



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: "Romania"

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I - Political context

POLITICAL CHANGE

I.1

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

The Eurozone crisis period in Romania is characterised by high political unrest and instability. Since 2008, Romania has known six government changes, one suspension of the President (2012), two national parliamentary elections (2008; 2012), two presidential elections (2009; 2014 forthcoming) and two referenda (2009; 2012).^[1] The long electoral periods did not favour a coherent approach to austerity packages and to their implementation, generating a largely unstable environment.

The political unrest has partially its roots in the institutional architecture put in place by the 1991 Constitution of Romania as revised in 2003. The fundamental law enshrines a semi-presidential political system whereby the responsibilities of President, Parliament and Government are often intertwined and mutually dependent.^[2] The legislature of Romania is bi-cameral, formed by the Chamber of Deputies and the Senate, directly elected for a period of four years. The President is directly elected for a five years mandate. The executive power is bicephalous (dualist executive), with both a directly elected President and a Prime Minister, invested by the President after receiving the Parliament's vote of confidence. The system ensures important space for checks and balances. However, at the same time it makes the 'cohabitation' of the three political institutions particularly difficult when not on the same side of the political compass. This was often the case in the analysed period.

Three parties have largely dominated the political discourse: the centre-right Democratic Liberal Party (PDL), the centre-left Social Democratic Party (PSD) and the centre-right National Liberal Party (PNL); the two latter parties allied as Social Liberal Union (USL) from February 2011 to March 2014.

The time sequence of major political events in the context of the main EU financial assistance agreements follows the order below:

- 2008, November 30, Parliamentary elections
- 2008, December 22, Government Boc (1) [PDL, PSD]
- **2009, June 23, MoU EC-Romania 2009-2011**
- 2009, October 1, PSD ministers resign
- 2009, October 13, Motion of censure of the Parliament, Government dissolved
- 2009, November 22, December 6, Presidential elections
- 2009, November 22, Referendum on transition to unicameral parliament and reduction of MP seats to maximum 300

- 2009, December 23, Government Boc (2) [PDL]
- **2010, February 22, 1st supplemental MoU EU-Romania 2009-2011**
- **2010, August 08, 2nd supplemental MoU EU-Romania 2009-2011**
- **2011, January 19, 3rd supplemental MoU EU-Romania 2009-2011**
- **2011, April 08, 4th supplemental MoU EU-Romania 2009-2011**
- **2011, June 29, MoU EU-Romania on precautionary assistance 2011-2013**
- **2011, December 27, 1st supplemental MoU EU-Romania 2011-2013**
- 2012, February 6, Government Boc (2) resigns
- 2012, February 9, Government Mihai Razvan Ungureanu [PDL]
- 2012, April 27, Motion of censure of the Parliament, Government dissolved
- 2012, May 7, Government Ponta (1) [USL]
- **2012, June 29, 2nd supplemental MoU EU-Romania 2011-2013**
- 2012, July 29, Referendum on the dismissal of the President
- 2012, December 9, Parliamentary elections
- 2012, December 21, Government Ponta (2) [USL]
- **2013, November 3, MoU EU-Romania on precautionary assistance 2013-2015**
- 2014, February 25, fall of USL coalition, PNL ministers resign
- 2014, March 5, Government Ponta (3) [PSD]
- 2014 November 2, November 16, Presidential elections (forthcoming)

The November 2008 parliamentary elections were a close call. The [Social Democrats](#) (PSD) won followed with less than one per cent difference of votes by the [Liberal Democrats](#) (PDL).[3] As a coalition agreement was reached between PSD and PDL, President Traian Băsescu (candidate of PDL predecessor party in 2004 presidential elections) nominated the leader of PDL as Prime Minister ([Emil Boc](#)).[4] On December 22, 2008 the Parliament gave the vote of confidence to Prime Minister Boc and his cabinet, formed by PDL and PSD members.[5] The invested Government had as first two governance objectives to ensure a stable economic climate in the context of global economic crisis and job creation.[6] Since the two parties of the governing coalition were so far apart ideologically, the coalition generated endless disputes. The Government operated in an atmosphere of constant conflicts and tensions from the very beginning. By mid-2009, political instability became so deep that the PSD eventually started acting as an opposition party, regardless of the fact that it was a member of the coalition.[7] During this period, Romania requested direct

financial assistance from the European Union and the International Financial Institutions, agreement announced on March 25 2009.

On October 1st 2009, a few weeks before the presidential elections of November 22, 2009, the fragile coalition collapsed.[8] Shortly after, on October 13, 2009, the Government collapsed under the vote of no confidence passed by the Parliament (the 'motion of censure').[9] The motion of censure was the first one to get the quorum since the first post-communist legislature of 1992.[10] Government Boc nevertheless remained in charge as a caretaker Government until late December 2009, as the subsequent attempts of the President to appoint different cabinets failed.

The political instability impacted on the engagements with the International Financial Institutions signed in April 2009.[11] After the first review of the IMF Stand-by-Arrangement on October 9, 2009[12] the collapse of the Government on October 13, postponed the second review until the new Government was in place.[13] In this sense the IMF country report on Romania states: "[w]hile offsets through cuts in capital spending, lower interest payments, and some late revenue recovery enabled the government to ultimately meet the revised end-year deficit target, implementation delays in spending measures and budget uncertainties in the run up to Presidential elections delayed completion of the second review." [14]

The Presidential elections and referendum held on November 22, 2009 fuelled the political rivalry between PDL, on one hand, and PSD, on other.[15] First, the Romanian citizens endorsed the referendum initiated by the President,[16] voting in favour of a unicameral Parliament to replace the bi-cameral one and the reduction of the parliamentary seats to a maximum of 300.[17] In the second tour of December 6, 2009, President Traian Băsescu (PDL candidate) outvoted Mircea Geoană (PSD candidate) roughly by 0.7%.[18] The Constitutional Court dismissed the allegations of fraud and validated the results of both the Presidential elections and the referendum.[19]

The re-elected President again put forward the candidacy of Prime Minister Emil Boc (PDL), who managed to get the Parliament's vote of confidence by a fragile majority on December 23, 2009[20] and maintained the position in office until February 6, 2012. This time, the Prime Minister's governance agenda included as a top priority the revision of the Constitution according to the results of the 2009 referendum (unicameral Parliament with maximum of 300 seats); followed by: economic redress, including no raise in VAT; respect of commitments agreed with IMF, World Bank and European Commission; transition to multi-annual budget model; revision of pension system, et al.[21]

The elections have again generated delays in implementation of the first 2009 MoU adjustment measures. Once a new Government was in place, the first addendum to the 2009 MoU between Romania and the EU has been signed in February 2010, updating the initial conditions and targets on the background of crisis deepening and worsening output indicators.[22]

The Government led by Prime Minister Boc (PDL) was the one to adopt the harsh and highly unpopular austerity packages of 2009 and mid 2010, including the fixed annual tax on private companies, the public sector salary cut by 25%, the attempt to cut the pensions by 15% and the raise of VAT by 5% (from 19% to 24%), all passed by way of the so-called 'engagement of responsibility' in front of the Parliament (whereby the government subjects the measures to a confidence vote procedure), thus avoiding parliamentary and public debates on the matter (please refer to sections

III.9, X.3, X.4, X.5 below).[23]

On 5 February 2011, the Social Liberal Union (USL) opposition was formed by an alliance between PSD, PNL and two other small parties: the Conservative Party (PC), and the National Union for the Progress of Romania (UNPR). The highly unusual alliance between socialists and liberals was fed by the common goal of a strong opposition against the governing PDL party and the President (Traian Băsescu) whose public popularity fell dramatically after the enforcement of the two adjustment packages in 2009 and 2010 respectively (please refer to section X.6 and X.9 below).

In January 2012 the growing public discontent burst into large-scale protests, supported by the USL opposition. The protests forced Prime Minister Boc and his Cabinet to resign on February 6, 2012.[24]

On February 9, 2012 President (Traian Băsescu) designated Mihai Răzvan Ungureanu, a formally politically independent candidate, to form a new Government. Prime Minister Ungureanu staid in office for less than 3 months, as the reunited chambers of the Parliament supported by the USL majority passed a second motion of no confidence on 27 April 2012, dissolving the Government.[25] The declared reasons of the motion were, inter alia, the failure of the Government to address the economic downturn and the lack of transparency, including lack of parliamentary debates on the Fiscal Compact.[26] (On the Fiscal Compact please refer to section IX below).

Left with no other option, the President designated Victor Ponta (PSD leader) as Prime Minister. Led by Prime Minister Ponta, USL was given the Parliament vote of confidence and became the governing coalition on May 7, 2012.[27] The Coalition maintained in office until early 2014. Immediately after the investiture, on May 18, 2012 the Government passed emergency legislation on gradual recoument of 2010 salary cuts and restitution of certain pensions and social security rights.[28]

The new Government investiture brought about the onset of a difficult period of cohabitation between President Băsescu one the one hand, and the Prime Minister and his USL Cabinet on the other. Political tension was on constant rise on the background of the constitutional dispute between the President and the Prime Minister about the representation of Romania to the 28-29 June 2010 European Council meeting.[29] On 27 June 2010 the Constitutional Court decided that it was for the President to represent the country.[30] Nevertheless the Prime Minister ignored the decision of the Court explaining that it was impossible to change the European Council delegation list just one day before the summit. On the same date, the Constitutional Court declared the local electoral law amendment establishing a first-past-the-post system (the-winner-takes-it-all), introduced less than six months before the local elections unconstitutional.[31]

The culmination of the political crisis hit in early July 2012 when the USL Government together with the USL members of Parliament attempted an overthrow of President Băsescu.[32] First, on July the 3rd, the Ombudsman and the PDL presidents of the two Chambers of the Parliament were dismissed by way of Parliament resolution.[33] Second, on July the 4th the law on the functioning of the Constitutional Court was amended by way of Emergency Ordinance, so that the Court could not review Parliament resolutions.[34] Third, on July the 5th the referendum law provisions on the quorum were amended by Emergency Ordinance, in the sense that a referendum may be validated if endorsed by fifty plus one per cent of the participants as opposed to prior fifty plus one per cent of

the citizens with a right to vote.[\[35\]](#) Fourth, on July 6, the Parliament adopted the decision to suspend the President for serious acts of infringing the Constitution, pursuant to Article 95 thereof and decided on the date of the referendum on the dismissal of the President.[\[36\]](#) (The same president has been suspended also in April 2007, the outcome of the referendum on dismissal was negative.) In spite of the fact that more than 87% of the referendum participants favoured the dismissal of the President,[\[37\]](#) the Constitutional Court did not validate the referendum held on July 29, 2012, as the half plus one quorum had not been met.[\[38\]](#) In the view of the Court, despite the legislative change introduced, the provisions were still to be interpreted as meaning fifty plus one of the citizens with a right to vote.[\[39\]](#)

The above-enumerated events stirred prompt and harsh reactions from the part of EU institutions and the international community. The Council of Europe Venice Commission framed the problem in terms of constitutionality and the need of constitutional review to avoid further institutional clashes in the future,[\[40\]](#) whereas the European Commission adopted a rule of law discourse.[\[41\]](#)

The overwhelming USL victory in the parliamentary elections of December 9, 2012, brought USL the absolute majority quorum in both Chambers of the Parliament.[\[42\]](#) Supported by the Parliament majority, Prime Minister Ponta was re-stated in office on December 21, 2012.[\[43\]](#) The parliamentary elections brought the much-expected stability awaited both internally and externally, notably by the International Financial Institutions. As the USL Government enjoyed a stable parliamentary majority the decision making process was much eased. The USL coalition controlled largely the legislative initiatives, having the certainty that these are supported by the Parliament. After a period of relative stability, the USL coalition fell apart on February 25, 2014 on the eve of the European Parliament elections of May 2014 and forthcoming presidential elections of November 02 and 16, 2014.

On March 5, 2014 Prime Minister Ponta presented the new PSD Cabinet, invested with the Parliament's vote.[\[44\]](#) The cabinet is currently in office. It is expected to change (or not) depending on the results of the Presidential elections of November 2014.

The eve of the forthcoming presidential elections of November 2 and November 16, 2014[\[45\]](#) finds the country in the midst of a recession period and attempts of economic consolidation, burning discussion on improvement of the European Structural and Investment Funds absorption capacity; fight with extreme poverty and corruption; implementation of justice reform; continuing efforts towards joining the Schengen area (blocked in 2012), attainment of euro adoption benchmarks; and - highly important - on-going discussions on Constitutional reform, which puts forward two fundamental challenges for the future: the reshaping of central inter-institutional competences and attributions; and the territorial administrative reform (on constitutional reform please refer to Section III.2, below).

Along these lines, Mr. Herman Van Rompuy's speech in Bucharest on 25th April 2013 presents a comprehensive summary of Romania's current priorities:

"Prime Minister Ponta updated me on the constitutional reform in the country [...] I encouraged him to continue the reform process, in full respect of fundamental values such as: respect of the rule of law and separation of powers and ensuring the widest possible consensus in the society. We addressed important economic topics. [...] In this context, we further talked about further improving Romania's absorption capacity in order to make better use of the existing EU funds. [...] We also

discussed the necessity to move gradually but relentlessly towards a genuine economic and monetary union. [...] In terms of Romania's aspirations to adopt the euro, we share the view that it is important for Romania to stay as close as possible to the euro area's developments in order to ensure a good preparation for it. There is progress on the convergence criteria, and now, I encouraged the Prime Minister to continue these efforts, for meeting all the necessary conditions for your euro joining later on.”[46]

Social context

The social context has also known escalating tensions on the background of the 2009 and 2010 economic redress packages (see section X.6 and X.9 below) .

On October 5, 2009, more than 800.000 public sector employees protested against the harsh austerity measures that included the freezing of the public sector bill, cut of bonuses, gradually decreasing the number of public servants, freeze of pension point, prohibition to accumulate the pensions with the salary, et al. In this sense, observers reported that: “[n]umerous offices, administrative departments and schools closed for the day. Hospitals restricted services to emergency cases. Some 15,000 workers and public servants took to the streets of Bucharest to protest, bringing traffic in the national capital to a standstill for hours.”[47] The social movement was reported as “the biggest in the country since the fall of Communism in 1989”. [48]

The 2010 austerity package, including the 25 % cut of public employers salaries, 15% cut of unemployment benefits, child raise support and numerous others social benefits, did not bring large immediate protests. These however fed the public discontent generating massive violent clashes and continued protests in January-February 2012. The protests were triggered by certain adjustment measures on the public health reform agenda but shortly transformed into countrywide protests, which gathered about 90.000 people on the streets of the largest cities in Romania, including the capital Bucharest.[49] The protests led to the resignation of the Boc Government on February 6, 2012 (see above).

[1] Permanent Electoral Authority of Romania, historic data, available at: <http://www.roaep.ro/istoric/>, consulted on 05.09.2014.

[2] For instance, the President must promulgate the laws adopted by the Parliament and may send them back for revision (Article 77, Constitution); the President designates the candidate for Prime Minister and invests the Government but based on the Parliament's vote of confidence (Article 89). The Parliament may withdraw the vote of confidence given to the Government by adopting a 'motion of censure' by majority (Article 113). The President may dissolve the Parliament (Article 89). At the same time, the Parliament may suspend the function of the President (Article 95), et al. Constitution of Romania available at: <http://www.cdep.ro/pls/dic/site.page?id=371>

[4] According to the Constitution of Romania, Article 85 (1), the President designates a candidate for Prime Minister to form a cabinet, and invests the formed Government, after the vote of confidence of the Parliament. The President is not held to designate a Prime Minister from the winning party.

[5] Parliament of Romania, Reunited chambers, 22 December 2008, stenograph vote, available in Romanian at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6564&idm=6&idl=1>, consulted on 07.09.2014.

[6] Parliament of Romania, Reunited chambers, 22 December 2008, debates on the Government agenda and members, stenograph, available in Romanian at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6564&idm=3&idl=1>, consulted on 07.09.2014.

[7] <http://www.theepochtimes.com/n2/world/romania-presidential-elections-26250.html>

[8] <http://news.bbc.co.uk/2/hi/europe/8284565.stm>

[9] The motion of censure '11 [ministers] against Romania!', of 13.09.2009. All 10 motions of censure initiated during 2008-2012 legislative period are available in Romanian at: <http://www.senat.ro/motiuniv.aspx>.

[10] For an overview of the motions of censor since 1992, see the Parliament of Romania, Senate chamber, available in Romanian at: <http://www.senat.ro/index.aspx?Sel=D8F0E028-96B4-4348-B38D-581C6B5CD19B>

[11] The initial agreement with IMF representatives was reached on March 25, 2009, the Memorandum of Understanding was drafted on April 1st 2009, a first formal Letter of intent was sent on April 24, 2009. IMF, Press Release No.09/86 of 25 March 2009, available at: <https://www.imf.org/external/np/sec/pr/2009/pr0986.htm>.

[12] IMF, First review under Stand by Arrangement, October 08, 2009, available at: <https://www.imf.org/external/pubs/cat/longres.aspx?sk=23349.0>

[13] IMF, Press Release No 09/392 of November 06, 2009, available at: <https://www.imf.org/external/np/sec/pr/2009/pr09392.htm>

[14] IMF, Country Report, Romania, p.12, available at: <http://www.imf.org/external/pubs/ft/scr/2012/cr1264.pdf>

[15] For a comprehensive analysis of the general political context before and after the elections see: Sergiu Gherghina, Election Briefing No 52, Europe and the Presidential Election in Romania, November 22-December 6 2009.

[16] Decree of the President no. 1507 of 22 October 2009, Official Journal 714/22.10.2009.

[17] Central electoral bureau 2009, final results referendum (Romanian), available at: <http://www.bec2009p.ro/rezultate-Turul%20I.html>. Currently the Parliament of Romania counts 453 members.

[18] Central electoral bureau 2009, final results presidential elections (Romanian), available at: <http://www.bec2009p.ro/rezultateP-TURUL%20II.html>. See further on motion of censure: <http://www.cdep.ro/pls/dic/site.page?id=126>.

[19] Constitutional Court of Romania, Ruling 39/2009 on the request of annulment of the results of Presidential elections of 6 December 2009, Ruling 37/2009 on the validation of the results of the

referendum, Official Journal 924/30.12.2009.

[20] Parliament of Romania, session of united chambers of 23 December 2009, vote of confidence, 276 votes for out of 470, stenograph in Romanian available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6738&idm=6&idl=1>.

[21] Parliament of Romania, session of united chambers of 23 December 2009, presentation of governance programme, stenograph in Romanian available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6738&idm=2&idl=1>

[22] First addendum to the MoU, between EU and Romania of 22 February 2010, Brussels, paras 5-6, available at: http://ec.europa.eu/economy_finance/articles/financial_operations/pdf/2010-02-25-smou_romania_en.pdf

[23] Constitution of Romania, Article 114, the Government may engage its responsibility on a programme, political declaration or legislative proposal, which may enter in force without the direct implication of the Parliament. In this case, the Parliament has three days to withdraw the vote of confidence given to the Government, by adopting a motion of censure. If no motion of censure is adopted, the programme, legal initiative or declaration is adopted and becomes binding on the Government. See further Section III.9 below.

[24] The protests were triggered by the Government intention to amend the public health law and the planned privatization of emergency services. The protests first initiated in support of SMURD (Mobile Service of Emergency and Reanimation), the public emergency service without legal personality, but rapidly spread as a general anti-Government protest all over the country. See: Presidency of Romania, Press release, January 13, 2012, (Romanian) available at: http://www.presidency.ro/pdf/date/13502_ro.pdf

[25] <http://www.ft.com/intl/cms/s/0/a6be01c6-9069-11e1-8cdc-00144feab49a.html#axzz3DHgHotOv>

[26] Parliament of Romania, United Chambers, session of 27 April 2012, Presentation of motion of censure, (Romanian), available at: <http://www.cdep.ro/motiuni/2012/1468.pdf>

[27] Parliament of Romania, United Chambers, session of 7 May 2012, Vote of investiture, steno <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7124&idm=5&idl=1>

[28] Emergency ordinances 17/2012, Official Journal 366 of 18.05.2012 and 19/2012, Official Journal 340 of 18.05.2012.

[29] It was a general political dispute; no particular interest regarding specific points on the European Council agenda was put forward.

[30] Constitutional Court of Romania, Decision 683/27.06.2012, Official Journal 479 of 12.07.2012.

[31] Constitutional Court of Romania, Decision 682/27.06.2012, Official Journal 479 of 12.07.2012.

[32] For a comprehensive sequence of the events please see: Venice Commission, Opinion 685/2012 on the compatibility with Constitutional principles and the Rule of Law of actions taken by the

Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, Adopted by the Venice Commission at its 93rd Plenary Session, pp. 4-5, (Venice, 14-15 December 2012), available at: [http://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)026-e.aspx#](http://www.venice.coe.int/webforms/documents/CDL-AD(2012)026-e.aspx#), consulted on 05.09.2014.

[33] Parliament of Romania, Decision of United Chambers No 32 of 03.07.2012, Decision of the Senate No 24 of 03.07.2012, Chamber of Deputies No 25 of 03.07.2012.

[34] Emergency Ordinance 38/2012 on the amendment of Law 47/1992 on the Organisation and Functioning of the Constitutional Court. By Decision 727 of 09.07.2012 the Constitutional Court declared the emergency ordinance unconstitutional; as well the law approving the emergency ordinance by Decision 738 of 19.09.2012 was found unconstitutional.

[35] Emergency Ordinance 41/2012 on the amendment of Law 3/2000 on referendum.

[36] Parliament of Romania, Decision of United Chambers No 33 of 06.07.2012.

[37] Central electoral bureau on referendum 2012, final results (Romanian) available at: <http://www.becreferendum2012.ro/DOCUMENTE%20BEC/Rezultate/rezultat.pdf>

[38] Ruling No 6 of 21.08.2012, Official Journal 616 of 27.08.2012. According to prior Decision 731 of 10.07.2012, the Court held that the modified provisions of the referendum law are still to be interpreted in the sense that 50% plus one quorum has to be met.

