



***CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW:  
HUNGARY***

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Disclaimer: in most of the cases where parliamentary debates are quoted, the Government has a two-third majority of the seats in the Parliament. In these cases there was no need of compromise between the governmental and opposition parties, not even in those cases, in which the European legislation had to be implemented by an act voted with the two-third majority of the MPs. Therefore these debates had no effect on the final decisions in most cases.

# I POLITICAL CONTEXT

## POLITICAL CHANGE

### I.1

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

A political crisis started in Hungary in 2006 when Prime Minister Ferenc Gyurcsány's speech about his party (social democrat MSZP) and Government lying to the public was leaked.<sup>1</sup> He did not resign, however serious protest and street riots were held against him all over the country, especially in the capital city, Budapest.

The Government lost the support of the public immediately, and during the next three years the Prime Minister became marginalized in his own party, becoming unable to finish the four years term. A new prime minister, Gordon Bajnai was elected by the majority of the Parliament who formed a 'technocrat Government' in April 2009.

As Prime Minister, Bajnai began the consolidation of the economy of the country by introducing fiscal harshness and austerity decisions. His actions were not popular with the Hungarian voters and he was still linked to former Prime Minister Gyurcsány, who symbolized the lies of the 20 years of democratic system to the people. Bajnai did not run for office in the 2010 April elections. Conservative central right party Fidesz won 52% of votes and more than two-thirds – 263 out of 386 – of seats in the Parliament. This was called a 'polling booth revolution' by the newly elected Prime Minister Viktor Orbán.<sup>2</sup>

Fidesz was backed by a two-third majority of votes in Parliament and started to reform the whole legal system of the country<sup>3</sup>. From an economical aspect the most important decision from the first year of the new Government was the nationalization of private pension savings of citizens.<sup>4</sup>

This stabilized the economy for the year of 2011 but did not help to solve the long term problems that caused instability in the system. According to Article 24 paragraph 5 of the former Constitution, the Constitution could have been amended by a two third majority of the votes of the MPs, but a process of forming a new constitution requires the votes of four fifth of the MPs. After being elected and holding two thirds of the seats in the Parliament, the Fidesz Government amended the four fifth rule to a two thirds rule and then initiated a process for a new constitution. Leftish opposition parties opposed this decision saying that the Government amended the constitution to ignore their opinions on the necessity of a new constitution. They refused to take part in this process, therefore the new Fundamental Law was delivered exclusively by Fidesz. It was only the far right Jobbik party that took part in the

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<sup>1</sup><http://news.bbc.co.uk/2/hi/europe/5359546.stm>

<sup>2</sup><http://www.economist.com/blogs/easternapproaches/2010/07/hungary>

<sup>3</sup><http://www.bbc.co.uk/news/world-europe-21792644>

<sup>4</sup><http://www.ft.com/cms/s/0/0e01c370-06de-11e0-8c29-00144feabdc0.html#axzz2ScHepWYg>

Parliamentary debates on the Fundamental Act that was adopted after five weeks of debate on April 25, 2011, the first anniversary of the 2010 elections when Fidesz won.<sup>5</sup> This process was harshly criticized internationally<sup>6</sup>. The Fundamental Act of Hungary was voted by the Parliament on 25 April 2011, on the first anniversary of governing coalition Fidesz-KDNP, and went in force on 1 January 2012.

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<sup>5</sup>For a detailed analysis see the Opinion on the New Constitution of Hungary by the Venice Commission, Strasbourg 20 June 2011, <http://lapa.princeton.edu/hosteddocs/venice-commission-hungarian-constitution.pdf>

<sup>6</sup>See for example: <http://hungarianspectrum.wordpress.com/2013/03/19/kim-lane-scheppes-testimony-at-the-helsinki-commission-hearing-on-hungary-full-text/> and [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/libe/pr/935/935253/935253en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/pr/935/935253/935253en.pdf)

## II CHANGES TO THE BUDGETARY PROCESS

### BUDGETARY PROCESS

#### II.1

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

The basis of the budgetary process is governed by the Fundamental Act of Hungary, in Article 36. Act CXCV of 2011 on State Finances regulates the budgetary process in detail, from Articles 12 to 22.

The dates of the budgetary process are different in the year of elections, because the new Government is usually in office from May. Based on the proposal of the Minister for National Economy the Government defines the main directions of the economic and fiscal policies, in particular the goals of the tax policy and the budgetary policy, and ascertains that the goal balance shall be in accordance with the reduction of the public debt. The Minister for National Economy works out the detailed plan of the schedule.<sup>7</sup>

The budget consists of chapters. The government body responsible for a chapter plans the incomes and expenses.<sup>8</sup> The Minister for National Economy prepares the draft of the budgetary act and submits it to the Government.

The Government presents the draft to the Fiscal Council. The Council forms an opinion about the draft in 10 days. If the Council does not support the draft the Government redesigns the proposal. The Government can only submit the proposal to the Parliament if the Fiscal Council supports the text.<sup>9</sup> The Government presents the proposal to the Parliament no later than the 15<sup>th</sup> of October.<sup>10</sup> Each committee of the Parliament comments on the draft, but it is the Budgetary Committee that presents the draft to the plenum of the Parliament.<sup>11</sup>

The Parliament discusses the draft together with the opinion of the State Audit Office and the Fiscal Council. The Parliament decides about the main numbers of the incomes and expenses of each chapter and the balance of the budget with the deadline of the 30<sup>th</sup> of November. After this point there can be no amendments to these numbers.<sup>12</sup>

As mentioned before, the approval of the Fiscal Council is needed before the approval of the Parliament. The Council examines if the budget is in accordance with the balance requirements incorporated in the Constitution. If the Council refuses to approve the Budgetary

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<sup>7</sup> Article 11 of Act CXCV of 2011 on State Finances

<sup>8</sup> Article 14 of Act CXCV of 2011 on State Finances

<sup>9</sup> Article 24 of Act CXCV of 2011 on Economic Stability

<sup>10</sup> Article 22 paragraph 2 of Act CXCV of 2011 on State Finances

<sup>11</sup> Standing Order No. 120 paragraph 3 of the Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary

<sup>12</sup> Article 22 paragraphs 6 and 7 of Act CXCV of 2011 on State Finances

Act until the 31th March of the year into the Budgetary Act the President can dissolve the Parliament.<sup>13</sup>

## GENERAL CHANGE

### II.2

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

Before the financial crisis, the budgetary process was really similar to the current one. There were less strict deadlines in the system. Most of the deadlines were decided by the Government that released governmental statutes about the budgetary process. The only strict deadline was the 30<sup>th</sup> November, the date before which the Parliament had to decide about the main numbers of the budget that could not have been changed after this date.

The rules concerning the Fiscal Council were not part of the budgetary process, because the Fiscal Council was created after 2008, as described in the answer to questions II.1 and VII.5.

## 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?

Apart from the introduction of the Fiscal Council with its far-reaching powers, no changes were introduced.

## CHANGE OF TIME-LINE

### II.4

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

No changes were introduced.

## MISCELLANEOUS

### II.5

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

No other relevant information.

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<sup>13</sup>Fundamental Law of Hungary, Article 3 paragraph 2 point b

### 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)?

Article E, paragraphs 2 and 4 regulate the cases in which a Cardinal Act should implement an international treaty.

‘(2) In order to participate in the European Union as a Member State, and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfill the obligations set out in the founding treaties, exercise some of its competences deriving from the Fundamental Law jointly with other Member States, through the institutions of the European Union.

(4) The authorization for expressing consent to be bound by an international treaty referred to in paragraph (2) shall require the votes of two-thirds of all Members of Parliament.’

