



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: QUESTIONNAIRE

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30 October 2015

**LAW DEPARTMENT PROJECT
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I POLITICAL CONTEXT

POLITICAL CHANGE

I.1

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

Note on a general background for a public reaction to the austerity measures

The crisis of 2009 is the third significant economic crisis experienced by Lithuania in the last two decades. This experience might have contributed to the general approach towards the crisis and the ‘culture of patience’ that is characteristic of the public reaction to the changes during the period at issue and the nature of the measures undertaken during the crisis.¹

The first crisis was the economic restructuring crisis of the 1990s which resulted in a decline of 70 percent of the country’s GDP over a few years. It also led to a decision to introduce the model of a currency board. The Lithuanian currency had been pegged to the euro from 2002 until 1 January 2015, when it became the official currency.

The second crisis – 1998-99 resulted from the financial crisis in Russia, which led to significant spending cuts and public management reforms (strategic planning).

The first election during the period at issue (see below) occurred at the very onset of the financial crisis.

Political context

Lithuania is a parliamentary democracy, governed on the basis of the Constitution of 1992. The post of the head of state, a President, is held by Dalia Grybauskaitė since 12 July 2009. She was elected in the very first round on 17 May 2009 with 68 percent of the popular vote, and reelected for her second term in office with a 58 percent in May 2014.

The parliament of Lithuania (Seimas) is a unicameral body, composed of 141 members, and elected for a four year term. The Prime Minister is appointed by the President with the approval of the Seimas. The Government is appointed by the President after nomination by the Prime Minister.

Before the financial crisis struck, the parliamentary majority was held by the Social Democratic Party which also led the government with Gediminas Kirkilas as Prime Minister. In 2007-2008 the government, supported by the opposition, made a number of decisions significantly increasing budgetary expenses (eg increasing public sector wages and social expenditure, including maternity

¹ R. Vilpišauskas, V. Nakrošis, V. Kuokštis, The Politics of Reacting to the Crisis in Lithuania from 2008-2013: Exiting the Crisis, Entering Politics as Usual? In: K. Bukovskis (ed.) *The Politics of Economic Sustainability: Baltic and Visegrad Responses to the European Economic Crisis*. Riga: Latvian Institute of International Affairs, 2014, p. 38- 63, p. 38.

leaves and pensions as well as introducing an automatic indexing of the budgetary pay-outs). These decisions were made despite the fact that the budget was never in surplus, even during the intensive period of economic growth in 2002 – 2007, which in 2007 was 9.8 percent of the GDP.

The first round of the 2008 Seimas elections took place a month after the collapse of Lehman Brothers, on 12 October. However, the topic of possible austerity measures never was on the political agenda. It is considered that the reason for that is that the possible impact of the external financial crisis was never sufficiently appreciated either by the opposition or the incumbent government.

October 2008 parliamentary elections

The October 2008 elections led to the following distribution of the 141 seats of Seimas:

The Conservative party (**Homeland Union – Lithuanian Christian Democrats**) – 45 seats.

The Social Democratic Party of Lithuania - 25 seats.

The newly established **National Revelation Party** (composed mostly of well-known stage performers) – 16 seats. The party's goal was to eliminate from politics both the Order and Justice Party and the Labour Party, which, as argued by the leader, were a threat to Lithuanian internal and external security. However, the party lost its popularity quickly: during the 2009 elections to the European Parliament it collected only 1 percent of the votes. It acceded to the Lithuanian Liberal and Centre Union on 22 September 2011.

Order and Justice Party – 15 seats. It is a party which is described as a Lithuanian eurosceptical party. The main criterion of attribution is the fact that both members of this party who were elected to the European Parliament in 2009-2013 (Rolandas Paksas and Juozas Imbrasas) were members of the Europe of Freedom and Democracy political group.² On 10 August 2013 this party adopted a resolution inviting the public to actively encourage the politicians to organize a mandatory referendum and obtain public mandate for the introduction of the euro.³ At the same time the Order and Justice Party is a member of the coalition of the government formed in 2012, which publicly declares the goal to introduce the euro. However, although it was publicly voicing eurosceptical opinions with respect to the euro (see discussion under Question V.3), the party did not take steps encouraging the initiation of a referendum on the issue.

Labour Party – 10 seats.

Liberal Movement – 11 seats.

² M. Jastramskis, Lietuvos visuomenės ir politinių partijų nuostatos ES atžvilgiu. [Positions on EU of the Lithuanian Public and Political Parties] *Lietuva Europos Sąjungoje*. Metraštis [Yearbook] 2009-2013, Europos Integracijos studijų centras: 2014.

³ Resolution of the Order and Justice Party of 12 August 2013, available in Lithuanian at <http://www.tvarka.lt/index.php?id=8125> [last accessed on 23 November 2015]. Also see T. Janeliūnas, „Tvarka ir teisingumas“ remsis euroskeptikais? [Order and Justice will draw on eurosceptics?] www.iq.lt, 2013-08-14. [last accessed on 23 November 2015].

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Liberal and Centre Union – 8 seats.

Electoral Action of Lithuanian Poles (LLRA) - 3 seats.

Lithuanian Peasants' Union - 3 seats.

New Union (NS) - 1 seat.

Independent candidates - 4 seats.

The coalition government was formed by the Conservative Party, who were joined by the National Revelation party and the two liberal parties. The leader of the Conservative Party Andrius Kubilius became Prime Minister.

The newly formed Government, presented with the macroeconomic forecast of 0 percent growth at its very first meeting, had to take immediate measures adjusting the draft budget. It thus became notorious for its 'night reforms', introducing sharp spending cuts and tax rises only a few days before the start of the new financial year of 2009. These measures are also often described as contributing to the severe contraction of the economy by 15 percent in 2009.⁴

The austerity measures provoked the first massive protests on 16 January 2009. For the first time since the restoration of independence in 1990 the police applied measures involving tear gas and rubber bullets. 30 persons were injured. Although subsequently a number of protests against the austerity measures were organized, none of them led to violence. However, at the end of 2009 there were 16,000 residents less in Lithuania compared to 2008. It is commonly assumed that they left to look for better opportunities abroad.

As the economy plunged 15 percent in 2009, the government decided not to call on foreign aid and instead took further austerity measures.⁵

This government became the first one in Lithuania's history to serve a full four-year term in office despite its unpopularity.

The other elections during the period at focus did not attract notable public interest and were not of special importance. The elections to the European Parliament of 7 June 2009 were marked by an exceptionally low turnout – only 20 percent of the electorate participated. Most of the seats – 4 out of 12 - were taken by the Conservative Party (the Homeland Union). The municipal elections of 27 February 2011 did not lead to any surprises.

⁴ G. Davulis, Global Crisis and Economic Processes in Lithuania and other Baltic Countries. *Business Systems and Economics* No. 2 (1), 2012: 134-147, p. 139, 140; J. Čičinskas, A. Dulkys, Finansų krizė ir nauji sprendimai Europos Sąjungoje: mažos valstybės atvejis. [Financial Crisis and new decisions in the European Union: a case study of a Small State] *Lietuvos metinė strateginė apžvalga* 2012-2013, p. 125; S. Jakeliūnas, *Lietuvos krizės anatomija* [The Anatomy of Lithuanian Crisis], Iš arčiau: 2010, p. 68; LRV 2008 m. veiklos ataskaita, pritarta 2009 m. kovo 25 d. nutarimu Nr. 223, [report of the Government of the Republic of Lithuania on its activities in 2008].

⁵ Discussed in detail at I. Hawkesworth, R. Emery, J. Wehner and J.Saegert, Budgeting in Lithuania, *OECD Journal on Budgeting* 2010/3, p. 8, available at <http://www.oecd.org/countries/lithuania/48170576.pdf>

October 2012 parliamentary elections

On 14 October 2012 national Parliamentary elections and a consultative referendum on the construction of a new nuclear power plant took place.

The Social Democratic Party became the winner of the election, with 38 seats, and formed a coalition with the controversial Labour Party, led by Viktor Uspaskich (29 seats),⁶ the populist Order and Justice (11 seats), led by an impeached president and a member of the European Parliament Rolandas Paksas, and the Electoral Action of Poles in Lithuania (5 seats). The Conservatives ended only narrowly behind the Social Democrats with 33 seats. The Liberal Movement, a member of the incumbent coalition, ended with 10 seats, only one seat less than during previous elections.

In 2012 another newly established party, *Drąsos kelias* (DK, The Way of Courage) entered Seimas, winning 7 seats. Its establishment resulted from a non-political so-called paedophilia scandal, which allegedly involved an assistant of an influential Member of Seimas. Both him and the father of the minor subsequently died. The formal leader of the Party was a priest Jonas Varkala, however, an important role in its establishment had an aunt of an allegedly abused minor girl, formerly a judge Neringa Venckienė, who was elected to the Seimas in 2012. She fled Lithuania in April 2013, after she was stripped of parliamentary immunity in a criminal investigation against her on the charges including contempt of court and abuse of the status of a guardian of her niece. Allegedly she claimed asylum in the United States in April 2013.⁷ Her whereabouts are currently unknown.⁸ Soon after the whole party went to a disarray: it could not take part in 2014 elections to the European Parliament as it failed to collect the minimum 10 000 votes required by law,⁹ and on 19 June 2014 its separate political group in Seimas ceased to exist. Questions were raised whether as it happened this party still had the number of members to be considered a political party as required by law.¹⁰

The issue which became a source of most political confusion was the result of the consultative referendum on a planned nuclear power station. On a 52 percent turnout 65 percent of voters were against the project, despite the fact that all major parties were in principle in favour of it.

⁶ V. Uspaskich was indicted with criminal charges for fraud and fraudulent bookkeeping and was sentenced to four years in prison by Vilnius Regional Court on 12 July 2013. See BNS, Vilnius Court pronounced the verdict in Labour Party's case, available at <http://www.lithuaniatribune.com/44590/vilnius-court-pronounced-the-verdict-in-labour-partys-case-201344590/> On 7 August 2013 another case was filed against V.Uspaskich for contempt of court. The factual circumstances are discussed in detail at European Parliament, Report on the request for waiver of the immunity of Viktor Uspaskich, A8-0149/2015, 11 May 2015.

⁷ The Lithuania Tribune, Venckienė's attempts to seek political asylum abroad seem suspicious, 2013- 04-13, <http://www.lithuaniatribune.com/35766/venckienes-attempts-to-seek-political-asylum-abroad-seem-suspicious-201335766/>

⁸ LRT, Prokurorai prisipažino, kad nežino, kur yra N. Venckienė [Prosecutors concede that they are not familiar with the whereabouts of N.Venckienė], www.lrt.lt, 2015-11-01.

⁹ BNS, Dar vienas rinkimų fiasko: „Drąsos kelias“ nesurinko parašų [Another election failure: 'Way of Courage' failed to collect the necessary number of signatures], www.delfi.lt, 2014-04-10.

¹⁰ Lietuvos Respublikos politinių partijų įstatymo pakeitimo įstatymas XII-614 [The Law amending the Law on Political Parties], Žin., 2013-12-14, Nr. 128-6513. Art. 5(3) of the Law currently requires 2000 members for the purpose of establishing a party. If the number of members becomes less than the required statutory minimum, and the party does not reorganize itself within two years so that its number of members fulfils the legal requirements, the party is removed from the register of political parties.