[39] Ibidem.

[40] Venice Commission, Opinion 685/2012, available at: [http://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)026-e.aspx#](http://www.venice.coe.int/webforms/documents/CDL-AD(2012)026-e.aspx#), consulted on 05.09.2014.

[41] European Commission, 'Statement by the European Commission on Romania' Brussels, 6 July 2012, available at: http://europa.eu/rapid/press-release_MEMO-12-529_en.htm.

[42] Central Electoral Bureau 2012, Parliamentary elections final results for Chamber of Deputies and Senate, available at: <http://www.becparlamentare2012.ro/rezultate%20finale.html>

[43] Parliament of Romania, United Chambers Session of 21.12.2012, Vote of confidence to the Government, stenogram (Romanian) available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7184&idm=5&idl=1>

[44] Parliament of Romania, United Chambers, session of March 5, 2014, decision on the modification of the composition of the Government, stenogram (Romanian), available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7356&idm=3&idl=1>

[45] Central Electoral Bureau, Presidential elections 2014, available at:

<http://www.bec2014.ro><http://www.bec2014.ro>

[46] European Council, Press release, Bucharest, April 25, 2013, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/136946.pdf

[47] <http://www.wsws.org/en/articles/2009/10/roma-o12.html>

[48] Ibidem.

[49] Besliu, Raluca, 'Honour and Solidarity: the 2012 Romanian Protests', available at: <http://politicsinspires.org/honour-and-solidarity-the-2012-romanian-protests/>

II - Changes to the Budgetary Process

BUDGETARY PROCESS

II.1

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

The Romanian state budget is adopted on an annual basis by the Parliament acting by simple majority on the proposal of the Government.

According to Article 138 of the Romanian Constitution, the national budget includes the state budget, the state social security budget and the budgets of the administrative-territorial units. Yearly, by August 15, the Government sends the Parliament the fiscal strategy for the next three years together with a legislative proposal on spending ceilings obligatory for the reference budgetary year and the next two years for approval (Even if the Parliament should adopt the law on budgetary ceilings before the budget laws, in practice all the laws are adopted on the same date). The state budget together with the state social security budget proposal drafted by the Government is forwarded to the Parliament by November 15. The Parliament approves the state budget laws by simple majority. In case the budget law is not approved by mid-December, the Government must demand the examination of the budget law in the emergency procedure. If the Parliament fails to reach an agreement on the budget laws three days before the start of the next budgetary year (by December 28) the old budget is applied until the adoption of the new budget. As well, the Constitution of Romania provides at Article 138 (5) that no budgetary expense may be approved without a pre-established financing source (section IX.4 below).

Law 500/2002 on public finances, as amended in 2013 (the 'Public Finances Law') further regulates the state budget and the state social security budget.^[1] The budget of the administrative territorial units is drafted and approved on an annual basis on the local level, according to the principle of local fiscal autonomy, as regulated by Law 273/2006 on local public finances (the 'Local Public Finances Law').^[2] Since 2010, the state and local budget proposals must take into consideration and adapt accordingly the national fiscal strategy pursuant to Law 69/2010 on fiscal-budgetary responsibility (the 'Fiscal Responsibility Law', see section II.2 below).^[3]

The three legal frameworks are closely inter-connected. On the one hand, the Public Finances Law (law 500/2002) and the Local Public Finances Law (Law 273/2006) establish the general rules of state and local budgets formation, administration, elaboration, execution, actors involved and their responsibilities (Article 1 thereof). On the other hand, the Fiscal Responsibility Law (Law 69/2010) complements as of 2010 both the Public Finances law and the Local Public Finances Law, establishing the medium and long-term fiscal discipline principles and laying down the multiannual fiscal framework and spending ceilings within which the latter two operate (Article 1, Fiscal Responsibility Law).

The budgeting system of Romania resembles the Italian and French ones.^[4] The Government, through the Ministry of Public Finance is the institution responsible for the realisation and coordination of national fiscal budgetary policy. The actors in charge of budgetary execution are organised in a three-layered system and are classified in primary, secondary and tertiary ordinateurs

(credit holders). The primary ordinateurs are the actors designated by law to dispose of and/or approve the public funds expenditure. On the central level the primary ordinateurs are usually the heads of Ministries and other central public or autonomous authorities, whereas on the local level the primary ordinateurs are the Mayors and Presidents of local councils. The secondary ordinateurs are the heads of public institutions with legal personality in the subordination of the primary ordinateurs, while tertiary ordinateurs are the heads of public institutions with legal personality in subordination of primary or secondary ordinateurs. The primary and secondary ordinateurs are entitled to assign and use the budgetary resources, whereas the tertiary ones may only use the funds allocated.[\[5\]](#)

The budget process combines a top-down and bottom-up budgeting approach.

First the Government, through the Ministry of Public Finance, centralises the overall goals of the national budgetary frame, based on fiscal policy and macroeconomic and social estimates on the reference budgetary year and next three years (t- the reference year and t+3) provided by the National Prognosis Commission. The National Prognosis Commission is a specialised body under the subordination of the Ministry of Public Finances since 1993, in charge of the economic and social strategy planning as well as harmonisation of the national developments with EU provisions and recommendations (please refer further to section VII.4 below).[\[6\]](#) Based on the above benchmarks, the Ministry of Public Finance drafts the annual state budget laws, fixing the spending ceilings for the reference budgetary year (t) and the estimates for the next two years (t+3) and submits it to the Government (Article 20 (1) Fiscal Responsibility Law).

In the second stage, the Ministry of Public Finance sends a framework letter to the primary ordinateurs informing them on the macroeconomic estimates and ceilings within which their respective budgets are to be drafted. The primary ordinateurs send the budget proposals to the Ministry of Public Finances, which analyses their consistency with the set macroeconomic estimates, ceilings and fiscal-budgetary strategy. In a final stage, the consolidated state budget is sent to the Government and subsequently to the Parliament for approval. The local budgets are approved at the local level.

The state budget laws may be amended later on a maximum of two times during the budgetary year but exclusively during the last six months (Article 15(2) Fiscal Responsibility Law).

As of 2013, the law on public finances expressly states that the Medium Term Budgetary Framework (the 'MTBF') is the basis for the annual budget (Law 500/2002, Section 1-1). The MTBF follows closely the macroeconomic and budgetary estimates of the European Commission. Any change in the MTBT shall be highlighted in the annex to the annual budget proposal and dully justified (Article 30-2 (3) Public Finance Law).

Given the frequent Government changes noted in the past, the 2013 amendment stipulates that in case of Government change the MTBF may be updated according to the new governance priorities, however the changes shall be detailed and clearly stipulated (Article 30-5 (3) Public Finance Law). As well, in response to long electoral periods registered in the past, in case parliamentary elections are scheduled in the last three months of the annual budgetary period (October-November) the budget must be adopted before (Article 35-1 Public Finance Law).

The annual budgetary calendar corresponds to the following cycle:

The calendar of budget formulation^[7]

1 June	National Prognosis Commission provides preliminary macroeconomic forecasts for the reference budgetary year together with estimates for the next three years (Art. 31 Public Finance Law).
31 June	Ministry of Public Finances submits proposed spending frames and ceilings for the next budgetary year together with the estimates for the next two years to the Government for main political discussions and approval (Art. 32 Public Finance Law).
31 July	The Ministry of Public Finances submits the Fiscal Budgetary strategy for the next three years to the Government (Art. 18 Fiscal Responsibility Law)
1 August	Ministry of Public Finance sends primary ordinateurs a framework letter on macroeconomic context, the methodology for drafting the budget and the expenditure ceilings approved (Art. 33 (1) Public Finance Law).
	The ceilings may be modified based on autumn macroeconomic forecast of National Prognosis Commission before November 1 st (Art. 33 (2) of Public Finance Law).
15 August	The Government sends the Parliament the Fiscal Budgetary strategy for the next three years together with a legislative proposal on ceilings obligatory for the reference budgetary year and the next two years for approval (Art. 18 and 20, Fiscal Responsibility Law)
1 September	Primary ordinateurs submit budget proposals to the Ministry of Public Finance within the limits of ceilings for the planned budgetary year and the estimates for the next three years (Art. 34 (1) Public Finance Law).
	If the primary ordinateurs do not adjust the budget proposals to the macroeconomic estimates, methodology and fiscal-budgetary strategy, the Ministry of Public Finance may reject the budget proposal (Art. 34 (4) Public Finance Law).
15 September	Primary ordinateurs resend the adapted budgets to the Ministry of Public Finance (Art. 34 (5) Public Finance Law).
30 September	Ministry of Public Finance Prepares and submits to Government the final draft budget for first reading (Art. 35 Public Finance Law).
	The budget proposal is accompanied by the Report on macroeconomic situation for the planned budgetary year and its projection for the next three years, including the Government strategy on public investment.
1 November	Revision of the final draft budget in the view of autumn macroeconomic and social estimates of National Prognosis Commission. (Art. 35 Public Finance Law).
15 November	Submission of draft budget to Parliament (Art. 35 Public Finance Law).
By 28 December	Final approval of budget by Parliament (Art. 36 Public Finance Law).

Source: Public Finance law 500/2002 as amended in 2013

GENERAL CHANGE

II.2

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

Since the entry into force of the Public Finance Law in 2002, twenty out of twenty two amendments were introduced during the crisis period (from 2009 to 2014). Moreover, the Fiscal Responsibility Law introduced in 2010 added to the changes of the budgetary process, introducing a strategic long-term approach to fiscal policy.

Fiscal responsibility

The first substantial change of the Romanian budgeting system since the beginning of the financial crisis is the introduction of the Fiscal Responsibility Law (Law 69/2010).^[8] The law was adopted in late 2010 and responded to the main challenges identified by the 'troika': lack of independent monitoring, absence of a strong multiannual fiscal strategy, poor fiscal targets enforcement and weak fiscal rules. ^[9]

Therefore, the Fiscal Responsibility Law first puts in place an independent Fiscal Council to ensure the monitoring function. For further reference on the Fiscal Council see section VII.5 below.

Secondly, a multiannual fiscal strategy stage is introduced. As highlighted in the budgetary calendar above (section II.1), the Government by August 15 submits the fiscal budgetary strategy for the next three years on an annual basis to the attention of the Parliament (Article 18 Fiscal Responsibility Law). Furthermore, the Government approves annually a legal proposal on budgetary ceilings for the reference budgetary year and the next two years to be adopted by the Parliament (Article 20 Fiscal Responsibility Law).

Third, in drafting the annual budget laws the Government must take due account of the fiscal budgetary strategy. At the same time, the primary ordinateurs must line up their budget proposals with the budgetary strategy and macroeconomic estimates communicated by the Ministry of Public Finance subject to the sanction of rejection of the budget proposal in case of failure to do so.

Fourth, strict fiscal discipline rules were introduced, backed by responsibilities and sanctions (Fiscal Responsibility Law 69/2010 Section XI, therein).

Multiannual budget planning, budget calendar, budgetary amendments

A stronger emphasis on the multiannual budgetary planning has been included as of 2010, in the form of a multi-annual fiscal strategy (Article 5, Fiscal Responsibility Law). Later in 2013 an express medium term budgetary framework has been introduced, to line up the national and EU budgetary frameworks (Section 1-1 Public Finances Law). The budgetary calendar substantially changed to allow a proper incorporation of European Semester recommendations (Section 2 Public Finances Law). A complete transition towards the European Account System (EAS) in budget planning and reporting, notably for the public deficit calculation was adopted (Art 7-1 Law Public Finances Law).^[10]

In terms of budgetary stability, the new legal framework limits the amendments of the budget laws to two budget rectification yearly, both allowed only in the second part of the budgetary year. Further rectifications may be included only in situations of extraordinary macroeconomic

imbalances.

Please refer for further details to section VII.8 below.

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?

Parliament

As of 2010 the Parliament is mandated to adopt on a yearly basis the law on fiscal-budgetary ceilings for the next budgetary year on the proposal of the Government (Article 18(2)(2-1) Fiscal Responsibility law). As such the spending caps are binding as provided by law and must be observed by the Government and the primary ordinateurs. In practice, since the introduction of the mechanism, the law on fiscal-budgetary ceilings and the budget laws have been adopted at the same time shortly before the start of the next budgetary year, contradicting the rationale behind the established mechanism.

Government

The Government has undertaken most of the economic reform responsibilities, which enlarged implicitly its sphere of competences.

As such, the Government, through the Ministry of Public Finances elaborates since 2010 yearly the fiscal-budgetary strategy and the report on macroeconomic and social estimates for the next three years. As well the Government establishes annually the ceilings for budgetary spending for the reference budgetary year and the next three years (Article 18(1)-(2-1) Fiscal Responsibility law). It is also for the Ministry of Public Finances to draft and observe the implementation of the National Convergence Programme (see section VII.2 below).

Investment Monitoring Unit and National Reporting System

An Investment Monitoring Unit was set up within the Ministry of Public Finances as of 2013 within the direct subordination of the Delegated Minister for the Budget, enforced by Emergency Ordinance 88/2013, Chapter II. The Unit has as main tasks to prioritise and evaluate and provide expert advice on public investment policies as well as to monitor the sound implementation of the national investment projects.[\[11\]](#)

As well a general national system of verification, monitoring, reporting and control of the financial statements, legal commitments and budgets of public entities has been put in place by Emergency Ordinance 88/2013, Chapter I (National Reporting System). The Ministry of Public Finances centralises and coordinates the implementation and operation of the national system. The system supports the availability and accuracy of data, as the primary ordinateurs are obliged under the contraventional sanctions to report systematically the data on budgetary-fiscal activity.

Fiscal Council[\[12\]](#)

The Fiscal Council was established in mid-2010 and further strengthened in 2013 (Law on fiscal

Responsibility). Please refer to section VII.5 below.

CHANGE OF TIME-LINE

II.4

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

See also section VII.8 below.

The implementation of Euro-crisis law changed substantially the prior budgetary cycle time-line. The budget calendar has been adapted to allow a better coordination between the budgeting process on the one hand and the National Reform programme, the National Convergence programme and the European Semester on the other hand.

Since the 2013 reform, the budgetary cycle starts two months later. On 31 June (priorly May 1st) the Ministry of Public Finances submits the spending ceilings and MTBF to the Government to allow the implementation of country-specific recommendations of the European Commission (Section 2 - 'Budgetary calendar', Law on Public Finances).

Annually until August 1st (instead of 1st of June) the Ministry of Public Finance sends primary ordinateurs a framework letter on the macroeconomic context, the methodology for drafting the budget and the expenditure ceilings approved. The shift allows for the implementation of the June-July Country Specific recommendations of the European Semester. Finally, the Budget laws proposals are sent to the Parliament by November 15 instead of 15 October to allow a proper consideration and implementation of October-November Council Resolutions.

MISCELLANEOUS

II.5

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

See also section VII.8 below.

[1] Law no. 500/2002 on Public Finance as amended by law 270/2013, available (Romanian) at: <http://www.mfinante.ro/legisbuget.html?pagina=domenii>

[2] Law no. 273/2006 on Local Public Finance, available (Romanian) at: <http://www.mfinante.ro/legisbuget.html?pagina=domenii>

[3] Law no. 69/2010 on Budgetary-Fiscal Responsibility as amended by law 377/2013, available in English at: <http://www.fiscalcouncil.ro/legea.htm>

[4] OECD Journal on Budgeting Volume 4, No 4, Budgeting in Romania, 2005, available at: <http://www.oecd.org/countries/romania/39997341.pdf>

[5] Law no. 500/2002 on Public Finance as amended by law 270/2013, available (Romanian) at:

<http://www.mfinante.ro/legisbuget.html?pagina=domenii>.

[6] See further the official page of the National Prognosis Commission: <http://www.cnp.ro/en/organizare>

[7] Source: Law no. 500/2002 on Public Finance as amended by law 270/2013, Articles 31-37, available (Romanian) at: <http://www.mfinante.ro/legisbuget.html?pagina=domenii>

[8] Available in English at: <http://www.fiscalcouncil.ro/legea.htm>

[9] European Commission, Fiscal Frameworks across member states, Occasional Papers 91, February 2012, pp. 60-61, available at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp91_en.pdf.

[10] Law 500/2002 on Public Finances, as amended in 2013

[11] Public Investment Unit act of organization, available in Romanian at: http://discutii.mfinante.ro/static/10/Mfp/rof2013/4_1_674_2013.pdf

[12] See also the official page of the Fiscal Council, available at: <http://www.fiscalcouncil.ro/index.html>

III - Changes to Constitutional Law

NATURE NATIONAL INSTRUMENTS

III.1

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

Euro-crisis law has primarily been implemented through ordinary legislation (e.g. the Fiscal Responsibility Law). In some cases, the Government adopted the implementing legislation using the Emergency Ordinance procedure adopting legal acts with the same power as ordinary laws issued by the Parliament, subject to the subsequent approval of Parliament. In other cases, the Government subjects measures to a confidence vote procedure (see on this procedure in Romania section III.9) before the united chambers of the Parliament for the legislative proposals, thus enabling the Parliament to approve the act before coming into force, but without the possibility to amend it, only to approve or reject it. In both instances the adopted acts have the legal force of an ordinary law in the national legal system, being assimilated to the 'law' as normative act of the Parliament.

Please refer to section III.9 below.

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?

Two constitutional revisions were initiated during the crisis period - in 2011 and 2014. The 2014 constitutional revision proposal is currently pending in the Parliament.

On the political context of these revision proposals, see section I above.

The first, 2011 constitutional reform was initiated by the President on the proposal of the Government after the positive results of the consultative referendum of November 22, 2009 on transition to unicameral parliament and reduction of MP seats to a maximum of 300. The President, exercising the attributes stipulated in Article 90 of the Constitution, initiated the referendum.^[1] As the referendum was only a consultative one, a revision of the constitution had to be initiated to enforce its results (see section III.4 below). The constitutional legislative project of 2011 did not limit the revision proposal to the number of Parliament chambers and seats, but put forward an extensive constitutional reform, intending the amendment of more than 60 articles out of the current 156.^[2]

Several proposed amendments are relevant from a Euro-crisis law perspective.

First, on Article 138 - 'National public budget' the amendment proposed the change of paragraph 2 as follows: 'The Government prepares the drafts for the State budget and for the State social security budget on an annual basis, which are submitted to the institutions of European Union after informing the Parliament on their content'.^[3] [author's translation from Romanian].

Second, the inclusion of a new Article 138-1 entitled 'Financial policy' was proposed to enshrine the

balanced budget principle at the constitutional level. It reads:

'(1) The State must avoid an excessive budget deficit. The budget deficit cannot be higher than 3% of GDP and public debt may not exceed 60% of domestic GDP.

(2) Foreign loans may only be contracted in the area of investments.

(3) In the event of a natural disaster or exceptional situations with negative impact on public finances, the maximum ceilings set out in paragraph (1) can be exceeded, with the consent of the majority of Members of Parliament, only if the excess can be compensated up to a period of three years.

(4) Notwithstanding the provisions of paragraph (2) to prevent consequences of natural disaster or other serious disasters, with the consent of the majority of members Parliament other foreign loans can be contracted.' [author's translation from Romanian].

The Constitutional Court exercised an ex officio constitutional review of the 2011 legal proposal, pursuant to Article 146(1) a) of the Constitution.[\[4\]](#)

The Court found the proposed amendment of Article 138, regarding the obligation to submit the draft budgets to the European Institutions "excessive and redundant".[\[5\]](#) The Court criticised the opportunity of constitutionalising the sole obligation of 'submitting' the draft budgets to the EU Institutions and held that as a full member of the EU Romania exercises together with other Member States the competences delegated to the EU pursuant to the founding treaties and no further regulation at the constitutional level was necessary in this respect.[\[6\]](#)

When it comes to the Balanced Budget provision of the proposed Article 138-1, the Court found that the provisions are constitutional and necessary as they re-state the obligations undertaken by Romania under the Stability and Growth Pact; equally, the Court notes that the obligations are part of the Treaty on the Functioning of the European Union and Article 126 thereof, as well as Protocol 12. Most importantly, the Court found that the proposed provisions do not infringe Article 152 on the limits of revision that prohibit any revision of the provisions touching upon the independent character of the Romanian state.[\[7\]](#)

The Chamber of Deputies rejected the aforementioned constitutional review project in May 2013 due to lack of political support.[\[8\]](#) The proposal, as emanating from the former Boc Government (PDL) and the President was highly unpopular with the governing coalition (at the time USL) and did not get the necessary constitutional law quorum (two thirds of the MPs) therefore it was not submitted to a referendum according to Article 151 (1)-(3) of the Constitution.

In February 2013, another constitutional reform was initiated. This time, the reform was supported by the majority coalition (USL). A Commission on the revision of the constitution was set up to draft the constitutional legislative proposal.[\[9\]](#) Onwards a constitutional forum was set to ensure a transparent process of public consultation.[\[10\]](#)

In 2014 the legislative proposal was formally registered with the Parliament, the Senate - the first Chamber invested with the constitutional reform legal project.[\[11\]](#) Compared to the 2011 revision project, the 2014 proposal has a wider scope, envisaging 128 amendments touching upon the vast

majority of the Constitutional provisions currently in force.[\[12\]](#)

The priorly proposed Article 138-1 'Financial policy' proposing the constitutionalisation of the Balanced Budget principle was not kept in the 2013 constitutional proposal.

The proposed amendment of Article 138 (2), which attempts the constitutionalisation of the obligation of the Government to submit the annual budget law proposal to the EU Institutions has maintained the same formulation: "The Government prepares the drafts for the State budget and for the State social security budget on an annual basis, which are submitted to the institutions of European Union after informing the Parliament on their content." [author's translation from Romanian][\[13\]](#)

In February 2014, the Constitutional Court exercised an ex officio control of the new proposal on the revision of the Constitution. The Court re-stated its 2011 reasoning on Article 138 (2), concluding that the amendment appears "excessive and redundant".[\[14\]](#)

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 1991 Constitution of Romania, as revised in 2003 and currently in force, contains only one provision coming close to a balanced budget rule stated in art. 138 (5): "no budgetary spending can be approved without establishing the financing source".