According to Article T paragraph 4 of the Fundamental Act of Hungary, a Cardinal Act of Parliament is an Act of Parliament for the adoption or amendment of which the votes of two-thirds of the Members of Parliament present shall be required.

Decision to amend article 136 TFEU  
European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, OJ L 91, 6.4.2011, p. 1 was incorporated into the Hungarian legal system by Act IX of 2012, that is a Cardinal Act. (see question V.2)

The Fiscal Compact,  
(Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) was ratified by Act XXXII of 2013, which is also a Cardinal Act. (see questions IX.2 and IX.4)

According to Article 15 paragraphs 3 and 4 of the Fundamental Act of Hungary, acting within its competence, the Government adopts decrees by statutory authorization on any matter not regulated by an act, but no decree of the Government shall conflict with any act.<sup>14</sup>

The financial assistance instruments were incorporated into the Hungarian legislation by decrees of Government. It was the Memorandum of Understanding that was translated and released by the Government in the 282/2008 Government statute, released on 28, November,

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<sup>14</sup> The text of the Fundamental Act of Hungary is available here: <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>

2008. Amendments of the Memorandum of Understanding were released in statutes on April 4th, 2009 (67/2009.), June 24th, 2009 (135/2009.), June 30th, 2009 (140/2009.) and February 28th, 2010 (28/2010.) (see question X.4).

Other Euro-crisis tools, such as reactions to the excessive deficit procedure or the Macroeconomic imbalances procedure were implemented in the so-called national plans, like the convergence programmes of 2011<sup>15</sup>, 2012<sup>16</sup> and 2013<sup>17</sup> and the Széll Kálmán plan that is a medium term plan on economic and financial policies of the Government<sup>18</sup>.

## CONSTITUTIONAL AMENDMENT

### III.2

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

No, there has not been any and there are no plans of amending the Fundamental Act of Hungary in relation to the Euro-crisis legislation.

## 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?

National constitutional law contains relevant elements, such as the balanced budget role in Articles N and 36, but this was introduced to the legal system in 2012. A Fiscal Council was created in 2008 as result of an international pressure, as detailed in the answer to question VII.5.

## PURPOSE CONSTITUTIONAL AMENDMENT

### III.4

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

No amendments made, and no amendments proposed.

## RELATIONSHIP WITH EU LAW

### III.5

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

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<sup>15</sup>[http://ec.europa.eu/europe2020/pdf/nrp/cp\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nrp/cp_hungary_en.pdf)

<sup>16</sup>[http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/pdf/20\\_scps/2012/01\\_programme/hu\\_2012-04-23\\_cp\\_en.pdf](http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/20_scps/2012/01_programme/hu_2012-04-23_cp_en.pdf)

<sup>17</sup>[http://ec.europa.eu/europe2020/pdf/nd/cp2013\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/cp2013_hungary_en.pdf)

<sup>18</sup><http://www.kormany.hu/download/4/d1/20000/Sz%C3%A9ll%20K%C3%A1lm%C3%A1n%20Terv.pdf>

No constitutional amendments.

## **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?

The Treaties of the Euro-crisis were promulgated in a 'Cardinal Act', see also the answer to question III.1. According to Article T paragraph 4 of the Fundamental Act of Hungary, Cardinal Act of Parliament is an Act of Parliament for the adoption or amendment of which the votes of two-thirds of the Members of Parliament present shall be required. These acts differ from ordinary Acts of Parliament only in the way of adoption and amendment, otherwise they do not forego ordinary acts and cannot contradict the provisions of the Fundamental Act, the constitution of Hungary.

## **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?

No constitutional amendments.

## **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?

Pieces of Hungarian legislation in connection with Euro-crisis law were seen as implementing European Union law. In case of a Parliamentary debate, both Governmental and opposition parties took it granted that EU law was being implemented by the Parliament or the Government.

## **MISCELLANEOUS**

III.9

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

No other relevant information.

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

*[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0001:EN:PDF](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 HUNGARY 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?

There was no visible debate on the issue.

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

Not relevant for Hungary, as it is not a party to the EFSF.

## GUARANTEES

### IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN HUNGARY? WHAT DEBATES HAVE ARISEN DURING THIS PROCEDURE, IN

PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE GUARANTEES FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

Not relevant for Hungary.

## **ACTIVATION PROBLEMS**

IV.4

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

Not relevant for Hungary.

## **CASE LAW**

IV.5

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

No.

## **IMPLEMENTATION**

IV.6

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

Not relevant for Hungary.

## **IMPLEMENTING PROBLEMS**

IV.7

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

Not relevant for Hungary.

## **BILATERAL SUPPORT**

IV.8

IN CASE HUNGARY 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?

Hungary did not provide such bilateral funding.

## MISCELLANEOUS

IV.9

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

Not relevant for Hungary.

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

The amendment was initiated just before Hungary started its half year presidency of the EU on January 1st, 2011. Enikő Győri, State Secretary for European Affairs said: ‘Budapest would not like to re-negotiate the treaty of Lisbon’. According to her, Hungary could support only minor amendments to the Treaty. ‘Nobody was interested in opening Pandora’s box.’<sup>19</sup>

After these statements the Government (probably under German pressure) changed its opinion and supported the amendment, without any major change in the text. Some Hungarian governmental politicians said that they were supporting it in the beginning; it was only the press that misinterpreted their statements.

During the negotiation process the Government was free to act according to its own standards, because there was no debate in the Parliament about the issue.

### APPROVAL

#### V.2

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

In Hungary, the implementation of European norms is carried out by the Parliament. According to Article E Paragraph 4 of the Fundamental Act of Hungary, the authorization to recognize the binding nature of an international agreement in which Hungary exercises its national sovereignty jointly with the European Union requires a two-thirds majority of the

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<sup>19</sup><http://www.euvonal.hu/index.php?op=hirek&id=6753>

votes of the Members of Parliament. The paragraph names the Founding Treaties as such international treaties.

The amendment of the 136 TFEU Treaty was introduced into the Hungarian legal system by Act IX of 2012<sup>20</sup>, voted on 27 February 2012<sup>21</sup>. During the application procedure debates were limited: the act was proposed by the Government, and was accepted without amendments, with 320 for it, 40 against it and 0 abstentions. All the votes against the act came from the eurosceptic, far right party Jobbik.

The Treaty Amendment is an international treaty that delegates parts of national sovereignty to the European Union and therefore it has to be incorporated into the Hungarian legal system by a parliamentary act voted by the two-third majority.<sup>22</sup> This criterion was fulfilled and the cardinal act (see also on this concept question III.1) was accepted by the required majority.

## RATIFICATION DIFFICULTIES

### V.3

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

Before approving the amendment, the Hungarian Parliament debated the issue. The Governing parties supported the amendment during the debate on 27 February 2012. The debate and the approval took place on the same day.

As the proposer of the act, the Government emphasized that the mechanism incorporated in the European law by the amendment is only binding on Eurozone member states, therefore the ratification imposes no legal commitments on Hungary<sup>23</sup> until it joins the Eurozone in the future. The Government supported the amendment on the basis that it provides a strong mechanism to reach economic and monetary stability for Eurozone member states, which

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<sup>20</sup> The text of the act is available here: <http://www.complex.hu/kzldat/t1200009.htm/t1200009.htm>

<sup>21</sup> See the details on the Webpage of the Hungarian Parliament:

[http://www.parlament.hu/internet/plsql/ogy\\_szav.szav\\_iron?P\\_CKL=39&P\\_DATUM\\_TOL=2012.02.27&P\\_DATUM\\_IG=2012.02.27&P\\_SZAVMOD=5](http://www.parlament.hu/internet/plsql/ogy_szav.szav_iron?P_CKL=39&P_DATUM_TOL=2012.02.27&P_DATUM_IG=2012.02.27&P_SZAVMOD=5)

<sup>22</sup>Article E Paragraphs 2 and 4 of the Hungarian Fundamental Law:

(2) In order to participate in the European Union as a Member State, and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfill the obligations set out in the founding treaties, exercise some of its competences deriving from the Fundamental Law jointly with other Member States, through the institutions of the European Union.