25 May 2014 elections to the EP, the second round of Presidential elections and a failed attempt to have a referendum on the euro

Two eurosceptical issues were mainly raised during the EP electoral campaign: the selling of land to foreigners and introducing the euro in 2015. Referendums were attempted on both questions. The initiators managed to collect the required 300.000 votes with respect to a referendum on the selling of land to foreigners, which took place on 29 June 2014, but failed, as it attracted only 15 percent of the electorate. However, it is important that it was the first time in the country's history that 300.000 signatures for holding a referendum were collected: all prior referendums were initiated by the Seimas. The attempt to initiate a referendum concerning the introduction of the euro was blocked at its infancy: on 7 April 2014 the State Electoral Commission refused to issue the initiators the signature collection papers, reasoning that the initiative was against the Constitution and Lithuania's international obligations.¹¹ An appeal against the decision was filed to the Supreme Administrative Court of Lithuania, which referred the case for an opinion to the Constitutional Court. On 17 July 2014 the Supreme Administrative Court, in view of the opinion of the Constitutional Court of 11 July 2014,¹² and sitting in its extended composition, decided that the Central Electoral Commission was correct in refusing to register the initiative and to issue it the signature collection papers.¹³

The very initiative for a referendum on the introduction of the euro was taken in February - March 2014, with the initiators arguing that introducing the euro in 2015 was too early as 'it might cause a crisis and Lithuania would end up like Greece or Portugal'.¹⁴ The initiators argued that they did not contest Lithuania's EU membership, but that they only wanted to give a chance to the people to express more clearly their will on the issue, especially because after the referendum on EU membership of 2003 the legal framework of EMU had changed significantly. One of the initiators, R. Ozolas, who is also known as the father of the national currency, argued that a key factor of the Baltic States' success in dealing with the crisis was the fact that they had their own national currencies. Although the initiators of the referendum were not against euro membership in general, they thought that it was too early for Lithuania to join the eurozone. They formulated a draft law on a constitutional amendment supplementing Art. 125 of the Constitution with two additional parts providing, first, that the national monetary unit of Lithuania is the litas, and second, that the Bank of Lithuania has an exclusive right to issue money. It was suggested to include a third part of the article that was to provide that the decision to change the national monetary unit may be decided only by a referendum and that international treaties may allow for payments in other monetary units.¹⁵

¹¹ Lietuvos Vyriausiosios rinkimų komisijos sprendimas Dėl atsisakymo įregistruoti iniciatyvinę grupę privalomajam referendumui paskelbti [Decision of the Central Electoral Commission on refusal to register the petition on announcement of a referendum] 2014-04-07, nr. SP-101.

¹² Ruling of the Constitutional Court of the Republic of Lithuania on the compliance of the provisions of the Republic of Lithuania's law on referendums [sic] with the Constitution of the Republic of Lithuania, an official translation is available in English at <http://www.lrkt.lt/en/court-acts/search/170/ta859/content>

¹³ Decision of the Supreme Administrative Court of Lithuania of 17 July 2014 No. R-858-11-14.

¹⁴ R. Vilpišauskas et al, *Lithuania*. Available at: <http://www.eu-28watch.org/?q=node/1203>

¹⁵ J. Ūdris. Member of the Central Electoral Commission. Pažyma dėl referendumo iniciatyvinės grupės prašymo [Certificate on the request to register the petition to announce a referendum] 2014-04-07, www.lrs.lt

Both selling of land to foreigners and introducing the euro in 2015 were topics that were raised by a nationalist party during the elections to the European Parliament of May 2014. However, in view of the Ukrainian crisis and the Russian aggression in the Crimea the mainstream political parties did not put them on their agenda emphasizing instead the European security issues. The entry to the eurozone was presented as a security, not an economic issue, and the mainstream media presented the supporters of the referendum on land ownership as undercover agents for separation from the EU. Questioning the importance of the EU (or NATO) was viewed as betrayal.¹⁶

Another factor in the European Parliamentary elections was the fact that their date coincided with the date of the second round of the Presidential elections. The fact that Dalia Grybauskaitė did not collect a sufficient number of votes to be reelected at the very first round meant higher participation rates at the elections to the European Parliament. However, this also had an impact on the nature of campaigning: the major topics of the campaign were security issues and Russian aggression.¹⁷ The other topics included fighting unemployment, promoting Lithuania's energy independence, social inclusion, security, Lithuania's role in the EU, federalization of the EU and discrimination of Lithuanian farmers with respect to direct payments.¹⁸

The critical view on the introduction of the euro in 2015 equally failed to persuade the electorate. Although the Eurobarometer 2013 autumn results showed that as many as 49 percent of the respondents did not support the single currency, compared with 40 percent who did and 11 percent who were undecided,¹⁹ support grew to 50 percent in 2014²⁰ and constituted 73 percent in July 2015.²¹ Lithuania became a member of the eurozone on 1 January 2015.

A surprising outcome of the EP elections was that the incumbent Social Democratic Party won only two seats at the European Parliament, which was substantially less than expected on the basis of the opinion polls. The same number of seats went to the opposition Conservative Party (Homeland Union), the Order and Justice Party and to the Liberal Movement, which was the best result in its history. The Labour Party, the Peasants and the Greens got one seat each.

Municipal elections of March 2015

The municipal elections of March 2015 were the first municipal elections through which mayors were directly elected. This might explain an elevated public interest in the event: compared with the elections of 2011, the public participation increased by 3 points (2011- 44.08 %, 2015- 47.17%). After the elections two political parties changed their leadership: Andrius Kubilius resigned from the

¹⁶ G. Aleknonis, European Parliament elections in Lithuania: populist competition in the shadow of the presidential vote. *Political preferences* 9/2014: 39-56, p. 41.

¹⁷ Ibid, p. 46.

¹⁸ R. Vilpišauskas et al, *Lithuania*. Internet Access: <http://www.eu-28watch.org/?q=node/1203>

¹⁹ Standard Eurobarometer 80, autumn 2013, p. 25. Available at http://ec.europa.eu/public_opinion/archives/eb/eb80/eb80_first_en.pdf

²⁰ Standard Eurobarometer 81, autumn 2014, p. 20, available at <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2040>

²¹ Standard Eurobarometer 83, first results May 2015, p.26.

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Conservative Party giving way to the member of the European Parliament Gabrielius Landsbergis, and Loreta Graužinienė resigned from the leadership of the Labour Party. Its newly elected leader is a member of the European Parliament (ALDE group) Valentinas Mazuronis, who only recently left another party, Order and Justice. Although the majority of municipal mandates (359) were collected by the Social Democratic Party, followed by the Conservative Party (253), the results demonstrate an increasing political influence of the Liberal Movement, which received 217 mandates. The Labour Party ended with 148 mandates, the Peasants and Greens – 82, a coalition of Polish Electoral Action and Russian Alliance - 62 mandates. The community electoral committees – non-party units collected 118 mandates throughout the country.

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

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

The general legal framework for the budget, the relationship between the Seimas and the Government in the budgetary process is governed by the Constitution of the Republic of Lithuania, adopted by a referendum on 25 October 1992.

The budgetary system consists of an independent State budget as well as independent municipal budgets (Art. 127 Constitution).

The main law governing the State budget is the Law on the Budget Structure (July 1990).²² It defines the content of both State and municipal budgets, the legal grounds for raising revenues and using appropriations, as well as the duties of their managers.

The Law on Fiscal Discipline (2007)²³ sets an objective of a balanced budget in the medium term and long term sustainability. The Law was adopted in reaction to the fact that on 23 May 2007 Standard and Poor's downgraded Lithuania's credit debt rating.²⁴ The Ministry of Finance concluded that the only way to persuade the markets of a stable economic perspective of the country would be to adopt a law which would be difficult to amend and would oblige the country to engage in a stable fiscal policy in a long and medium-term perspective.²⁵ However, the Law on Fiscal Discipline did not establish a binding medium-term expenditure framework, and did not provide for an enforcement mechanism. Furthermore, as it was a simple law, its amendment was not more difficult than that of any other ordinary law.

The Seimas has a constitutional duty to approve the budget by law prior to the start of the new budgetary year, (Art. 131 (1) Constitution) i.e. by 1 January (Art. 129 Constitution). The Law on the Budget Structure enshrines a stricter requirement to approve the budget at least 14 calendar days prior to the start of the new budget year (Art. 20).

The Constitution allows the Seimas to increase the expenditure only provided that the Seimas identifies the financial resources that can cover it. However, if certain expenditure is provided by law, it may not be reduced until that law is amended (Art. 131(2) Constitution).

²² Lietuvos Respublikos biudžeto sandaros įstatymas [Law on the Budget Structure] Nr. IX-1946, 2003-12-23, Žin., 2004, No. 4-47. An official translation of the law in English is available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.440733?jfwid=cxhmy4f3>

²³ Lietuvos Respublikos fiskalinės drausmės įstatymas [Law on Fiscal Discipline] Nr. X-1316, 2007-11-8, Žin., 2007, Nr. 120-4881.

²⁴ Aiškinamasis raštas dėl Lietuvos Respublikos fiskalinės drausmės įstatymo projekto [Explanatory memorandum on the Draft Law on Fiscal Discipline] Nr. XP-2394, 2007-07-09.

²⁵ Ibid.

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The municipal budgets are approved by the municipal councils. They include municipal revenues which are calculated on the basis of the rules defined in the Law on the Methodology of Determination of Municipal Budgetary Revenues²⁶ and funds transferred from the State to exercise delegated functions of the state.

Under the Constitution the budget is approved for one calendar year. Since 11 July 2000 Art. 17(3) of the Law on Budgetary Structure provides that the State budget will be planned for three years (the budget year plus two succeeding years) based on the principle of strategic planning.²⁷ Beginning with the budgetary year of 2014 the three-year planning rule is extended also to municipal budgets. The latter change implements the requirements of article 9 of the directive 2011/85 to establish a credible, effective medium-term budgetary framework providing for a fiscal planning horizon of at least 3 years (see also question VII.2).

The Budget is drafted and submitted for consideration to the Seimas by the Government (Art. 94(4) Constitution) no later than 75 days before the end of the budget year (ie by 17 October). (Art. 130 Constitution, Art. 18 of the Law on Budget Structure). The procedure of approval of the State budget is governed by chapter 27 of the Statute of the Seimas, which has a status of a law.²⁸ There is no formal pre-budget consultation with the Parliament, although the Minister of Finance may consult the chair of the Budget and Finance Committee during the drafting process. The main focus of parliamentary scrutiny follows the presentation of the draft budget by the Minister of Finance in mid-October.

Following the Government's presentation the Seimas has at least 15 days to consider the draft budget. Having received the draft, the Seimas then submits it to the National Audit Office of Lithuania. Art. 173 (1) of the Statute of Seimas requires the Office to present its conclusions on the Draft Budget to the Seimas' Budget and Audit Committees by 15 November. The conclusions may also be submitted to the Seimas on its request and on the date set by it.

The National Audit Office also has constitutional powers to control the execution of the budget (Art. 134 Constitution).

The committees may submit their comments and proposals to the Budget and Finance Committee by 10 November.

Following an amendment of the Law on Budget Structure of 16 October 2012, starting with 2014 the Bank of Lithuania presents a report to the Seimas on the impact of the implementation of the general structural government balance impetus target on the confidence in the stability of the financial system

²⁶ Lietuvos Respublikos savivaldybių biudžetų pajamų nustatymo metodikos įstatymas [The Law on the Methodology of Determining Budgetary Income of the Municipalities], Nr. VIII-385, 1997-07-02, Žin., Nr.69-1743.

²⁷ B. Sudavičius, V. Vasiliauskas, Narystės Europos Sąjungoje įtaka Lietuvos Respublikos biudžeto planavimui, [The Impact of the EU Membership on the Budgetary planning in the Republic of Lithuania] in: G. Švedas (ed.), *The 10th anniversary of the Lithuanian Membership in the European Union* (Vilnius university: 2014) p. 469- 487.

²⁸ Lietuvos Respublikos Seimas, Statutas [Statute of Seimas of the Republic of Lithuania] Nr. VIII-1000, Žin., 1999, Nr.5-97.

and prices.²⁹ Prior to this amendment the scope of the report of the Bank of Lithuania was narrower and concerned only its duties as a central bank with respect to the banking sector.