In 2011, a constitutional amendment proposing the inclusion of a Balanced Budget Rule, enjoyed the favourable opinion of the Constitutional Court in 2011, however the project did not pass in Parliament. The Budget Balance Rule was implemented by national ordinary law in 2013. See section II.2 above and section IX.4 below.

Constitutional provisions on an independent budgetary council are neither present nor have they been envisaged by the two constitutional reform proposals (section III.2 above). The Fiscal Council established in mid-2010 is part of Euro-crisis law in Romania, but was not introduced into the Constitution (please refer to section VII.5 below).

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

According to Title VII of the Constitution of Romania, the revision of the Constitution may be initiated by the President on the proposal of Government, by two-thirds of the deputies or senators or by 500.000 citizens with voting rights. The project is submitted to the two Chambers of the Parliament (Article 150). These may adopt the proposal by two thirds of the members of each Chamber (Article 151 (1)). In case of dissent on the content of the revision proposal the United Chambers may adopt the revision proposal with a three-fourths majority (Article 151 (2)). The revision is final after the approval of the Romanian citizens by referendum, organised in the next 30 days following the decision of the Parliament (Article 151 (3)).

Article 152 enshrines the limits of constitutional revision. Pursuant to the article, the constitutional provisions on the “national, independent, unitary and indivisible character of the Romanian state, republican form of government, territorial integrity, independence of justice, the political pluralism and official language” may not form the object of revision. Equally, any revision that would hamper the fundamental rights and liberties as guaranteed by the Constitution is prohibited. The revision is also not allowed during a state of emergency and other crisis situations.

The present Constitution of Romania was adopted in 1991 and has been amended once since, in 2003, in the view of accession to the European Union (the ‘EU’) and to the North Atlantic Treaty Organization (the ‘NATO’).[15]

Since the start of the crisis, there were two different constitutional revision projects, none of them adopted until the present stage (see sections III.2 above).

The broad genesis of the two constitutional revisions is found in the political instability and rivalry between the central political institutions that culminated with several severe constitutional crises in the last decade.

As already mentioned above (section I), the constitutional architecture of Romania lays down a challenging avenue for political institutions when on different sides of the political spectrum. One should mention the suspension of the President in 2007 and 2012, the constant conflicts between the Parliament and the Government that led to multiple Government changes, the political unrest between the President and the Parliament and the present open conflict between the President and the Prime Minister (the forthcoming presidential elections of November 2014 are highly important in this sense).[16] In this context, the Constitutional Court exercised the role of an ‘arbiter’ being called to rule on the conflicts of constitutional nature and of a legal nature more than sixteen times from 2008 to 2013.[17] Recently, in May 2014, the Court has been called again to mediate the claimed constitutional conflict between the President and the Prime Minister.[18]

On the political context, please refer to section I above.

Beyond the broad background context, each revision was triggered by specific circumstances.

The first constitutional review project was fed by the positive results of the 2009 referendum, initiated by the President. The President consulted the Romanian people on the reform of the Parliament. The reform of the Parliament as an institution proposed a double limitation. First a limitation of the Chambers - from a bi-cameral to a unicameral Parliament; second, the limitation of the seats to 300 (of the current number of 584). After the positive results of the referendum on both limits, a constitutional revision was then initiated by the President on the proposal of the Government. During the process, the legislative project on the revision of the constitution reached a much larger scope than that of merely implementing the referendum results, including the constitutional provisions on financial and budgetary policy, presented in section III.2 above.

The second constitutional review was initiated by the USL parliamentary majority in response to the major constitutional crisis of July 2012, described in section I above. Following the recommendations of international and EU institutions, notably the Council of Europe’s Venice Commission,[19] the European Commission[20] and the European Council,[21] the 2012 USL Government put the constitutional revision on top of the agenda. The revision was also fed by the USL Government

territorial decentralisation reform project and the inclusion of the 'region' as a territorial-administrative unit to complete the existing ones: the county, the town and the commune.[\[22\]](#) The USL parliamentary majority supported the Government's agenda. The constitutional legislative proposal is currently pending in the Parliament, more specifically in the Senate, awaiting the report of the specialised Committee on the revision of the constitution.[\[23\]](#)

As seen above (section III.2), in the context of both projects for the revision of the Constitution the euro-crisis amendments have a rather ancillary nature, especially in the text of the last 2014 project. The main discussions and public debates are centred upon an equilibrated political institutional architecture and the sensitive territorial-administrative organisation issue.

It must be stressed that following the USL coalition's fall in February 2014, there is currently no clear qualified parliamentary majority to support the constitutional review. As well, in April 2014 the Constitutional Court declared the proposed project unconstitutional in more than twenty-four instances.[\[24\]](#)

RELATIONSHIP WITH EU LAW

III.5

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

For the time being, there is no constitutional amendment adopted after 2003. The 2013 constitutional revision process presented in section III.2 and III.4 above is currently at an incipient stage. The final revision and approval by referendum shall take substantial time, depending greatly on political support. The Constitutional revision project contains relevant elements concerning the relationship between EU law and national law.

Namely, a proposal regarding the change of Article 148 'Accession to the European Union' dealing with the relationship between national and European law was listed (the so-called 'accession clause'). The change is meant to update the constitutional provision and formalise the EU Member State status of Romania, as of January 1st 2007 (the 'membership clause').

The proposal puts forwards the following changes:

Constitution of 1991 revised in 2003	Constitution revision proposal 2013
Title VI 'Euro-Atlantic Integration'	Title VI 'The Membership of Romania to the European Union and North Atlantic Treaty Organization'
Article 148 Integration into the European Union	Article 148 Integration into the European Union
(1) Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out by means of a law adopted in the joint sitting of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.	(1) Ratification of the treaties that amend or complete the constituent treaties of the European Union and the treaties through which The North Atlantic Treaty is modified or supplemented, is made by a law passed in a joint session of the Chamber of Deputies and the Senate, by a vote of two thirds of the Deputies and Senators.

(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws , in compliance with the provisions of the accession act.	(2) Romania shall ensure compliance, within the national legal order , of the European Union law obligations under the Act of Accession and the other treaties signed in the Union.
(3) The provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.	
(4) The Parliament, the President of Romania, the Government , and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.	
(5) The Government shall send to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval.	

Source: Proposal L233/07.04.2014 and Article 148 Constitution [author's translation from Romanian]

As to the substance of the amendment, the proposed amendment of Article 148 paragraph 2 was seen by the Constitutional Court as changing fundamentally the relationship between national constitutional law, on the one hand and EU law, on the other. As such, by decision 80/2014, the Constitutional Court declared the proposed amendment unconstitutional as being contrary to the provisions of Article 152(2) of the Constitution - 'The limits of revision': "no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof". [\[25\]](#)

In fact, the current Article 148 paragraph 2 states that the EU treaties and other binding EU law provisions: "shall take precedence over the opposite provisions of the national laws". The proposed revision does not retain the formulation "national law" stating at the general level that: "Romania shall ensure compliance, within the national legal order, of the European Union law obligations". As such, the proposed text encloses in the notion 'national legal order' also the Constitution and the provisions thereof. The change was considered problematic by the Constitutional Court. In this sense it held that:

"461. Therefore, to accept the new wording proposed at Article 148 (2) would amount to the creation of necessary premises allowing the limitation of the jurisdiction of the Constitutional Court, in the sense that the only acts that are adopted in areas not subject to the transfer of competences to the European Union would still be subject to constitutional review, whereas the normative acts [...] adopted in the areas of shared competences, would be subject exclusively to the legal order of the European Union, being excluded from constitutional control. Nevertheless, irrespective of the area of legal acts, they must respect the supremacy of the Constitution of Romania, according to Article 1 para. (5).

462. Therefore, the Court finds that such a change would constitute a restriction of the citizens right to constitutional justice, to defend certain constitutional values, rules and principles, namely the suppression of a guarantee of these constitutional values, rules and principles, which also include the sphere of rights and fundamental freedoms." [author's translation from Romanian, Decision 80/2014, published in Official Journal 246 of 07.04.2014]

Other proposed provisions of the Article 148 'membership clause' remain substantively largely the same, however the framing is more succinct and general, compared to the prior explicit and detailed formulation. As well, the reference to specific institutions is avoided (see comparative table above).

More specifically:

The amendment of the first paragraph is imminent. Currently it has no legal value for the future of Romanian constitutional law, because it refers to the process of accession, which already took place in 2007. Equally, the proposed provisions retain the qualified majority rule (two thirds of the MP's) for the ratification of treaties that amend or complement the constituent treaties of the European Union.

The provisions of the current paragraph 3 are included in the proposed paragraph 1.

The provision of paragraph 4, mandating the Government to send to Parliament the draft of binding acts before their submission to the EU institutions is repealed. However, the Parliament is still consulted based on the subsidiarity principle enshrined in the Protocol 2 as included by Lisbon treaty.

For the time being, the constitutional revision project is still pending in the Parliament, subject to further substantive revisions and debates. As soon as a final formulation of the revision proposal is reached, and possibly after another constitutional review, the law on the revision of the constitution shall be eventually submitted to a national referendum.

ORGANIC LAW

III.6

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

The Romanian legal system provides for three categories of laws: constitutional, organic and ordinary. The constitutional laws concern the revision of the Constitution, are adopted by qualified majority of two-thirds of the members of each Chamber of the Parliament and are subject to subsequent approval by referendum. The organic laws are adopted by absolute majority - the vote of fifty per cent plus one of the members of each Chamber. The ordinary laws are adopted by simple majority - of fifty per cent plus one of the present members of each Chamber (Constitution of Romania Articles 73 and 76).

The euro-crisis law implemented by Romania did not fall into the areas of organic law as regulated by Article 73 (3) a)-s) of the Constitution. The law related to the Euro-crisis has primarily been implemented through ordinary legislation.

In some cases, the Government adopted the legislation by emergency ordinance procedure (see section III.9 below), adopting legal acts with same power as ordinary laws issued by the Parliament, subject to the subsequent approval of Parliament (Article 115(4)-(5) Constitution).

In other cases, the Government 'assumed responsibility' by subjecting measures to a confidence vote procedure before the United Chamber of Deputies and the Senate for legislative proposal (Article 114 Constitution). Thus, the Parliament was left with two options: either tacitly accept the act before

its entry into force, without the possibility to amend it or dismiss the Government by adopting a motion of no confidence (see section III.9 below).

The bills adopted according to the above mentioned special legislative procedures are assimilated to the laws as legal acts of the Parliament and have the same legal force, even if of different types:

- Laws adopted by the Parliament (Article 76 Constitution);
- Government Emergency Ordinances adopted by the Government through legislative delegation, subsequently approved by Parliament (Article 115 (4) Constitution);
- Laws adopted by the Parliament on Government proposals after the Government 'assumed responsibility' (that is, subjects measures to a confidence vote procedure), without the possibility for the Parliament to amend the proposals (Article 114 Constitution).

CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

III.7

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

For the time being, there is no constitutional amendment adopted after 2003, by consequence there is no amendment in relation to Euro-crisis law or the budgetary process. All the ordinary legislation adopted in relation to Euro-crisis law or the budgetary process is referred to and discussed in the answers given to the following questions at section X below.

The 2013 amendment of the Fiscal Responsibility ordinary law introduced the Balance Budget Rule (see section IX.4 below), however the relating constitutional amendment proposed in 2011 was not kept in the 2014 constitutional revision proposal.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

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

The political debates regarding the legal instruments for the adoption of euro-crisis law were widely framed around two special procedures - emergency ordinances and so-called 'engagement of responsibility' - used by the Government to pass legislation on the austerity measures. The euro-crisis legislation adopted according to the two mentioned procedures was equivalent to ordinary law as the bills did not fall within the area of organic law (Article 73 Constitution).[\[26\]](#)

Please see also section III.9 below.

The ordinary legislation was seen as implementing Euro-crisis law. The state institutions, including the President, the Government, the Parliament and the Constitutional Court stated expressly and all accepted the economic redress multilateral programme and the adjustment legislation as emanating from the International Financial Institutions, notably the IMF. The link with the EU was not so clearly emphasised. All Governments invested after the multilateral loan was contracted by Romania in 2009 stated their political commitment to the obligations undertaken under the financial assistance agreements with the IMF, World Bank and European Commission. The Constitutional

Court further qualified the economic instabilities as a serious threat to national security. As such, the agreement with the International Financial Institutions and the European Commission was considered necessary to address this threat.[\[27\]](#)

When passed by ordinary legislative procedure the fundamentation note (document supporting the legal proposal stating the legal, political, economical considerations for adopting a legal act) of the legal proposals expressly stated the Euro-crisis measures as the reason for legislative intervention – as was for instance the case of the 2013 reform of the Public Finances law and Fiscal Responsibility law (see section II above).

The parliamentary debates during the 2009-2012 period usually expressed the discontent of the opposition regarding the austerity measures adopted without consultation of the Parliament.[\[28\]](#) One could mention, for instance, the constitutional conflict between the Parliament and the Government on the education law, passed by the so-called ‘responsibility engagement procedure’ (see section III.9) even if the law was under parliamentary debate.[\[29\]](#) The opposition’s criticism also addressed the choices of the Government, as for instance the cut of salaries and pensions. One of the many reasons for dismissal in April 2012 of the Government led by Prime Minister Ungureanu was the Government’s engagement to adopt the Fiscal Compact without due consultation of the Parliament (on the Fiscal Compact see section IX below).[\[30\]](#) It must be stressed that the critiques were mainly political as none of the emergency ordinances were overturned by the Parliament in an ex post legislative control. This confirms the conclusion that the Romanian politicians usually see the Euro-crisis law as mandatory, without stressing the constitutional balance between national prerogatives and EU authorities.[\[31\]](#) This state of facts has multiple causes, one of them being the dependency of Romania on the EU financial support. Also, in a country subdued by constant political ‘battles’ between the President and the former opposition (see section I above), every one of the main political figures saw an opportunity to gain advantage by winning the popularity and support of the western leaders. After the parliamentary elections of December 2012, the USL coalition got an overwhelming parliamentary majority. As the Government and the parliamentary majority were on the same side of the political spectrum, Euro-crisis legislation was increasingly passed directly through Parliament from 2012 onwards, however the emergency ordinances culture is still frequently practiced as it is so deeply rooted in the Romanian decision making modus operandi.

As for the general public perception, in Romania there was no relevant wider public debate regarding the adoption of Euro-crisis law or the appropriate legal instruments to be employed. Generally, before the first austerity package measures were agreed with the IMF and the MOU with the EU, both in 2009, public opinion was largely unaware of the euro-crisis threat. During the parliamentary electoral campaign of 2008 citizens were reassured that Romania was not in crisis. The harsh economic adjustment measures of 2009 and 2010 came as an avalanche for public opinion followed by a dramatic fall of popularity in the polls of the President and the PDL Government.

In Romania usually the national leaders were seen as the ones to blame. As such, there was no strong public opinion questioning the decisions taken at the EU level. The EU and the International Financial Institutions were seen as the solution for the mistakes of the Government.

Even if slightly in decline during the deepest economic downturn Romanian public opinion remained supportive when it comes to EU. The spring 2014 Eurobarometer shows that Romania is the Member State with the highest raise in trust towards the EU compared to the 2013 period

(+10%).[\[32\]](#) Similarly, the public perception on the image of the EU has improved by 12% - again, the highest score compared to other EU Member States.[\[33\]](#) On the other hand, the perception of the national employment and economic avenues is constantly pessimistic.[\[34\]](#) The contrast in public perception when comparing the EU and national situation was examined in a recent study, which explains that: “[t]he paradox is only apparent and it can be explained by one distinctive feature of the Romanian public opinion. Since EU accession, Romanians have pictured the EU as a saviour and as a safe haven. This frame still lingers in the collective memory, fuelled by a chronic discontent with the national political class and a tendency towards self-victimization”. [\[35\]](#)

MISCELLANEOUS

III.9

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

GOVERNMENT EMERGENCY ORDINANCES - AN ORDINARY EXTRAORDINARY PROCEDURE

As mentioned in section III.8 above, the vast majority of crisis-driven legislation was passed through Government Emergency Ordinances.

The instrument as enshrined in Article 115 (4)-(8) of the Romanian Constitution is designed as an extraordinary procedure, meant to address the situations that allow no postponement of legislative action. A bill passed in the form of a Government Emergency Ordinance enters into force after notification of the Parliament and publication in the Official Journal. Subsequently, the Parliament adopts a law of approval or rejection of the ordinance within thirty days from the notification by the Government. If the first notified chamber of the parliament fails to examine the legal initiative on the approval of the Emergency Ordinance within a thirty days period, the law is considered adopted and passes automatically to the other chamber for approval. When an Emergency Ordinance concerns matters of organic law, it must be approved with the majority provided for the latter, as prescribed by Article 76 (3) of the Constitution. Government Emergency Ordinances have a limited scope and these are not to be adopted in the areas that touch upon the fundamentals of the constitutional system. Nevertheless, this has not always been respected.[\[36\]](#)

In spite of its extraordinary character, this tool has been used on an ordinary basis - both before and during the crisis period - well exceeding 100 emergency ordinances annually.[\[37\]](#) The Venice Commission has expressed concern regarding the excessive use of the procedure, recommending instead the use of delegated legislation pursuant to Article 115 (1) to (3) Constitution, which would allow a prior involvement of the Parliament, as well as a revision of the Parliament's rules of procedure.[\[38\]](#) The use of Government Emergency Ordinances to ratify and implement multilateral financial assistance packages (please refer to sections X.3, X.4, X.5 below) raises important democratic legitimacy issues. However, it must be stressed that none of the financial assistance instruments ratified by way of Emergency Ordinance were subsequently blocked or brought into question by the Parliament on the occasion of ex post legislative control.

THE 'ENGAGEMENT OF GOVERNMENT RESPONSIBILITY' PROCEDURE. ARTICLE 114 ROMANIAN CONSTITUTION.

In addition to Government Emergency Ordinances, as the preferred option for passing crisis-led

legislation, the so-called 'engagement of government responsibility' is another procedure, which has known an unprecedented active use. The procedure enshrined in Article 114 of Romanian Constitution states that the Government may engage its responsibility in front of the Parliament regarding a programme, declaration or a bill. In this case, the bill is considered adopted in 3 days if the Parliament does not pass a motion of censure (vote of no-confidence) against the Government.

Since 2008, the procedure was used more than 13 times for passing core crisis-driven measures, including the amendment of the pensions law, the social dialogue law, the labour code, the national framework act on wages, the maternity leave act, the military pensions act, the public education law et al. Basically, the procedure was used when the emergency ordinance was not feasible or desirable.

In contrast with Government Emergency Ordinances, the acts adopted by engagement of Government responsibility are not followed by ex post parliamentary control. They are automatically adopted if no motion of censure is formulated and successfully passed by the Parliament, acting by absolute majority (fifty per cent plus one of the members of the two chambers) within 3 days after the engagement of responsibility. The procedure gives insurance that the adopted measures shall not be overturned by the Parliament in an ex post control as the case may arrive for Government Emergency Ordinances.

The frequent use of the procedure during 2010-2011 was criticised by the opposition as a way to bypass the legislator.^[39]

In response to the extensive use of the Government responsibility procedure, both projects for the revision of the Constitution (section III.2 and III.4 above) proposed a limitation of the use of the procedure to one engagement of responsibility per legislative session. The Constitutional Court has further advised the limitation to 'one engagement of responsibility per legislative session corresponding to a single domain'.^[40]

[1] Article 90 (1) Constitution: The President of Romania may, after consultation of Parliament, ask the people of Romania to express their opinion on matters of national interest, by referendum. [author's translation from Romanian]

[2] For the full constitutional revision proposal and findings of the Constitutional Court, see Decision 799/2011 of the Constitutional Court of Romania, Official Journal 440/23.06.2011, available in Romanian at: http://www.ccr.ro/files/products/D0799_11.pdf

[3] Constitution of Romania, Article 138 (2): 'The Government prepares the drafts for the State budget and for the State social security budget on annual basis, and such are singly submitted to Parliament for approval'. For the English translation of the Constitution of Romania see: <http://www.ccr.ro/constitutia-romaniei-2003>

[4] Constitutional Court of Romania, Decision 799/2011, Official Journal 440/23.06.2011, available in Romanian at: http://www.ccr.ro/files/products/D0799_11.pdf

[5] Ibidem.

[6] Ibidem.

[7] Constitution of Romania, Article 152 (1): 'The provisions of the present Constitution concerning the national, independent, unitary and indivisible character of the Romanian State, the Republican form of government, or territorial integrity, independence of judiciary, political pluralism, or official language may not be subject to revision.' Full text available at: <http://www.cdep.ro/pls/dic/site.page?id=371>

[8] Legislative proposal on constitutional revision, File Pl-x 492/2011, available in Romanian at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=12163

[9] Decision of the Parliament No 17/2013, Official Journal 95/15.03.2013.

[10] The official page of the forum is available in Romanian at: <http://forumconstitutional2013.ro/ce-este-forumul-constitutional/>

[11] Legislative proposal on the revision of Constitution of Romania, File No. PL nr. L233/2014, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=1&idp=17422; See also the Opinion of Venice Commission on the draft law, 16 September 2013, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)010-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)010-e)

[12] For the complete constitutional revision project and the reasoning of the Court see: Constitutional Court of Romania, Decision 80/2014, Official Journal 246/07.04.2014.

[13] Constitutional Court of Romania, Decision 80/2014, Official Journal 246/07.04.2014

[14] Ibidem.

[15] Constitution of Romania, English, available at: <http://www.cdep.ro/pls/dic/site.page?id=372&idl=1>

[16] For a summary of the constitutional crises (Romanian) see the 2013 Report of the Constitutional Forum, pp.33-34, for Constitutional Court intervention to solve the constitutional conflicts of legal nature see: Table p.139, available at: <http://forumconstitutional2013.ro/wp-content/uploads/2013/03/Raport-final-FC-1-iunie.pdf>

[17] Ibidem, Table p.139.