(4) The authorisation for expressing consent to be bound by an international treaty referred to in paragraph (2) shall require the votes of two-thirds of all Members of Parliament.

<sup>23</sup>[http://www.parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=166&p\\_felsz=195&p\\_szoveg=&p\\_felszig=195](http://www.parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=166&p_felsz=195&p_szoveg=&p_felszig=195)

must be a high priority for Hungary as well. The Government pointed out that the amendment would not widen the scope of powers of the European Union.

During the parliamentary debate, members of Jobbik criticized the amendment because according to their views it was a major step towards the forming of a United States of Europe, which is contrary to the interests of Hungary<sup>24</sup>. The Jobbik Party argued that the voting of the amendment caused a political crisis in Slovakia and even though the amendment is not binding on Hungary yet, it will be at the moment the country joins the Eurozone, and then Hungary will be the subject of strong liabilities introduced by the amendment. The reasoning of Jobbik was inaccurate, since the amendment became binding on Hungary after the ratification, however ESM would be binding on Hungary after a future ratification following its join to the Eurozone.

Other parties in the Parliament supported the government on the issue, on the basis that a strong Eurozone is a priority for Hungary because of its dependence on other member states.<sup>25</sup>

The importance of the issue for MPs is demonstrated by the fact that the act approving the 136 TFEU Treaty amendment was accepted after a debate in which three MPs and the under-secretary for Foreign Affairs held speeches for approximately 20 minutes all together.

The Government argued in Parliament that the treaty amendment increases the role of national Parliaments and opens up the opportunity for democratic debate. The Minister of Foreign affairs said: 'there is no real alternative for Hungary but supporting the Treaty amendment'.<sup>26</sup>

## CASE LAW

V.4

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

No, there is not any.

## MISCELLANEOUS

V.5

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

No other relevant information.

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<sup>24</sup>See the parliamentary debate here: [http://www.parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=166&p\\_felsz=191&p\\_szoveg=&p\\_felszig=191](http://www.parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=166&p_felsz=191&p_szoveg=&p_felszig=191)

<sup>25</sup>This was said by independent, left wing MP Csaba Molnár during the debate: [http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=166&p\\_felsz=193&p\\_szoveg=&p\\_felszig=193](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=166&p_felsz=193&p_szoveg=&p_felszig=193)

<sup>26</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=162&p\\_felsz=247&p\\_szoveg=136&p\\_felszig=247](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=247&p_szoveg=136&p_felszig=247)

## 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 HUNGARY 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.

Hungary is not a member state joining the Euro-Plus-Pact.<sup>27</sup> According to the Prime Minister, the Government decided not to join because the pact can reduce the right of member states to decide about their own tax systems. According to him ‘Hungary’s tax benefit system greatly relies on the corporate tax base – certain allowances, such as research and development-, culture- or sport-related ones, are deductible from the tax base. Changing it would require the modification of the whole allowance system, which would result in the elimination of certain tax benefits.’<sup>28</sup>

Prime Minister Viktor Orbán said on the topic in the Parliament on 4 April 2011: ‘I recommend it to the plenum to never support a European tax harmonization, because we, the Hungarians can only lose with it: mostly lose workplaces. I ask for your support for the Government on this issue.’<sup>29</sup> He also said, that joining the pact would mean 1% of decline in economic growth for Hungary and the loss of 50 000 to 70 000 workplaces in the country.

According to Péter Oszko, former Minister of Finance, the real reason for Hungary not joining the pact was that it would integrate the system of different corporate tax systems, not by equalizing the rate of the tax but by adopting the same system to calculate the amount of the tax. In this model it would be obvious however that the Hungarian corporate tax rate is relatively low; other taxes in the system (like local business tax or the so-called ‘crisis taxes’

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<sup>27</sup>See also: Zsofia Danko: Corporate tax harmonization in the European Union, MPRA Paper No. 40350, posted 6. August 2012 14:29 UTC, page 215.

<sup>28</sup><http://www.bbj.hu/business/4-reasons-for-hungary-to-join-the-euro-plus-pact-%E2%80%93-and-4-not-to-57929>

<sup>29</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=82&p\\_felsz=14&p\\_szoveg=versenyk%E9pess%E9gi%20and%20paktum&p\\_felszig=14](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=82&p_felsz=14&p_szoveg=versenyk%E9pess%E9gi%20and%20paktum&p_felszig=14)

imposed on big international companies after the beginning of the economic crisis) make it expensive to run a business in the country. As a consequence the reason of not joining to the pact was to avoid transparency.<sup>30</sup>

## MISCELLANEOUS

VI.2

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

No, Hungary is not a member to the Euro-Plus-Pact.

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<sup>30</sup> <http://www.vg.hu/velemeney/publicisztika/oszko-egyelore-keves-az-eredmenye-a-titkolt-megszoritasoknak-344746>

## 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 HUNGARY 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 was the main concern of the Hungarian EU Presidency from January 2011. According to press information the Hungarian Government was highly committed to finalize the Six-Pack during the presidency. (The deal of the member states' Ministers of Finance on the Pack was made on the 15th of March, 2011. That day is a national holiday in Hungary, and Prime Minister Viktor Orbán held a speech in Budapest with the punch line: 'we won't let Brussels control us', that enlightens the real contradiction between the two communication schemes of the Government: one to the citizens and one to the outside world.)

According to the consuetude in Brussels the state in charge of the presidency takes part in the negotiation as a neutral actor and is interested in the compromise. Hungary stuck to this practice in the case of the six pack and there was no public debate about the topic.

Eventually, the final decision on the Six-Pack was made after the Hungarian presidency finished in June 2011.

### 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)?

On December 9, 2013 Act CCXXII of 2013<sup>31</sup> was accepted by the Parliament.<sup>32</sup> The law required the majority of the votes of the MPs, the votes divided as 248 in favor (mostly governmental), 32 against (mostly from Jobbik) and 42 abstentions (mostly from socialist party MSZP).

The act amends the Act CXCV of 2011 on State Finances to bring it in accordance with Directive 2011/85/EU.

The main amendments are the following. Macro economical and budgetary forecast have to be prepared and published by the Government at least twice a year. Middle term planning is prepared for three years (following the current year). The IT system of the Hungarian State Treasury is transformed and the changes have to be published on the website of the Treasury. A new rule is introduced concerning the budgetary planning, that has three main elements: according to the balance of the whole governmental sector the public debt has to decrease; the deficit of the balance of the whole governmental sector cannot exceed the 3% of the GDP; the structural balance cannot exceed the middle term budgetary target that is specified in the convergence programme. These rules can only be ignored temporarily if it is justified by the unfavorable developments of the economical cycle, but this divergence has to be reasoned in details in the proposal for the budgetary act.

The act also amended some of the dates of the budgetary process. According to the new rules, the minister responsible for state finances prepares and publishes the detailed plan of the budgetary planning until the 30<sup>th</sup> of June<sup>33</sup> and the Government presents the proposal of the budgetary act to the Parliament no later than the 15<sup>th</sup> of October.<sup>34</sup>

## IMPLEMENTATION DIFFICULTIES

### VII.3

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

On December 9, 2013 Act CCXXII of 2013<sup>35</sup> was accepted by the Parliament.<sup>36</sup> The law required the majority of the votes of the MPs. Since the Governmental coalition held the two-third majority of the seats in the Parliament the passing of the required no political consent of the opposition parties. The implementation of the directive did not caused any legal problems.