The first reading of the Law on the draft budget in the plenary session is held on 25 November, followed by a second reading in the plenary session and approval in mid-December. The State budget and the main financial indicators of municipal budgets are approved by the Seimas adopting a Law on Approval of the Fiscal Indicators of the State Budget and Municipal Budgets.³⁰ The Law covers the revenue and expenditure of the Government's ministries and other budgetary institutions, and includes state allocations to the municipalities.

Should parliamentary approval be delayed beyond the beginning of the relevant budget year, Art. 132 Constitution allows monthly expenditure not exceeding one-twelfth of the State budget expenditure approved for the previous budget year. Under Art. 29 of the Law on the Budget Structure the monthly appropriations of every appropriation manager may not exceed one-twelfth of the previously appropriated funds. Such interim funding cannot be used for new activities but only for 'continuous activities', obligations established by laws and debt-servicing obligations. The Law explicitly exempts EU financial support and co-funding and other financial support from these restrictions. During the budgetary year, the Constitution allows the Seimas to approve adjustments to the budget under the same procedure as applicable for the main budget, and it may approve an additional budget if necessary (Art. 132 Constitution).

Following the parliamentary approval of the budget, the Government issues a decree that contains a breakdown of expenditure on the programme level and by economic category.

Under Article 5 of the Constitutional Law on the Implementation of the Fiscal Treaty Seimas is empowered to establish the medium-term objective by 15 March, for a maximum period of three years (see also question VII.10).

The government presents a report to the Seimas on the implementation of the structural impetus target and on the general government sector balance indicator by 1 May. If the structural impetus target is not implemented, the Government must also submit the reasons for that to the Seimas and to the National Audit Office. The National Audit Office then presents its report on the validity of such reasons and whether the measures on the implementation of the structural impetus target are appropriate. In view of this report, the Government must present the Seimas with the final list of reasons why the structural impetus target was not achieved. The Government has an obligation to do it at a time when the draft Law on Fiscal Indicators of the State and Municipal Budgets is submitted to the Seimas (eg by 17 October).

²⁹ Lietuvos Respublikos biudžeto sandaros įstatymo 1, 2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 32, 33, 35, 37 straipsnių, penktojo skirsnio pavadinimo pakeitimo, Įstatymo papildymo šeštuoju skirsniu ir priedu bei 16 straipsnio pripažinimo netekusiu galios įstatymas [The Law amending articles 1, 2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 32, 33, 35, 37 of the Law on the Budget Structure] XI-2274, Žin., 2012-10-31, Nr. 126-6323.

³⁰ E.g. Lietuvos Respublikos 2015 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymas [Law on Approval of the Fiscal Indicators of the State Budget and Municipal Budgets for 2015], Nr. XII-1408. TAR, 2014-12-23, No. 20611.

GENERAL CHANGE

II.2

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

There have been no significant changes affecting the timeline of the budgetary process. The content of documentation has changed, as the European Semester and the relevant documents are now integrated in the budgetary process.

One more notable change is that since 2011 the budget formulation procedure has been amended allowing for an increased minister's role in establishing priorities for their ministries.

Under the system used in 2008-2010, each year in May the Budget Department of the Ministry of Finance prepared preliminary allocations for the State budget taking into account the strategic goals, macroeconomic projections, preliminary limits on public investment for three years and preliminary data about EU fiscal support. In May or June, the Government would approve overall ceilings and limits on public investment for the budget year and the two succeeding years. The Ministry of Finance then set individual ministry ceilings and distributed planning guidance to appropriation managers, who on their own turn submitted their budget proposals by early September, followed by negotiations between the Ministry of Finance and the appropriation managers. As the Government approves the plan on fiscal indicators at the end of February – March, it takes into consideration the deadlines when it has to submit the relevant documents to the European institutions. Also, under the Law on Budget Structure the Government is under an obligation to submit to the Seimas the documents received from the European institutions adopted during the European Semester and to discuss their recommendations in the Draft Law on Fiscal Indicators of State Budget and Municipal Budgets.

In October 2012 the Law on Budget Structure was also supplemented with a 6th chapter which sets out the procedure with respect to a breach of fiscal discipline. It provided for the Government's obligation to present to Seimas the report on the implementation of the government balance structural impetus target. If it becomes clear that the target is not met, the Law requires the Prime Minister to verbally explain to the Seimas the reasons for such failure. If the causes identified do not fall within the list of the escape clauses identified in Art. 39 of the Law on Budget Structure, the Prime Minister must explain them and suggest the specific measures which would enable avoiding them in the future. The Prime Minister is also requested to explain the causes of the heightened tax risk indicator as well as its medium term management perspectives. Art. 39 also lists the permissible causes justifying the failure to implement the structural impetus target or provisions on surplus and balanced medium term budget.

This duty applies to the planning of the 2014 budget and to subsequent budgets.

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?

The major change is an extension of the competence of the National Audit Office empowering it to exercise the functions of an independent fiscal institution. (see also question VII.5).

This was done by the Constitutional Law on the Implementation of the Fiscal Treaty³¹ and the amendment of the Law on National Audit Office (No.I-907),³² both of which were adopted on 6 November 2014 and entered into force on 1 January 2015.

Another amendment enhanced the involvement of the Bank of Lithuania in the budgetary process. Starting with the budget of 2014 under Art. 19(3) of the Law on Budgetary Structure within 15 days after the Government presents the draft Budget to the Seimas the Bank of Lithuania is to present its report on the impact of the implementation of the general structural government balance impetus target on the confidence in the stability of the financial markets and prices. Also, after the adoption of the Constitutional Law on the Implementation of the Fiscal Treaty the Bank of Lithuania is under an obligation to submit to the monitoring authority its macroeconomic forecasts each time they are updated, but at least twice per calendar year (see also question VII.4). The provision also empowers the Bank to request information from state and municipal institutions for the performance of this function (Art. 9(2) Constitutional Law on the Implementation of the Fiscal Treaty).

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?

The timeline has not changed significantly. The requirement to make public the draft budget for the forthcoming year by 15 October almost coincides with the national constitutional deadline to submit the draft budget to Seimas by 17 October. Consequently there was no change of legal regulation on this issue.

³¹ Lietuvos Respublikos Fiskalinės sutarties įgyvendinimo konstitucinis įstatymas [Constitutional Law of the Republic of Lithuania on the Implementation of the Fiscal Treaty], Nr. XII-1289, 2014-11-06, TAR No. 2014-17028. An official translation in English is available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1012060 [last accessed on 23 November 2015].

³² Lietuvos Respublikos valstybės kontrolės įstatymo Nr. I-907 2, 4, 6, 9 ir 23 straipsnių pakeitimo įstatymas [Law on amendment of arts. 2, 4, 6, 9 and 23 of the Law of the Republic of Lithuania on National Audit Office] Nr. I-907, 2014-11-06, TAR Nr.2014-16779.

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MISCELLANEOUS

II.5

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

No further relevant information.

III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

NATURE NATIONAL INSTRUMENTS

III.1

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

The Fiscal Compact was mainly implemented by the Constitutional Law on the Implementation of the Fiscal Treaty, which was adopted on 6 November 2014. The peculiarity of the Constitutional Law is that it is not considered to be a part of the Constitution, therefore theoretically the Law still must comply with the Constitution, although it has a higher legal power than an ordinary law. It differs from an ordinary law by the procedure of its adoption (which requires a qualified majority vote, ie more than half of all members of Seimas) and amendment (a majority of at least 3/5 members of Seimas). Art. 69 (3) of the Constitution also requires adopting a separate law providing for a list of constitutional laws (see also question IX.2)

A few amendments were also made to the Law on Fiscal Discipline (also see question II.1). Most significant amendments were made to the Law on Budget Structure by a normal act of Seimas.

The ESM treaty was ratified by law, and implemented by the Government adopting a decision.³³ (see question VIII.6)

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. Prior to ratification of the Fiscal Compact the Department of European Law of the Ministry of Justice issued an advice to Seimas³⁴ that there was no ground to believe that there could be a conflict between the Fiscal Compact and the Constitution.

³³ Lietuvos Respublikos Vyriausybės nutarimas Dėl LR dalyvavimo Europos Stabilumo Mechanizmo valdytojų taryboje ir direktorių valdyboje. Europos stabilumo mechanizme tvarkos aprašas [Decision of the Government of Lithuania on Lithuania's participation at the European Stability Mechanism Board of Governors and the Board of Directors] 2015-01-01, TAR Nr. 2902.

³⁴ Europos teisės departamento išvada įstatymo dėl Belgijos Karalystės, Bulgarijos Respublikos, Danijos Karalystės, Vokietijos Federacinės Respublikos, Estijos Respublikos, Airijos, Graikijos Respublikos, Ispanijos Karalystės, Prancūzijos Respublikos, Italijos Respublikos, Kipro Respublikos, Latvijos Respublikos, Lietuvos Respublikos, Kiuksemburgo Didžiosios Hercogystės, Vengrijos, Maltos, Nyderlandų Karalystės, Austrijos Respublikos, Suomijos Respublikos, Portugalijos Respublikos, Rumunijos, Slovėnijos Respublikos, Slovakijos Respublikos, Suomijos Respublikos ir Švedijos Karalystės sutarties dėl stabilumo, koordinavimo ir valdysenos ekonominėje ir pinigų sąjungoje ratifikavimo projektui, XIP-4491 [The conclusion of the Department of European Law on the draft Law Ratifying the Fiscal Compact], 2012-06-05, Nr. S-2012-4726. Department of the European Law under the Ministry of Justice is an institution which advises the Government and Seimas on issues concerning implementation of European law. It also represents the Government in cases considered by the EU Court of Justice.

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The Department reasoned that the Fiscal Compact merely specified in more detail the constitutional principle that it was necessary to balance the expenditure on social needs with the budgetary capacity.

The main focus of the opinion was the ruling of the Constitutional Court of 2002 where the Court had emphasized that the budgetary estimates should ensure a balance between the social needs and the budgetary capacity; that it was an exclusive duty of the Government to draft the budget just like discussing and adopting the budget was an exclusive duty of the Seimas, and that these competences were not transferrable.³⁵

With respect to the corrective measures required by the Fiscal Compact Treaty, the Department of European Law did not think that the need to take into consideration the opinion of the European Commission in adjusting the budget in any way contradicted the Constitution. The Department also did not consider that the Fiscal Compact Treaty requirement to appoint an independent fiscal institution affected the exclusive budgetary competence of either the Parliament or the Government.

With respect to the specific Fiscal Treaty rules and the requirement to have a balanced budget the Department reasoned that these could be taken as a part of the principle accepted by the Constitutional Court that the budget needs to be planned in view of the current economic and social status, needs and capacities of the society and the State, the State's financial resources and its international obligations.