[18] Constitutional Court, Decision 284/21.05.2014, available in Romanian at: http://www.ccr.ro/files/products/Decizie_284_20141.pdf

[19] Venice Commission, Opinion 685/2012, available at: [http://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)026-e.aspx#](http://www.venice.coe.int/webforms/documents/CDL-AD(2012)026-e.aspx#), consulted on 05.09.2014

[20] Report from the Commission to the European Parliament and the Council on the progress of Romania under the Co-operation and Verification mechanism as of 2007, available at: http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf

[21] Speech of President Van Rompuy, European Council, Press release, Bucharest, April 25, 2013, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/136946.pdf

[22] 2013 Report of the Constitutional Forum, fn 77, available at: <http://forumconstitutional2013.ro/wp-content/uploads/2013/03/Raport-final-FC-1-iunie.pdf>

[23] Legislative proposal on the revision of Constitution of Romania, File No. PL nr. L233/2014, available at:

http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=1&idp=17422

[24] Constitutional Court, Decision 80/2014 available in Romanian at: http://www.ccr.ro/files/products/Decizii_80_2014_opinii2.pdf

[25] Decision 80/2014, published in Official Journal 246 of 07.04.2014, available in Romanian at: http://www.ccr.ro/files/products/Decizii_80_2014_opinii2.pdf

[26] Constitution of Romania, Article 76(3):" Organic laws shall regulate: a) the electoral system; the organization and functioning of the Permanent Electoral Authority; b) the organization, functioning, and financing of political parties; c) the statute of Deputies and Senators, the establishment of their emoluments and other rights; d) the organization and holding of referendum; e) the organization of the Government and of the Supreme Council of National Defence; f) the state of partial or total mobilization of the armed forces and the state of war; g) the state of siege and emergency; h) criminal offences, penalties, and the execution thereof; i) the granting of amnesty or collective pardon; j) the statute of public servants; k) the contentious business falling within the competence of administrative courts; l) the organization and functioning of the Superior Council of Magistracy, the courts of law, the Public Ministry, and the Court of Audit; m) the general legal status of property and inheritance; n) the general organization of education; o) the organization of local public administration, territory, as well as the general rules on local autonomy; p) the general rules covering labour relations, trade unions, employers' associations, and social protection; r) the status of national minorities in Romania; s) the general statutory rules of religious cults; t) the other fields for which the Constitution stipulates the enactment of organic laws."

[27] Constitutional Court, Decision 872/2010, analysed at section X below

[28] Parliamentary debates, April 19, 2011, MP Calin Potor declaration (Romanian) "The assumption of responsibility? No, the neutralization of democracy and parliamentarianism", [author's translation] available at: <http://www.cdep.ro>

[29] Constitutional Court, Decision 1525/2010, Official Journal 818 of 07.12.2010.

[30] Parliament of Romania, United Chambers, session of 27 April 2012, Presentation of motion of censure, (Romanian), available at: <http://www.cdep.ro/motiuni/2012/1468.pdf>

[31] <http://www.ziare.com/politica/politica-externa/romania-si-sindromul-copilului-abandonat-1224533>

[32] Standard Eurobarometer 81 of Spring 2014, p.94.

[33] Ibidem., p. 98.

[34] Ibidem., p.33-43.

[35] Alina Bârgăoanu, Flavia Durach - The Crisis of the European Union and its Reflection in the Romanian Public Sphere. Recent Findings, Romanian Journal of European Affairs Vol. 13, No. 1, March 2013, available at http://www.ier.ro/documente/rjea_vol13_no1/RJEA_2013_vol13_no1_art.1_.pdf

[36] See: Emergency Ordinance 38/2012 on the amendment of the law on the functioning of the Constitutional Court. Venice Commission, Opinion 685/2012, available at: [http://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)026-e.aspx#](http://www.venice.coe.int/webforms/documents/CDL-AD(2012)026-e.aspx#), consulted on 05.09.2014, paras. 9-29.

[37] According to the data of Legislative Bulletin of the Senate, available in Romanian at: <http://www.senat.ro/index.aspx?Sel=E41323AD-273F-4449-BD0C-78D144CFEDB5>

[38] Venice Commission, Opinion 685/2012, available at: [http://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)026-e.aspx#](http://www.venice.coe.int/webforms/documents/CDL-AD(2012)026-e.aspx#), consulted on 05.09.2014, para. 79.

[39] Parliamentary debates, April 19, 2011, MP Calin Potor declaration (Romanian) "The assumption of responsibility? No, the neutralization of democracy and parliamentarianism", [author's translation] available at: <http://www.cdep.ro>

[40] Decision 799/2011; Decision 80/2014, published in Official Journal 246 of 07.04.2014, available in Romanian at: http://www.ccr.ro/files/products/Decizie_80_2014_opinii2.pdf, paras 334-337,.

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:2010:118:0001:0001:EN:PDF>)

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

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

NEGOTIATION

IV.1:

WHAT POLITICAL/LEGAL DIFFICULTIES DID ROMANIA 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?

- Romania, as a non-Eurozone member state, was not part of the EFSF framework agreement.
- Regarding the EFSM, Romania as a non-Euro Member State did not encounter any political or legal difficulties during the negotiations of the EFSM Regulation.

As for the general position during the negotiations, according to the Ministry of Foreign Affairs, Romania was supportive on the adoption of the tool. Given the national objective and obligation under the accession treaties to adopt the Euro currency as soon as the conditions are met, the instrument was seen as indirectly beneficial for Romania. The specific objective of Romania in the negotiations as mentioned by the Ministry was to make sure that no unjustified measures are imposed on non-Euro Member States in the view of adopting the Euro currency that would render Romania's aspirations towards joining the Monetary Union unnecessarily burdensome.^[1]

For the adoption of the final Regulation, during the Council meeting of 9/10 May 2010, Romania was represented by the Ministry of Public Finances' State Secretary, Mr. Alexandru Nazare.^[2] The position of the Romanian Government was expressed by the State Secretary of the Ministry of Finance, Mr. Alexandru Nazare (member of the PDL party), after the Council meeting, stating that:

"[t]he establishment of this mechanism for financial stability, supported by Romania, is a proof of solidarity, a tool that the Union needed and it is also a strong political commitment. Romania will benefit indirectly from this Mechanism in the following years and directly from the moment of its

accession to the Eurozone. The Mechanism will be implemented through the joint efforts of the European Commission, of the International Monetary Fund and of the Member States in order to enable the prevention of such future crises and to protect the European single currency. This mechanism is a safety measure in addition to strengthening the European economies; the priority is still that of adjusting each Member State's budgetary costs in every Member State severely affected by the crisis. In this context, Romania's reform plan agreed with the IMF was welcomed by EU finance ministers."[\[3\]](#)

There were no recorded debates in the Romanian Parliament concerning the EFSM. One reason for the absence of parliamentary debate could be the fact that Romania is not yet a Euro Member State and does not benefit directly from the Mechanism. Instead, Romania received assistance loans under the Balance-of-Payments (BOP) facility starting from 2009[\[4\]](#) (please see on the BoP sections X.5 and X.6 below).

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 ROMANIA AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

Romania is not a party to the EFSF.

GUARANTEES

IV.3

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

Romania is not a party to the EFSF.

ACTIVATION PROBLEMS

IV.4

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

Romania is not a party to the EFSF.

CASE LAW

IV.5

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

No, there is no constitutional or ordinary court judgment about the EFSM.

Romania is not a party to the EFSF.

IMPLEMENTATION

IV.6

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

Romania is not a party to the EFSF.

IMPLEMENTING PROBLEMS

IV.7

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

Romania is not a party to the EFSF.

BILATERAL SUPPORT

IV.8

IN CASE ROMANIA 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?

Romania did not provide bilateral funding.

MISCELLANEOUS

IV.9

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

Even though on the national level there were no debates regarding the negotiations of the EFSM Treaty, mass-media gave brief information to the Romanian public about the Council meeting where the EFSM was adopted.

[1] Source: written answers from the Ministry of Foreign Affairs of Romania, 24 September 2014.

[2] Council of the European Union, Extraordinary Council Meeting 9-10 May 2010, press release 9696/2010, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/114324.pdf

[3]

http://www.euractiv.ro/uniunea-europeana/articles%7CdisplayArticle/articleID_20131/Uniunea-Europeana-initiaza-Mecanismul-de-Stabilitate-Financiara-pentru-protejarea-zonei-euro.html

[4] Council Decision 2009/459/EC of 6 May 2009. See also: http://ec.europa.eu/economy_finance/assistance_eu_ms/romania/index_en.htm

V - 136(3) TFEU

At the 16/17 December 2010 European Council a political decision was taken to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. On March 25, 2011 the European Council adopted the legal decision to amend article 136 TFEU by adding a new third paragraph: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

The process of approval of this decision by the member states in accordance with their respective constitutional requirements as prescribed by article 48(6) has been completed and the amendment has entered into force on 1 May 2013.

NEGOTIATION

V.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ROMANIA ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

No significant political or legal difficulties were encountered in the negotiation of Article 136 TFEU amendment.

The President of Romania, Traian Băsescu, represented Romania in the Spring European Council of 24-25 March 2011.

In the context of the economic crisis period in the EU, the Romanian Government^[1] and the President^[2] supported the creation of a European stability mechanism and, implicitly, the restricted amendment of the Treaty.

Romania will have to contribute to the European Stability Mechanism after its accession to euro area, which is a national medium-term priority (currently the adoption of Euro is planned for January 2019).^[3] In this context, the main concern of Romania in the negotiations was the level of its contribution rate in the perspective of accession to the European Economic and Monetary Union.^[4]

After the European Council meeting, the President considered that the results of the negotiations were a successful compromise for Romania.^[5] According to the President, if the mechanism were to apply the following day, Romania would have had to pay a lower contribution by 50% compared to the one originally proposed. The President declared that the initial contribution of 2,3 - 2,4 billion Euro which would be applicable to Romania was reduced to approximately 1.3-1.4 billion Euro in the final compromise for Member States which are still in the process of 'catching up', including Romania. ^[6]

APPROVAL

V.2

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

The Treaty was ratified by the Romanian Parliament on the 12th of June 2012 with the enactment of organic Law no. 85/2012 for the ratification of the European Council Decision 2011/199/EU of 25

March 2011 amending Article 136 of the Treaty on European Union with regard to a stability mechanism for Member States whose currency is the euro, in force as of 22 June 2012, pursuant to Article 148 (3) of the Romanian Constitution on the amendment of EU treaties.[\[7\]](#)

Prior to the ratification, the Romanian President issued Decree No. 892/2011,[\[8\]](#) undersigned also by the Romanian Prime-Minister, in order to ask the Parliament to approve the Decision of the European Council 2011/199/EU. The legislative initiative was taken by the Romanian Government when presenting on December 12, 2011 the proposal to the Parliament, in accordance with the provisions of Article 148 paragraph 3 of the Romanian Constitution.[\[9\]](#) The Parliament rejected the Government proposal to ratify the European Council Decision 2011/199/EU by emergency parliamentary legislative procedure. Therefore, the ordinary legislative procedure was employed, the ratification process lasting over six months.

The legislative background Fundamentation note attached to the ratification law proposal described the treaty amendment initiative process at the EU level as of 2010 and further explained that the amendment intends to put in place a EU primary legal basis for a permanent stability mechanism. No socio-economic or financial impact assessment was conducted.[\[10\]](#)

The Legislative Council, a body of legal experts with the main objective to present advisory opinions on draft legislation, endorsed unanimously the adoption of the aforementioned ratification law.[\[11\]](#)

After approval by the four Parliamentary Committees concerned (the Legal Committee of each House of Parliament and the Committee for European Affairs of each house), the Parliament, in joint session of the two Chambers, adopted the Law on 12 June 2012 with a majority of the votes cast (307 for, 1 against, 1 abstention).[\[12\]](#)

On the 19th of June 2012 the Romanian President promulgated the Law no. 85/2012, approving the Treaty amendment of Article 136(3) TFEU.[\[13\]](#)

RATIFICATION DIFFICULTIES

V.3

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

During the ratification of the Article 136 TFEU amendment, the members of the Parliament made no modification proposals.

Pursuant to Article 148(1) and (3) of the Romanian Constitution, amendments to the EU founding treaties are adopted by organic law, in a joint session of the Chamber of Deputies and the Senate, by two-thirds of the Deputies and Senators. According to the stenograph, during the joint session of the United Chambers of the Parliament of 12 June 2012, the rapporteur presented the legal proposal in five lines.[\[14\]](#) No public intervention was made by any individual member of the Parliament or political groups. The members of the Parliament present adopted the ratification law with 307 votes FOR, one abstention and one vote against. So, it can be said that the only “difficulty” encountered was the passivity of the Parliament.

CASE LAW

V.4

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

No, there is no constitutional or ordinary court judgment on the amendment of Article 136 TFEU.

MISCELLANEOUS

V.5

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

No further relevant information.

[1] Permanent Representation of Romania to the European Union, Information note, available at: <http://ue.mae.ro/en/local-news/562>

[2] Romanian Presidency, Declaration of the President of Romania, Spring European Council, March 25, 2010, available at: http://cms.presidency.ro/?pag=59&year=2011&sid=13115&id_p=13121

[3] National Convergence Programme 2014-2017, p. 5, available (Romanian) at: http://discutii.mfinante.ro/static/10/Mfp/pdc/ConvergenceProgramme2014_2017ro_5mai.pdf

[4] Source: written answers from the Ministry of Foreign Affairs of Romania, 24 September 2014.

[5] Romanian Presidency, Declaration of the President of Romania, Spring European Council, March 25, 2010, available at: http://cms.presidency.ro/?pag=59&year=2011&sid=13115&id_p=13121.

[6] Ibidem.

[7] Parliament of Romania, Legislative file PL nr. x- 764/2011, http://www.cdep.ro/pls/proiecte/upl_pck_proiect?cam=2&idp=12454

[8] Ibidem.

[9] Law 85/2012 transposing the Council Decision 2011/199/EU of 25 March 2011, background Fundamentation note, available at: <http://www.cdep.ro/proiecte/2011/700/60/4/em1036.pdf>

[10] The background Fundamentation note states that: “[d]uring the European Council of 28-29 October 2010, based on a Franco-German proposal the negotiations for establishment of a permanent mechanism for the management of the euro-zone crises were initiated. The creation of such a mechanism does not have a legal basis in the [EU] primary law [currently] in force, the legal basis for the introduction of such a mechanism cannot be introduced by consequence through secondary legislation. Therefore, the amendment of the [TFEU] is required with the view of creating the necessary legal basis needed for the establishment of the permanent mechanism by Article 136 amendment.” [author’s translation from Romanian] Law 85/2012 transposing the Council Decision 2011/199/EU of 25 March 2011, background note, available at: <http://www.cdep.ro/proiecte/2011/700/60/4/em1036.pdf>

[11] Legislative Council, Opinion No 1146/1.11.2011, available at: <http://www.cdep.ro/proiecte/2011/700/60/4/cl1036.pdf>

[12] Parliament of Romania, United Chambers, session of 12.06.2012, debates, available (Romanian) at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7129&idm=5&idl=1>

[13] President of Romania, Decree 424/2012 of 19.06.2012.

[14] Parliament of Romania, Joint session of the Chamber of Deputies and Senate of 12.06.2012, debates, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7129&idm=5&idl=1>

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 ROMANIA 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.

Romania was represented at the 24/25 March 2011 European Council by the President of Romania, Traian Băsescu (Former member of the PDL party). Although not part of the Eurozone, Romania joined the Euro-Plus-Pact. The reason behind this approach was, as reported by the media, the desire of not being excluded from the European process.^[1]

Immediately after the March European Council summit, President Băsescu defended his choice in front of the Romanian public. The President declared that the Pact was a catalyst towards a complex national “roadmap”: “1. for sustainable economic growth, Romania has to become competitive again, which is why structural reforms must be pursued 2. Romania needs to continue the European convergence process to take advantage of the full benefits of the Single Market, and this process must be completed with the Euro adoption in 2015”.^[2]

As mentioned above, the progress towards the adoption of Euro is a national priority. Romania is bound under the accession treaty to adopt the Euro, however no pre-established date is foreseen.^[3] The ratification of the Euro-Plus-Pact was presented as an intermediate step towards accession to the Monetary Union. It was reported, that in order to limit the budget deficit and public debt sustainability, Romania would have to prepare the ground for institutional structural reforms. In this respect, the Euro-Plus Pact was presented as a useful complement to a rapid accession to ERM-II (European Exchange Rate Mechanism), also called the “euro waiting room”.^[4]

First, the Government proposed 2015 as a timeline for adopting the Euro currency in the Convergence Programme 2012-2015,^[5] although during the financial crisis the National Bank of Romania expressed some concerns about this time-table.^[6] The current target for adopting the Euro currency as announced by the Ministry of Public Finance in the 2014-2017 Convergence Programme is January 1st, 2019.^[7]

In terms of macroeconomic commitments, Romania has already implemented a good part of the reforms committed to under the Euro Plus Pact at the request of the IMF. No banking restructuring,

nationalisation or sales of banks' assets was reported. In this sense, the President declared after the European Council summit that the crisis-legislation has been already adopted in 2010 by Romania - as part of troika conditionality - which lines up the country perfectly with the objectives of Euro-Plus-Pact.[\[8\]](#) The Head of State has also declared that the decision to join the Euro-Plus-Pact was taken after Romania had the guarantee that the tax rates will remain a national decision: "[i]f [tax rates discretion] had been in question, Romania would not have joined (the Pact)," he commented.[\[9\]](#)

Therefore, it seems that signing the Pact was an easy political decision. As it was expressed even by President Băsescu: "[t]he exchange of best practice, combating fraud and tax evasion which are expressly mentioned in the decisions of the Council - we have no reason not to be a part of this Euro Plus Pact".[\[10\]](#)

No ex ante comprehensive impact assessment was conducted, no debates on advantages and disadvantages were presented, no long-term implication studies were analysed before joining the Euro-Plus-Pact.

MISCELLANEOUS

VI.2

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

The measures envisaged by Romania under the Euro-Plus Pact have been adopted by the Government through a memorandum, on the 29th of April 2011 and fully integrated in the National Reform Programme 2011-2013.[\[11\]](#)

According to the implementation report of the Euro-Plus-Pact of March 15, 2012, the institutions in charge of Euro-Plus-Pact monitoring are the Ministry of European Affairs and the Ministry of Public Finances.[\[12\]](#) Each of the Ministries puts in place internal arrangements to accommodate their respective monitoring tasks of the National reform Programme and Convergence Programme. The monitoring is based on a concrete action plan with specific short and medium term targets to be achieved within a precise time-line. [\[13\]](#)

An ex post study undertaken by the European Institute of Romania - a public institution whose mission is to provide expertise in the field of European Affairs - provides a comprehensive analysis of the advantages and disadvantages of Romanian accession to the Euro-Plus-Pact.[\[14\]](#) According to the study, on the positive side, the economic policies undertaken under the Euro-Plus-Pact are able to foster the country's convergence and facilitate the structural consolidation and labour market reforms undertaken by Romania.[\[15\]](#) However, on the other side of the medal, the study stressed that an independent monetary and fiscal policy would have proved a better medium-term choice for the country: "[f]or Romania it would be beneficial if it could maintain some degree of independence over fiscal policy. Deeper fiscal integration at the EU level would necessarily involve a higher coordination of fiscal policies across the EU which would lead to fiscal harmonisation. If Romania were to adjust fully to this, it would adversely affect its competitiveness. Tax policy, especially the existing low levels of income and profit tax, provides a competitive advantage compared to other EU countries."[\[16\]](#)

[1] Corneliu Harea, Europuls Collaborator, available at Europuls: http://europuls.ro/index.php?option=com_content&view=article&id=553:pactul-euro-plus-oportuniti-i-provocri-pentru-romania-&catid=107:politica-economica&Itemid=1242

[2]

http://www.europuls.ro/index.php?option=com_content&view=article&id=553:pactul-euro-plus-oportuniti-i-provocri-pentru-romania-&catid=107:politica-economica&Itemid=1242

[3] [Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union](#), Official Journal of EU L 157 of 21 June 2005.

[4] Corneliu Harea, Europuls Collaborator, available at Europuls: http://europuls.ro/index.php?option=com_content&view=article&id=553:pactul-euro-plus-oportuniti-i-provocri-pentru-romania-&catid=107:politica-economica&Itemid=1242

[5] "The commitment to adopt the euro in 2015 is maintained and it represents an important anchor for ensuring the consistency in time of the macroeconomic policy mix and of the structural reforms, as well as for fostering the adjustments needed to increase the resilience and flexibility of the Romanian economy." Convergence Programme 2012-2015, p. 4.

[6] The Government did not include a specific moment as objective for joining Euro-zone in the 2013-2016 Convergence Programme. It only states that "[T]he commitment to adopt the euro is maintained for a date when will be attained the objective regarding the fulfilment of the real and nominal convergence criteria." Convergence Programme 2013-2016, p. 4.

[7] Ministry of Public Finance, Convergence Programme 2014-2017, available at: <http://www.mfinante.ro/noutatieco.html?pagina=ue>

[8] The Presidency of Romania, Declaration of the President, March 25, 2012, available at: http://cms.presidency.ro/?pag=59&year=2011&sid=13115&id_p=13121

[9] <http://www.evz.ro/detalii/stiri/cum-a-ajuns-romania-in-pactul-euro-plus-925049.html#ixzz2W0pz0Zal>

[10] <http://www.nineoclock.ro/romania-now-part-of-euro-plus-pact/>

[11] Government of Romania, National Reform Programme 2011-2013, 55p, available at: http://ec.europa.eu/europe2020/pdf/nrp/nrp_romania_ro.pdf

[12] Ministry of Foreign Affairs of Romania, Report on the implementation of Euro-Plus-Pact, March 15, 2012, available at: http://ec.europa.eu/europe2020/pdf/nd/eppreport2012_romania_en.pdf

[13] Due to limited space, we refer to the Euro-Plus Pact Implementation Report issued by the Government of Romania - Ministry of European Affairs on March 15th 2012, which is annexed to the present Report.