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<sup>31</sup>The text of the act is available here: <http://www.complex.hu/kzldat/t1300222.htm/t1300222.htm>

<sup>32</sup> [http://www.parlament.hu/internet/plsql/ogy\\_irom.irom\\_adat?p\\_ckl=39&p\\_izon=13216](http://www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=13216)

<sup>33</sup> Article 13 paragraph 1 of Act CXCV of 2011 on State Finances

<sup>34</sup> Article 22 paragraph 2 of the amended Act CXCV of 2011 on State Finances

<sup>35</sup>The text of the act is available here: <http://www.complex.hu/kzldat/t1300222.htm/t1300222.htm>

<sup>36</sup> [http://www.parlament.hu/internet/plsql/ogy\\_irom.irom\\_adat?p\\_ckl=39&p\\_izon=13216](http://www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=13216)

## 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)?

In the Convergence Programme, the Hungarian authorities report their intention to modify legislation to require the State Audit Office and/or the Fiscal Council to assess the macroeconomic and budgetary forecasts presented in the convergence programme and to make this assessment public.<sup>37</sup> However, the Fiscal Council currently in office is not an unbiased institution, as discussed in answer VII.5.

## FISCAL COUNCIL

### VII.5

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

There is a Fiscal Council in Hungary. It was constituted by Act LXXV of 2008<sup>38</sup>, entering into force on 1 January 2009, in accordance with an agreement made with the International Monetary Fund. Forming the Council was one of the conditions imposed by the IMF to provide financial support to Hungary.

‘The Council’s original design established it as a body consisting of three non-partisan members independent from the government and political parties.’<sup>39</sup> Back then the head of the Council was appointed by the President, while two other members were appointed by the Head of the Hungarian National Bank and the Head of the State Audit Office.

A recent report from the IMF concludes that: ‘The Council had not even been in operation for two years before the newly elected government suggested significant revisions to its legal framework. This followed a period of tension between the Government and the Council. The Council criticized the Government’s medium-term budgetary plan in the 2011 budgetary bill and other aspects of the Government’s economic policy including temporary industry-specific taxes and the diversion of private-pension contributions to the state.’<sup>40</sup>

The legislation was amended in 2011 and the legal status of the Council is currently regulated by Act CXCV of 2011<sup>41</sup>, which is a normal act of Parliament, but some parts of it were

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<sup>37</sup> The Convergence Program of Hungary, 2012

<sup>38</sup> The text of the act is available here: <http://www.complex.hu/kzldat/t0800075.htm/t0800075.htm>

<sup>39</sup> Case Studies of Fiscal Councils – Functions and Impact, International Monetary Fund, July 16, 2013

<sup>40</sup> Case Studies of Fiscal Councils – Functions and Impact, International Monetary Fund, July 16, 2013

<sup>41</sup> The text of the act is available here: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100194.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100194.TV)

passed and can only be amended by the two-third majority of the votes of the MPs. Regulations concerning the Fiscal Council are included in these parts, because Paragraph (5) of Article 44 of the Fundamental Act of Hungary states that ‘The detailed rules of the functioning of the Budgetary Council shall be regulated in a cardinal Act of Parliament’.

The three members currently are: Head of the State Audit Office elected by the two thirds of the votes of the MPs for a 12-years-long term<sup>42</sup>, Head of the Hungarian National Bank, appointed by the President of the Republic for a six-years-long term<sup>43</sup>, and the President of the Fiscal Council appointed by the President of the Republic for a six-years-long term<sup>44</sup>. At first sight it seems to be an advisory body, but in fact, it has absolute veto over the Budget Bill.<sup>45</sup>

‘[The Council was s]ignificantly weakened following 2011 reorganization, which eliminated its dedicated staff and reduced its budget to near zero.’<sup>46</sup>

‘The Fiscal Council examines compliance with the debt rule, delivering an opinion every six months on the state of play of the budget and the trends in public debt; furthermore, it is entitled to express an opinion on any issue related to the planning and implementation of the budget, as well as to management of other public spending. The amendment results in a broader scope of authority for the Fiscal Council; the Government shall submit to the Council for an opinion, in addition to the budget, the proposals which the budget is based on, including proposals for acts establishing payment obligations (taxes), and the Fiscal Council may express an opinion on such proposals.’<sup>47</sup>

The Fiscal Council has an important part in the budgetary process: according to Article 44 paragraph 3 of the Fundamental Act of Hungary, it has to give its consent to the budgetary proposal before it can be presented to the Parliament. If the Council does not approve the proposal, the Government is required to revise it until the Council finds it in accordance with the stability rules of the Fundamental Act and the CXCIV Act of 2011 on Economic Stability.<sup>48</sup>

Although the Council may refuse to give consent only in specific cases (for example if the Budget Bill would allow state debt to exceed half of the GDP) its decision cannot be reviewed or annulled. If no state budget is accepted until the 31<sup>st</sup> of March of the running year, the President has the opportunity to dissolve Parliament, which gives an excessive power to the Fiscal Council. In case of a future government formed by current opposition parties, the Fiscal

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<sup>42</sup>Article 43 paragraph 2 of the Fundamental Act of Hungary

<sup>43</sup>Article 41 paragraph 3 of the Fundamental Act of Hungary

<sup>44</sup>Article 44 paragraph 4 of the Fundamental Act of Hungary

<sup>45</sup>The English webpage of the Fiscal Council: [http://www.parlament.hu/kt/kt\\_eng.htm](http://www.parlament.hu/kt/kt_eng.htm)

<sup>46</sup> Marco Cangiano, Teresa R. Currestine, Michel Lazare (editors): Public financial management and its emerging architecture, 2013, page 212

<sup>47</sup> The Convergence Program of Hungary, 2012

<sup>48</sup> See Article 44 paragraph 3 of the Fundamental Act of Hungary, Article 24 of Act CXCIV of 2011 on Economical Stability and Article 22 paragraph 6 of Act CXCV of 2011 on State Finances

Council will have the opportunity to prevent the budgetary act being accepted by refusing to give its consent.<sup>49</sup>

## **REGULATION NO 1176/2011 ON THE PREVENTION AND CORRECTION OF MACROECONOMIC IMBALANCES**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT>

### **MEIP DIFFICULTIES**

#### **VII.6**

WHAT POLITICAL/LEGAL DIFFICULTIES DID HUNGARY 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?

There was no real debate about the issue, not even in the Parliament.

## **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?

There has been no change to accommodate the amended Medium-term Budgetary Objective (MTO) Procedure.

### **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)?

There were no changes to the budgetary process itself. The deadlines and steps of the Hungarian budgetary process make it possible to prepare and present a Convergence Program to the European Commission and to incorporate its recommendations into the final budgetary act. See the details of the budgetary process in the answer to question II.1.

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<sup>49</sup> Article 23 to 26 of Act CXCIV of 2011 on Economical Stability

## MTO DIFFICULTIES

### VII.9

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

## 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)?

‘In accordance with the deadline set for the application of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, transposition will take place in the second half of 2013. Related legislative amendments, such as the proposals for the amendment of the act on the state budget or that of the act on the economic stability of Hungary, are planned to be discussed by the Parliament in October and will be adopted by the end of 2013.’<sup>50</sup>

This happened on December 9, 2013 Act CCXXII of 2013<sup>51</sup>, which includes a medium term budgetary rule. According to this rule the structural balance cannot exceed the middle term budgetary target that is specified in the convergence programme. Act CXCV of 2011 on State Finances<sup>52</sup> has been also amended and in Article 2 paragraph 1 point z it applies the definition of Medium-term Budgetary Objective according to the consolidated Regulation 1466/97.