The department therefore did not think that there were any issues in the Fiscal Compact that could be in conflict with the Constitution, however, as the final conclusion on this issue could only be made by the Constitutional Court, it was preferable to make a reference on this issue.³⁶

The Seimas, however, did not feel that the issue was as topical as to warrant a reference: only one speaker, Vytenis Andriukaitis, spoke in favour of this idea, however, clearly it was outside of the parties' agenda of priorities.³⁷ Instead, a decision was taken to speed up the ratification procedure. In total the discussions over the Treaty took less than one hour after which it was ratified.³⁸

Contrary to the opinion of the European Law Department, a former president of the Constitutional Court and currently a Judge at the European Court of Human Rights prof. dr. Egidijus Kūris had expressed his view publicly that in order to accommodate the implementation of the Fiscal Compact it was necessary to reconsider a number of articles of the Constitution – especially those concerning the composition of the budget and collection of taxes. His view was that a reference to the Constitutional

³⁵ Lietuvos Respublikos Konstitucinio Teismo nutarimas Dėl valstybės ir savivaldybių biudžetų rodiklių [Ruling of the Constitutional Court of the Republic of Lithuania on the Fiscal Indicators of State and Municipal Budgets, Nr. 25/01, 2002-01-14. An official translation is available at: <http://lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2002>

³⁶ Europos Teisės Departamento išvada LR Seimo Teisės ir teisėtvarkos komitetui įstatymo dėl Belgijos Karalystės, Budgarijos Respublikos, Danijos Karalystės, Vokietijos Federacinės Respublikos, Estijos Respublikos, Kipro Respublikos, Latvijos Respublikos, Lietuvos Respublikos, Liuksemburgo Didžiosios Hercogystės, Vengrijos, Maltos, Nyderlandų Karalystės, Austrijos Respublikos, Lenkijos Respublikos, Portugalijos Respublikos, Rumunijos, Slovėnijos Respublikos, Slovakijos Respublikos, Suomijos Respublikos ir Švedijos Karalystės sutarties dėl stabilumo, koordinavimo ir valdysenos ekonominėje ir pinigų sąjungoje ratifikavimo projektui, [European Law Department Conclusion to Seimas on the draft Law on the Ratification of the TSCG, 5 June 2012, no S-2012-4726.]

³⁷ Seimo rytinio posėdžio stenograma, [Seimas' morning session transcript] 2012-06-28.

³⁸ Ibid.

Court was necessary before ratifying the Treaty, as it would enable to identify what, if any, constitutional amendment was needed.³⁹

CONSTITUTIONAL CONTEXT

III.3

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

The Constitution does not contain explicit provisions touching on the principles provided for by the Fiscal Compact.

However, the Constitutional Court has developed a concept which relates to the principle of a balanced budget. The Court accepts that the constitutional concept of State budget and the principle of responsible governance imply the need to form a realistic budget, and that the projected income and expenditure must correspond to the needs and possibilities of the society and the State.⁴⁰ Therefore the Court emphasizes that the Seimas and the Government, when in need to restrict the budgetary expenditure, are under a duty to take into consideration the state functions established in the Constitution, the existing economic and social situation, the needs and possibilities of the society and the State, the available and potential financial resources and state obligations (*inter alia*, international ones). The Court also accepted the principle requiring balanced assessment of the social needs and the fiscal ability of the State in its ruling concerning the constitutional model of healthcare.⁴¹

In this jurisprudence the Court further restricted the scope of the State's ability to downsize the budgetary expenditure to the need to comply with the following principles:

- 1) The salaries of the State servants can be reduced for no longer than one year; the budget of the next year should be adopted in view of the status of the economy. One year after adoption, the decision to reduce the salaries must be reconsidered.
- 2) The principles of the rule of law, equality, justice, proportionality and legitimate interests and legal certainty, social solidarity and other imperatives must be taken into consideration. The social guarantees may be reduced only as an *ultima ratio*.
- 3) Reduction of the salaries of the State servants and pensions is allowed only if the State is in a severe financial crisis. Upon an official finding that the State is in such a crisis, the Seimas may

³⁹ Fiskalinės drausmės paktas į Lietuvos Konstituciją nesikėsins? [Will the Fiscal Treaty threaten the Constitution of Lithuania?] www.veidas.lt, 2012-03-15.

⁴⁰ Rulings of the Constitutional Court of 14 January 2002 and of 15 February 2013, and an interpretative decision of 16 April 2014. An academic summary is presented by T. Birmontienė, *Konstitucinė valstybės biudžeto doktrina* [The Constitutional Doctrine on the State Budget], *Konstitucinė Jurisprudencija* 2012, vol. 3 (27) p. 94-119.

⁴¹ Ruling of the Constitutional Court of 11 July 2002 on the funding of healthcare system, longterm funding of the systems of research and education, drafting and composition of the State Budget; Ruling of the Constitutional Court of 16 May 2013 on compliance with the Constitution of a number of provisions of the Law on Social Insurance, the Law on Health Insurance, the Law on Social Insurance of Maternity and Sickness. All official translations in English are available at www.lrkt.lt

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reduce the salaries and pensions. However, the reduction must be temporary and compensations must follow subsequently.

The Constitutional Court so far did not have a chance to express its views on the doctrine of the independence of the National State Audit Office.

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?

Yes. The Constitutional Law on the Implementation of the Fiscal Treaty No. XIIP-1761(2) was adopted on 6 November 2014. Its content is addressed above under part IX. The Law is of a different level than ordinary legislation as it requires a stricter, longer and a more complicated amendment procedure. The constitutional law is adopted if more than half of all members of the Seimas (more than 71) vote for it. Once adopted, it can be amended if at least 3/5 of all members of the Seimas vote in favour.

The Constitutional Law on the Implementation of the Fiscal Treaty was adopted by 103 members of Seimas voting for, 1 against and 2 abstending. The Law was thus included in the list of Constitutional Laws, which includes 9 other Laws: the Law on State Language, The Law on State Heraldic Arms and other Heraldic Arms and Signs, the Law on State Flag and other Flags, the Law on State Anthem, the Law on Referendum, the Law on the Approval, Entry into Force and Implementation of the Code of Elections, the Law on Citizen's Legislative Initiative, the Law on Petitions, the Law on State of Emergency.

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?

With little discussions as there were on the issue, there was a clear understanding among the Members of Parliament and the public that the rules were of a European origin and were adopted in order to implement the eurocrisis law.

MISCELLANEOUS

III.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO LITHUANIA 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, 1st round of Greek loan assistance).

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

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

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0004:EN:PDF>)

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

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

NEGOTIATION

IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA 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 is no publicly available information on the discussions at the Government or Seimas with respect to either the EFSF or the EFSM.

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 LITHUANIA AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

GUARANTEES

IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN LITHUANIA? 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 applicable, as Lithuania is in the Eurozone only since 1 January 2015.

ACTIVATION PROBLEMS

IV.4

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA 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 applicable, as Lithuania is in the Eurozone only since 1 January 2015.

CASE LAW

IV.5

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

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

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 applicable, as Lithuania is in the Eurozone only since 1 January 2015.

IMPLEMENTING PROBLEMS

IV.7

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

Not applicable, as Lithuania is in the Eurozone only since 1 January 2015.

QUESTIONNAIRE

BILATERAL SUPPORT

IV.8

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

Not applicable.

MISCELLANEOUS

IV.9

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

Not applicable.

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

No difficulties were publicly reported. I requested the Ministry of Finance to provide information on the issues concerning negotiations of the eurocrisis instruments under the Law on the Right to Obtain Information from State and Municipal Institutions. The Ministry replied via email on 7 September 2015. In its reply to this particular question the Ministry of Finance indicated the following: ‘Lithuania was not an eager supporter of the amendment, however, for the sake of compromise and in the interest of EU financial stability Lithuania did not object to a partial amendment of article 136 TFEU, which would include a provision enabling establishment of the stability mechanism, and would be based on strict conditionality. Lithuania’s primary interest was transparency of further consultations on the permanent mechanism of crisis management, which would be held in cooperation with all EU Member States and their national parliaments.’⁴²

APPROVAL

V.2

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

The amendment was approved on 12 June 2012 by the Seimas adopting a Law ratifying the amendment of Art. 136 TFEU with regard to a stability mechanism for Member States whose currency is the euro, made by the decision no. 2011/199 of the European Council.⁴³

⁴² A. Jonušas, „Fw: Dėl informacijos pateikimo“ Message to Loreta Šaltinytė“, 7 September 2015. Email in Lithuanian. Translated by L. Šaltinytė.

⁴³ LR įstatymo dėl Sutarties dėl Europos Sąjungos veikimo 136 straipsnio, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras (*euro*), pakeitimo, priimto 2011 m. kovo 25 d. Europos Vadovų tarybos sprendimu 2011/199/ES, ratifikavimo [The Law on ratification of the amendment of Art. 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],

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The explanatory memorandum of the Law⁴⁴ argued that it was an important measure facilitating the creation of a permanent crisis management mechanism, which would be used when the need would arise to safeguard the financial stability of the eurozone as a whole. The amendment was presented as a clear legal ground to establish the ESM, which would be created by the agreement of the Member States. It further emphasized that the new provision reflects the ability to create the ESM to the eurozone Member States without suggesting that in the absence of such a provision of the TFEU it would not be permissible to establish the ESM. It further emphasized that although it was the primary duty of the eurozone Member States to solve their fiscal problems, and that the ESM would not apply to the States which are not party to the eurozone, it was in the interest of all EU Member States to ensure stability of the eurozone. These arguments were reiterated during the discussions before ratification.

The question of legal basis to ratify the treaty did not raise any public discussions. It was presented as a technical issue and was accepted as such without further consideration. It was agreed that the ratified document is an amendment of the TFEU, despite the fact that the amendment itself was made by a decision of the European Council.

The technical issue of whether it was a treaty or a European Council decision which needed to be ratified was raised by the Parliament's legal department:⁴⁵ the draft of the ratification law referred to the decision of the European Council of the European Union. It was agreed that even though the amendment of the TFEU was made by a European Council decision, the amendment was still a treaty amendment, therefore the document to be ratified was the TFEU, not the decision of the European Council.

APPROVAL DIFFICULTIES

V.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA ENCOUNTER DURING THE APPROVAL OF THE 136 TFEU TREATY AMENDMENT?

No difficulties were encountered. During the discussions no serious argument against ratification of this Law was voiced. In support of ratification Kęstutis Glaveckas, a chairman of the Parliamentary Budget and Finance Committee, argued that ratification of the Law would show solidarity with the

2012-06-12 Nr. XI-2058; Pakeitimo įstatymas, 2014-01-23 Nr. XII-763. An official translation in English is available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a6e453d08d9211e39e3c992f044525a9?jfwid=cxhrnxzkm>, [last accessed on 23 November 2015].

⁴⁴ Užsienio reikalų ministerija, Lietuvos Respublikos įstatymo Dėl 2011 m. kovo 25 d. Europos Vadovų Tarybos sprendimo 2011/199/ES, kuriuo iš dalies keičiamas Sutarties dėl Europos Sąjungos veikimo 136 straipsnis, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras, ratifikavimo Projekto nr. XIP-3638, Aiškinamasis raštas [Explanatory memorandum on draft Law no. XIP-3638], 2011-09-26.

⁴⁵ LR Seimo kanceliarijos teisės departamentas, Išvada dėl Lietuvos Respublikos įstatymo „Dėl 2011 m. kovo 25 d. Europos Vadovų Tarybos sprendimo 2011/199/ES, kuriuo iš dalies keičiamas Sutarties dėl Europos Sąjungos veikimo 136 straipsnis, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras, ratifikavimo“ projekto [Seimas' Chancellery, Department of law, Conclusion on draft Law No. XIP-3638, 10 October 2011].

eurozone Member States, whereas failure to ratify would destroy everything that Lithuania sought to achieve during the past eight years.⁴⁶

The Minister of Foreign Affairs A. Ažubalis argued that failure to ratify would mean that [Lithuanian Seimas] creates a hurdle to stabilization of the vulnerable situation in the financial markets and does it without clear reasons.⁴⁷ P. Auštrevičius noted the potential benefit to Lithuania to have resort to the fund in the future in case of need.⁴⁸

Members of the political group Order and Justice Julius Veselka and Egidijus Klumbys argued against ratification on the ground that the document was irrelevant to Lithuania which was not yet a member of the eurozone. E. Klumbys added that ratification of this law contradicted the Constitution of the Republic of Lithuania.

The amendment was ratified with 81 votes for, 0 against and 8 abstentions.

CASE LAW

V.4

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

No.