[14] European Institute of Romania - Euro Plus Pact Adoption: Implications for Romanian Fiscal Policy, 2012, p. 146, available at: http://www.ier.ro/documente/spos_2011/SPOS_2011_-_nr_2_RO-EN_.pdf. Further information about the European Institute of Romania available at: <http://www.ier.ro/en>

[15] Ibidem.

[\[16\]](#) Ibidem, p. 206.

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 ROMANIA 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?

In Romania there is no legal rule obliging the executive (President and government Ministers) to get a prior consent or opinion of the legislature on the country positions in European Council or Council meetings, respectively. Equally, there is no administrative practice to publish in advance the negotiating positions of the country. The President usually holds a press conference after the European Council meetings. The national Parliament is usually not involved a priori in the specific discussion of the points on the European Union's agenda. There is only a constitutional obligation of the Government to send to the two Chambers of the Parliament the proposals of the binding acts before submitting them for the approval of the EU institutions (Article 148(5) Romanian Constitution) - as for instance the draft budget laws.

There is no information available regarding issues related to budgetary sovereignty, constitutional law, social-economic rights or the budgetary process raised by Romania during the Six-Pack negotiations.

As repeatedly stated above, the Romanian executive - both the President and the Government - have been in favour of all crisis legislative action adopted at the EU level, including the adoption of the Six-Pack legislation. As a non-Euro member state, Romania's position was centred on the necessity to avoid a European Union of "two speeds", translated for the President of Romania into a necessity to include as far as possible the non-euro Member States into the EU crisis-driven agenda.^[1]

Romania was represented at the ECOFIN Council meeting of October 4, 2011 by the Minister of Public Finances Gheorghe Ialomitanu and State Secretary Dan Lazar.^[2] Before the ECOFIN meeting of 4 October, 2011, for the informal meeting of the ECOFIN Council of 16-17 September 2011, the Ministry of Public Finances shortly welcomed the agreement reached on the Six Pack, stating at the same time that the "[...] new rules were supported by Romania from the very beginning".^[3]

DIRECTIVE 2011/85/EU

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

IMPLEMENTATION

VII.2

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

In Romania the Fiscal Responsibility Law No. 69/2010, adopted prior to the Directive 2011/85/EU, already imposed some of the rules designed to strengthen fiscal discipline.[\[4\]](#) (see also section II.2 above)

Therefore, before the formal implementation of Directive 2011/85/EU, Romania already had binding legislation in several core areas regulated by this legal source.

The rules already in place have been strengthened through the 2013 reform, which amended both the Fiscal Responsibility Law No. 69/2010 (Amendment Law 377/2013)[\[5\]](#) and the Public Finances Law 500/2002 (Amendment Law 270/2013)[\[6\]](#) to further align the existing rules with Directive 2011/85/EU and Fiscal Compact requirements (see section IX, below). The 2013 amendments to the Fiscal Responsibility Law and Public Finances Law were adopted by the Parliament on 23rd December 2013 (in force since 01.01.2014) and 18 October 2013 (in force since 21.10.2013) respectively.

The following measures have been put in place according to the five main pillars of Directive 2011/85/EU:

Accounting and statistics

Romania committed within the agreement with the European Commission and IMF to adopt progressively the ESA 95 (European System of Accounts). The Romanian authorities reported to apply the system since 2006.[\[7\]](#)

The 2013 reform takes the commitment one step further towards full adoption of the ESA standards:

- Based on the provisions of Article 3(2) a) of Directive 2011/85/EU, the Ministry of Public Finances must publish monthly and quarterly the accounting data corresponding to the cash-based fiscal data on its webpage (Article 34-1 Fiscal Responsibility Law as amended in 2013).
- Responding to Article 3(2) b) of Directive 2011/85/EU, a table of correspondence between the national public accounting system and EU system shall be included in the Final Report on the budgetary execution published by the Ministry of Public Finances annually (Article 34-1 Fiscal Responsibility Law as amended in 2013)
- As well in order to increase the administrative capacity to fully employ the ESA 95 system, each public institution must designate an accounting-financial division. The director of the accounting-financial division must hold a certificate of proficiency in the European System of Accounts (Article 19-1, b-2) Public Finances Law as amended in 2013).

Forecasts

- The National Commission for Prognosis is responsible for the macroeconomic and social forecasts (Article 31, Law 500/2002 on Public Finances). Please refer to section VII.4 below.
- According to Article 4 (1) of Directive 2011/85/EU the prudent macroeconomic forecasts have been introduced as of 2013 (Article 18-1 Fiscal Responsibility Law as amended in 2013)
- According to Article 4 (4) of Directive 2011/85/EU the Medium Term Budgetary Framework (MTBF) shall include a sensitivity analysis of the fiscal goals to the change of macroeconomic variables and the sensitivity analysis of the public debt depending on different growth scenarios for a six years time-frame: results of two previous years, the estimates for the current year and prognosis of the three following years (Article 20-2 Fiscal Responsibility Law as amended in 2013)
- As of 2013, the Fiscal Council is the institution tasked to check ex-post the accuracy and reliability of the macroeconomic forecasts. In case of persistent deviations for a period of at least 4 years of the macroeconomic data, the Council notifies the Government which is obliged to take and publish the 'necessary measures' (Article 40 Fiscal Responsibility Law as amended in 2013).
- The macroeconomic forecasts used as basis for the budget planning shall follow closely the forecasts of the European Commission and other international independent institutions; any derogation shall be dully motivated (Article 30-2 Public Finances Law as amended in 2013).

Numerical fiscal rules

Already in 2010 the first numerical rule to be approved by Romania was the realisation of an annual budgetary balance equal to zero that would then be maintained and directed towards a surplus. This is a major change for Romania, known for a deficit-equilibrated budget tradition rather than a surplus one.

In 2013, the express numerical figures on budget deficit and public debt were introduced. Article 5-1 of the Fiscal Responsibility Law as amended in 2013 states expressly that according to Protocol 12 to the TFEU the: "budgetary position of the public administration is either balanced or in surplus."

- The budgetary position is balanced or in surplus, respectively the requirements of Protocol 12 to the TFEU, are considered fulfilled when one of the three scenarios below is complied with (Article 5-2 Fiscal Responsibility Law as amended in 2013):

"(a) The medium-term budgetary objective does not exceed a lower limit of the annual structural balance of the public administration of -0.5% of GDP expressed at market prices;

(b) When the ratio between the public debt calculated according to the EU methodology and the GDP at market prices is significantly below 60% and when the risks related to long-term sustainability of public finance are low, the lower limit of the medium-term budgetary objective may not exceed an annual structural balance of the public administration of maximum -1.0% of GDP at market prices;

(c) The annual structural deficit of public administration converges towards the medium-term budgetary objective according to an adjustment path agreed with the institutions of

the European Union, according to the Council Regulation (EC) no. 1466/1997, as subsequently amended and supplemented.”[\[8\]](#)

- Other fiscal rules concern the prohibition to engage in budget spending 180 days before the end of the Government mandate (Article 9); the prohibition to operate more than two modifications of the budget laws during the budgetary year (Article 15(2)); the complete prohibition to operate any modification to the adopted budget in the first six months unless in exceptional emergency situations; the funds’ allocation to primary credit holders is performed only annually in the context of the budget laws.

- Most importantly, sanctions are introduced in case of non-compliance with the fiscal rules. As such the Government jointly or the members of the Government individually and the primary credit holders may be held accountable for failing to observe the above rules (Article 52-54 Fiscal Responsibility Law). The 2013 amendment brings some clarification on the form of guilt needed to enforce the sanctions.

Medium-Term Budgetary Framework (the ‘MTBF’)[\[9\]](#)

Since 2010 a three-year ‘Fiscal-Budgetary Strategy’ has been introduced as an additional budgeting stage (Article 18-20 Fiscal Responsibility Law). The Fiscal-Budgetary Strategy is a public policy document elaborated each year by the Ministry of Public Finances by the 31st of July and approved by the Government. The strategy is presented to the Parliament yearly, by August 15. The annual budget laws must take into consideration the Fiscal-Budgetary Strategy (Article 28 Public Finances Law).

As of 2013, the Public Finances Law introduces another explicit ‘Budgetary Framework of Romania’ and ‘Medium-Term Budgetary Framework’ (Chapter III, Section 1-1, Articles 30-1 to 30-5, Public Finances Law). The implementing provisions state that the ‘Budgetary framework of Romania’ shall closely follow the EU Budgetary framework in order to avoid the excessive public deficit and respect the obligations under TFEU and other treaties ratified by Romania (Articles 30-1 Public Finances Law). The medium-term budgetary framework is the basis for the annual budgetary framework; in case of a change in Government the new cabinet may perform changes to the MTBF, however these must be separately detailed and explained (Articles 30-5 Public Finances Law).

Monitoring

A Fiscal Council was put in place as of 2010 corresponding to the provisions of Article 6(1) b) of Directive 2011/85/EU and the relevant provisions of the Fiscal Compact (see Chapter X of the Romanian Fiscal Responsibility Law). For the Fiscal Council and Fiscal Compact please see sections VII.5 and IX, respectively.

The Ministry of Public Finances checks ex ante the compliance of the primary credit holders with the targets and spending ceilings set by the MTBF, having the possibility to reject the proposed budgets of the primary credit holders if not in compliance with the first (Article 21(3) Fiscal Responsibility Law).

IMPLEMENTATION DIFFICULTIES

VII.3

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

In late December 2013 Romania adopted new legislation to implement Directive 2011/85/EU, which updates and reinforces the already existing rules in national legislation (Law No 69/2010) (see section VII.2, above).

As Romania was already under the financial supervision of the European Commission, IMF and World Bank since 2009, there were no specific debates regarding the new Directive and the additional implementing measures provided for by Law 377/2013.[\[10\]](#)

One of the main features of the multilateral financial assistance programme between Romania on the one hand and the European Commission, IMF, World Bank, European Bank for Reconstruction and Development (EBRD) and European Investment Bank (EIB) on the other, was the adoption and implementation of a series of far-reaching fiscal governance reforms, including the adoption of a Fiscal Responsibility Law in 2010. The aim of these reforms was to address the weaknesses in Romania's fiscal institutional framework so as to strengthen the fiscal discipline and avoid the budgetary slippages of the past.[\[11\]](#)

These 2013 amendments were passed without particular debates as these were listed last on the agenda of the Parliamentary session, on December 2nd at 18.30 in the evening.[\[12\]](#) As the amendment law also contained several provisions implementing the Fiscal Compact due to be implemented by January 1st 2014, the emergency legislative parliamentary procedure was used. The law was voted in the Parliament on December 10, 2013 with 242 votes FOR out of 310 Members of the Chamber of Deputies present.[\[13\]](#)

On the implementation of the first 2010 budgetary framework requirements (Law 69/2010 on Fiscal Responsibility) there was more discussion, in particular with regards to the very short notice of the Parliament, the emergency legislative procedure, the mere ten minutes allocated for the parliamentary debates and the 'last minutes rush' to implement the law.[\[14\]](#)

After the approval of the Senate on March 03, 2010, the Law proposal was decided by the Chamber of Deputies. According to the Parliamentary session stenograph of March 30, 2010, the legislative proposal was presented by the Minister of Public Finances personally in the Parliament just one day before the end of the time-frame to implement the measures agreed with the international partners (March 31st). All the political groups took the floor. The law was seen as a requirement due to fulfil for the IMF by March 31st 2010. None of the interventions questioned the necessity of the law as the credibility of Romania and the financial stability of the country were at stake. However all the interventions underlined the importance of the new provisions and criticised the extremely brief time allocated for the debates. From this point of view the opposition qualified the process as a 'legislative massacre'.[\[15\]](#)

The law was passed by simple majority of the present members of the Parliament on March 30, 2010 at 12.13 PM (FOR - 135, Against - 97, Abstentions - 1).[\[16\]](#) At 12.45 PM, fifteen minutes after the bill was passed, the General Director of the IMF, Dominique Strauss-Kahn, made a one-hour intervention in the Parliament of Romania.[\[17\]](#)

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 National Commission for Prognosis is responsible for providing macroeconomic forecasts for the reference budgetary year and the following three years, with yearly updates (Article 31, Public Finance Law No. 500/2002).^[18] The National Commission for Prognosis is a public body (a unit from 1990-1993) in the subordination of the Ministry of Public Finances established in 1990, in charge of short, medium and long-term macro-economic and social forecasts, in line with the National Reform Programme, National Convergence Programmes and European Commission indicators.^[19] In view of budget planning, the National Commission for Prognosis publishes the macroeconomic and social mid-term forecasts by the 1st of June each year (Article 31, Public Finance Law No. 500/2002). The forecasts are elaborated for the reference budgetary year and the three following years. The autumn updates of the forecasts are taken into consideration in the final draft of budget laws.

The forecasts are reviewed by the Fiscal Council, published, and considered by the Government and Parliament for the approval of budgetary plans (Article 40 Fiscal Responsibility Law). The Fiscal Council conducts an impartial, periodical, comprehensive and ex post evaluation of the forecasts (Article 30-4 Fiscal Responsibility Law). As of 2013, 'other habilitated bodies' may conduct the forecasts review if delegated. On the Fiscal Council see section VII.5 below. This is not the case yet. The forecasts feed into the Fiscal-Budgetary Strategy approved by the Government and published on the Ministry of Public Finances' websites, and forms the basis for the annual budget laws (on forecasts see also section VII.3 above).

FISCAL COUNCIL

VII.5

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

One of the main objectives of the Fiscal Responsibility Law of March 2010 - prior to the adoption of Directive 2011/85/EU - was to set up the Fiscal Council (Article 40-48 Fiscal Responsibility Law).^[20]

According to Chapter X of the Fiscal Responsibility Law, the Fiscal Council is set as an independent authority composed of five members with extensive expertise in budgetary and macroeconomic policies, invested for a single 9 years mandate by Parliament decision. The Council's design corresponds to the criteria of institutional, personal and financial independence. The legal provisions lay down extensive rules to ensure the independence and integrity of the Council members, their financial autonomy and the authority of the Council's competences.

The Fiscal Council supports the Government and the Parliament in planning the medium and long-term fiscal-budgetary strategy. It provides analysis and issues opinions on the official macroeconomic and budgetary forecasts, monitors the compliance with the rules and principles of the Fiscal Responsibility Law, especially with regard to the automatic correction mechanism and emergency situation rules.

The Fiscal Council assesses the performance of the Government against fiscal targets and policies, prepares cost estimates and issues opinions on the amendments made to the annual budget law during parliamentary debates. It also provides information and advice to the Government and Parliament on legislative recommendations for maintaining and strengthening fiscal discipline and transparency of fiscal policies (Article 40 Fiscal Responsibility Law).[21] Other authorities are obliged to engage in a loyal cooperation with the Fiscal Council and provide upon request all the necessary data (Article 41 Fiscal Responsibility Law).

The main output of the Fiscal Council is an annual report which contains the post evaluation of the macroeconomic and budgetary estimates of the fiscal budgetary strategy (Article 40 (2) a) Fiscal Responsibility Law), the assessment of progress against objectives, targets and policies set out in the budget fiscal strategy and the annual budget (Article 40 (2) b) Fiscal Responsibility Law), the assessment of the government's compliance with the principles and rules of the Fiscal Responsibility Law (Article 40 (2) c) Fiscal Responsibility Law), as well as recommendations and opinions for improving the conduct of fiscal policy. In addition to its annual report, the Fiscal Council also publishes all the opinions, forecasts, analyses and recommendations that it issues during the year (art. 40 (2) d) Fiscal Responsibility Law).

The Fiscal Council issues opinions and recommendations on the main documents that are part of the budgetary process. Both the Government and the Parliament are held to take into account the opinions and recommendations of the Fiscal Council when elaborating and approving the fiscal strategy and the annual budgets (Articles 24 and 25 Fiscal Responsibility Law).

The Fiscal Council also assesses the budgetary performance of the Government against fiscal targets and policies and prepares cost estimates and opinions on the amendments made to the annual budget law during parliamentary debates. Moreover, 60 days before general elections, the presidents of the political parties may ask the Fiscal Council (or alternatively, the Prime Minister) to calculate the financial impact of any of the policies announced by the parties (Article 38 Fiscal Responsibility Law).[22]

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

There is no information on specific debates regarding the new Regulation.

It must be noted that the macroeconomic imbalances procedure does not apply to Romania. As a Member State implementing macroeconomic adjustments programmes under financial assistance, the macroeconomic imbalances and the relevant policies adopted are monitored within the framework of the specific programmes for Romania.[\[23\]](#)

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?

Before 2011, the fiscal framework of Romania has been significantly reformed in 2010, following the adoption of the Fiscal Responsibility Law 69/2010.

The Fiscal Responsibility law of 2010 (Articles 18-20 Fiscal Responsibility Law) mandated the adoption of a three-year Fiscal-Budgetary Strategy with targets for deficit rates and public expenditure, reimbursable financing as well as the adoption on an annual basis of a law on ceilings for guarantees and public expenditure. As well, since 2009 the Government of Romania, through the Ministry of Public Finances was charged to elaborate and publish yearly the National Convergence Programmes.[\[24\]](#) Nevertheless, regarding the budgetary process, the European Commission considered in 2013 that: “[t]here [was] room for improvement in the context of the medium-term budgetary framework as well as in terms of compliance with the existing budget ceilings. Despite some steps taken to prioritise public investments, a strategy needs to be developed and implemented in this area and to be properly reflected in the medium-term budget planning.”[\[25\]](#)

In response, in late 2013 the reform of the two legal frameworks – Fiscal Responsibility Law and the Public Finances Law – introduced expressly the Medium -Term Budgetary Objective (MTO) and the relating corrective mechanism procedure.

As of 2013 the Fiscal Responsibility Law is amended as follows:

The MTO has been expressly defined as a: “target of the annual structural balance of the public administration, established according to EC Council Regulation no. 1466/1997 of 7 July 1997, on strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, published in the Official Journal of the European Union, series L, no. 209 of 2 August 1997, as subsequently amended and supplemented”. (Article 3 (6-2) Fiscal Responsibility Law as amended in 2013)

Annually, the Ministry of Public Finance drafts the three-year Fiscal-Budgetary Strategy identifying inter alia the ceilings on expenditure for the respective period. The ceilings indicated in the Fiscal-Budgetary Strategy are sent separately in the form of a legislative proposal for approval by the Parliament by August 15 annually. As of 2013, the legal proposal shall include also the MTO and the concrete modality through which the Government plans to adjust towards it (Article 18 (2-1) Fiscal Responsibility Law). Therefore, the MTO is adopted by binding normative law before the adoption of

the annual budget. In 2014 the law on ceilings will include for the first time the MTO. In practice until present the law on ceilings was adopted by the Parliament on the same date with the annual budget laws.

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)?

In 2013, Romania adopted new legislation to accommodate the provisions of the Fiscal Responsibility Law No 60/2010 as well as the budgetary calendar of the Public Finances Law 500/2002 to the European Semester calendar.

Please also see section II above.

As presented in the table below, the budgetary calendar has been substantially modified to enable the national Government to properly assess and implement the outcome of the European Semester. In general, one may note that the overall calendar has been shifted with about two months.

First, the National Prognosis Commission has to publish the macroeconomic and social forecasts by June 1st compared to the prior March 31st deadline. Second, in order to implement the European Commission's May-June country-specific recommendations, the Ministry of Public Finances shall submit to the Government the Fiscal-budgetary Strategy together with the legal proposal on budget ceilings including MTO by July 31 instead of May 1st. The prior arrangement made it practically impossible to take the Commission's recommendation into consideration before the first budget draft. Third, after the Commission's recommendations are approved by the European/Council in June-July, the Government sends the Fiscal-Budgetary Strategy and the law on the ceilings to the Parliament (August 15, compared to the prior June 15) for approval and also to primary ordinateurs who draft their respective budget proposals based on the documents received (August 1st compared to the prior June 1st). Lastly, after the September-October Council resolutions the Government sends the final budget draft to the Parliament by November 15 for debates and adoption (compared to the prior October 15).

