by new President François Hollande on July 13, 2012, on the basis of art.54 of the Constitution.

Art.54 disposes that “*if the Constitutional Council, on a referral from the President of the Republic, from the Prime Minister, from the President of one or the other Houses, or from sixty Members of the National Assembly or sixty Senators, has held that an international undertaking contains a clause contrary to the Constitution, authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution.*”<sup>231</sup>

French *Conseil Constitutionnel* decision n°2012-653 DC of 9 August 2012 recognises that the ratification of the Fiscal Compact, including the obligation to enshrine the balanced budget rule in national law, does not require the Constitution to be changed <sup>232</sup> (see also question IX.7)

<sup>229</sup> <http://www.assemblee-nationale.fr/14/rapports/r0205.asp>; see also *Conclusions du Conseil européen des 28 et 29 juin 2012* (EUCO 76/12) :

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/fr/ec/131408.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/fr/ec/131408.pdf); see also in the newspapers : <http://www.lejdd.fr/International/UE/Actualite/Le-Memorandum-de-Francois-Hollande-a-destination-des-pays-de-l-UE-519938>; [http://www.lemonde.fr/economie/article/2012/06/28/accord-europeen-pour-un-pacte-croissance-de-120-milliards-d-euros\\_1726687\\_3234.html](http://www.lemonde.fr/economie/article/2012/06/28/accord-europeen-pour-un-pacte-croissance-de-120-milliards-d-euros_1726687_3234.html)

<sup>230</sup> <http://www.assemblee-nationale.fr/14/rapports/r0205.asp>

<sup>231</sup> [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/constiution\\_anglais\\_oct2009.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_oct2009.pdf)

<sup>232</sup>

<http://www.legifrance.gouv.fr/affichJuriConst.do?oldAction=rechJuriConst&idTexte=CONSTEXT000026345630&fastReqId=995021034&fastPos=1>

The ratification of the Fiscal Compact was then submitted as an Act, through an “accelerated procedure”, by the President of the Republic to the vote of both Houses of the Parliament. Under article 53 of the Constitution, “*Peace Treaties, Trade agreements, treaties or agreements relating to an international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament*”<sup>233</sup>. As the Fiscal Compact modifies provisions “which are the preserve of statute law”, it has to be ratified through an Act of Parliament<sup>233</sup>.

An “accelerated procedure” (see annex II) was used, which shortens the procedure of adoption of the Act, in particular by limiting the number of readings of the Act to one in each House<sup>234</sup>. Adopted by both Houses after one reading, the Act authorising the ratification of the Fiscal Compact Treaty was published in the Official Journal on October 23, 2012<sup>235</sup>.

## RATIFICATION DIFFICULTIES

### IX.3

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

The Fiscal Compact was ratified with a view to interpret it in a different way as compared to its initial understanding by former President Sarkozy – that is to say, as obliging France to amend its Constitution in order to constrain financial Acts with binding rules on budgetary balance<sup>236</sup>. As the text itself did not change between the time it was negotiated by the right-wing government and the time it was reinterpreted by the centre-left government, its ratification was adopted by a large majority including both UMP and PS votes.<sup>237</sup> The interpretation made of the Fiscal Compact by the new government – according to which amending the Constitution was not necessary to comply with the requirements of the Fiscal Compact – was authorized by a judgement of the *Conseil Constitutionnel* in Decision n° 2012-653 DC of 9 August 2012<sup>238</sup> (see question IX.7) Overall, the new majority undertook a

<sup>233</sup> <http://www.assemblee-nationale.fr/14/projets/pl0197.asp>

<sup>234</sup> [http://www.assemblee-nationale.fr/connaissance/fiches\\_synthese/septembre2012/fiche\\_32.asp](http://www.assemblee-nationale.fr/connaissance/fiches_synthese/septembre2012/fiche_32.asp)

<sup>235</sup>

<http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=?cidTexte=JORFTEXT000026526229&dateTexte=&oldAction=rechJO&categorieLien=id>