## CURRENT MTO

### VII.11

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

According to the Convergence Programme 2013<sup>53</sup>, the MTO is set at a structural deficit of 1,7% of GDP throughout the Programme period.<sup>54</sup> There is no information available of an intended revision.

## ADOPTION MTO

### VII.12

BY WHAT INSTITUTION AND THROUGH WHAT PROCEDURE IS HUNGARY’S MEDIUM-TERM

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<sup>50</sup> Convergence Programme of Hungary 2013

<sup>51</sup>The text of the act is available here: <http://www.complex.hu/kzldat/t1300222.htm/t1300222.htm>

<sup>52</sup>The text of the act is available here: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100195.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100195.TV)

<sup>53</sup>Convergence Programme of hungary 2013, available at [http://ec.europa.eu/europe2020/pdf/nd/cp2013\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/cp2013_hungary_en.pdf)

<sup>54</sup> Additional document to the 2013 budgetary bill: [http://www.parlament.hu/irom39/04365/adatok/fejezetek/00\\_kitekintes.pdf](http://www.parlament.hu/irom39/04365/adatok/fejezetek/00_kitekintes.pdf)

BUDGETARY OBJECTIVE ADOPTED AND INCORPORATED IN THE STABILITY PROGRAMME (EUROZONE, ARTICLE 3(2)(A) CONSOLIDATED REGULATION 1466/97)?

The Convergence Programme is presented by the Government, while the planning is conducted by the Ministry of National Economy. There is no formal procedure that the Government has to follow while adopting the Medium-term Budgetary Objectives.

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

No debates have arisen.

## **REGULATION No 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1173:EN:NOT>

### **SANCTIONS**

VII.14

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

No specific debates have arisen.

Former Article 37 paragraph (6) of the Fundamental Law of Hungary constituted a right to the Parliament to impose extra taxes if there was an obligation of the state to pay a fine, based on the decision of an international court or law enforcer. This rule was not specially made to solve the problem of the sanctions of the six pack but opened the possibility for the Government to do so in the future.

This provision was removed from the Fundamental Law by the Fifth Amendment of the Fundamental Law of Hungary on 23 September 2013, mostly because of the heavy criticism

on this rule coming from the European Commission, according to which the possibility of these extra taxes would cause a strong insecurity in the rule of law in Hungary.<sup>55</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 relevant for Hungary.

## MISCELLANEOUS

VII.16

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

No further relevant information.

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<sup>55</sup>See for example in Hungarian Helsinki Committee, Eötvös Károly Policy Institute and Hungarian Civil Liberties Union: Comments on the Fifth Amendment to the Fundamental Law of Hungary, 18 September 2013, available here: [http://helsinki.hu/wp-content/uploads/NGO\\_comments\\_on\\_the\\_5th\\_Amendment\\_to\\_the\\_Fundamental\\_Law\\_October2013.pdf](http://helsinki.hu/wp-content/uploads/NGO_comments_on_the_5th_Amendment_to_the_Fundamental_Law_October2013.pdf)

## VIII ESM TREATY

*The European Stability Mechanism (ESM) Treaty was signed on July 11 2011. It was later renegotiated and a new ESM Treaty was signed on February 2, 2012. The Treaty provides a permanent emergency fund that is intended to succeed the temporary emergency funds. It entered into force on September 27, 2012 for 16 contracting parties (Estonia completed ratification on October 3). The 17 contracting parties are the member states of the Eurozone, but the ESM Treaty is concluded outside EU law.*

*(<http://www.european-council.europa.eu/eurozone-governance/esm-treaty-signature?lang=it> and <http://www.esm.europa.eu/pdf/FAQ%20ESM%2008102012.pdf>)*

## NEGOTIATION

### VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID HUNGARY 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.

Not relevant for Hungary, since it is not a party to the ESM Treaty.

## 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 HUNGARY 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.

At first, the Hungarian Government was against the Fiscal Compact because of their understanding of the Compact aiming to harmonize taxing in the European Union. Prime Minister Viktor Orbán said on 9 December 2011 that the decision about the Compact has to be made by the Parliament, because its provisions would restrict sovereignty.<sup>56</sup>

During the parliamentary debate on 13 February 2012<sup>57</sup>, the position of the Hungarian Government was that accepting the Fiscal Compact is in the interest of the whole European Union, and therefore of Hungary. The vast majority of Hungarian export goes to the Eurozone and everything increasing the security and productivity in the Eurozone is important for Hungary.

However, most of the Compact is not yet binding for Hungary<sup>58</sup>, but it will be once Hungary joins the Eurozone. Hungary currently would not be able to fulfill the conditions of the Fiscal Compact but the Government will work for a strong Hungary that is able to meet these conditions at the time of joining the Eurozone. The Minister of Foreign Affairs speaking on behalf of the Government reminded that signing<sup>59</sup> the Fiscal Compact is in the power of the

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<sup>56</sup>[http://hvg.hu/vilag/20111209\\_orban\\_eu](http://hvg.hu/vilag/20111209_orban_eu)

<sup>57</sup>[http://www.parlament.hu/orszagguylesi-naplo-clozo-ciklusbeli-adatai?p\\_auth=ao0cIc1l&p\\_p\\_id=pairproxy\\_WAR\\_pairproxyportlet\\_INSTANCE\\_9xd2Wc9jP4z8&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&pairproxy\\_WAR\\_pairproxyportlet\\_INSTANCE\\_9xd2Wc9jP4z8\\_pairAction=%2Finternet%2Fcplsql%2Fogy\\_naplo.naplo\\_fadat\\_aktus%3Fp\\_ckl%3D39%26p\\_uln%3D162%26p\\_felsz%3D10%26p\\_felzig%3D22%26p\\_aktus%3D6](http://www.parlament.hu/orszagguylesi-naplo-clozo-ciklusbeli-adatai?p_auth=ao0cIc1l&p_p_id=pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_naplo.naplo_fadat_aktus%3Fp_ckl%3D39%26p_uln%3D162%26p_felsz%3D10%26p_felzig%3D22%26p_aktus%3D6)

<sup>58</sup>Prime Minister Orbán Viktor said that this option – joining the Fiscal Compact as a non Euromember state without its provisions being binding on Hungary – became the part of the Compact because of him during the negotiation process, while in fact, it is thanks to the strong standpoint of the Polish Government. (See for example: <http://www.origo.hu/itthon/20120213-orban-viktor-eu-penzugyi-paktum-lengyelorszag-es-bulgaria.html>, 'The success of Poland is the success of Viktor Orbán')

<sup>59</sup> 'According to Article 7 paragraph 1 b of the Act L of 2005 on the Procedure Related to International Treaties, in cases when the international treaty does not fall under the authority of the Parliament, the Government is

Hungarian Government, according to Hungarian law<sup>60</sup>, because it does not deliver sovereignty to the European Union (see also question IX.2). This statement was overruled by the 22/2012. (V.11.) Constitutional Court decision of 11 May 2012. (see question IX.4) But because of the importance of the issue, the Government requested the approval of the Parliament, before signing the Fiscal Compact.<sup>61</sup>

An MP from the governing party Fidesz pointed out that there is no real alternative to the approval of the Fiscal Compact for Hungary. He emphasized that the Fiscal Compact widens the powers of national parliaments, because it opens the opportunity for them to hold joined debates and conferences on budgetary policies and questions resulting from the Compact.<sup>62</sup>