Table VII.8.1. Comparative budget timeline analysis[\[26\]](#)

Prior to 2013	2013 Reform		
31 March	National Prognosis Commission provides preliminary macroeconomic forecasts (Art. 31 of the Law on Public Finance).	National Prognosis Commission provides preliminary macroeconomic forecasts (Art. 31 of the Law on Public Finance).	1 June
		May-June European Commission Country Specific Recommendations	

1 May	Ministry of Public Finances (MPF) submits proposed spending frame for the next budgetary year and the spending estimates for the next three years to the government for main political discussions (Art. 32 of the Law on Public Finance).	Ministry of Public Finances submits the multiannual fiscal budget strategy for the next three years to the Government (Law on Fiscal Responsibility Article 18)	31 July
15 May	Government approves the ceilings set for main primary ordinateurs as well as fiscal and budgetary policy objectives for the following three years.	Ministry of Public Finances submits proposed spending frame for the next budgetary year and the spending estimates for the next three years, and the MTBO to the government for main political discussions (Art. 32 of the Law on Public Finance).	31 July
		June-July European Council and Council discussion and approval of Country Specific Recommendations	
1 June	Ministry of Public Finance sends primary ordinateurs a framework letter and key macroeconomic assumptions, the methodology for drafting the budget, and the expenditure ceilings approved by government (Art. 33 (1) of the Law on Public Finance).	Ministry of Public Finance sends primary ordinateurs a framework letter and key macroeconomic assumptions, the methodology for drafting the budget, and the expenditure ceilings approved by government (Art. 33 (1) of the Law on Public Finance).	1 August
15 June	Modification and approval to ceilings based on macroeconomic assumptions (Art. 33 (2) of the Law on Public Finance).	The Government sends the multiannual fiscal budget strategy for the next three years to the Parliament (Law on Fiscal Responsibility Article 18) The Government sends the Law on budgetary ceilings and MTBO to the Parliament (Law on Fiscal Responsibility Article 18 (2-1))	15 August
15 July	Primary ordinateurs submit budget proposals with three next year estimates to the Ministry of Public Finance (Art. 34 of the Law on Public Finance).	Primary ordinateurs submit budget proposals with three next year estimates to the Ministry of Public Finance (Article 34 of the Law on Public Finance). If not in line with the Fiscal and budgetary strategy and ceilings the Ministry of Finance may reject the budgets according to article 21(3) of Fiscal Responsibility Law	1 September
		Primary ordinateurs send the amended budget proposals to the Ministry of Public Finance	15 September
1 August	Conclusion of discussions on departmental budget submissions.		
30 September	Preparation and submission to government of final draft budget (Art. 35 of the Law on Public Finance).	Ministry of Finance drafts the proposals of budget laws and budgets and submits them to the Government for a first reading	30 September
		September-October Council Resolutions	
		Ministry of Public Finance submits the adapted budget in line with autumn forecast of National Prognosis Commission	1 November
15 October	Submission of draft budget to Parliament.	Government approves the budget and sends it to the Parliament	15 November
		If a decision on the budget is not taken, the Government may request the examination of the budget proposal in emergency procedure	15 December
By 28 December	Final approval of budget by Parliament (Art. 36 of the Law on Public Finance).	Final approval of budget by Parliament (Art. 36 of the Law on Public Finance).	By 28 December

MTO DIFFICULTIES

VII.9

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

No political or legal difficulties were encountered nor were there debates specific to Regulation 1175/2011/EU. The amendments were seen as necessary and positive measures, meant to align the

national budgetary process to the 'EU model'. As stressed above, the emanations of the EU level generally enjoy large political and social support, thus the necessary legislative and procedural accommodations were introduced without difficulties reported (see section VII.1 above).

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 provisions ensuring the respect for the MTO and the mechanism to correct the deviations are set under the Fiscal Responsibility Law 69/2010 as amended in 2013 (Section 4, Article 6-2).[\[27\]](#)

In case of deviations from the established MTO, the automatic correction mechanism is launched as of 2013 (Article 6-2 Fiscal Responsibility Law). According to the legal provisions in force, the existence of a deviation shall be assessed based on Article 6 of the Regulation (EC) 1466/97 as amended by Regulation (EU) 1175/2011. The divergence is ascertained based on the documents issued by the EU Institutions or by the Government based on the opinion of the Fiscal Council. In this scenario, the Government shall approve the measures necessary to correct the identified deviation or if the law containing the MTO has been adopted already by the Parliament, the Government shall send the Parliament the measures aiming to correct the deviation for adoption. The measures proposed must be quantifiable (broken down by year), effective (must prove effectiveness already in the first budgetary year), proportionate and in line with the EU institutions' recommendations. The Fiscal Council issues also an opinion on the correction measures. The existence of the divergence shall be also communicated to the Parliament Committee on budget, banks and finance.

Equally, the Annual Report on the budgetary execution of the Ministry of Public Finances shall evaluate the results of the budgetary year having regards to the MTO, the deviation and the concrete adjustment methods envisaged (Article 33 Fiscal Responsibility Law).

CURRENT MTO

VII.11

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

As established in the Convergence Programme 2014-2017, "the general objective is to reach MTO in 2015, with a structural deficit of 1% of GDP, after the removal of the excessive deficit procedure expected in 2013 was confirmed".[\[28\]](#) The structural deficit is to be maintained at 1% also in 2016 and 2017. The structural deficit for 2014 is 1.4%.

Romania's public debt is relatively low (39.9% of GDP in 2014) and it is expected to decrease to 39.6% in 2015, 39,1% in 2016 and 38,5% in 2017, thus well below the 60% of GDP limit.[\[29\]](#)

The MTO is expected to be revised in 2015, when the Ministry of Public Finances shall publish the National Convergence Programme for 2015-2018.

ADOPTION MTO

VII.12

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

Romania's MTO is adopted and incorporated into the National Convergence Programme by the Ministry of Public Finances. Starting with January the 1st, 2014 the Ministry of Public Finances shall include the MTO in the legislative proposal on the budgetary ceilings and send it for approval to the Parliament by August 15 (article 18(2-1) Fiscal Responsibility law). The Parliament approves the law by simple majority.

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

No legal or political difficulties were encountered nor did any significant debates specific to Regulation 1177/2011/EU arise.

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

Regulation 1173/2011 shall apply to Romania once it adopts the Euro currency.

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?

For the moment no further changes are envisaged by Romania to comply with the Six-Pack rules. The 2013 reform included a comprehensive set of rules meant to fully address the changes in national legislation necessary to implement the Six-Pack.

MISCELLANEOUS

VII.16

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

Not applicable.

[1] Presidency of Romania, Autumn Summit 2011, Press release, available at: http://cms.presidency.ro/?pag=59&year=2011&sid=13541&id_p=13577

[2] Fiscal Courier Journal, news item, available at: <http://www.curierulfiscal.ro/2011/10/08/reuniunea-consiliului-ecofin-luxemburg-4-octombrie-2011/>

[3] http://discutii.mfinante.ro/static/10/Mfp/afaceri_europene/buletin23septembrie2011.pdf

[4] Law 69/2010 on Fiscal Budgetary Responsibility, Official Journal 252 /20.04.2010, available in Romanian at: <http://www.mfinante.ro/legisbuget.html?pagina=domenii>

[5] Law 69/2010 as amended by Law 377/2013 on Fiscal Budgetary Responsibility in force as of 01.01.2014, available in English at: <http://www.fiscalcouncil.ro/legea.htm>

[6] Law 500/2002 on Public Finances and amendment Law 270/2013, available in Romanian at: <http://www.mfinante.ro/legisbuget.html?pagina=domenii>

[7] European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2013, available at: http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp128_en.pdf

[8] Law 69/2010 as amended by Law 377/2013 on Fiscal Budgetary Responsibility in force as of 01.01.2014, available in English at: <http://www.fiscalcouncil.ro/legea.htm>

[9] Law 377/2013 amending the Law 69/2010 of fiscal responsibility, Official Journal 826 of 23.12.2013, available in Romanian at: http://discutii.mfinante.ro/static/10/Mfp/legislatie/lege377_2013modif69_2010.pdf. See also the legislative file, opinions and procedure (Romanian) at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=13787

[10] Parliament of Romania, Legislative fine PL x- 534/2013 on the amendment of the Law 69/2010 on Fiscal budgetary responsibility, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=13787

[11] Fiscal frameworks across Member States: Commission services country fiches from the 2011 EPC peer review, European Economy, Occasional Papers 91, February 2012, p. 60.

[12] Parliament of Romania, Legislative fine PL x- 534/2013, December 2, 2013, Debates, <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7328&idm=4>

[13] Parliament of Romania, Legislative fine PL x- 534/2013, electronic vote, available at: <http://www.cdep.ro/pls/steno/eVot.Nominal?idv=11355>

[14] Parliament of Romania, Legislative fine PL x- 65/2010, March 30, 2010, debates, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6794&idm=6>

[15] Ibidem.

- [16] Parliament of Romania, Legislative fine PL x- 65/2010, electronic vote, available at: <http://www.cdep.ro/pls/steno/eVot.Nominal?idv=5987>
- [17] Parliament of Romania, United Chambers, session March 30, 2010, Intervention of General Director of IMF, available (Romanian) at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6790&idm=1&idl=1>
- [18] Law 500/2002, amended in 2013, available in Romanian at: <http://www.mfinante.ro/legisbuget.html?pagina=domenii>
- [19] National Commission for Prognosis, official page, available at: <http://www.cnp.ro/en/istoric>
- [20] Fiscal Responsibility law 69/2010, English, available at: <http://www.fiscalcouncil.ro/legea.htm>. See further the official web page of the Fiscal Council, available at: <http://www.fiscalcouncil.ro>
- [21] European Commission, Occasional Papers 91, February 2012 http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp91_en.pdf, Law 69/2010 on Fiscal responsibility as amended in 2013, arts 40-47.
- [22] European Commission, Occasional Papers 91, February 2012: Fiscal frameworks across Member States: Commission services country fiches from the 2011 EPC peer review, p. 60, available at http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp91_en.pdf
- [23] European Commission, Communication (2014) 150 Final, [Results of in-depth reviews on the prevention and correction of macroeconomic imbalances](http://ec.europa.eu/economy_finance/economic_governance/documents/2014-03-05_in-depth_reviews_communication_en.pdf), of 05.03.2014, p.3, available at: http://ec.europa.eu/economy_finance/economic_governance/documents/2014-03-05_in-depth_reviews_communication_en.pdf
- [24] Ministry of Public Finances, National Convergence Programmes since 2009 (Romanian), available at: <http://www.mfinante.ro/programDeConvergenta.html?pagina=programConvergenta>
- [25] Commission Staff Working Document, Assessment of the 2013 national reform programme and convergence programme for Romania, p. 14, available at: http://ec.europa.eu/europe2020/pdf/nd/swd2013_romania_en.pdf
- [26] Source: Law 500/2002 on public finances before and after the amendment by law 270/2013.
- [27] Law 69/2010, as amended in 2013, the English version available at: <http://www.fiscalcouncil.ro/legea.htm>
- [28] National Convergence programme 2014-2017, pp.33-34, available at: http://ec.europa.eu/europe2020/pdf/csr2014/cp2014_romania_en.pdf
- [29] Ibidem, p. 40.

VIII - ESM Treaty

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

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

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ROMANIA 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.

Romania is not a party to the ESM Treaty as it is not a Eurozone Member State.

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 ROMANIA 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.

President Traian Băsescu was the representative of Romania at the European Council of 1-2 March 2012.[1]

It was also the President's sole decision to inform both the European Commission and the European Council that Romania shall support and accede to the agreement on the Fiscal Compact.[2] After the European Council of 8-9 December 2011, the President declared that he committed in front of the EU leaders because as a chief of state a President could not have had another position even if he had not discussed the decision priorly with the Parliament and was perfectly aware of the risk that the Parliament (USL majority, hostile to the President) could block the agreement upon ratification.[3] Therefore the difficulties were rather matters of internal politics and political rivalry.

One has to remind the national political background interests of the period (see section I on 'political context' above). The positive results of the referendum of November 2009 initiated by the President on a unicameral Parliament with 300 seats were not yet put in place because of lack of political support in the Parliament. The Fiscal Compact in its first draft mandated the amendment of the Constitution. Thus complementary to the declared fiscal discipline and economical reasons, the ratification of the Fiscal Compact would have provided for a feasible opportunity to 'open' the Constitution for amendment. Prior to the signature of the Treaty, the President held a meeting with the representatives of the political parties in the Parliament. Afterwards, the President said: „[n]o parliamentary political party will reject the ratification of the European Union's fiscal union agreement in due time. The meetings have been extremely useful and they direct us towards consensus both on accession to the treaty and the amendment of the constitution”. [4] [author's translation from Romanian]

Following the informal European Council meeting of 30 January 2012, the reported objective of Romania as stated by the President was: “the widest possible participation as treaty signatories to the Eurozone summits”. [5] A compromise solution was attained, according to the President: Romania as a non-Eurozone Member State but signatory shall participate in the summits that debate matters of general interest, and in any event at least one of the two established annual meetings

shall be also open to non-euro Member States, including Romania.[6]

After the signature of the Fiscal Compact on 2 March 2012, the President showed a great support for the Fiscal Compact, stating that the treaty presented two main advantages. On the one hand a deeper integration and harmonization of EU policies and on the other hand: “maybe more important, the increase of the control of the European Institutions on the coordination of national economic policies, especially the fiscal-budgetary ones.”[7] On the particular advantage for Romania the President stated that by signing the Fiscal Compact, Romania has joined a common effort towards a deeper integration: “The Euro is no longer the currency of Eurozone Members, it is the currency of European Union”, he added.[8] [author’s translation from Romanian]

Ionut Dumitru, the President of the Romanian Fiscal Council[9] supported the decision of the President, but at the same time took a pragmatic stand: „[f]or Eastern European countries and for Romania in particular, the Fiscal Compact can be a significant advantage, if we think that fiscal discipline has never been a strong point of Romania’s. On the other hand, the downside of the Compact has to do with the more limited capacity to stimulate the economy, especially during periods of recession. Practically, we will only have a limited ability to help the economy when such help will be needed, but overall I can say that it may have a positive effect on fiscal discipline and this could be beneficial for the long-term sustainability of public finances.”[10]

Even if the decision to join the Fiscal Compact was taken by the President alone, the position cannot be seen as diverging from the one of the present Government and the Prime Minister (Victor Ponta - PSD), even if the President and Prime-Minister Ponta have opposite political convictions. In this sense, the current governance programme for 2013-2016 states that the governance agenda is based on the fundamental principles of European governance, namely: “the macroeconomic prudence and fiscal-budgetary responsibility [...] the principle of reducing the gaps between Romania and the European Union’s advanced countries, including the adaptation of European solutions [...]”[11] [author’s translation from Romanian]

RATIFICATION

IX.2

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

The Fiscal Compact was ratified after it got the approval of the two chambers of the Romanian Parliament - Chamber of Deputies and Senate. The emergency legislative procedure was employed allowing the Parliament to pass the law in less than 60 days. The ratification law was an ordinary law, voted by the majority of the members of the Parliament present.

Firstly on May 8, 2012 the legal proposal regarding the Ratification of the Treaty regarding the stability, coordination and governance within the Economic and Monetary Union signed in Brussels on 2nd March 2012 (Fiscal Compact) was approved by the Chamber of Deputies with 237 votes for, no vote against and 2 abstentions.[12] No debates on the substance of the fiscal Compact were registered. After the rapporteur presented shortly the provisions of the Fiscal Compact treaty and one equally short supportive intervention the legal proposal for ratification was put to a vote.[13] Onwards, the ratification law was discussed and adopted in the Senate with 89 votes for, one vote against and no abstentions, according to the transcript of the meeting of the Senate on the 21st of May 2012.[14] The ratification law subsequently became Law no. 83/2012.[15]

The legal basis for the ratification is Article 11 of the Constitution, which states - according to the dualist theory of international law reception - that: "the treaties ratified by the Parliament are part of the internal law". The provisions of the ratified treaty have the same legal force in the national legal system as the law of ratification, in casu - an ordinary law.

The legislative process was based on the following provisions of the Romanian Constitution:

"Article 67:

The Chamber of Deputies and the Senate shall pass laws, and carry resolutions and motions, in the presence of the majority of their members."

Article 73

(1) Parliament passes constitutional, organic, and ordinary laws.

Article 75

(1) The Chamber of Deputies, as a first notified Chamber, shall debate and adopt the bills and legislative proposals for the ratification of treaties or other international agreements and the legislative measures deriving from the implementation of such treaties and agreements [...].

(2) The first notified Chamber shall pronounce within 45 days. [...]

(3) After the first notified Chamber adopts or repeals it, the bill or legislative proposal shall be sent to the other Chamber, which will make a final decision.

Article 76

(1) Organic laws and resolutions concerning the Standing Orders of the Chambers shall be passed by the majority vote of the members of each Chamber.

(2) Ordinary laws and resolutions shall be passed by the majority vote of the members present in each Chamber."[\[16\]](#)

There was no discussion on whether a special majority was needed, as the vote was almost unanimously in favour of approval.

It must be stressed that the present law was only the ratification law. Further legislative measures were carried out to actually implement the provisions of the Fiscal Compact in late 2013. Please see section IX.5 below.

RATIFICATION DIFFICULTIES

IX.3

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

The ratification bill of the Fiscal Compact was passed by the Chamber of Deputies on May 8, 2012 without amendments and no actual debates. On May 21, 2012 the law was approved by the Senate equally with no amendment and no actual debates. The ratification law entered into force on 23.06.2012, three days after the publication in the Official Journal of Romania on 20.06.2012.[\[17\]](#)

No legal or political difficulties were encountered by the Romanian authorities and no further public debates were reported on the ratification of the Fiscal Compact.

Political and legal difficulties were encountered and are still pending regarding the implementing measures of the Balance Budget Rule. See section IX.5 below.

As to opinions expressed by Romanian politicians, Ion Iliescu, Romania's former President and the Social Democrat Party's (PSD) Honorary President, declared on 15 February 2012 that the Romanian authorities are rushing to sign the European Fiscal Treaty without analysing its consequences for Romania.^[18] Ion Iliescu said that "the opposition does not oppose Romania's accession to the Fiscal Treaty, but it wants a debate on the consequences of signing the European Act. We [the prior USL coalition] do not have reserves and negative attitudes, but we want to understand better, to analyse and decode it", the politician stated.^[19] He was asked by a journalist, why he thinks the government is rushing to sign the Treaty, and Iliescu answered as follows: "I cannot explain it to myself; I do not understand the rush, when everyone in Europe sits and analyses it. Nobody rushes us to sign it now because we are still outside the Euro Zone. I do not know why Mr. Băsescu [President] is rushing into things, I do not know what knowledge he has and how much economics knowledge he has and what he understands out of this. Why does he push the country to engage in an affair? I cannot explain it to myself, because this is an adventure where people participate without having any clue about it."^[20] The PSD's Honorary President added that before the Government signs the Treaty, debates should be organized about the consequences of the accession to the Treaty, but also about future policies within the EU to reduce the discrepancies between the EU Member States. Iliescu avoided commentaries on the possible risks that Romania would face by signing the Treaty.^[21]

The Romanian Government on 28th February 2012 authorised the signature the Fiscal Compact. After President Traian Băsescu signed the document, Dan Suciuc, the spokesman of the Executive declared: "[f]ollowing negotiations, Romania obtained the status of participating non-Euro-Zone State to the joint meetings of all Signatory States under certain conditions".^[22]

A Protocol on Accession to the Fiscal Compact was signed a week earlier by the coalition's leaders and PSD's President, Victor Ponta [current prime-minister of Romania], admitting that the USL Government agreed that Romania would sign and ratify the Fiscal Compact.^[23]

In his speech on 7 March 2012 in the plenary meeting of the Parliament, President Băsescu asked the Parliament to ratify the Fiscal Treaty as soon as possible: "it will be a signal of the decision, the political will to become a powerful economy and a powerful state that would secure our own resources for development and, especially, ensure sustainable development, with several pillars, including EU funding", the President stated.^[24] The President also affirmed that "Romania meets many of the conditions required by the Fiscal Treaty. Romania will not step back even if the Euro zone will be in recession in the second half of the year (...). In 2012 through the Fiscal Treaty a step forward was made. We cannot have a healthy euro if only Germany has a pragmatic approach [...]. This rule makes the Euro lasting and the economy of the EU a stronger one".^[25]

Several Romanian economists have taken critical positions regarding the ratification of the Fiscal Compact. Adrian Vasilescu, counsellor of the Romanian National Bank (BNR) Governor, for example highlighted the problem of lack of data: "[i]n Romania, nobody officially calculates this data [on

structural deficit and potential GDP]. The Romanian National Bank (BNR) calculates the potential GDP, but it does it only for itself without communicating it. The EU Member States agreed that the 'golden rule' of not overcoming the deficit of 0.5% and 60% of GDP debt must be included in the Constitution. The problem is that the structural deficit cannot be measured, but only estimated based on an economic model."[\[26\]](#)

Economic analyst Ilie Şerbănescu (former Minister of Reform from 5 December 1997 until 17 April 1998) argued that the ratification would affect living standards.[\[27\]](#)

Liviu Voinea, director of the Applied Economics Group, argued that the ratification of the Fiscal Compact would: "[...] increase the property taxes because [the] country collects four times less than the EU. [...] Romania will now be forced to use all available resources in the coming years, namely higher absorption of EU funds or increasing the percentage of unexplored workforce (40%) for growth".[\[28\]](#)

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 ROMANIA? 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.

Romania has decided to be bound by the Balanced Budget Rule on the basis of Article 14(5) Fiscal Compact already before joining the Euro area (see also section IX.1 above and IX.8 below).

The current provisions of the Romanian Constitution do not include a Balanced Budget Rule. The only existing constitutional rule limiting the budgetary decisions is set by Article 138 (5) of the Constitution, which states that: "[n]o budget expenditure shall be approved unless its financing source has been established".

In the legal system of Romania, the Parliament adopts the following acts: laws, regulations, decisions, declarations, motions, messages and appeals. The only act of the Parliament with normative nature, of general application and with legally binding force is the law ('legea').

As to the types of laws, according to Article 73 (1) of Romanian Constitution: "Parliament passes constitutional, organic, and ordinary laws". The constitutional laws are the ones on the revision of the Constitution. These are adopted by the Parliament with two thirds of the members of each Chamber being onwards subject to approval by referendum (Article 151, Constitution of Romania). The organic laws are adopted only in the expressly and exhaustively prescribed areas as detailed in the Constitution by the majority of the members of each Chamber of the Parliament - absolute majority (Article 73(3) and Article 76(1), Constitution of Romania). The ordinary laws are adopted by the majority of the present members of each Chamber of the Parliament - simple majority (Article 76(1), Constitution of Romania).

Subsequently, in the Romanian legal system the only provisions with both binding force and

permanent character are the constitutional ones. No other legal acts may provide a sufficient guarantee of permanence. The other laws – organic and ordinary – can be changed with a majority of votes of the members of the Parliament or a majority of the members of the Parliament present, respectively.

It follows that, in order to comply with the provisions of Article 3 (2) of the Fiscal Compact, it can be argued that in Romania the amendment of the Constitution would have been imminent.