MISCELLANEOUS

V.5

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

The Law ratifying an amendment of Art. 136 of the TFEU was subsequently amended on 23 January 2014. The need for an amendment arose because the ratifying Law used the term ‘euro’ with a Lithuanian ending, and was written in the following way: ‘euras (*euro*)’. This did not comply with the formal EU requirements that the name of the common currency should be identical in its nominative singular use. The government proposed this amendment in view of the planned entry to the eurozone the year after so that the European Central Bank would not have a ground to criticize Lithuania in its opinion.⁴⁹ On 23 January 2014 the amendment was approved by Seimas with a vote of 102 in favour, one against and one abstention.

⁴⁶ Seimo rytinio posėdžio stenograma. 2012-06-12 [Transcript of Seimas’ 12 June 2012 morning session].

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Įstatymo „Dėl Sutarties dėl Europos Sąjungos veikimo 136 straipsnio, kiek tai susiję su stabilumo mechanizmu, taikytinu valstybėms narėms, kurių valiuta yra euras (euro), pakeitimo, priimto 2011 m. kovo 25 d. Europos Vadovų Tarybos sprendimu 2011/199/ES, ratifikavimo” pakeitimo įstatymo projekto aiškinamasis raštas [Explanatory memorandum of the Law on ratification of Art. 136 of the Treaty on the Functioning of the European Union with regard to the Stability mechanism for Member States whose currency is the euro] XIIP-1344.

VI EURO-PLUS-PACT

On March 11, 2011 the Heads of State or Government of the Eurozone endorsed the Pact for the Euro. At the 24/25 March 2011 European Council, the same Heads of State or Government agreed on the Euro Plus Pact and were joined – hence the ‘Plus’ - by six others: Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (leaving only the UK, Czech Republic, Sweden and Hungary out).

The objective of the pact is to foster competitiveness, foster employment, contribute to the sustainability of public finances and reinforce financial stability. In the Euro-Plus-Pact the Heads of State or Government have entered into commitments on a number of policy areas, in which member states are competent.

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

NEGOTIATION

VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA 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.

Being a non-eurozone Member State Lithuania did not participate at the negotiations of the Euro-Plus-Pact in March 2011. Nevertheless, it was among the six non-eurozone Member States which joined the Pact without being able to negotiate its terms and conditions. This suggestion to join the pact in the mode of “take it or leave it” was described by the minister of foreign affairs A. Ažubalis as arrogant.⁵⁰ Lithuania still agreed to join as the Euro-Plus-Pact was viewed as reflecting its interest to proceed towards becoming a part of the eurozone. President D. Grybauskaitė expressed her support to the Euro-Plus-Pact stating that it promotes employment, fosters business growth and, last but not least, ties the hands of those who may want to make excessively populist decisions.⁵¹

In its reply to this particular question, the Ministry of Finance commented that during the negotiations Lithuania supported enhancing of the economic coordination for the sake of stability of the EU and of the eurozone. It was important for Lithuania to ensure that at this stage new criteria of membership in the eurozone were not created and that the following principles of the Pact were implemented: 1) direct taxes remained a part of national competence, 2) new initiatives were to comply with existing EU instruments (eg Europe 2020, European Semester, Stability and Growth Pact) and EU provisions of internal market 3) the European Commission and the EU Council in its relevant formations should be actively engaged in the process of surveillance of the implementation of the Pact.’

⁵⁰ ELTA, “Prezidentė: „Euro plius“ paktas bus naudingas Lietuvos žmonėms”, [President: “Euro-Plus-Pact will benefit the Lithuanian people” 25-03-2011], <http://ekonomika.tv3.lt/naujiena/prezidente-euro-plius-paktas-bus-naudingas-lietuvos-zmonems-6062.html#ixzz3gRpvs4j9>

⁵¹ Ibid.; ‘Lithuania joins EU’s new economic pact barring economic populism’, 29 March 2011 <http://www.lithuaniantribune.com/5998/lithuania-joins-eus-new-economic-pact-barring-economic-populism-20115998/>

MISCELLANEOUS

VI.2

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

No other relevant information.

VII SIX-PACK

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

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

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

NEGOTIATION

VII.1

WHAT POSITIONS DID LITHUANIA 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?

As the information on Lithuania’s negotiating position is not publicly available, the answer to this question is based on the reply of the Ministry of Finance to my request to provide information on the issues under the Law on the Right to Obtain Information from State and Municipal Institutions. The Ministry replied via email on 7 September 2015.⁵² The Ministry only provided a summary of its positions, which did not touch on the issues identified above. On this basis it is assumed that during the negotiations Lithuania did not raise any concerns with respect to the issue of the implications of the ‘Six-Pack’ for budgetary sovereignty, constitutional law, socio-economic fundamental rights or the budgetary process. Lithuania supported the proposal to impose financial sanctions on the eurozone Member States which fail to ensure budgetary discipline as prescribed by the SGP.

DIRECTIVE 2011/85/EU

Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States

⁵² A. Jonušas, „Fw: Dėl informacijos pateikimo“ Message to Loreta Šaltinytė“, 7 September 2015. Email in Lithuanian. Translated by Loreta Šaltinytė.

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 main measure implementing Directive 2011/85 was an amendment of the Law on Budget Structure, which is described in more detail under Question II.⁵³ The amending Law was adopted on 16 October 2012. In order to implement the directive, a number of other amendments were also made to the Law on Fiscal Discipline,⁵⁴ the Law on Budget Structure of the Social Security Fund⁵⁵ and three regulatory instruments adopted by the Ministry of Finance.⁵⁶

The Law on the Budget Structure was supplemented with a new section VI governing the mechanism of surveillance. The competences concerning economic development scenario were given to the Ministry of Finance, whereas the Bank of Lithuania was allocated the task of reporting on the impact of the macrofiscal measures on consumer confidence, price and fiscal stability.

IMPLEMENTATION DIFFICULTIES

VII.3

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

No difficulties were encountered. Only one member of parliament, Julius Veselka, a member of the Order and Justice Party, raised his concern that it is not correct to assume that EU bureaucrats know better how to decide a fiscal situation, and it is also incorrect to hand in the right to decide on these issues to the accountants of the Ministry of Finance assuming that they know better. He cited Gerhard Schröder on the point that it is wrong to exclude the means which may enhance economic growth, and invited ‘true lithuanians’ to vote against the proposal. The Law on Budget Structure was adopted with

⁵³ LR Biudžeto sandaros įstatymo 1,2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 31, 32, 33, 35, 37 straipsnių, penktojo skirsnio pavadinimo pakeitimo, įstatymo papildymo šeštuoju skirsniu ir priedu bei 16 straipsnio pripažinimo netekusiu galios įstatymas, 2012-10-16 Nr. XI-2274, entered into force on 31 October 2012, published at VŽ, 2012-10-31 No. 126-6323. [Amendment of Arts. 1,2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 31, 32, 33, 35, 37 of the Law on the Budget Structure, amendment of the title of its 5th section, its supplementation with 6th section and invalidity of Art. 16, Law No. XI-2274.]

⁵⁴ Lietuvos Respublikos Fiskalinės drausmės įstatymo 3 ir 4 straipsnių pakeitimo įstatymo projektas [Draft Law amending Arts. 3 and 4 of the Law on Fiscal Discipline] Nr. 12-1040-01, 2012-03-29.

⁵⁵ Lietuvos Respublikos valstybinio socialinio draudimo fondo biudžeto sandaros įstatymo 2, 4, 6 ir 9 straipsnių pakeitimo įstatymo projektas [Draft Law on amendment of Arts. 2, 4, 6 and 9 of the Law on the Budget of the State Social Security Fund] Nr. 12-1029-01, 2012-03-29.

⁵⁶ Lietuvos Respublikos finansų ministro 2004 m. birželio 9 d. įsakymas Nr. 1K-219 ‘dėl Finansų ministerijos rengiamų fiskalinio sektoriaus rodiklių, apibrėžtų Tarptautinio valiutos fondo duomenų platinimo specialiuose standartuose, teikimo nacionaliniams suvestinių duomenų puslapiui „Lietuvos ekonomikos ir finansų duomenys“, Įsakymas Nr. 1K-219, Žin., 2004, Nr. 95-3515; Lietuvos Respublikos finansų ministro 2004 m. gegužės 14 d. įsakymas Nr. 1K-189 “Dėl Valstybės skolos apskaičiavimo taisyklių patvirtinimo“, Įsakymas Nr. 1K-189, Žin., 2004, Nr. 82-2972; 2006, Nr. 72-2722; Lietuvos Respublikos finansų ministro 2011 m. gruodžio 12 d. įsakymas Nr. 1K-407 „Dėl Fiskalinės politikos departamento nuostatų patvirtinimo“.

QUESTIONNAIRE

62 votes in favour, 2 against and 21 abstentions. The support came mostly from the ruling coalition (41 votes) and 11 socialdemocrats. 6 abstentions and both objections came from the Order and Justice Party. Apart from the quoted opinion of one of its members, the Party did not make any statement explaining its position. A further 6 abstentions came from the Social Democratic party, 5 from the group of the independent members and 4 from the Labour Party.

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 institution responsible for submitting the macroeconomic and budgetary forecasts is the Ministry of Finance (Art. 8(5) of the Law on Budget Structure). Specifically, the function of producing macroeconomic and budgetary forecasts is performed by the Ministry's Department of fiscal policy.⁵⁷

Art. 4(1) of the Directive is implemented by an amendment of Art. 17 (2) of the Law on Budget Structure.⁵⁸ It lists the documents that the Ministry of Finance needs to take into consideration when drafting the Law on Fiscal Indicators of the State and the Municipal Budgets. The documents include the Government Programme, the Convergence/Stability programme of Lithuania, the State Progress Strategy,⁵⁹ National Reform Programme and other documents of strategic planning, the Law on the Budget Structure, the Law on Fiscal Discipline, the medium term economic development scenario, strategic documents of EU financial support, strategic plans of the appropriations managers, preliminary fiscal indicators of the state and municipal budgets, approved by the Government.

Art. 4(5) of the Directive was implemented by amending arts. 8 and 11 of the Law on Budget Structure. Art. 8 specifies that the methodology of drafting the budget and its implementation is managed by the Ministry of Finance. Under Art. 11 of the Law, the information about the drafting, adoption and execution as well as assessment and surveillance of the budget is public, except for the information which constitutes state secrets. Art. 11 (2) specifies that this information is published at the internet site of the Ministry of Finance.⁶⁰

⁵⁷ LR finansų ministro 2011 m. gruodžio 12 d. įsakymas Nr. 1K-407 „Dėl Fiskalinės politikos departamento nuostatų patvirtinimo“ [an order of the Minister of Finance of 12 December 2011 on the rules governing the functions of the department of Fiscal policy].

⁵⁸ 2011 m. lapkričio 8 d. Tarybos Direktyvos 2011/85/ES “Dėl reikalavimų valstybių narių biudžeto sistemoms“ ir Lietuvos Respublikos Biudžeto sandaros įstatymo 1, 2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 31, 32, 33, 35, 37 straipsnių, penktojo skirsnio pavadinimo pakeitimo, įstatymo papildymo šeštuoju skirsniu ir priedu bei 16 straipsnio pripažinimo netekusiu galios įstatymo projekto atitikties lentelė, XIP-4582 2012-06-21 [The table of implementation of the Directive 2011/85/EU and the Law on Amendment of the [number of articles] of the Law on the Budget Structure].

⁵⁹ Currently this is a Lithuania's progress strategy 2030, approved by Seimas' decision on 15 May 2012: Seimo nutarimas Dėl valstybės pažangos strategijos „Lietuvos pažangos strategija „Lietuva 2030“ patvirtinimo Nr. XI-2015. It is presented as a future vision of Lithuania. The document compiles the ideas of the civil society, active citizens, NGOs on the successful future of Lithuania. Its legal status is not clearly defined.