<sup>236</sup> <http://www.senat.fr/rap/112-022/112-022.html>

<sup>237</sup> Votes at the AN: <http://www.assemblee-nationale.fr/14/scrutins/jo0030.asp> ; votes at the Senate: <http://www.senat.fr/scrutin-public/2012/scr2012-3.html>

<sup>238</sup> Rapport for the Finances Commission of the Senate, 9 October 2012: <http://www.senat.fr/rap/112-022/112->

narrow reading of the obligations set by the Fiscal Compact, so as to see how they could be limited in scope (this concerned e.g. the theoretical nature of the risk of CJEU review and sanction, imprecision of the definition of “structural deficit”, a potential broad understanding of “exceptional circumstances”, and possibilities to be given extensions for the reduction of budget a deficit)<sup>239</sup>.

Opposition to the ratification included the far left, for which this new interpretation of the Fiscal Compact was not sufficient and which preferred a clear rejection of crisis instruments focused on austerity<sup>240</sup>. The ecologists also voted, in majority, against the ratification, insisting that a more demanding vision of Europe was needed at a time of increasing risk of recession in Europe, and that austerity policies should be reconsidered<sup>241</sup>. Other opponents to the ratification invoked, in particular, the Fiscal Compact as infringing national sovereignty in budgetary matters<sup>242</sup>, or as threatening the freedom of administration of local authorities<sup>243</sup>.

It should be noted, however, that the centre-left majority started to stress more the merits of the Fiscal Compact once its new interpretation had set aside the idea of a constitutional “golden rule”. It was described as an “opportunity to be seized” to strengthen the powers of the French Parliament on budgetary matters. In particular, the creation of an independent body to assess the economic forecasts of the government, as well as the new duties of information and of justification for economic assessments and provisions in the Budget Acts and Programming Acts, were said to be likely to increase the quality and the independence of the information available to the Parliament to control governmental budget proposals<sup>244</sup>.

Moreover, the Fiscal Compact, in line with the Two Pack and the European Semester, would open up a possibility for the French Parliament to expand its role in budgetary matters. With the European Semester and the continuous production of analyses and recommendations on the public accounts, for the first time, the Parliament would be able to take part in debates preceding budget proposals, whereas its traditional role was to discuss these proposals only once they were formed by the Government<sup>245</sup>. According to the centre-left majority, these euro-crisis instruments’ main effect would be to oblige

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[0222.html#toc52](#)

<sup>239</sup> *Idem.* <http://www.senat.fr/rap/112-022/112-022.html>

<sup>240</sup> [http://www.assemblee-nationale.fr/14/cri/2012-2013/20130012.asp#P365\\_75152](http://www.assemblee-nationale.fr/14/cri/2012-2013/20130012.asp#P365_75152)

<sup>241</sup> *Idem.*

<sup>242</sup> [http://www.senat.fr/amendements/2012-2013/23/Amdt\\_1.html](http://www.senat.fr/amendements/2012-2013/23/Amdt_1.html); [http://www.senat.fr/amendements/2012-2013/23/Amdt\\_2.html](http://www.senat.fr/amendements/2012-2013/23/Amdt_2.html)

<sup>243</sup> [http://www.senat.fr/amendements/2012-2013/23/Amdt\\_3.html](http://www.senat.fr/amendements/2012-2013/23/Amdt_3.html)

<sup>244</sup> [http://www.assemblee-nationale.fr/14/rapports/r0205.asp#P1210\\_179797](http://www.assemblee-nationale.fr/14/rapports/r0205.asp#P1210_179797)

<sup>245</sup> *Idem.*

governments to always give justifications for their choices.

The far left was however sceptic regarding the democratic nature of these developments, arguing in favour of a greater role of the European Parliament in EU economic and political governance, and for a referendum on the Fiscal Compact, so that citizens would have a say on the developments of the EU<sup>246</sup>.