In practice, this was not the case. The provisions of Article 3(1) of the Fiscal Compact on the Balance Budget Rule and the correction mechanism were implemented in the national legal system by ordinary Law 377/2013 amending Law 60/2010 on Fiscal Budgetary Responsibility (Sections 3 and 4).[\[29\]](#)

The legislative proposal to amend the Fiscal Responsibility Law no. 69/2010 was subject to the emergency procedure, in order to comply with the deadline of implementing the Fiscal Compact of 1 January 2014. The proposal was registered in the Senate on 19 November 2013, was voted by the Senate on 27 November 2013 (86 votes FOR, 0 Against and 8 Abstentions[\[30\]](#)), and afterwards was also approved by the Chamber of Deputies on 10 December 2013 (242 votes FOR, 31 Against and 42 Abstentions [\[31\]](#)). On 18 December 2013, the legislative proposal, approved by both chambers of the Parliament, was promulgated by the Romanian President, becoming Law no. 377/2013.[\[32\]](#)

The law is an ordinary one and requested a simple majority, as the fiscal discipline does not feed into the areas regulated by organic law provided for by Article 73(3) of the Constitution. It was published in the Official Journal on December 23, 2013 and entered into force on January 1st 2014.[\[33\]](#)

The specific provisions implementing the Balanced Budget Rule, transpose closely the text of Article 3 (1) of the Fiscal Compact. It reads as follows:

“Article 5¹. In order to comply with the reference values for budget deficit and public debt, as they are mentioned in Protocol no. 12 on the Procedure Applicable to Excessive Deficits, attached to the Treaty on the Functioning of the European Union, the budgetary position of the public administration is either balanced or in surplus.

Article 5². The rule provided under article 5¹ shall be considered complied with if one of the following requirements is fulfilled:

(a) The medium-term budgetary objective does not exceed a lower limit of the annual structural balance of the public administration of -0.5% of GDP expressed at market prices;

(b) When the ratio between the public debt calculated according to the EU methodology and the GDP at market prices is significantly below 60% and when the risks related to long-term sustainability of public finance are low, the lower limit of the medium-term budgetary objective may not exceed an annual structural balance of the public administration of maximum -1.0% of GDP at market prices;

(c) The annual structural deficit of public administration converges towards the medium-term budgetary objective according to an adjustment path agreed with the institutions of the European Union, according to the Council Regulation (EC) no. 1466/1997, as subsequently amended and

supplemented.” [\[34\]](#)

It must be recalled that the President of Romania on January 30, 2012, shortly before the signature of the Fiscal Compact, pleaded for the absolute necessity of amending the Constitution by the end of 2013, at the latest, to respect the commitments undertaken by Romania under the agreement.[\[35\]](#)

As well, on December 11, 2011 after the European Council of 8-9 December 2011, the President declared that the transposition of the relevant provisions of the Fiscal Compact shall be checked by the Court of Justice of the European Union: “[...] the concrete way in which the relevant objectives of the Growth and Stability Pact shall be introduced in the Constitution or in the equivalent legislation shall be analysed and approved by the Court of Justice of the European Union”, he stated.[\[36\]](#) [author’s translation from Romanian]

Two projects on the revision of the Constitution were put forwards in the reference period: in 2011 and 2014, respectively. Please refer to sections III.2 and III.4 above.

The 2011 legislative proposal on the revision of the Constitution, registered in the Parliament on June 26, 2011, envisaged the inclusion of a new Article 138-1 ‘Financial policy’ regulating the Balance Budget principle.[\[37\]](#) The project was initiated by the President on the proposal of the Government (both the cabinet and Prime Minister members of PDL), exercising the attributes stipulated in Article 150 of the Constitution.[\[38\]](#) In July 2011, Prime Minister Emil Boc (in office until February 2012), referring to the proposal stated: “I will tackle the provision of Article 138-1 regarding the state financial policy, which requires, for the first time in the Romanian Constitution, a limit of the deficit at 3% and of the public debt exceeding 60% of GDP. Such a constitutional provision is not new, or completely new, to European constitutions. We already have the precedent of Germany in 2009, which included a provision almost exactly as ours on the budget balance and the discussions are well advanced in France, for the purposes of such an approach to the provision in the Constitution of certain rules to keep the financial balance. I think that such a rule is absolutely necessary to be imposed at the constitutional level. I say this especially in view of the lessons the crisis have taught us about how vulnerable governments and countries are facing populism, demagoguery and the policies responsible for buying votes with public money. We need such a provision to be a safeguard against any populist policies of buying votes with public money.”[\[39\]](#) [Author’s translation from Romanian]

As well, the constitutional review project proposed the amendment of Article 138 (2) with an additional obligation of the Government to submit the annual draft budget laws to the institutions of the European Union.

Later on, the aforementioned constitutional review project initiated by the President was rejected by the Parliament (USL majority) on May 21, 2013 before being submitted to a referendum (see sections III.2 and III.4 above).[\[40\]](#)

In 2013 a new constitutional reform was initiated by the Parliament with a formal proposal registered in the Parliament in 2014 (USL majority).[\[41\]](#) This time, the constitutional revision project was initiated by the Parliament.[\[42\]](#) The 2014 project does not include the Article 138-1 ‘Financial policy’ and the relevant provisions on a Balanced Budget Rule. The amendment of Article 138 (2) Constitution on the obligation of the Government to submit the annual draft budget laws to

the institutions of the European Union after informing the Parliament is maintained.

The current 2014 project has been reviewed by the Constitutional Court on its own motion. By Decision 80 of February 16, 2014 the Constitutional Court found more than twenty instances of unconstitutionality of the proposed constitutional revision initiative.[\[43\]](#) Currently, the constitutional revision legislative proposal is pending in the Parliament.

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 provisions of the Fiscal Compact, including the Balanced Budget Rule were implemented by law 377/2013 amending law 69/2010 on Fiscal Budgetary Responsibility. The particular rush in implementing the Fiscal Compact provisions left no time for parliamentary debates. The implementing law proposal was registered with the Senate on November 21, 2013. Onwards the law was passed to the Chamber of Deputies and adopted by simple majority according to the emergency legislative procedure on December 10, 2013. The whole legislative process lasted less than one month, under considerable time pressure, as the law was due by January the 1st of 2014. In both Chambers of the Parliament the debates were a mere formality, meaning that the rapporteur announced the legislative novelty of the proposed law followed by no intervention from the parliamentary groups - the only ones allowed to take the floor during the emergency legislative procedure debates.

Regarding the implications of the treaty for (budgetary) sovereignty, the President of Romania stated on March 2, 2012 shortly after the signature of the Fiscal Compact that: "the 25 countries that signed the Treaty accepted "voluntarily" to share the control over the budget and fiscal prerogatives with the EU Commission. The treaty is a step forward in the process of European integration of economic policies. This process will be done in two ways. Through increasing policy harmonization at EU level and, perhaps more importantly, by increasing the control exercised by the European institutions in the coordination of national economic policies, especially fiscal policy".[\[44\]](#) [author's translation from Romanian] Therefore, the President rather saw the signature of the Fiscal Compact by Romania as an opportunity and a necessary step towards European integration than an intrusion into national sovereignty, as long as the member states agree on sharing decision powers regarding fiscal and budgetary policies.

The general debate on the revision of the constitution was a constant one between the President and the Parliament since 2009 and continues until the present days. The implementation of the Fiscal Compact fed into this long-standing debate. At the time the Fiscal Compact was signed, the President insisted on the immediate revision of the Constitution. In the period 2012-2013 the only project on the revision of the Constitution registered in the Parliament was the one initiated by the President on the proposal of the prior PDL government, the party in opposition since May 2012. During 2013, the USL coalition elaborated another legislative proposal on revision of the Constitution, however it was registered with the Parliament only in 2014 and did not include a Balanced Budget Rule. Please see sections III.2 and III.4 above.

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)?

There is no information concerning any public debates about the relationship between the Balanced Budget Rule of the Fiscal Compact and the Medium term budgetary objective in the six-pack.

CASE LAW

IX.7

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

There is no court judgement either on the Fiscal Compact or on the Balanced Budget Rule contained therein.

Nevertheless, in June 2011, before the signature, ratification or implementation of the Fiscal Compact the Constitutional Court has expressed its opinion on the inclusion of a Balanced Budget Rule provision in the Constitution of Romania transposing the maximum reference values of the Stability and Growth Pact (budgetary deficit 3% of GDP and public debt 60% of GDP). By Decision 799 of 17 June 2011 concerning the legal proposal on the revision of the constitution, the Court found a constitutional amendment concerning a Balanced Budget Rule constitutional as these restate the obligations of the Stability and Growth Pact, Article 126 Treaty on the Functioning of the European Union, as well as Protocol 12. Moreover, the Court held that provisions of constitutional force that express the principle of budgetary balance are necessary as these are consistent with the Declaration on Article 126 TFEU whereby: “[...] a rule-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.”

Having regard to the above reasoning, the Court concluded that:

“The constitutional review project enshrines at the level of constitutional legal norm the principle of budget balance: regulation of a maximum budget deficit of 3% of GDP and public debt not exceeding 60% of GDP. The proposal is based on the need of converting a constitutional criterion of economic exigency discipline and budgetary rigor and the review does not violate the Constitutional limits prescribed by article 152 (1).” [\[45\]](#) [Author’s translation from Romanian]

Even if the present 2014 Constitutional amendment initiative does not contain a similar article, the aforementioned Decision is important as it states the principled stand of the Constitutional Court on the matter. Most importantly, the Decision reviewed the constitutionality of the proposed Budget Balance Rule against Article 152 (1) of the Constitution of Romania ‘The limits of revision’ concluding that the amendment does not conflict with the fundamental constitutional foundations that may not be subject to revision, such as the independence of the Romanian state. Article 152(1) reads:

“The provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity,

independence of justice, political pluralism and official language shall not be subject to revision.”[46]

On the exact wording of the proposed article 318-1 see section III.2 above.

NON-EUROZONE AND BINDING FORCE

IX.8

HAS ROMANIA 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?

The decision to be bound by the Fiscal Compact was rather a political decision taken by the President and supported by the Government. Please see section IX.1 above.

Romania, although not a member of the Euro area, decided to be bound by the entire Fiscal Compact. Similar to other non-Eurozone signatories Romania is bound by the provisions of Title III[47] and IV[48] of the Treaty as of 1 January 2013 the date of entry into force of the Fiscal Compact Treaty only if it declares to be bound by these Titles.[49] The ratification was notified to the Council of the European Union on 06th November 2012, including a Declaration to be bound by Title III and IV of the Treaty.[50]

MISCELLANEOUS

IX.9

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

Not applicable.

[1] Presidency of Romania, Statement of the President, March 2, 2012, available at: http://cms.presidency.ro/?pag=59&year=2012&sid=13941&id_p=13946

[2] Presidency of Romania, Statement of the President, December 11, 2011, available at: http://cms.presidency.ro/?pag=59&year=2011&sid=13764&id_p=13787

[3] Ibidem.

[4]

<http://www.romanialibera.ro/politica/institutii/basescu-toate-partidele-parlamentare-vor-sustine-modificarea-constitutie-247707>

[5] Presidency of Romania, Statement of the President, January 30, 2012, available at: http://cms.presidency.ro/?pag=59&year=2012&sid=13889&id_p=13898

[6] Ibidem.

[7] Presidency of Romania, Statement of the President, March 2, 2012, available at: http://cms.presidency.ro/?pag=59&year=2012&sid=13941&id_p=13946

[8] Ibidem

[9] The Fiscal Council is an independent authority set up under the Fiscal Responsibility Law 69/2010 available at: <http://www.fiscalcouncil.ro/legea.htm>. The body is tasked with supporting the government and Parliament in working out and implementing the fiscal policy and with promoting transparency and sustainability of public finances,

[10] <http://actmedia.eu/daily/tax-council-head-eu-fiscal-compact-benefits-romania/38515>

[11] Government of Romania, Objectives, available at: <http://gov.ro/ro/obiective/programul-de-guvernare-2013-2016>

[12] Parliament of Romania, Chamber of Deputies, Session of May 8, 2012, stenograph, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7126&idm=30,011>

[13] Parliament of Romania, Chamber of Deputies, Session of May 8, 2012, debates, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7122&idm=3>

[14] Parliament of Romania, Senate, Session of 21st May 2012, transcript, p. 41, available at: <http://www.senat.ro/pagini/stenograme/stenograme2012/12.05.21.pdf>

[15] Published in the Official Journal no 410/20.06.2012. The adopted form is available at: http://www.cdep.ro/pls/proiecte/docs/2012/cd039_12.pdf

[16] Constitution of Romania, English, available at: <http://www.cdep.ro/pls/dic/site.page?id=372&idl=1>

[17] Parliament of Romania, Legislative file PL x- 39/2012, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12609

[18] <http://www.romanialibera.ro/actualitate/politica/iliescu-despre-tratatul-de-guvernanta-fiscala-nu-stiu-de-ce-se-grabest-e-domnul-basescu-253787.html> [author's translation from Romanian]

[19] <http://www.romanialibera.ro/actualitate/politica/iliescu-despre-tratatul-de-guvernanta-fiscala-nu-stiu-de-ce-se-grabest-e-domnul-basescu-253787.html> [author's translation from Romanian]

[20] Ibidem.

[21] Ibidem.

[22] <http://www.mediafax.ro/economic/guvernul-a-aprobat-semnarea-tratatului-de-guvernanta-fiscala-ue-romania-va-trebu-i-sa-limiteze-deficitul-bugetar-si-datoria-publica-9351766> [author's translation from Romanian]

[23] Ibidem.

[24] Parliament of Romania, United Chambers, session of 7 March 2012, Address of the President of Romania to the Parliament, stenograph, available in Romanian at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7107&idm=2&idl=1> [author's translation from Romanian]

[25] Ibidem.

[26] <http://www.business24.ro/macroeconomie/criza-economica-romania/europa-schimba-regulile-pactului-fiscal-cat-ne-co>

[sta-salvarea-euro-1506385](#), [author's translation from Romanian]

[27] Ibidem.

[28]

<http://www.business24.ro/macroeconomie/criza-economica-romania/europa-schimba-regulile-pactului-fiscal-cat-ne-co-sta-salvarea-euro-1506385> [author's translation from Romanian]

[29] Available at: <http://www.fiscalcouncil.ro/legea.htm>

[30] Parliament of Romania, Senate, Session of 27 November 2013, Legislative file L656/21.11.2013, vote, available at: <http://www.senat.ro/legis/lista.aspx>

[31] Parliament of Romania, Chamber of Deputies, Session of 27 November 2013, Legislative file PL-x nr. 534/2013, vote, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=13787

[32] Published in the Romanian Official Monitor on 23rd December 2013.

[33] Law 377/2010, legislative file details, available at: http://www.cdep.ro/pls/legis/legis_pck.htp_act?ida=121469

[34] Article 5-1 and 5-2, Fiscal Responsibility Law 69/2010, as amended by law 377/2013, available at: <http://www.fiscalcouncil.ro/legea.htm>

[35] Presidency of Romania, statement of the President of 30 January 2012, available at: http://cms.presidency.ro/?pag=59&year=2012&sid=13889&id_p=13898

[36] Presidency of Romania, statement of the President of 11 January 2011, available at: http://cms.presidency.ro/?pag=59&year=2011&sid=13764&id_p=13787

[37] Parliament of Romania, Legislative file PL-x nr. 492/2011, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=12163

[38] Article 150 (1) Revision of the Constitution may be initiated by the President of Romania on the proposal of the Government, by at least one quarter of the number of Deputies or Senators, as well as by at least 500,000 citizens with the right to vote.

[39] <http://www.juridice.ro/155562/forumul-revizuirea-constitutiei-romaniei.html> Please indicate when the translation is yours.

[40] Legislative file PL-x nr. 492/2011, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=12163

[41] Legislative proposal on the revision of Constitution of Romania, File No. Pl nr. L233/2014, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=1&idp=17422

[42] Ibidem.

[43] Constitutional Court, Decision 80/2014, available in Romanian at: http://www.ccr.ro/files/products/Decizie_80_2014_opinii2.pdf

[44] Presidency of Romania, statement of the President, March 2, 2012, Brussels, available in Romanian at: http://cms.presidency.ro/?pag=59&year=2012&sid=13941&id_p=13946

[45] Constitutional Court of Romania, Decision 799 of 17 June 2011, published in the Official Journal 828 of 23.11.2011, available in Romanian at: http://www.ccr.ro/files/products/D0799_11.pdf

[46] For the English version of the Romanian Constitution please consult the official page of the Parliament of Romania: <http://www.cdep.ro/pls/dic/site.page?id=371&idl=2>

[47] Fiscal Compact, Articles 3-8 of the Treaty, available at: http://european-council.europa.eu/media/639235/st00tscg26_en12.pdf ;

[48] Fiscal Compact, Economic policy coordination and convergence, Articles 9-11 of the Treaty, available at: http://european-council.europa.eu/media/639235/st00tscg26_en12.pdf ;

[49] Fiscal Compact, considerations, available at: http://european-council.europa.eu/media/639235/st00tscg26_en12.pdf ;

[50] Declaration of Romania, available at: <http://www.consilium.europa.eu/policies/agreements/search-the-agreements-database?command=declaration&lang=en&aid=2012008&partyId=RO&doclang=EN>

X - Financial Support

A number of member states have received direct financial assistance through balance of payments support (Hungary, Romania, 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.

In early spring 2009, faced with a sharp increase in internal and external imbalances strongly aggravated on the background of the economic and financial crisis, Romania concluded a financing agreement for a two-year multilateral financial assistance package of EUR 20 billion with the IMF, EU, EBRD and World Bank.[1] The agreement was announced by both IMF[2] and EU institutions[3] on March 25, 2009. In academic literature, the agreement was presented as helping with maintaining liquidity pressures in the short term, to improve competitiveness and to redress the macroeconomic and financial imbalances.[4]

Three Balance of Payments assistance programmes (BoP) for Romania have been agreed with the EU institutions as of 2009. Under the first programme, running from 2009-2011, Romania benefited of EUR 5 billion BoP assistance, disbursed in five instalments. The second BoP programme for 2011-2013 provided for EUR 1.4 billion pre-cautionary financial assistance. The third and current BoP programme for 2013-2015 agreed to continue the pre-cautionary assistance of up to a maximum of EUR 2 billion.[5]

For the three BoP assistance programmes - please see sections X.5 and X.6 below.

The economic, political and legal context of Romania in the period was largely driven by the accession to the EU on January 1st 2007.

The 2009 economic and financial difficulty of Romania cannot be said to have come as a complete surprise. As early as 2007, alarm bells on Romania's economic fragility were rang by International Financial Institutions, notably the IMF.[6] The signature of the treaty of accession in 2005 has generated a 'booming' effect on the Romanian economy, which registered unprecedented capital inflows and rapid rates of growth.[7] The positive developments were welcomed by the International Financial Institutions, however the Romanian authorities were constantly cautioned on the risks of the economic boom corroborated with national challenges identified as: a constantly increasing deficit and inflation rates, high spending and over-indebtedness, poor fiscal policies and rules, highly instable and short-term budget administration and planning, et al.[8]

The political situation preceding the financial assistance is characterised largely by two factors: a puzzled political arena and constant electoral periods. In 2007, Romania has known two referenda and one European Parliament election (following the EU accession). In 2008, national parliamentary and local elections were organised. The unstable political context did not favour a thoroughly stable and long term budgetary and fiscal policy planning as was recommended by international observers.

The legal situation was largely driven by the political and economic developments described below.

Political and economic situation leading up to the moment when Romania formally requested direct financial assistance

Political situation

Similar to the period following the financial assistance contracted in March 2009, the preceding political context was characterised by constant tensions (see section I on the post-2008 political context). On May 19, 2007 a referendum on the dismissal of the President has been held, following the President's suspension by Parliament vote.[\[9\]](#) The referendum result did not meet the fifty percent plus one quorum.[\[10\]](#) In response, the President initiated a referendum on the introduction of the uninominal electoral system to be introduced as of the first parliamentary elections scheduled for 2008.[\[11\]](#) This referendum similarly did not meet the fifty percent plus one quorum.[\[12\]](#) On November 25, 2007 citizens have been called to vote on their European Parliament representatives.[\[13\]](#)

The electoral chain continued in 2008 with the parliamentary elections held on November 30, 2008. The result of the parliamentary elections was a close call. The Social Democrats (PSD) won about 33.9% of the votes, outvoting with less than one per cent the Liberal Democrats (PDL) supported by President Băsescu, who got 32.34% of the votes.[\[14\]](#) The ruling National Liberal (PNL) centre right party got a mere 18.6% of the votes.

On post-2008 political context please see section I above.

With regard to the political circumstances the IMF mission to Romania held on 21 April 2008 that:

“[t]he mission also takes note of several significant risks to the 2008 fiscal deficit. Reflecting fragmented politics and a series of key elections approaching, fiscal policy making seems to have shifted to a particularly short-term mode. Three risks stand out: [...] [planned decrease of VAT to 5% for basic food products, pensions increase, increase of public wage bill][...]”