⁶⁰ Amendment of Art. 11 of the Law on Budget Structure of 6 November 2012 No. XI-2318, entered into force on 1 January 2014. Prior to this provision the law required to publish this information at Valstybės žinios (Official Journal). Currently the

The table of implementation of the Directive also refers to Art. 17 of the Law of Budget Structure, which provides that the Law on the Fiscal Indicators of the State and Municipal Budgets is drafted by the Ministry of Finance.⁶¹ In addition, point 7 of the Government's regulation governing the functions of the Department of Fiscal policy was supplemented with a part 4, which specifies that the Department is under a duty to prepare the central medium term scenario, which is necessary for drafting the Law on the Fiscal Indicators of the State and Municipal Budget and other documents.

With respect to the requirement to conduct an unbiased and independent evaluation under Art. 4(6) of the Directive, the Law on Budget Structure was supplemented with Art. 37 (5), specifying that the final evaluation of the macroeconomic and budgetary planning would also be done by the Ministry of Finance. It provides for an obligation of the Ministry of Finance to take measures in order to avoid excessive inaccuracies. Under this provision excessive inaccuracies are established if they are observed at least for the duration of four consecutive years, given that these inaccuracies have an impact on the economic development scenario and their causes are not related to changes of circumstances or methodology of planning. If such inaccuracies are established, the Law imposes a requirement on the Ministry of Finance to take steps to remove the bias and inform the public of the bias. The provision requires making public the results of this evaluation. These results are to be taken into consideration when drafting other scenarios of economic development and the plans of budgetary revenue.

FISCAL COUNCIL

VII.5

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

The functions of monitoring the compliance with the eurocrisis law are conducted by the National State Audit Office. Its functional autonomy derives from the Constitution (1992) and the Law on National State Audit Office (No. I-907, 30 May 1995).

The table of the implementation of the Directive,⁶² which demonstrates the level of implementation of the directive, identified the National Audit Office as an independent Fiscal Council within the meaning

information relating to the budget is available at <http://finmin.lrv.lt/lt/veiklos-sritys/biudzetas> . Also, the information on the execution of the budget is published at <https://lrvk.lrv.lt/lt/administracine-informacija/biudzeto-vykdyimo-ataskaitu-rinkiniai>

⁶¹ 2011 m. lapkričio 8 d. Tarybos Direktyvos 2011/85/ES "Dėl reikalavimų valstybių narių biudžeto sistemoms" ir Lietuvos Respublikos Biudžeto sandaros įstatymo 1, 2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 31, 32, 33, 35, 37 straipsnių, penktojo skirsnio pavadinimo pakeitimo, įstatymo papildymo šeštuoju skirsniu ir priedu bei 16 straipsnio pripažinimo netekusiu galios įstatymo projekto atitikties lentelė, XIP-4582 2012-06-21 [The table of implementation of the Directive 2011/85/EU and the law on amendment of the [number of articles] of the Law on the Budget Structure].

⁶² 2011 m. lapkričio 8 d. Tarybos Direktyvos 2011/85/ES "Dėl reikalavimų valstybių narių biudžeto sistemoms" ir Lietuvos Respublikos Biudžeto sandaros įstatymo 1, 2, 3, 8, 10, 14, 17, 18, 19, 20, 21, 24, 30, 31, 32, 33, 35, 37 straipsnių, penktojo skirsnio pavadinimo pakeitimo, įstatymo papildymo šeštuoju skirsniu ir priedu bei 16 straipsnio pripažinimo netekusiu galios įstatymo projekto atitikties lentelė, XIP-4582 2012-06-21 [The table of implementation of the Directive 2011/85/EU and the law on amendment of the [named articles] of the Law on the Budget Structure].

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of Art. 6(1) of the Directive 2011/85. However, the implementing measures were taken only subsequent to the ratification of the Fiscal Compact. The major implementing legislation was the Constitutional Law on the Implementation of the Fiscal Treaty, accompanied with the amendments of the Law on National Audit Office, made on 6 November 2014. Both entered into force on 1 January 2015.⁶³

In general, the powers of the National Audit Office to control the execution of the budget are constitutional (Art. 134 Constitution). The Constitution defines that the term of office of an Auditor General is 5 years and that he/she is appointed by the Seimas upon the recommendation of the President of the Republic. The Constitution also requires the Auditor General to present a report to the Seimas on the annual execution of the State budget. Under Art. 173 of the Statute of the Seimas the Auditor General also presents a report on the draft Budget.

The specific role of the National Audit Office in the fiscal surveillance was implemented only by the Constitutional Law on the Implementation of the Fiscal Treaty of 2014. Art. 9 of this Law addresses the independence of the Fiscal Council and provides for its right to receive data. Art. 9(1) specifies that the officials of the monitoring authority must not accept instructions from any other institution and person and that state institutions and other persons must respect the independence of the [monitoring authority]. Under Art. 9(2) the Bank of Lithuania is under a duty to present its macroeconomic forecasts each time they are updated, but not less frequently than twice per calendar year.

Under Art. 9(3) the monitoring authority has a right to hire independent Lithuanian and foreign experts.

Art. 9(6) of the Law on the National Audit Office provides for the following deadlines to present the Office's reports:

- 1) within 30 working days the report on achievement of the structural impetus target, in case of failure to achieve it – the report on the validity of reasons and adequacy of measures to achieve it;
- 2) within 20 working days on the government's proposal to amend the Law on Fiscal Indicators of the State and Municipal Budgets, a report on implementation of the structural impetus target, and the need of additional measures to achieve it.
- 3) within 7 work days after a public presentation by the Government of an economic development scenario a report affirming it.
- 4) within 7 working days after the public presentation of the economic development scenario by the Government a report on the presence of exceptional circumstances within the meaning of Council Regulation No. 1466/97.
- 5) within 15 working days after the Government's proposal of the guidelines on the structural impetus target and measures to achieve it a report to the Seimas on compliance with the Fiscal Compact.

⁶³ Lietuvos Respublikos valstybės kontrolės įstatymo Nr. I-907 2, 4, 6, 9 ir 23 straipsnių pakeitimo įstatymas [Law on the Amendmet of the Law on National Audit Office] Nr. XII-1291, 2014-11-06, TAR, 2014-11-13, Nr. 2014-16779.

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 LITHUANIA 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 answer of the Ministry of Finance to this particular question shows that there were no difficulties on this issue. During the negotiations Lithuania was in favour of the provisions of the regulation. However, it considered it important that the indicators of imbalance were analyzed in more detail, therefore it insisted on presentation of an economic analysis with the scoreboard. Lithuania considered that a detailed analysis of the indicators might ensure that the Commission initiated any procedure only after a careful analysis of the deviations, and in view of eg specific circumstances of the states that are catching up.⁶⁴

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?

Under the amended Art. 19 (1) (5) of Law on Budget Structure if there is a deviation from the three-year planning indicators approved by the Seimas, the government must present its explanation on how new priorities of economic policy are reflected in the change.

Under Art. 19 (2) (1) within 10 working days after submitting the draft Law on Fiscal Indicators of State and Municipal Budgets to the Seimas the Government is under a duty to present to it:

- 1) the newest opinion of the EU Council on the Stability program, and, if Lithuania is in the excessive deficit procedure, the recommendations of the EU Council addressed to Lithuania on corrective measures.
- 2) The Minister of Finance must present the Government's conclusions with respect to the necessity to implement the recommendations and (or) opinion of the EU Council.

⁶⁴ A. Jonušas, „Fw: Dėl informacijos pateikimo“ Message to Loreta Šaltinytė“, 7 September 2015. Email in Lithuanian. Translated by Loreta Šaltinytė.

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- 3) The Government's list of suggested measures in order to implement the recommendations and (or) opinions of the EU Council.
- 4) Medium term public sector balance indicators which implement Lithuania's obligations to the EU or seek to attain public sector surplus.

Under Art. 20 (6) of the Law on Budget Structure, Seimas is under a duty to 'assess' [Lith. *įvertina*] the latest valid recommendations and opinion of the EU Council on Lithuania's stability (convergence) program.

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 for economic policy coordination did not have an effect on the national budgetary timeline.

MTO DIFFICULTIES

VII.9

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

No difficulties were encountered. All amendments were generally perceived as concerning Lithuania only indirectly, as the Lithuanian institutions viewed themselves doing well in balancing the budget. It was also assumed that these provisions would not affect Lithuania, as the rules were there only to ensure that the state budget does not become a means of gaining political influence by unjustifiably increasing budgetary expenditure. [Also see question IX.2]

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 Constitutional Law on the Implementation of the Fiscal Treaty of 2014 provides that the medium term objective must be established by 15 March by the act of the Seimas, for a period which should not exceed three years (Art.5 Constitutional Law on the Implementation of the Fiscal Treaty). The Law further requires that the MTO should either be a surplus budget or should not exceed 0.5 percent of the structural public sector deficit. If the ratio of the public sector debt and GDP is less than 60 percent and the risk of longterm sustainability of finance is low, the MTO should be either a surplus budget or a deficit not exceeding 1 percent GDP at current prices.

So far the Government has not yet adopted the necessary legislation implementing the procedure of adoption of the MTO by the Seimas. The MTO so far has been set by the Government without a formal regulation of the procedure for its adoption. Also, there is no legislation providing for an automatic correction mechanism in the Lithuanian system of fiscal discipline (see also question IX.1).⁶⁵

CURRENT MTO

VII.11

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

The Constitutional Law on the Implementation of the Fiscal Treaty, which entered into force on 1 January 2015, defines that Lithuania's medium-term objective is not higher than 1 % of GDP in structural deficit, or the one that is very close to this value at the time when the results are assessed.

However, so far there is no legislation implementing this provision. On 22 January 2015 the Ministry of Finance submitted its proposal on a Resolution of the Seimas setting the Medium-term budgetary objective of 0.5 percent of GDP in structural deficit for 2015-2017.⁶⁶ The draft was registered but was not considered by the Seimas. On 21 September 2015 the Ministry of Finance again submitted a draft proposal for a resolution of the Seimas which essentially repeats the provision of the Constitutional Law on the Implementation of the Fiscal Treaty, ie it provides that Lithuania's MTO is no higher than 1 per cent of GDP in structural deficit for 2016-2018.⁶⁷ Adoption is still pending.

The last time that the Government revised the MTO was on 28 October 2014, when it postponed the objective to attain a budget surplus to 2017.⁶⁸ It did so in its regulation presenting its report on compliance of the draft Law on the Fiscal Indicators of the State and Municipal Budgets with the recommendation of the Council of the EU. The Government set the following MTOs: 1,2 percent GDP structural deficit in 2015, 0,5 percent GDP structural balance in 2016, and 0,2 percent GDP surplus in 2017.

⁶⁵ Išvada dėl Lietuvos Respublikos 2015 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymo projekto, 2014-11-14 Nr. Y-4. [Report of the National Audit Office on the draft Law on Fiscal Indicators of State Budget and Municipal Budgets of 2015], p. 13.

⁶⁶ Seimo nutarimo projektas Dėl vidutinio laikotarpio tikslo nustatymo [Draft Seimas' decision on Medium Term Objective] Nr. 15-508, 2015-01-22.

⁶⁷ Seimo nutarimo projektas Dėl vidutinio laikotarpio tikslo nustatymo [Draft decision of Seimas on Medium Term Objective] nr. 15-10302, 2015-09-21.