The eurosceptic, far right party Jobbik argued that there were legal problems in the context of the approval. The translation of the text of the treaty is incorrect and uses definitions that are not clear (e.g. general government debt). During the parliamentary debate, the Jobbik recommended a referendum on the issue but it was rather a rhetorical sentence than a real issue. This recommendation was not welcomed by the Government, which has not argued for a referendum. According to Jobbik, the sovereignty of the Parliament will be restricted on deciding on key issues like the deficit, the reduction of public debt after joining the Eurozone, because the conditions of the Fiscal Compact will restrict the freedom of the Parliament to decide on these issues.<sup>63</sup>

Opposition left wing party MSZP (Hungarian Socialist Party) supported the Fiscal Compact and encouraged the Government to act accordingly to it in the future, even though it will not be binding on Hungary until it joins the Eurozone.<sup>64</sup>

The Hungarian Government had two priorities during the negotiation of the Fiscal Compact. The first was that the Compact shall be binding only for Eurozone Member States. This was important because the Government pursues a so-called unorthodox economic policy<sup>65</sup>, that is based on rapid decisions and which leaves a wide margin of appreciation for the Government. This would be limited by the provisions of the Fiscal Compact. The second point was that the

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entitled to authorize either the Prime Minister or the Minister of Foreign Affairs - in a governmental statute - to recognize the binding validity of an international agreement.'

<sup>60</sup> Act L of 2005 on the Procedure related to International Treaties, Article 7 paragraph 1 b). The text of the act is available here: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0500050.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0500050.TV)

<sup>61</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=162&p\\_felsz=245&p\\_szoveg=&p\\_felszig=245](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=245&p_szoveg=&p_felszig=245)

<sup>62</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=162&p\\_felsz=247&p\\_szoveg=&p\\_felszig=247](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=247&p_szoveg=&p_felszig=247)

<sup>63</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=162&p\\_felsz=251&p\\_szoveg=136&p\\_felszig=251](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=251&p_szoveg=136&p_felszig=251)

<sup>64</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=162&p\\_felsz=259&p\\_szoveg=&p\\_felszig=259](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=259&p_szoveg=&p_felszig=259)

<sup>65</sup>See for example: <http://online.wsj.com/news/articles/SB10001424127887324263404578613861507944932>

Compact shall not refer to the Euro-Plus-Pact and not contain any provisions concerning tax harmonization that is not supported by Hungary.<sup>66</sup>

During the negotiation process Hungary supported the Polish standpoint arguing that in some cases the non Eurozone member states should have the opportunity to join the Euro summits.<sup>67</sup>

## RATIFICATION

### IX.2

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

As followed from a case decided by the Hungarian Constitutional Court (see question IX.4), the Fiscal Compact was required to be transposed in an act voted by a two-third majority of the Parliament, according to Article E Paragraphs 2 and 4 of the Hungarian Fundamental Law. This transposition into the domestic legal order of the Compact was carried out by Act XXXII of 2013 on 25 March 2013, which had been accepted with the votes of the two-third majority of the Parliament. The text of the act is equivalent of the Hungarian translation of the Treaty. Since the Fiscal Compact is an international treaty according to Article E Paragraphs 2 and 4 that delivers parts of the Hungarian sovereignty to the European Union the Compact had to be ratified by a cardinal act.<sup>68</sup>

## RATIFICATION DIFFICULTIES

### IX.3

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

During the parliamentary debate on 19 March 2013, the Minister of Foreign Affairs on behalf of the Government basically repeated the arguments that have arisen during the negotiation of the Fiscal Compact. He emphasized again that Titles III and IV are not going to be binding on Hungary.<sup>69</sup> The Government also argued that Article 13 will strengthen democratic control over the fiscal and economical policies of the European Union.<sup>70</sup> An MP from the governing party Fidesz pointed out that the fiscal provisions of the Hungarian Fundamental Act – Articles 37 and 38<sup>71</sup> – prescribe stricter policies than the Fiscal Compact. He also pointed out that only Article 12 will be binding on Hungary while not being a member of Eurozone,

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<sup>66</sup>For the reasons, see the answer to question VI.1.

<sup>67</sup> Based on a statement announced by the Government: <http://eu.kormany.hu/uj-kormanykozi-szerzodes>

<sup>68</sup>For a detailed reasoning, see answer 59.

<sup>69</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=263&p\\_felsz=474&p\\_szoveg=&p\\_felszig=474](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=263&p_felsz=474&p_szoveg=&p_felszig=474)

<sup>70</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=263&p\\_felsz=476&p\\_szoveg=&p\\_felszig=476](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=263&p_felsz=476&p_szoveg=&p_felszig=476)

<sup>71</sup>The text of the Hungarian Fundamental Act is available here: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=140968.248458](http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.248458)

which provides the right to the Prime Minister to attend meetings of the Eurozone member states.<sup>72</sup>

The far right eurosceptic Jobbik reminded that David Cameron, Prime Minister of the United Kingdom said after 2015 a referendum will decide whether the UK should remain a member state of the European Union, and Hungary should also consider this option.<sup>73</sup>

Left wing MSZP (Hungarian Socialist Party) welcomed the position of the Government on the issue and supported the ratification.<sup>74</sup>

An independent MP from the former green left fraction LMP (Politics Can Be Different) opposed the Fiscal Compact and argued that an eco-social Europe can be an alternative choice to the Compact.<sup>75</sup>

Since most provisions of the Fiscal Compact are not binding on Hungary yet, and the legal approval of the Treaty was a simple process, the debate did not affect the ratification of the Fiscal Compact.

## 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 HUNGARY? 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.

Interestingly considering the fact that Hungary is not yet bound by this part of the Fiscal Compact, the government is already considering the introduction of a correction mechanism: ‘The development of a medium-term budgetary framework aimed at meeting the provisions of Stability and Growth Pact is in progress. There are plans to define rules for the budget balance to ensure compliance with the provisions for improvement of the structural balance, the adjustment path to the MTO, and debt reduction. With a view to complying with the Intergovernmental Treaty (Fiscal Compact), a correction mechanism in the event of non-

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<sup>72</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=263&p\\_felsz=478&p\\_szoveg=&p\\_felszig=478](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=263&p_felsz=478&p_szoveg=&p_felszig=478)

<sup>73</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=263&p\\_felsz=480&p\\_szoveg=&p\\_felszig=480](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=263&p_felsz=480&p_szoveg=&p_felszig=480)

<sup>74</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=263&p\\_felsz=486&p\\_szoveg=&p\\_felszig=486](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=263&p_felsz=486&p_szoveg=&p_felszig=486)

<sup>75</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=39&p\\_uln=263&p\\_felsz=492&p\\_szoveg=&p\\_felszig=492](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=263&p_felsz=492&p_szoveg=&p_felszig=492)

compliance will also be considered. Consequently, the authorities aim to define rules for the structural balance and the medium-term budgetary objective in Hungarian legislation and, to this end, a methodology to calculate the potential GDP and the output gap. Compliance with such fiscal rules will be monitored by the Fiscal Council. In addition, the authorities plan to set up mandatory mid-year corrective mechanisms if the deficit or debt figures fail to comply with the rules. Ex post reputational or financial sanctions could also be applied. Such sanctions would be based on statistical data that can be properly measured (e.g. spring-autumn EDP notification) and can actually be influenced by the entity against which the sanction would be applied. Also, the application of sanctions would be subject to the principle of progressivity.<sup>76</sup>

Hungary is not planning to amend its Constitution, since the Fundamental Law of Hungary already contains some provisions concerning the balanced budget. Article M rules that Hungary shall enforce the principle of balanced, transparent and sustainable management of the budget, Parliament and the Government shall have the primary responsibility for fulfillment of this principle and the Constitutional Court, the courts, local governments and other state organs shall respect this principle in the performance of their duties.