## 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 FRANCE? 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.

As confirmed by the Decision n° 2012-653 DC of the *Conseil Constitutionnel* on August 9, 2012, amendment of the Constitution was not necessary to comply with article 3(2) of the Fiscal Compact<sup>247</sup> (see also question IX.7). The new French Government undertook to implement the Balanced Budget Rule in an Organic Law on the Programming and Governance of Public Finances<sup>248</sup>. Organic laws determine the modalities of application of ordinary laws in areas restrictively determined by the Constitution<sup>249</sup> (see also question II.1).

Following a constitutional amendment in 2008<sup>250</sup>, Article 34 of the Constitutions already provided for an "objective of balanced budget": "*The multiannual guidelines for public finances shall be established by Programming Acts. They shall contribute to achieving the objective of balanced accounts for public administrations*<sup>251</sup>". The binding nature of such an objective may however have appeared limited<sup>252</sup>.

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<sup>246</sup> *Idem.*

<sup>247</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-658-dc/decision-n-2012-658-dc-du-13-decembre-2012.135388.html>

<sup>248</sup> <http://www.senat.fr/dossier-legislatif/pjl12-043.html>

<sup>249</sup> <http://www.senat.fr/role/fiche/loi.html>

<sup>250</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-revisions-constitutionnelles/revision-constitutionnelle-du-23-juillet-2008.16312.html>

<sup>251</sup> [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/constiution\\_anglais\\_oct2009.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_oct2009.pdf)

<sup>252</sup> Guy Carcassonne, *La Constitution*, Editions du Seuil, onzième édition (2013), pp.177-178 : « *Apparaissent, enfin, des orientations pluriannuelles des finances publiques, définies par des lois de programmation auxquelles est recommandée la vertu : s'inscrire dans le nouvel objectif de valeur constitutionnelle d'équilibre des comptes des administrations publiques. Etrange conception, étrange rédaction. L'on pouvait souhaiter la*

As confirmed by Decision n° 2012-653 DC of the *Conseil Constitutionnel* on August 9, 2012, amending the Constitution was not necessary to comply with article 3(2) of the Fiscal Compact<sup>253</sup> (see also question IX.7). The new French Government undertook to implement the Balanced Budget Rule in the Organic law on the Programming and Governance of Public Finances (also hereafter “the Organic law”)<sup>254</sup>, completing and leading to modifications to the Organic Law on Budget Acts (hereafter “the LOLF”)<sup>255</sup>.

The Organic Law on the Programming and Governance of Public Finances was adopted through an accelerated procedure, which allows for only one reading in both Houses of the Parliament (see also Annex II). However, as both Houses provided amendments (the National Assembly on 10 October 2012; the Senate on 30 October 2012), and according to the accelerated procedure, the final draft was transferred to a joint committee (“*commission mixte paritaire*” – CMP), a commission gathering MPs from both Houses with the objective to harmonise their positions and agree on a common text. Meeting on 8 November 2012<sup>256</sup>, the CMP agreed on a final draft that was eventually voted by both Houses (Assemblée Nationale on 19 November 2012, Senate on 22 November 2012).

In accordance with article 46-5 and article 61-1 of the French Constitution, the Constitutional Council reviews the conformity of organic laws before they are given effect, which led the Constitutional Council to issue Decision 2012-658 DC on 13 December 2012<sup>257</sup>, recognising the partial conformity of the organic law to the Constitution (see also question IX.7).

In light of the organic law and of this Decision, the role of the Constitutional Council in the control of Budget Acts and Social Security Financing Acts regarding the Balanced Budget Rule could appear as limited.