⁶⁸ Lietuvos Respublikos Vyriausybės 2014-10-28 nutarimas Nr. 1178 "Dėl išvados dėl Lietuvos Respublikos 2015 metų valstybės biudžeto ir savivaldybių biudžetų finansinių rodiklių patvirtinimo įstatymo projekto atitikties Europos Sąjungos Tarybos rekomendacijai", [Decision of the Government of the Republic of Lithuania No. 1178 on compliance of the draft Law on Fiscal Indicators of State and Municipal Budgets with the recommendation of the Council of the EU], p. 4.

ADOPTION MTO

VII.12

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

With respect to the procedure of establishing the MTO the Constitutional Law on the Implementation of the Fiscal Treaty merely provides that the MTO must be established by 15 March of the current year by a legal act of the Seimas, but for a maximum period of three years. However, so far implementing legislation has not been adopted, and the procedure is not regulated. As discussed above under VII.11, the last time the MTO was approved in the Government's report on compliance of the draft Law on the Fiscal Indicators of the State and Municipal Budgets with the recommendation of the Council of the EU, ie a document which formally would not be expected to be used for this purpose.

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

The discussion documents are not generally available to the public, however, the official documents implementing this legislation do not show any discussions demonstrating any difficulties with this issue.

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

No difficulties.

GENERAL CHANGES

VII.15

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

No further changes.

MISCELLANEOUS

VII.16

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

No further information.

VIIIESM 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.esm.europa.eu/about/legal-documents/index.htm>

and

<http://www.esm.europa.eu/pdf/FAQ%20ESM%2008102012.pdf>

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID LITHUANIA 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.

Lithuania did not take part in the negotiations of the ESM Treaty as it was not a member of the eurozone at the relevant time. It was the second non-eurozone Member State after Latvia to accede to the ESM, on 14 January 2015 and become a member on 3 February 2015.

RATIFICATION

VIII.2

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

The ESM Treaty was ratified by the Seimas adopting a Law on 18 December 2014.⁶⁹ 82 voted in favour, 1 against and one abstended from voting.

The main arguments for ratifying the Treaty remained the same as those behind ratification of the amendment of Art. 136 TFEU. The explanatory memorandum of the Ministry of Finance described the functions of the ESM, noted that support of the ESM entails a strict requirement to adjust the macroeconomic policy, and emphasised that in case Lithuania would find itself in need it would also be able to request assistance from the ESM.⁷⁰ In addition, the Ministry argued that Lithuania's ESM

⁶⁹ Lietuvos Respublikos įstatymas dėl Belgijos Karalystės, Vokietijos Federacinės Respublikos, Estijos Respublikos, Airijos, Graikijos Respublikos, Ispanijos Karalystės, Prancūzijos Respublikos, Italijos Respublikos, Kipro Respublikos, Latvijos Respublikos, Lietuvos Respublikos, Liuksemburgo Didžiosios Hercogystės, Vengrijos, Maltos, Nyderlandų Karalystės, Austrijos Respublikos, Portugalijos Respublikos, Slovėnijos Respublikos, Slovakijos Respublikos ir Suomijos Respublikos Europos stabilumo mechanizmo steigimo sutarties ir su ja susijusių dokumentų ratifikavimo, [Law on ratification of the Treaty Establishing the European Stability Mechanism and Relating Documents] Nr. XII-1493, TAR, 2014-01-01, Nr. 21152.

⁷⁰ Lietuvos Respublikos Finansų Ministerija, Lietuvos Respublikos įstatymo Dėl Belgijos Karalystės, Vokietijos Federacinės Respublikos, Estijos Respublikos, Airijos, Graikijos Respublikos, Ispanijos Karalystės, Prancūzijos Respublikos, Italijos Respublikos, Kipro Respublikos, Latvijos Respublikos, Liuksemburgo Didžiosios Hercogystės, Maltos, Nyderlandų Karalystės, Austrijos Respublikos, Portugalijos Respublikos, Slovėnijos Respublikos, Slovakijos Respublikos ir Suomijos Respublikos Europos Stabilumo Mechanizmo steigimo sutarties ratifikavimo projekto XIIP-2559

membership would contribute to regional and interregional cooperation, development of multilateral relationships, strengthen political and economic ties with other States and Lithuania's role in the global arena.⁷¹

RATIFICATION DIFFICULTIES

VIII.3

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

No political or legal difficulties were encountered during the process of ratification.

CASE LAW

VIII.4

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

No.

CAPITAL PAYMENT

VIII.5

WHAT IS THE ROLE OF PARLIAMENT IN THE PAYMENT OF THE (FIRST INSTALMENT OF) PAID-IN CAPITAL REQUIRED BY THE ESM TREATY (ARTICLE 36 ESM TREATY)? WHAT RELEVANT DEBATES HAVE ARISEN IN RELATION TO THIS PAYMENT?

Under Art. 2. of the Law ratifying the ESM Treaty, the Seimas' prior consent is required in two situations:

- 1) If a decision needs to be taken under Art. 10 (1) of the ESM Treaty to change the maximum lending volume and the adequacy of the authorized capital stock of the ESM.
- 2) If the decision is taken to change the contribution key under Art. 11 of the ESM Treaty, if this would result in a higher contribution key for Lithuania.

The Law was adopted with a broad consensus, ie this document did not raise any discussions at the adoption stage.

The Law does not provide for any role for the Seimas with respect to the payment of the first installment to the ESM. However, the payment was planned in Art. 12 (10) (1) of the Law on the Fiscal Indicators of the State and Municipal Budgets, which was approved by the Seimas. Consequently, the

aiškinamasis raštas, [Explanatory Memorandum on the Draft Law on Ratification of the Treaty Establishing the European Stability Mechanism No. XIP-2559] 2014-11-26.

⁷¹ Ibid.

decision to make the payment was taken by the Government specifically referring to the Law on the Fiscal Indicators of the State and Municipal Budgets.⁷²

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 rules governing the taking of the decisions to grant financial assistance and the disbursement of tranches are found in a decision adopted by the Government.⁷³ The decision requires the Minister of Finance to obtain an approval of the Government on these issues. However, the Parliament is not directly involved in taking these decisions. Under part 7 of the said decision the Government informs the Seimas (its committee on European Affairs) about the positions no later than within 5 days after their adoption.⁷⁴ The decisions to grant financial assistance and the disbursement of tranches require consent of the Government *in corpore*.⁷⁵

A consent of the Government *in corpore* is necessary for the following decisions:

1. establishment, cancellation, administration and usage of reserve and other funds under ESM Arts. 4(4) and 24;
2. issuing of new shares other than at par under ESM Art. 8(2);
3. payment of an authorized unpaid capital under ESM Art. 9(1);
4. granting of financial assistance to a member of ESM, setting of conditions of economic policy, choice of measures and financial conditions under ESM Arts. 12, 13, 14, 15, 16, 17 and (or) 18;
5. review of the instruments of financial assistance under ESM Art. 19;
6. pricing policy under ESM Art. 20;
7. decisions seeking to ensure that overdue amounts are settled, under ESM Arts. 25(2) and (3).

⁷² Lietuvos Respublikos Vyriausybės nutarimas Dėl Lietuvos Respublikos įmokėtojo kapitalo dalies Europos stabilumo mechanizme sumokėjimo [Decision of the Government of Lithuania on payment of the contribution key to the European Stability Mechanism] TAR, 2015-01812.

⁷³ Lietuvos Respublikos Vyriausybės nutarimas Dėl LR dalyvavimo Europos Stabilumo Mechanizmo valdytojų taryboje ir direktorių valdyboje. Lietuvos Respublikos dalyvavimo Europos stabilumo mechanizme tvarkos aprašas [Decision of the Government of Lithuania on Lithuania's participation at the European Stability Mechanism Board of Governors and the Board of Directors], 2015-01-01, TAR Nr. 2902 [act adopted on 18 February 2015].

⁷⁴ Ibid, part 7.

⁷⁵ Ibid.

APPLICATION DIFFICULTIES

VIII.7

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

So far no legal or serious political difficulties have arisen. However, in July 2015 the new leader of the Labour Party Valentinas Mazuronis, who is also a member of the European Parliament, expressed his concern that the plan to provide financial assistance to Greece from the ESM involved too much risk and therefore the Labour Party did not approve of it.⁷⁶ As a member of the ruling coalition, the Party initiated a discussion on this issue at the State's political council.⁷⁷ This did not lead to any significant development, as the Government approved its position to issue financial support to Greece nevertheless.⁷⁸

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?

No changes were made so far.

MISCELLANEOUS

VIII.9

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

No further information.

⁷⁶ ELTA, Valentinas Mazuronis: Graikijos gelbėjimo projektas yra per daug rizikingas. [Valentinas Mazuronis: Greece's rescue package involves too much risk] 2015-07-17 www.ve.lt

⁷⁷ The political council of the ruling coalition is an informal political body, composed of the leaders of the parties participating at the ruling coalition. The council does not have a legal status, however, it is often gathered to discuss the most topical political issues, most importantly – the formation of the ruling coalition and other significant topics that require a common position of the coalition. In January 2015 it has been gathered to discuss the prospect of maintaining the ruling coalition as the president of honour of the Labour Party V. Uspaskich encouraged the members of the party to vote against the draft budget of 2015. Most recently in September 2015 it discussed the adoption of the Social Model, which seeks to liberalize labour relationships in the country.

⁷⁸ BNS, Vyriausybė pritarė EK deryboms dėl paramos Graikijai [The Government approved European Commission's negotiations on Support to Greece], www.lzinios.lt, 2015-07-16.

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 LITHUANIA 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 Ministry of Finance gave the following reply to this question on my request under the Law on the Right to Obtain Information from State and Municipal Institutions:

‘During the negotiations Lithuania supported the idea that the eurozone should enhance coordination of economic policy by strengthening fiscal discipline, in order to encourage economic growth and competitiveness. Lithuania in principle was in favour of the provisions enhancing fiscal discipline, however, as it was not yet a member of the eurozone, it had reservations on the provisions of the program of economic partnership which may imply a huge administrative - political burden on the country at the very start of the excessive deficit procedure. Lithuania supported the application of the method of a reversed qualified majority both with respect to the criteria of an excessive budgetary deficit and an excessive debt, and supported the idea to allow participation of non-eurozone members at the European summits.⁷⁹ Lithuania also supported the flexible formulation on the requirement to include in the Constitution the provision on a balanced budget or a surplus budget. These provisions of the Fiscal Compact were taken by Lithuania to be completely in its interests, because they imposed on the governments of the Member States a duty to conduct a responsible and sustainable fiscal policy.’⁸⁰

The Treaty was presented in Lithuania as one which does not encroach on national sovereignty, and is merely a logical conclusion to the earlier agreements on stricter financial discipline, which introduces sanctions for countries’ failure to comply with substantive rules and expands the competence of the EU Court of Justice.⁸¹

⁷⁹ A. Jonušas, „Fw: Dėl informacijos pateikimo“ Message to Loreta Šaltinytė“, 7 September 2015. Email in Lithuanian. Translated by Loreta Šaltinytė.

⁸⁰ Ibid.

⁸¹ BNS R.Karoblis: Briuseliui daug naujų galių neperduodame – interview [BNS interview with R. Karoblis: we do not transfer many new powers to Brussels] (n.b. R. Karoblis was an ambassador of Lithuania to the EU at a relevant time) 2012-02-05 www.delfi.lt.