According to Paragraph 5 of Article 34 ‘in order to preserve the balance of their budget, an Act of Parliament may prescribe that if a local government plans to contract a debt above a level defined by an Act of Parliament or to undertake any other commitment, it shall obtain the approval of the Metropolitan or County Office of the Government.’

Paragraphs 4 and 6 of Article 36 read as follows ‘the Parliament may only adopt an Act on the central Budget which will not result in an increase in the state debt compared to gross domestic product’ and ‘one may only derogate from the provisions contained in Paragraph (4) during a special legal order and to the extent necessary to mitigate the consequences of circumstances triggering the special legal order, or, if there is a significant and enduring national economic recession, to the extent necessary to restore the balance of the national economy.’

## **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.

See the answers to questions IX.1 and IX.2. No additional reasoning emerged compared to those discussed earlier.

## **RELATIONSHIP BBR AND MTO**

### **IX.6**

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<sup>76</sup>Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States

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)?

Not relevant for Hungary.

## **CASE LAW**

IX.7

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

There is a Constitutional Court decision in relation with the Fiscal Compact, the 22/2012. (V.11.) CC decision of 11 May 2012.<sup>77</sup>

### **1. Name of the Court**

Constitutional Court of Hungary

### **2. Parties**

The minister of public administration and justice on behalf of the Government, as petitioner

### **3. Type of action/procedure**

Interpretation of the provisions of the Fundamental Law regarding a certain constitutional issue, provided that the interpretation can be directly deduced from the Fundamental Law.<sup>78</sup>

### **4. Admissibility issues**

The Constitutional Court can interpret the Fundamental Law on the petition of the Parliament or its standing committee, the President of the Republic or the Government.<sup>79</sup> Here, the member of the Government was the petitioner, and the petition regarded a certain constitutional issue, so it was admissible. (Decision paras 29-31)

### **5. Legally relevant factual situation**

‘The Treaty – as pointed out in the petition – regulates in many different contexts the application of certain legal and institutional mechanisms of the European Union, and the role of the institutions of the European Union in monitoring, supervising and enforcing the implementation of the Treaty, and in the consultation and the coordination with the Member States. Although the subject of the Treaty is not about Hungary being a Member State of the

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<sup>77</sup> The text of the decision is available here: [http://www.mkab.hu/letoltesek/en\\_0022\\_2012.pdf](http://www.mkab.hu/letoltesek/en_0022_2012.pdf)

<sup>78</sup>Section 38, paragraph 1 of Act CLI. of 2011 on the Constitutional Court, the text of the act is available here: <http://mkab.hu/rules/act-on-the-cc>

<sup>79</sup>Section 38, paragraph 1 of Act CLI. of 2011 on the Constitutional Court, the text of the act is available here: <http://mkab.hu/rules/act-on-the-cc>

European Union or not, and neither is it a founding treaty, a question emerges concerning the interpretation of paragraph (2) of Article E) of the Fundamental Law and the application of paragraph (4) thereof, with regard to the authorization given in the respect of acknowledging the mandatory force of it (paragraph 33).’

The decision was about interpreting Article E Paragraph 2 and 4 of the Hungarian Fundamental Law:

‘(2) In order to participate in the European Union as a Member State, and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfill the obligations set out in the founding treaties, exercise some of its competences deriving from the Fundamental Law jointly with other Member States, through the institutions of the European Union.

(4) The authorisation for expressing consent to be bound by an international treaty referred to in paragraph (2) shall require the votes of two-thirds of all Members of Parliament.’

## **6. Legal questions**

‘Would an international treaty be regarded as an international treaty under Article E) para. (2) of the Fundamental Law if

- a) it is not one of the founding treaties of the European Union, and it is not a legal act of the Union, but
- b) all of its states parties are member states of the European Union,
- c) which regulates subjects that are also regulated by the founding treaties of the European Union and by the legal acts of the Union,
- d) which is aimed at the further development of the European Union and strengthening the economy of the European Union in a subject matter, which is an essential element of the European Union's founding treaties, and
- e) according to which certain institutions of the European Union can act in implementing and supervising the implementation of the international treaty?’ (paragraphs 3 to 9)

The main question is that whether the Fiscal Compact is an international treaty in which case it shall be promulgated in a cardinal act, an act requiring the two thirds of the votes of the MP’s. (see on cardinal acts in general question III.1)

## **7. Arguments of the parties**

In the procedure of interpreting the Constitution, no argumentation is required from the petitioner. On the contrary, the petitioner is in the position of asking the Constitutional Court to interpret the Constitution from a specific aspect that is defined in a question proposed by the petitioner.

## **8. Answer by the Court to the legal questions and legal reasoning of the Court**

‘The votes of two-thirds of the Members of the Parliament is required for the consent to be bound by an international treaty aimed at modifying or amending the rights and obligations originating from the founding treaties, provided that the treaty is aimed at jointly exercising further competences originating from the Fundamental Law. An international treaty can be, in particular, regarded as such, if Hungary is a party to it as the Member State of the European Union together with other Member States, and the treaty regulates subjects contained in the founding treaties, or it is aimed at implementing or supervising the founding treaties.’ (para 1)

‘The votes of two-thirds of the Members of the Parliament is not required for the consent to be bound by an international treaty, if the treaty would not result in exercising, jointly with the institutions of the European Union or with other member states, new competences originating from the Fundamental Law.’ (paragraph 2)

## **9. Legal effects of the judgment/decision**

According to the decision, the Fiscal Compact is required to be ratified by an act voted by a two-third majority of the Parliament, which is the requirement linked to a cardinal act. This domestic legal recognition of the Compact was carried out by the Act XXXII of 2013 on 25 March 2013 that had been accepted with the votes of the two-third majority of the Parliament.

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

The Constitutional Court decision was not subject of any major debate on the basis of the implementation of European Union legislation. There was major citation and examination of the decision because it was the first that stated that the decisions of the Constitutional Court that had been delivered on the basis of the former Constitution are still binding when interpreting the new Fundamental Act in case no major textual changes happened comparing the text of the former and latter<sup>80</sup>.

According to the decision ‘Article E) para. (4) regulates clearly that two-thirds of the Members of the Parliament is required for acknowledging the mandatory force of treaties that contain a transfer of sovereignty’ and the Fiscal Compact is an international treaty that contains a transfer of Hungary’s national competences to the European Union. The understanding of the decision is that the Constitutional Court did not draw a line that marked the border of the transfer of national competences to the European Union. Therefore there is no clear line that indicates the borders of national sovereignty and sovereignty that is transferred to the European Union.

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<sup>80</sup>See for example Antal Attila: Az Alkotmánybíróság határozata korábbi gyakorlatának érvényességéről. Megdönthető vélelem az Alkotmányon alapuló gyakorlat mellett, Jogesetek Magyarázata 2013/2.

## NON-EUROZONE AND BINDING FORCE

IX.8

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

No.

## MISCELLANEOUS

IX.9

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

No other relevant information.

## 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.

Political crisis started in Hungary in 2006 when Prime Minister Ferenc Gyurcsány's speech about his party (social democrat MSZP) and Government lying to the public was leaked.<sup>81</sup> He did not resign, however serious protest and street riots were held against him all over the country, especially in the capital city, Budapest.

The Government lost the support of the public immediately, and during the next three years the Prime Minister became marginalized in his own party, becoming unable to finish the four

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<sup>81</sup><http://news.bbc.co.uk/2/hi/europe/5359546.stm>

years term. A new prime minister, Gordon Bajnai was elected by the majority of the Parliament who formed a 'technocrat Government' in April 2009.