First, continuous case law of the Constitutional Council indicated that it would not review the conformity of the Budget Acts and Programming Acts with the Fiscal Compact, as it did

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*constitutionnalisation d’une ‘règle d’or budgétaire’ (...). On préféra une formule édulcorée – un simple objectif, non une obligation – et limitée – aux seules administrations publiques plutôt qu’à l’ensemble des charges collectives ».*

<sup>253</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-653-dc/decision-n-2012-653-dc-du-09-aout-2012.115444.html>

<sup>254</sup> <http://www.senat.fr/dossier-legislatif/pjl12-043.html>;  
[http://legifrance.gouv.fr/affichTexte.do?jsessionid=880EA47A857F3711785949A673404337.tpdjo13v\\_2?cidTexte=JORFTEXT000026785259&dateTexte=&oldAction=rechJO&categorieLien=id](http://legifrance.gouv.fr/affichTexte.do?jsessionid=880EA47A857F3711785949A673404337.tpdjo13v_2?cidTexte=JORFTEXT000026785259&dateTexte=&oldAction=rechJO&categorieLien=id) (pdf :  
[http://legifrance.gouv.fr/jopdf/common/jo\\_pdf.jsp?numJO=0&dateJO=20121218&numTexte=1&pageDebut=19816&pageFin=19820](http://legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=20121218&numTexte=1&pageDebut=19816&pageFin=19820) )

<sup>255</sup>

[http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=A66320193C5E585C67BBCC5544239979.tpdjo14v\\_1?cidTexte=JORFTEXT000000394028&dateTexte=20130616](http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=A66320193C5E585C67BBCC5544239979.tpdjo14v_1?cidTexte=JORFTEXT000000394028&dateTexte=20130616)

<sup>256</sup> <http://www.senat.fr/rap/112-115/112-115.html>

<sup>257</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-658-dc/decision-n-2012-658-dc-du-13-decembre-2012.135388.html> (pdf :  
<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-135388.pdf> )

not view as its task to control the conformity of a French law with the international commitments of the State<sup>258</sup>. Only the conformity of Budget Acts and Programming Acts with organic laws and with the Constitution would be subject to review<sup>259</sup>.

Moreover, the Organic Law on the Programming and Governance of Public Finances essentially made Programming Acts the main vehicle in French law of the requirements of fiscal discipline contained in the Fiscal Compact.. Programming Acts were created by the 2008 Constitutional modification, and were made to set multiannual guidelines for public finances, aiming at balanced accounts for public administrations. The Organic law on the Programming and Governance of Public Finances constrained and specified these Programming Acts in accordance to the Fiscal Compact.

However, Programming Acts were not by themselves binding on Budget Acts and Social Security Financing Acts. This was confirmed by the Constitutional Council in Decision 2012-658 DC, restating that Programming Acts were not positioned higher in the hierarchy of norms than Budget Acts or Social Security Financing Acts. Therefore, the latter could not be reviewed on the basis of the commitments of fiscal discipline made in the Programming Acts, themselves implementing the commitments made in the Fiscal Compact.

In addition, for Programming Acts to be binding on Budget Acts would be contrary to article 20 of the Constitution according to which “*the Government shall determine and conduct the policy of the Nation*”<sup>260</sup>, granting freedom of appreciation and adaptation to the government; also it would be contrary to the budgetary prerogatives of the Parliament (§12 of the Decision<sup>261</sup>). This position appears to be in line with the principle according to which the legislator cannot bind itself for the future and can always undo a law previously passed<sup>262</sup>.

The Constitutional Council could intervene on the basis of the new Organic Law in the event where the Government would set in a Programming Act a Medium Term Budgetary Objective clearly at odds with the requirements of the Organic Law (an event which seemed more theoretical than plausible in the political context of the discussions)<sup>263</sup>; or in the event where the Government would stay silent, within the mechanism of correction of public deficit, on the gaps existing between its prevision of deficit reduction and public spending,

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<sup>258</sup> See in particular Decision 54-74 DC of 15 January 1975.

<sup>259</sup> Michel Lascombe, « La nouvelle gouvernance financière », *AJDA* 2013 p.228, 2013, pp.5-6.