This position was publically maintained throughout the negotiations. This is clearly seen from the joint decision of the Seimas' committees on European Affairs and Foreign Affairs, which endorsed the Government's position with respect to the TSCG to be discussed at the European Council meeting of 30 January 2012.⁸² Notably, it is one of the very few decisions that are accessible to the public. The only specific provision of the document touching on negotiations of the TSCG was point 2.2., which requires that the Government insists on the position that all States which have ratified the Treaty are equal, therefore art. 12 of the Treaty should specify that the leaders of the countries which are not members of the eurozone are invited to all meetings of the heads of the Member States.⁸³ In his interview to BNS the Lithuanian ambassador to the EU observed that on this issue the provision which found its way to the Treaty was more than Lithuania's intended minimum, which resulted from Poland's tough negotiating line.⁸⁴

RATIFICATION

IX.2

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

The Fiscal Compact was ratified on 28 June 2012 by a Law adopted by the Seimas on 28 June 2012 with 80 votes in favour, 11 against and 21 abstentions.⁸⁵ The Law was adopted by an expedited procedure.⁸⁶ The ratification was supported by the ruling coalition, however, 7 votes out of 11 of those who voted against were from the party Order and Justice, which is a member of the coalition. Its other three members voted in favour, and 6 abstained. The next day the leader of the Order and Justice Party made an announcement that the ratification of this Treaty was premature and that it was a question which should have been left to the People, because the Treaty enabled a 'foreign subject' to have an impact and to exercise control over the State budget, which was a significant restriction of the State's sovereignty.⁸⁷ In his view by ratifying this treaty Lithuania blindly lost a part of its sovereignty, without

⁸² Lietuvos Respublikos Seimo Europos reikalų komiteto ir Lietuvos Respublikos Seimo Užsienio reikalų komiteto Bendras sprendimas Dėl Lietuvos Respublikos pozicijos Europos Taryboje dėl svarstomo Sutarties dėl Stabilumo Koordinavimo ir Valdymo Ekonominėje ir Pinigų Sąjungoje projekto, 2012-01-25, Nr. 100-S-1 [Seimas' Committees of European Affairs and Budgetary Affairs, "A common decision on the position of Lithuania in European Council on the draft Treaty on Stability Coordination and governance in EMU", 25 January 2012.] available in Lithuanian at <http://www3.lrs.lt/docs2/EEVFGZZH.DOC>

⁸³ Lietuvos Respublikos Seimo Europos reikalų komiteto ir Lietuvos Respublikos Seimo Užsienio reikalų komiteto Bendras sprendimas Dėl Lietuvos Respublikos pozicijos Europos Taryboje dėl svarstomo "Sutarties dėl Stabilumo Koordinavimo ir Valdymo Ekonominėje ir Pinigų Sąjungoje" projekto, 2012-01-25, Nr. 100-S-1 [Seimas' Committees of European Affairs and Budgetary Affairs, "A common decision on the position of Lithuania in European Council on the draft Treaty on Stability Coordination and governance in EMU", 25 January 2012.] available in Lithuanian at <http://www3.lrs.lt/docs2/EEVFGZZH.DOC>

⁸⁴ BNS, R.Karoblis: Briuseliui daug naujų galių neperduodame – interview [BNS interview with R. Karoblis: We do not transfer many new powers to Brussels] www.delfi.lt, 2012-02-05.

⁸⁵ Lietuvos Respublikos fiskalinės sutarties įgyvendinimo konstitucinis įstatymas [Constitutional law on the Implementation of the Fiscal Treaty], TAR, 2014-11-18, Nr. 17028.

⁸⁶ Lietuvos Respublikos Seimo statutas [Statute of Seimas of the Republic of Lithuania], Žin., 1994-02-25, Nr. 15-249.

⁸⁷ R.Paksas, Pritarimas Fiskalinės drausmės sutarčiai – skubotas ir nenaudingas. [Approval of the Fiscal Treaty is hasty and useless] <http://www.tvarka.lt/index.php?id=7612>

QUESTIONNAIRE

even seeking to ensure the application of the principle of equality and without attempting to bargain for favours in exchange for its support.

The Seimas, with 86 votes in favour, 4 against and 14 abstentions also adopted a protocol decision linking the implementation of the Treaty with the following conditions:

1. That Lithuania gets the same structural funds agricultural support as that received by the other EU Member States which acceded to the EU earlier;
2. Lithuania's funding from the Cohesion Fund would not be reduced;
3. The EU will ensure the funding necessary for the closure of the Ignalina nuclear plant.

The protocol decision was adopted on the initiative of the Labour Party.⁸⁸

The legal significance of this protocol decision is next to nothing, as even national law does not provide for a possibility of adopting an act in such a form at a time of ratification. This protocol decision cannot be considered as a reservation, because all reservations should be explicitly identified in the text of the law ratifying the treaty. The Statute of the Seimas only includes two articles with respect to ratification of treaties. Art. 180²⁶ provides that when provided by the EU Treaty or the TFEU the EU legislative acts are approved by Seimas adopting a law to this effect. Art.181 regulates ratification and denunciation of treaties; it requires a 2/5 majority of all members of the Seimas for ratification and a 3/5 majority of all members of the Seimas for denunciation of a treaty. It further specifies that the borders of the State can only be amended by a treaty, which is ratified by 4/5 majority of all members of the Seimas.

The Statute of the Seimas only mentions a protocol decision on two occasions: 1) under Art. 180²⁰ the Seimas adopts a protocol decision approving or disapproving a candidacy to the position of the European Commissioner, the Court of Auditors or the European Union Court of Justice; 2) under Art. 151 a protocol decision may be adopted if the Seimas decides to return a draft law for improvement. In this situation the protocol decision should specify the necessary changes. Arguably, Art. 151 of the Statute of the Seimas served as a source of inspiration for the idea to adopt a protocol decision in this situation.

Although the document does not have any legal significance either in national or European law, it shows the prevalent pragmatic political approach to the adoption of eurocrisis legislation in Lithuania and perhaps should be considered as a politicians' attempt to present themselves to the electorate as protecting national interests.

Legal basis/argumentation

The position prevailed that it was not necessary to amend the Constitution and address the provisions regarding structural deficit in it, and that a constitutional law (lith. Konstitucinis įstatymas)⁸⁹ would be sufficient for this purpose. The peculiarity of the constitutional law is that it is not considered to be a part of the Constitution, therefore theoretically the law still must comply with the Constitution,

⁸⁸ Seimo rytinio posėdžio stenograma,[Seimas' morning session transcript] 2012-06-28.

⁸⁹ This is a Lithuanian version of an organic law. See Sinkevičius V., Konstitucinių įstatymų samprata: teoriniai aspektai. [eng: The Concept of Constitutional Laws: Theoretical Aspects] *Jurisprudencija*, 2008 2(104): 28-38.

although it has a higher legal power than an ordinary law. It differs from an ordinary law by the procedure of its adoption (adoption of a Constitutional Law requires a qualified majority vote, more than half of all members of Seimas) and amendment (a majority of at least 3/5 members of Seimas). Art. 69 (3) of the Constitution also requires adopting a separate law providing for a list of constitutional laws.

However, the doctrine on constitutional laws in Lithuania has not yet been successfully tested. A former president of the Constitutional Court prof. Egidijus Kūris has bluntly described them as a 'Lithuanian misunderstanding'.⁹⁰ Therefore if Lithuania really wanted to incorporate the Fiscal Treaty to the Lithuanian constitutional system, it was necessary to amend the Constitution itself.⁹¹

This did not persuade the politicians, who presented their own interpretation of the Constitution. The chairman of the Seimas' Committee on the Budget and Finance Kęstutis Glaveckas referred to Art. 135 of the Constitution in support of his opinion that the Treaty complies with the Lithuanian Constitution because Art. 135 of the Constitution clearly enshrines that in its foreign policy Lithuania is guided by generally accepted principles and rules of international law, seeks to ensure its security and independence, welfare of its citizens and their fundamental rights, and contributes to the creation of the international order based on law and justice. In his view, the new treaty specifically focuses on the interests of the welfare of the people, since it is a consensus opinion that fiscal discipline is necessary and that excessive borrowing needs to be restrained in order for Europe to successfully overcome the crisis.⁹²

President Grybauskaitė's position was that this Treaty does not introduce anything new to Lithuania, because the country already follows a strict austerity policy.⁹³ The same position was held by prime minister A. Kubilius, who also expressed his hope that after ratification of this treaty the society will also understand that the times of excessive spending are in the past and that it will not be possible to derogate from this provision even if the ruling coalition changes.⁹⁴

RATIFICATION DIFFICULTIES

IX.3

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

No political/legal difficulties encountered. See discussion under IX.2

⁹⁰ Prof. E. Kūris expressed his position at a public conference, organized on 24 February 2012 by the Ministry of Foreign Affairs. A summary of the views expressed at the event is available in Lithuanian at <http://www.snaujienos.lt/naujienos/salyje/21183-e-kris-pasiraius-naujosios-fiskalins-drausms-sutarties-suderinamumo-su-konstitucija-sutart-silo-kreiptis--kt>

⁹¹ Ibid.

⁹² Fiskalinės drausmės paktas į Lietuvos Konstituciją nesikėsins? www.Veidas.lt, 2012-03-15 [last accessed on 22 July 2015].

⁹³ Ibid.

⁹⁴ Ibid.

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 LITHUANIA? WILL THERE BE AN AMENDMENT OF THE CONSTITUTION? IF NOT, DESCRIBE THE RELATION BETWEEN THE LAW IMPLEMENTING THE BALANCED BUDGET RULE AND THE CONSTITUTION. IF THE CONSTITUTION ALREADY CONTAINED A BALANCED BUDGET RULE, DESCRIBE THE POSSIBLE CHANGES MADE/REQUIRED, IF ANY.

The balanced budget rule was included in Art. 4 (2) and Art. 4 (4) of the Constitutional Law on the Implementation of the Fiscal Treaty, and provides:

2. Each budget attributable to the general government sector, with the exception of the budget of the State Social Insurance Fund of the Republic of Lithuania, the State budget and the budget the planned appropriations which do not exceed 0.3 % of GDP in the preceding year at current prices, must be planned, approved, amended and implemented to be in surplus or balanced when judged by its structural balance indicator calculated on accrual basis.

4. Each budget attributable to the general government sector the planned appropriations of which do not exceed 0.3 % of GDP in the preceding year at current prices shall be planned, approved, amended and implemented in such a way that the appropriations of the budget would not exceed its revenue, with the exception of the year when a negative output gap is projected according to the economic development scenario which is made public by the Government or its authorized institution and in regard to which the monitoring authority published its conclusion. In the latter case, the appropriations may not exceed revenue by more than 1.5 %.

For more details on the status of the Constitutional Law on the Implementation of the Fiscal Treaty, see question IX.2.

DEBATE BALANCED BUDGET RULE

IX.5

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

The issue was not raised during the debate.

RELATIONSHIP BBR AND MTO

IX.6

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

The issue was not raised during the debate.

CASE LAW

IX.7

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

No.

NON-EUROZONE AND BINDING FORCE

IX.8

HAS LITHUANIA 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 LITHUANIA AND THE FISCAL COMPACT?

No further 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)

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.

Lithuania did not ask for or receive financial support.

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.

Lithuania did not receive financial support.

STATUS INSTRUMENTS

X.3

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

Lithuania did not receive financial support.

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?

Lithuania did not receive financial support.

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 Lithuania did not receive financial support, the issue is not tested in practice.

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

Not applicable.

MISSIONS

X.7

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

Not applicable.

CASE LAW INTERNATIONAL INSTRUMENTS

X.8

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

Not applicable.

CASE LAW IMPLEMENTING MEASURES

X.9

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

Not applicable.

BOND PURCHASES ECB

X.10

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

Not applicable.

CONDITIONALITY BOND PURCHASES ECB

X.11

WHAT NATIONAL POLICY MEASURES HAVE BEEN REQUESTED BY THE ECB IN EXCHANGE FOR THE ACQUISITION OF GOVERNMENT BONDS ON THE SECONDARY MARKET? HOW HAVE THESE REQUESTS BEEN

QUESTIONNAIRE

SUBJECT TO DEBATE IN LIGHT OF THEIR IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

Not applicable.

MISCELLANEOUS

X.12

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

Not applicable.