'In response to the serious market turbulences and difficulties in refinancing government and external debt in the first half of October 2008, the Hungarian authorities applied to the EU, the IMF and the World Bank for financial assistance.

Following negotiations in October 2008 between the IMF and the Commission staff on the one hand and the Hungarian authorities on the other, an agreement was reached to provide multilateral financial assistance to Hungary with an overall amount of €20 billion, consisting of the following contributions: European Community, €6.5 billion under a balance-of-payments assistance facility approved by the Council on 4 November 2008; International Monetary Fund, SDR 10.5 billion (around €12.5 billion) under an IMF Stand-by arrangement approved on 6 November 2008; the World Bank, €1.0 billion.'<sup>82</sup>

## NEGOTIATION

### X.2

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

Then opposition, now Governmental party Fidesz during the parliamentary debate of 6 November 2008 argued, that the people have the right to know what the Government is going to spend the loan provided by the IMF, the World Bank and the EU on, which will increase the national debt. As an opposition party, Fidesz criticized austerity measures conducted by the Government. According to Fidesz, the Government said that the situation had arisen because of the international crisis, while it can also be argued that between 2002 and 2008 the reigning Governmental party, MSZP ruined the country, the crisis hit this weakened country and therefore it had really serious effects on Hungary.<sup>83</sup>

The Government defended its policies by saying the aim is to make the social system more fair, the regulation of the banks stricter, freeze the wages of the members of the Parliament, and decrease the wages of the heads of state owned companies, be stricter on corruption and black market.<sup>84</sup> According to the Government, the money coming from the European Union made it possible to run anti-crisis politics. These sources were really important in dealing with

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<sup>82</sup>[http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/hungary/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/hungary/index_en.htm)

<sup>83</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=38&p\\_uln=173&p\\_felsz=147&p\\_szoveg=eur%F3pai%20uni%F3&p\\_felszig=147](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=38&p_uln=173&p_felsz=147&p_szoveg=eur%F3pai%20uni%F3&p_felszig=147)

<sup>84</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=38&p\\_uln=173&p\\_felsz=147&p\\_szoveg=eur%F3pai%20uni%F3&p\\_felszig=147](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=38&p_uln=173&p_felsz=147&p_szoveg=eur%F3pai%20uni%F3&p_felszig=147)

fiscal crisis and economic recession. In that situation the sources provided by the European Union made the developments possible.<sup>85</sup>

According to a Member of European Parliament, himself being member of the governing party MSZP, and therefore speaking on behalf of the Government during the debate, the deal of the financial aid was really hard to negotiate and it would be able to save Hungary from the financial crisis.<sup>86</sup>

National debate concentrated on the IMF loan, which is the symbol of the catastrophic economic conditions of the country. It was often said during the debate that countries from the third world are the clients of the IMF and Hungary has not been in the need of this kind of loan since the end of the communist era in the beginning of the 1990's. The main communication path of the then major opposition party Fidesz was that the socialist governments and namely Ferenc Gyurcsány were responsible for this situation.

## STATUS INSTRUMENTS

### X.3

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

The financial aid was provided to Hungary by the signing of the Memorandum of Understanding that is an international treaty according to the Hungarian legal system. According to the Hungarian law<sup>87</sup>, it is the competence of the Government to ratify any international treaty that does not deliver sovereignty to the international bodies, in this case the European Union. These provisions derive from Article E of the Fundamental Act of Hungary.<sup>88</sup>

## TRANSPOSITION NATIONAL LEGAL ORDER

### X.4

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

The financial assistance was incorporated into the Hungarian legislation by Government decrees. According to Article 7 paragraph 1 b) of Act L of 2005 on the Procedure related to

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<sup>85</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=38&p\\_uln=172&p\\_felsz=58&p\\_szoveg=eur%F3pai%20uni%F3&p\\_felszig=58](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=38&p_uln=172&p_felsz=58&p_szoveg=eur%F3pai%20uni%F3&p_felszig=58)

<sup>86</sup>[http://parlament.hu/internet/plsql/ogy\\_naplo.naplo\\_fadat?p\\_ckl=38&p\\_uln=172&p\\_felsz=118&p\\_szoveg=eur%F3pai%20uni%F3&p\\_felszig=118](http://parlament.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=38&p_uln=172&p_felsz=118&p_szoveg=eur%F3pai%20uni%F3&p_felszig=118)

<sup>87</sup> Act L of 2005 on the Procedure related to International Treaties, Article 7 paragraph 1 b). The text of the act is available here: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0500050.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0500050.TV)

<sup>88</sup><http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>

International Treaties it is the competence of the Government to ratify any international treaty that does not deliver sovereignty to the international bodies, and Article 15 paragraphs 3 and 4 of the Fundamental Act of Hungary states that acting within its competence, the Government adopts decrees by statutory authorization on any matter not regulated by an act, but no decree of the Government shall conflict with any act.<sup>89</sup>

The Memorandum of Understanding was translated and released by the Government in the 282/2008 decree of Government, released on 28, November, 2008.<sup>90</sup> Amendments of the Memorandum of Understanding were released in statutes on April 4th, 2009 (67/2009. decree of Government)<sup>91</sup>, June 24th, 2009 (135/2009. decree of Government)<sup>92</sup>, and February 28th, 2010 (28/2010. decree of Government)<sup>93</sup>.

Because of the form of legislation (decree of Government, what is released by the Government without any other confirmative action) there was no Parliamentary debate on this issue.

## ROLE PARLIAMENT

X.5

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

As described in the answer to question X.4, it was the Government who incorporated the assistance instrument into the national legal order. The Parliament was concerned indirectly when accepting the budgetary acts of the years affected by the financial assistance.

## ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

Hungary received a financial assistance that consisted of three parts. The first from the European Community, €5.5 billion under a balance-of-payments assistance facility approved by the Council on 4 November 2008; the second from the International Monetary Fund, SDR 10.5 billion (around €12.5 billion) under an IMF Stand-by arrangement approved on 6 November 2008; and the third from the World Bank, €1.0 billion. The assistance offered by the European Union is detailed in the following.

The assistance was received in three phases: €2.0 billion, released in December 2008 upon agreement on the Memorandum of Understanding (MOU); €2.0 billion, released in March

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<sup>89</sup> The text of the Fundamental Act of Hungary is available here: <http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>

<sup>90</sup>[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0800282.KOR](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0800282.KOR)

<sup>91</sup><http://www.opten.hu/opten/light/torvtar/67-2009-iv-2-korm-rendelet-110820.html>

<sup>92</sup><http://www.opten.hu/opten/light/torvtar/135-2009-vi-24-korm-rendelet-121850.html>

<sup>93</sup>[http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1000028.KOR](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1000028.KOR)

2009; and €1.5 billion, released in July 2009. The interest rate is 3.25% for the first two installments and 3.625% for the third one, with repayments started in 2011.<sup>94</sup>

The first memorandum of understanding focused on six areas: fiscal consolidation, fiscal governance reform, financial sector regulation and supervision, structural reforms, monitoring fiscal developments and reporting on inflation and foreign exchange reserves.<sup>95</sup>

## MISSIONS

X.7

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

No legal changes were made to accommodate these ‘troika’ missions and they were not subject to public debate.

## CASE LAW INTERNATIONAL INSTRUMENTS

X.8

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

No, there has been none.

## CASE LAW IMPLEMENTING MEASURES

X.9

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

No, there is not any.

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<sup>94</sup>[http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/hungary/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/hungary/index_en.htm)

<sup>95</sup>Memorandum of Understanding between the European Community and the Republic of Hungary, Annex I