<sup>260</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html>

<sup>261</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-658-dc/decision-n-2012-658-dc-du-13-decembre-2012.135388.html>; see also Michel Lascombe, *op.cit.* p.5.

<sup>262</sup> *Conseil Constitutionnel* Decision 82-142 DC of 27 July 1982, *Loi portant réforme de la planification*, §8, cited in Romain Bourrel, « La validation par le Conseil constitutionnel de la « nouvelle Constitution financière » de la France », *AJDA* 2013 p.478, 2013, p.2.

<sup>263</sup> <http://www.assemblee-nationale.fr/14/rapports/r0244.asp>

pointed out by an independent authority, the High Council of Public Finance (“*Haut Conseil des Finances Publiques*”)<sup>264</sup>.

Another route for constitutional review of Budget Acts would be through the control of the respect, in the Programming Acts, of the principle of “faithfulness of public accounts” (“*principe de sincérité des comptes publics*”) by the Government. Thus, a Government that would deliberately publish unrealistic economic assessments and forecasts in order to appear to fulfil its requirements under the Organic Law could see its Programming Acts annulled by the *Conseil Constitutionnel*<sup>265</sup>. However, it was underlined during the discussions that such control had been exercised loosely until then<sup>266</sup>, no Budget Acts having been ever cancelled on this basis, and a strict criterion of “manifest error of appreciation” having been set by the Council to assess it<sup>267</sup>.

Nevertheless, a new element that may hypothetically change this case law appeared in Decision n°2012-658 DC of 13 December 2012: faithfulness of public accounts may be assessed in light (but, as noted by the centre-left-wing majority, not exclusively<sup>268</sup>) of the advice of the High Council of Public Finance<sup>269</sup> (§19 of the Decision)<sup>270</sup>.

## 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 national debate on the implementation of the Fiscal Compact shared many features with the debate on its ratification (see also question IX.3). The laws launching both processes were proposed to the Parliament by the centre-left-wing government on the same day, 19 September 2012.

In particular, the arguments over the need for a reorientation of the euro-crisis measures could be found in both cases. Discussions over the extent to which the election to the Presidency of socialist François Hollande, who campaigned for a renegotiation of the Fiscal Compact, brought about significant or sufficient change, were also a common feature of both debates.

The main point of opposition, in both cases, consisted in the former right-wing majority and

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<sup>264</sup> Michel Lascombe, *op.cit.*, p.10

<sup>265</sup> Loi organique TSCG Rapport Com spéciale AN

<sup>266</sup> *Idem.*

<sup>267</sup> Romain Bourrel, *op.cit.* pp.2-3.

<sup>268</sup> Rapport AN loi organique, p.39.

<sup>269</sup> Romain Bourrel, *idem.*

<sup>270</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-658-dc/decision-n-2012-658-dc-du-13-decembre-2012.135388.html>

the centre being in favour of a Constitutional amendment for the implementation of the Balanced Budget Rule, whereas the new centre-left-wing majority chose an interpretation of the Fiscal Compact allowing for its ratification without Constitutional modification and a more flexible understanding of its constraints, through organic legislation, as allowed by the Constitutional Council (Decision n° 2012-653 DC of 9 August 2012).

Regardless of the interpretation of the Treaty, as the text that was open to ratification was the same as the text that was signed, both former and new majorities agreed on the ratification, while the far left and the ecologists voted against, both seeking a clearer disruption with the line of anti-crisis measures adopted so far. The point of disapproval between the new and the former majority thus appears to have rather been born on the implementation of the Treaty through an organic law, together with the degree of flexibility with which the new majority interpreted the instrument. In particular, the right wing former majority did not accept easily that the new majority did not entail in the Organic Law implementing the fiscal compact the numbered objectives of deficit reduction provided for by article 4 of the Fiscal Compact. The position of the centre-left-wing new majority was however that a document of constitutional (or, on the matter, organic) norm should not integrate detailed policy aims, but only principles<sup>271</sup>.

It should be noted that once the Treaty was ratified, the ecologists rallied the new centre-left-wing majority for the vote of the Organic Law, arguing that the implementing Organic Law was acceptable as far as it did *not* implement a golden rule; one additional explaining factor being that they were likely to increase their weight in the discussion of the precise content of the law if they were willing to vote in favour of it in the end<sup>272</sup>.

Two different assessments of the constraining qualities of the Organic Law were made during the debates. For the new center-left majority and the ecologists, the text was presented as a flexible and useful tool, for rather informational purposes, helping the Government and the Parliament in the process of drafting and adopting the budget. In the same perspective, the newly created independent body in charge of assessing budget proposals under article 3(2) of the Fiscal Compact, the "*Haut conseil des finances publiques*" (High Council of Public Finance) would only provide analyses and advice that could not bind the decisions made by democratically elected institutions. The Constitutional Council would not be able to annul a budget on the basis of the objectives of budgetary balance of the Organic Law<sup>273</sup>. Indeed, the Organic Law was perceived as constraining the procedures of budgetary legislation rather than its content (see also question IX.4). In particular, the calculation in structural terms of the deficit was said to be such an uncertain economic assessment that it was very unlikely to give ground firm enough for any constitutional

<sup>271</sup> [http://www.assemblee-nationale.fr/14/cri/2012-2013/20130014.asp#P465\\_92105](http://www.assemblee-nationale.fr/14/cri/2012-2013/20130014.asp#P465_92105). See in particular the intervention from Pierre-Alain Muet for the position of the new majority.

<sup>272</sup> <http://www.assemblee-nationale.fr/14/scrutins/jo0032.asp#Groupe%C3%A9cologiste> ; <http://www.senat.fr/scrutin-public/2012/scr2012-12.html>

<sup>273</sup> <http://www.assemblee-nationale.fr/14/rapports/r0244.asp>

review<sup>274</sup>. The looseness of the review exerted until then on the Budget Acts, Social Security Financing Acts and Programming Acts by the Constitutional Council regarding the principle of faithfulness of public accounts, a principle that was recalled in the Organic Law and in both Decisions n° 2012-653 DC and n°2012-658 DC (see also questions IX.4 and IX.7), was also underlined by the majority<sup>275</sup>.

However, this last argument seemed to be less definite within the ranks of the majority, as a report authored by this very majority had elsewhere<sup>276</sup> left open the question of whether the Constitutional Council taking into account the advice of the High Council of Public Finance, for the review of the principle of faithfulness of public accounts, would lead to a change in the case-law towards stricter control.

This question had to do with the second, competing assessment of the constraints arising from the Organic Law, defended essentially by the right-wing former majority, the centre, and the far left. In this other perspective, the review of the principle of faithfulness could be interpreted as being part of a constraining system, binding on the budgetary process in a significant manner. The centre thus held that the *Conseil Constitutionnel* could, on the basis of the principle of faithfulness of public accounts, annul the macroeconomic forecasts of the government<sup>277</sup>. The former right-wing majority added that if the Organic Law was really without effect on the budgetary process, this would constitute a breach of the Treaty and not a mere interpretation of it; therefore, the mechanism of correction of the public deficit should be taken seriously<sup>278</sup>. The far left shared this analysis, but as a reason to vote against the Organic Law, as it was perceived as constraining the budgetary process. To the far left, the main failure of the Organic Law was that the flexibility it sought was only a flexibility of means to achieve an objective that was itself dogmatic, unchallenged and economically dangerous: reducing public deficit without taking into account the specificities of the various public administrations and of the broader economic and social context<sup>279</sup>.

## RELATIONSHIP BBR AND MTO

### IX.6

*WHAT POSITIONS, IF ANY, ARE TAKEN IN THE NATIONAL DEBATE ABOUT THE RELATIONSHIP BETWEEN THE BALANCED BUDGET RULE OF ARTICLE 3(1)(B) FISCAL COMPACT AND THE MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) RULE IN THE SIX-PACK (SECTION 1A, ARTICLE 2A REGULATION 1466/97, ON WHICH SEE ABOVE QUESTION VII.10)?*

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<sup>274</sup> *Idem.*

<sup>275</sup> *Idem.*

<sup>276</sup> [www.assemblee-nationale.fr/14/rapports/r0244.asp](http://www.assemblee-nationale.fr/14/rapports/r0244.asp)

<sup>277</sup> [http://www.assemblee-nationale.fr/14/cr/2012-2013/20130014.asp#P465\\_92105](http://www.assemblee-nationale.fr/14/cr/2012-2013/20130014.asp#P465_92105)

<sup>278</sup> *Idem.*

<sup>279</sup> *Idem.*

The only position found focusing on this relationship was set out in a report<sup>280</sup> from the centre-left-wing majority pertaining to the ratification of the Fiscal Compact. Otherwise, the Organic law on the Programming and Governance of Public Finances could be said as completing the fulfilment of both the requirements of the Fiscal Compact and of the MTO rule of the Six-Pack. The report stated essentially that the main difference between the Fiscal Compact and the Six-Pack as regards the MTO rule relates to the tightening of the Balanced Budget Rule, setting a MTO of 0.5% GDP of structural deficit instead of 1% deficit in the Six-Pack. With the Fiscal Compact, a 1% GDP deficit would only be acceptable for States achieving to have less than 60% of GDP of debt and when risks pertaining to the sustainability of the debt are low.

The centre-left-wing majority praised in this regard two elements of flexibility regarding the MTO: that the debt be understood in “structural” terms allows for taking into account cyclical factors (“*variations conjoncturelles*”) in the assessment of debt sustainability; and that “exceptional circumstances” may legitimise deviating from the MTO, the Fiscal Compact giving more precision on the matter than the Six-pack<sup>281</sup>.

## CASE LAW

### IX.7

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

There are four relevant cases, for an analysis click on the annex:

Decision n° 2012-653 DC of the Constitutional Council, August 9, 2012<sup>282</sup> (see annex I.1 for an analysis and question IX.4).

Decision n° 2012-658 DC of the Constitutional Council, December 13, 2012<sup>283</sup> (see annex I.2).

Decision n°2012-659 DC of the Constitutional Council, December 13, 2012<sup>284</sup> (see annex I.3).

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<sup>280</sup> [http://www.assemblee-nationale.fr/14/rapports/r0205.asp#P1210\\_179797](http://www.assemblee-nationale.fr/14/rapports/r0205.asp#P1210_179797)

<sup>281</sup> *Idem*.

<sup>282</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-653-dc/decision-n-2012-653-dc-du-09-aout-2012.115444.html> ; (pdf: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-115444.pdf>) (english version : <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-no-2012-653-dc-of-9-august-2012.115501.html> )

<sup>283</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-658-dc/decision-n-2012-658-dc-du-13-decembre-2012.135388.html> (pdf: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-135388.pdf> ).

<sup>284</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-659-dc/decision-n-2012-659-dc-du-13-decembre-2012.135388.html>

Decision n°2013-682 DC of the Constitutional Council, December 19, 2013<sup>285</sup> (see annex I.4).

## NON-EUROZONE AND BINDING FORCE

### IX.8

*HAS FRANCE DECIDED TO BE BOUND BY PARTS OF THE FISCAL COMPACT ON THE BASIS OF ARTICLE 14(5) FISCAL COMPACT ALREADY BEFORE JOINING THE EURO AREA, OR HAS THIS OPTION BEEN DEBATED?*

Not applicable, since France is a member of the Euro Area

## MISCELLANEOUS

### IX.9

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

The Fiscal Compact was not the first attempt at introducing a “Golden Rule” in French constitutional law. In March 2011, the right-wing government tried and failed to have the Parliament adopt a law amending the Constitution for the purposes of budgetary balance<sup>286</sup>. A report by Michel Camdessus<sup>287</sup> had been issued in June 2010<sup>288</sup>, and argued for a constitutional change, including (but not limited to) the institution of a “Framework Pluriannual Programming Act for Public Finances” (*loi-cadre de programmation pluriannuelle des finances publiques*), binding on financial Acts<sup>289</sup> (which is currently not the case for Programming Act set up by the new Organic Law on the Programming and Governance of Public Finances).

On 16 March 2011, the right-wing government presented to Parliament a proposal for constitutional amendment<sup>290</sup>, inspired on several accounts from the Camdessus report. Its main features included importantly a “Framework Act for a Balanced Budget” (*lois-cadres*

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[depuis-1959/2012/2012-659-dc/decision-n-2012-659-dc-du-13-decembre-2012.135375.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-659-dc/decision-n-2012-659-dc-du-13-decembre-2012.135375.html) ; (pdf: [www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-135375.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-135375.pdf) )

<sup>285</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-682-dc/decision-n-2013-682-dc-du-19-decembre-2013.138972.html> ; (pdf: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-682-dc/decision-n-2013-682-dc-du-19-decembre-2013.138972.html> )

<sup>286</sup> <http://www.senat.fr/dossier-legislatif/pj110-499.html>

<sup>287</sup> While his report was discussed in Parliament, MPs from the far left criticised Michel Camdessus’ past role as Director of the IMF between 1987 and 2000, in particular the way he dealt with the Argentinian crisis. He is now honorary governor of Bank of France. <http://www.assemblee-nationale.fr/13/cri/2009-2010/20100206.asp> (pdf: <http://www.assemblee-nationale.fr/13/pdf/cri/2009-2010/20100206.pdf> )

<sup>288</sup> <http://www.ladocumentationfrancaise.fr/rapports-publics/104000330/index.shtml>

<sup>289</sup> *Idem.*

<sup>290</sup> <http://www.senat.fr/dossier-legislatif/pj110-499.html>

*d'équilibre des finances publiques*), with a pluriannual perspective and binding on financial Acts. Two other modifications of the Constitution were proposed: to ensure a monopoly for financial Acts in matters of mandatory levy (*prélèvements obligatoires*); and to enshrine in the Constitution the principle of systematic transmission of the Stability programmes to the Parliament before their transmission to the European Commission.

One argument in particular, found in the first Report on the project of constitutional amendment at the National Assembly, justified primarily the adoption of constitutional measures of budgetary control because it was not any more possible to use monetary devaluations – because of the common currency – to help solve budgetary difficulties<sup>291</sup>.

The right-wing and its allies from the centre however could not find the qualified majority required by Article 89 of the Constitution for any vote of a Constitutional amendment by the Parliament gathered in Congress<sup>292</sup>, especially not when the majority in the Senate had shifted to the left (see also question I.1).

The Socialist Party, in particular, refused what it called a manoeuvre aiming at presenting the left as lacking a sense of budgetary responsibility. Instead, democratic elections should take place and give to the people the choice of alternative visions of economic and budgetary policies.

The far left considered the “golden rule” presented by the right-wing government as a constitutionalisation of an “austerity straightjacket”, based on an economic orthodoxy shared by the European institutions<sup>293</sup>.

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<sup>291</sup> <http://www.assemblee-nationale.fr/13/rapports/r3333.asp>

<sup>292</sup> [http://www.assemblee-nationale.fr/connaissance/fiches\\_synthese/septembre2012/fiche\\_43.asp](http://www.assemblee-nationale.fr/connaissance/fiches_synthese/septembre2012/fiche_43.asp)

<sup>293</sup> <http://www.senat.fr/seances/s201106/s20110615/s20110615011.html#section1675>

## **X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT**

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

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

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

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

### **CONTEXT**

#### **X.1**

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

France has not received this kind of financial assistance.