The mission **urges** the authorities to strongly oppose these and other initiatives that would put at risk the fiscal targets for 2008 and undermine macroeconomic stability.”[\[15\]](#)

The Senate had already adopted the above measures, decreasing the VAT on basic food products to 5% and increasing the pensions on February 6, 2008. Following the strong IMF recommendation, the Chamber of Deputies rejected the legislative project, but it did so only in March 2009, after the parliamentary elections held in late November 2008.[\[16\]](#)

The IMF later appreciated that the parliamentary elections of November 2008: “also contributed to pre-crisis fiscal vulnerabilities from large pre-electoral spending. Spending on public wages and pensions increased by 35 and 46 percent, respectively, in 2008 compared to the previous year.”[\[17\]](#)

Economic situation

Starting with 2008, on the background of the global economic and financial crisis Romania has been closely monitored by the international financial Institutions. The following general features were characteristic of the Romanian economy in the period preceding the financial assistance:

First, Romania's perspective of accession to EU in 2005 and the actual accession in January 2007 had a positive impact on economic growth.[\[18\]](#) The country has been the addressee of 'massive capital inflows' in the form of foreign direct investment.[\[19\]](#) The foreign investment generated a significantly high spending rate in comparison with the country's growth pace.[\[20\]](#) As the 2008 IMF country-report notes: "[t]he massive and persistent capital inflows as EU accession prospects firmed were clearly unexpected, and led to 'overheating'."[\[21\]](#)

Second, as to other macroeconomic variables, the period 2003-2008 was characterised by:

- high growth rates amounting to 6.5-7% per year until 2008[\[22\]](#)
- constantly increasing account deficit rates from 5% in 2003 to 12.4 in 2008[\[23\]](#)
- rapidly increasing public debt[\[24\]](#)
- the sudden increase of real wages' rates since 2005 (especially public wage rates) which were not backed by correlative productivity growth[\[25\]](#)

Third, the banking system was largely dependent on external parent financial institutions (around 88% in 2008), which were highly exposed to the external shocks.[\[26\]](#)

As to the relation between the fiscal-budgetary policies and the political context of 2008, the IMF country-report on Romania also notes that in spite of the budgetary reforms carried out since 2000 the budgetary culture needed further reforms, especially with regard to long term budgetary planning, stronger fiscal rules and independent fiscal institutions: "[...] against a backdrop of political fragmentation, present fiscal institutions remain weak. Fiscal policy decisions are often driven by short-term political considerations, with little attention to the consequences for the functioning of the economy and the long-run sustainability of government finances. Symptoms of this short-term bias are the tendency to artificially inflate revenue forecasts, the high frequency of budget revisions, the pronounced end-year surge in government spending, the systematic underutilization of EU funds, and underfunded social commitments."[\[27\]](#)

The above-enumerated challenges have been exposed by the global economic crisis, generating great imbalances and acute need for financial assistance.[\[28\]](#)

Mr. Jeffrey Franks, the head of the IMF mission to Romania during January 27- February 4, 2009 declared in this sense that: "[i]nternational problems were the trigger for the downturn, but longstanding imbalances within the Romanian economy are aggravating its effects at home."[\[29\]](#)

Mr. Franks added: "[w]hile growth remained high in the first three quarters of 2008, output indicators deteriorated rapidly in the last months of the year. Exports began to tumble, credit availability tightened for firms and households, and domestic consumption and investment are poised to fall. Industrial output is dropping, and business and consumer confidence have

deteriorated. Thus economic activity will be weak, and GDP growth may well turn negative in 2009, with a moderate recovery only toward the end of the year or early-2010. While it is true that uncertainties surrounding the forecast are high, we believe that the balance of risks is on the downside.”[30]

On March 25, 2009 the agreement on a 24 months financial assistance programme for Romania was announced.[31]

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.

In early 2009, given the sharply deteriorating output indicators and the increased risks signalled by the International Financial Institutions, Romania was looking for financial support through loans, initiating the dialogue first with the EU and shortly after with the IMF.[32] An IMF Mission visited Romania between January 29 and February 4, 2009.[33] The mission did not announce a loan, IMF officials declaring that there was no formal request on the part of Romanian authorities to start financial assistance programme discussions.[34]

The public and political debate was absent during the negotiations as the public was still largely unaware of the difficulty of the situation. Again, it must be stressed that the late 2008 elections veiled Romania’s delicate economic situation and successfully distracted the public’s attention. During the electoral campaign the political leaders reassured the voters that Romania was not in crisis and that the global events do not put a threat to Romania’s stability. The radical events of the next three months came completely unexpected for the large public.

There was no relevant public debate on the agreement’s implication on budgetary sovereignty, constitutional law or socio-economic rights during the negotiation of the agreements as the list of conditionalities and the implications were explicitly made public only on April 24, 2009 together with the formal Letter of Intent and signature of the Technical MoU with the IMF.[35] The post-signature debates were largely centred on the agreement with the IMF. The conditionalities therein were presented as a ‘bad’ externality imposed by the IMF as an outside financial institution. Contrary to the agreements with the IMF, the MoU with the European Union had an ancillary role in the public debates, being seen more as an internal EU matter. After the publication of the content of the agreement with the IMF, the President tried to calm the spirits claiming that the agreement could be re-negotiated “anytime”. [36] Mr. Ponta - the PSD leader at that moment in opposition, currently the Prime Minister - had in response a public intervention stating that no re-negotiation was possible: “[President] Băsescu lied”, he declared.[37]

On March 25, 2009, the decision on financial assistance for Romania was made public.[38] A formal Letter of Intent has been signed by the Romanian Government to the IMF on April 24, 2009.[39] Several days later, the EUR 5 billion ‘rescue plan’ for Romania was also approved by the EU through Council Decision 2009/459/EC of 6 May 2009 providing Community medium-term financial assistance for Romania,[40] later amended by Council Decision 2010/183/EU of 16 March 2010.[41]

The Memorandum of Understanding (MoU) between the European Union and Romania was signed on June 18, 2009 in Bucharest and on 23 June 2009 in Luxemburg, the latter being represented by the Prime Minister, the Minister for Public Finances and the representative of the National Bank of Romania.[\[42\]](#) Therefore, the Government supported by the National Bank of Romania was the initiator of the formal request for international financial assistance.

The national ratification measures of the MoU between Romania and the EU were approved by the Government's Emergency Ordinance (OUG) 89/2009 of July 1st, 2009, which left no space for parliamentary debates (please see section X.5 below).[\[43\]](#) Similar government emergency instruments were used to ratify the first 2009 agreements with the IMF and World Bank.[\[44\]](#) For the legal nature of the Government Emergency Ordinances please see section III.9 above.

In addition to the 5 billion EU assistance, the financial assistance to Romania was supplemented by the IMF, World Bank, EIB and EBRD amounting to an overall loan of € 20 billion, built up as follows:

- EU € 5 billion
- International Monetary Fund, SDR 11.44 billion (around € 12.95 billion) under an IMF Stand-by arrangement approved on May 4, 2009, amounting to 1,110.77 per cent of Romania's quota
- The World Bank, € 1 billion under a Development Policy Loan
- The EIB and the EBRD, € 1 billion combined.

In 2011 and 2013 two other BoP pre-cautionary assistance packages have been negotiated between the EU and Romania for a pre-cautionary loan of a maximum of € 1.4 and 2 billion respectively. No comprehensive public debates during the negotiation of these instruments were held. For the parliamentary debates on the ratification of financial assistance instruments see section X.5 below.

STATUS INSTRUMENTS

X.3

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

The Memorandum of Understanding (MoU) and the Loan Agreement between the European Community and Romania were first ratified by the Romanian Government through the adoption of Government Emergency Ordinance No 82/30.06.2009.[\[45\]](#) The financial assistance instrument was regarded as an international treaty (international bilateral agreement, according to the view expressed by the Parliamentary Commission on Budget, Finance and Banking[\[46\]](#)) and it had to be ratified by the Parliament. The Government Emergency Ordinance was later on approved by the Parliament through Law no 364/20.11.2009[\[47\]](#).

The legal bases of the above mentioned acts are Articles 11 and 115(4) of the Constitution. Pursuant to Article 11 of the Romanian Constitution:

“(1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to. (2) Treaties ratified by Parliament, according to the law, are part of national law. [...]”.

According to Article 115 (4) of the Romanian Constitution: “The Government can only adopt emergency ordinances in exceptional cases, the regulation of which cannot be postponed, and has

the obligation to give the reasons for the emergency status within their contents.”

The Loan Agreement attached to the MoU is governed by English law as agreed by the Parties.[\[48\]](#) The Court of Justice of the EU was chosen as the sole competent authority having jurisdiction.[\[49\]](#) The disbursement of the assistance was subject to official notification in the form of a legal opinion, confirming that all the constitutional and legal requirements of the Romanian legal system for the irrevocable entry into force of the agreement were respected.[\[50\]](#) The legal opinion was issued by the Legal Department of the Ministry of Public Finances, confirming the constitutionality and full validity of the agreement in the national legal system.[\[51\]](#) The opinion expressly states that:

“11. The choice of English law as the law governing the loan agreement is a valid choice of law binding on the Borrower according to the Romanian law.

12. The Borrower has accepted legally, effectively, irrevocably the exclusive jurisdiction of the Court of Justice and Court of First Instance of the European Communities in respect of the Loan Agreement and any decision of such court shall be final and enforceable in Romania.

13. Neither the Borrower nor any of its properties are immune, **on the grounds of sovereignty** or otherwise, against confiscation measures – before or after a judgment, or execution of any act or procedure related to the Loan Agreement, except for those assets belonging to the public property of the Borrower under art. 136 of the Romanian Constitution, and art. 11 of Law No. 213/1998 on public property and its legal regime.”[\[52\]](#)

The 2009 MoU was subsequently modified 4 times. Each time the addendum was adopted following the same procedure – through a Government Emergency Ordinance, followed by a law adopted by the Parliament[\[53\]](#) (see also section X.4 below).

TRANSPOSITION NATIONAL LEGAL ORDER

X.4

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

The financial assistance instruments have been transposed ad literam in the content of the ratification laws, being further implemented by specific legislative measures. Therefore in the case of Romania the act of ratification coincides with the act of transposition. The international assistance instruments were regarded as international treaties in the Romanian legal system (international bilateral agreements, according to the view expressed by the Parliamentary Committee on Budget, Finance and Banking[\[54\]](#)), as such, these have been ratified according to the provisions of the Romanian Constitution – Art. 11:

“(1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to.

(2) Treaties ratified by Parliament, according to the law, are part of national law.

(3) If a treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution.”

After the ratification, the international agreements take the same status (legal force) in the national

legal system as the ratification law.

The Romanian Government largely responded to the crisis by following the Emergency Ordinances procedure (see the text of Article 115 Constitution below and section III.9 above). The Emergency Ordinances are legal acts issued by the Government in extraordinary emergency circumstances. These have the same legal force in Romania's constitutional order as the laws adopted by the Parliament and take immediate effect from the day of publication in the Official Journal upon the prior notification of the Parliament. The active involvement of the Parliament is only required at a later moment when the a posteriori parliamentary control of the Government's acts is exercised. As such, the two Chambers of the Parliament are convoked in five days after the notification of the Emergency Ordinance. If a decision of the Parliament is not reached in thirty days the Emergency Ordinance is considered approved automatically. The Parliament in examining the Emergency Ordinances may either adopt or reject the act of the Government; further amendments are possible.

On Emergency Ordinances, the Constitution stipulates at Article 115 that:

“(4) The Government can only adopt emergency ordinances in exceptional cases, the regulation of which cannot be postponed, and has the obligation to give the reasons for the emergency status within their contents.

(5) An emergency ordinance shall only come into force after it has been submitted for debate in an emergency procedure to the Chamber having the competence to be notified, and after it has been published in the Official Gazette of Romania. If not in session, the Chambers shall be convened by all means within 5 days after submittal, or, as the case may be, after forwarding. If, within 30 days at the latest of the submitting date, the notified Chamber does not pronounce on the ordinance, the latter shall be deemed adopted and shall be sent to the other Chamber, which shall also make a decision in an emergency procedure. An emergency ordinance containing norms of the same kind as an organic law must be approved by a majority stipulated under article 76 (1).

(6) Emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly.

(7) The ordinances the Parliament has been notified about shall be approved or rejected in a law, which must also contain the ordinance that ceased to be effective according to paragraph (3).

(8) The law approving or rejecting an ordinance shall regulate, if such is the case, the necessary steps concerning the legal effects caused while the ordinance was in force.”

For the ratification of the MoU between the EU and Romania on the First BoP programme 2009-2011 as well as the subsequent addenda, Emergency Ordinances were adopted by the Government and sent to the Parliament for approval according to the provisions of Article 115 paragraph 5 of the Constitution cited above. After the approval by the Parliament the legal force of the MoU in the national legal order was that of an ordinary law, as the Government's Emergency Ordinance concerned an area falling in the domain of ordinary law according to Article 73(3) and 76 of the Constitution (please also see sections X.2, X.3 above and section X.5 below).

Even if during the delicate political situation of 2009 it was extremely hard to reach a political consensus in the Parliament (see section X.1 and I.1 above), the legislative proposals advanced by the Government on the approval of the ratification instruments for financial assistance were adopted with little or no opposition (the approval of Government Emergency Ordinances). The reason behind this state of affairs was the fact that the economic crisis and the need for external financial assistance was an undisputed reality on the political agenda. Blocking the ratification or having fierce debates on the ratification of the financial assistance instruments would have had a 'boomerang effect' on the economy of the Romania, hampering its credibility on the financial markets and clearly postponing the disbursement of the much needed financial assistance. Instead, extremely tense disputes accompanied the adoption of the concrete implementing acts of the prescribed adjustment measures. Please see sections X.5, X.6 and X.9 below.

ROLE PARLIAMENT

X.5

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

Adoption and transposition

The financial assistance instruments agreed between the Government of Romania, on the one hand and the EU, IMF and World Bank, on the other hand were seen as international treaties (section X.3 above). According to Article 11 of the Constitution of Romania, the international treaties produce effects into the national legal order only after ratification by the Parliament. Therefore, the Parliament was the institution to approve the ratification of the financial assistance instruments by ordinary law.

Even if as mentioned above (section X.3) the financial assistance instruments corresponding to the first two BoP assistance packages were ratified by Government Emergency Ordinances, these were subsequently subject to Parliament's approval. In such a way, formally, the Parliamentary law of approval of the Government Emergency Ordinance on the ratification of the financial assistance instrument constituted in fact the confirmatory ex post ratification act. The act of ratification usually consisted of two parts: the first part stated that the respective law or emergency ordinance was ratifying the financial assistance instrument, whereas the second part transposed the expressis verbis content of the financial assistance instrument, together with the Loan agreement and annexes.

As of 2013, the Government coalition also enjoyed a parliamentary majority, and therefore all the financial assistance instruments were ratified and transposed in national legislation directly by law of the Parliament.

Both the ratification Emergency Ordinances and later on the ratification Laws were the initiatives of the Government. All the ratification instruments were debated and approved by parliamentary emergency procedure.^[55] The procedure presupposes a rapid decision making process. All amendments to the legal proposal are made only in a written form. The committees and the specialised advisory bodies submit the reports on the legal initiative pursuant to the emergency procedure terms applicable to each of them. The general debates are limited only to parliamentary groups, each of them having a maximum of 5 minutes to express their view on the legal

proposal.^[56] The emergency procedure is always employed in case of Government Emergency Ordinances or in case of the legislative initiatives concerning the harmonisation of national legislation with the EU and Council of Europe legislation (EU law implementing legislation). In other cases, the initiator may ask for use of the emergency procedure subject to approval by the Parliament. In the few cases where the financial assistance instruments were approved directly by law of the Parliament, the Government as initiator asked for the emergency procedure to be employed. ^[57]

Implementation

As to the implementation of the adjustment measures several remarks must be made. First, as the implementing measures were fiercely opposed by Parliament, its role was circumvented by the Government, acting by the so-called 'engagement of responsibility procedure' according to Article 114 of the Constitution (please see section III.9 above). Nevertheless, the Parliament had an important role. It challenged systematically the constitutionality of the main implementing measures adopted between 2009 and 2010 to fulfil the conditions detailed in the MoU (please see section X.9 below).

BoP 2009-2011 assistance programme

The Memorandum of Understanding (MoU) between the European Community and Romania on the first BoP 2009-2011 programme was approved by the Parliament, after the Government adopted an Emergency Ordinance to ratify and transpose the provisions of the MoU, as described above (see section X.4).

The ratification Government Emergency Ordinance (OUG - 'Ordonanta de Urgenta a Guvernului') was subject to ex post Parliament approval between September-November 2009, a period marked by strong political instability and social unrest (see section I above).^[58] The law on the approval of the Emergency Ordinance on the ratification of the MoU was adopted by the Chamber of Deputies on September 16, 2009 and by the Senate on November 03, 2009. The Parliament acted by emergency parliamentary procedure, having 60 days to approve the law.

In spite of political rivalries, the vote on the ratification of the MoU enjoyed a broad political consensus. The law was approved with only 2 votes against in the Chamber of Deputies and by unanimity in the Senate.

As to the debates, these were a mere formality. The stenograph of the debate in the Chamber of Deputies only records the presentation of the law by the Government representative and no further interventions.^[59] The stenograph also records the statement of the chair of the session after the voting procedure, who concluded: "Distinguished colleagues, we find a tremendous support for Government's demarche in respect of the loan made".^[60] Similarly, the stenograph of the debate in the Senate - the decisional chamber in the legislative file - records no opinion expressed by the members of the Senate, only the approval of the Committee on Budget and Finance and the point of view in favour of the legislative proposal expressed by the representative of the Government, who declared: "[o]bviously, the Government supports this bill. Romania, as you know, sent a formal request to the European Commission on a medium-term financial assistance loan worth up to 5 billion Euros. The EU Council approved this financial assistance. This agreement mentions a set of

adjustment and reform measures to mitigate the effects of the crisis”.[\[61\]](#) The Government state agent closed his short intervention with the words: “[w]e ask you with all our heart to agree with the adoption of the legal proposal”.[\[62\]](#)

Similarly, the subsequent 2010 ratification Emergency Ordinances on the first and second addendum to the MoU did not enjoy comprehensive debates in the Parliament neither on the substance of the agreement nor on their implications for the Romanian constitutional order. The parliamentary debates, when existent, concerned questions of procedure and necessary quorum in the committees.[\[63\]](#) In other instances, because the thirty days for the approval of the Emergency Ordinances had expired the Government Emergency Ordinance was automatically approved and passed to the second Chamber of the Parliament without debates, according to Article 115(5) Constitution.[\[64\]](#)

In March 2011, the Parliament seemed to take a stance. On the third addendum to the MoU ratified by Emergency Ordinance 5/2011, the approval law of the Parliament did not enjoy much popularity.[\[65\]](#) The ordinary law was finally approved, as it required only simple majority, but this time it got the negative vote of the opposition (the USL alliance formed by the PSD and PNL parties; which from May 2012 formed the governing coalition).[\[66\]](#) During the debates, the USL alliance representatives criticised the celerity of the decision-making, the marginalisation of the Parliament and the gravity of the adjustment measures imposed by the agreement.[\[67\]](#) In this sense, the PNL representative declared that the group would vote against on the basis of two considerations:

“The first issue concerns the way in which the Romanian government violates the legislative autonomy of Parliament. Ratifying such loan agreement by emergency ordinance, in my view, is a serious violation of parliamentarism and the Constitution, even if the constitution gives the government the prerogative to issue emergency ordinances. And the second aspect, indebtedness of the Romanian people without consulting elected officials. If a handful of governors consider that they represent the Romanian people they are wrong”.[\[68\]](#)

Contrary to the March 2011 pro-activity of the Parliament, the following Emergency Ordinance 43/2011 on the ratification of the fourth addendum to the MoU was left again with no ex post parliamentary control. The Emergency Ordinance was considered approved with no vote from the Chamber of Deputies as the legal term of thirty days expired (Article 115(5) Constitution).[\[69\]](#)

As to the implementation of the MoU labour market conditionality, in April 2011, the Romanian Government engaged its responsibility in front of the Parliament on Law 62/2011 in Social Dialogue.[\[70\]](#) The procedure is prescribed by Article 114 of the Romanian Constitution and allows the Government to adopt a law without engaging the Parliament (please see Section III.9 above).[\[71\]](#) As Clauwaert and Schömann show in their country-report on Romania, the law: “[...] not only governs new collective bargaining rules for all levels from national to company, but also regulates representativeness criteria for trade unions and employers’ organisations, the Economic and Social Council (CES) and labour conflicts, among other things. It extracts and somewhat modifies the relevant rules on collective bargaining contained in the Labour Code (Law No. 53/2003), the Collective Agreement Law (Law No. 130/1996) and Laws No. 54/2003 (on the establishment, structure and management of trade unions) and Law No. 356/2001 (on employers). However, the Government adopted this new law on Social Dialogue circumventing the normal parliamentary procedure. This was contested unsuccessfully by opposition parties in the

Constitutional Court. There was also dissatisfaction among the social partners in particular because, for several provisions, there were no supporting impact studies, while comments and observations made by the Economic and Social Council and the International Labour Organization (ILO 2011) were not taken into consideration.”[72]

The same so-called ‘engagement of responsibility procedure’ was employed by the Government in 2009 and 2010 for the implementation of the first adjustment measures (see section IX.9 below).

BoP 2011-2013 assistance programme

The second, BoP precautionary assistance programme for Romania was ratified again by Emergency Ordinance OUG 108/2011, subject to ex post approval by the Parliament. Also in this case, the thirty days term expired[73] and the project was sent to the Senate, which approved the emergency ordinance by unanimity.[74]

As the USL coalition came into government in May 2012, the culture of using Government Emergency Ordinance for ratification of MoUs shifted to using regular laws of the Parliament. As the USL Government enjoyed also a stable majority in the Parliament, the first had no reservation to subjecting the ratification of the MoUs directly to the Parliament. Moreover, the ratification of the MoU by ordinary law needed only a fifty per cent plus one simple majority vote of the Members of the Parliament present for adoption. As such Law 27/2013 on the first and second addendum to the second MoU on the pre-cautionary assistance 2011-2013 was adopted according to emergency parliamentary procedure.[75] The law was adopted by unanimity in the Chamber of Deputies and with 144 votes for and one abstention in the Senate.[76] The debates were given five minutes in the Chamber of Deputies which none of the parliamentary groups made use of.[77] In the Senate the debates were limited to the presentation of the favourable reports of the committees and one general intervention attracting the attention of the senators that the measures prescribed for by the MoU should be taken seriously as they are to become binding after the vote.[78]

BoP 2013-2015 assistance programme

The MoU and Loan Agreement corresponding to the current BoP 2013-2015 assistance package were ratified by Law 31/2014.[79] The Chamber of Deputies approved the legislative proposal of the Government by simple majority on February 18, 2014. The proposal was adopted with 269 votes FOR, 28 votes against and 21 abstentions.[80] The debates consisted largely of political accusations between the past and present government.[81] After the representative of the Parliament presented shortly the precautionary financial assistance arrangement, the PDL opposition group announced its negative vote on the project: “PDL was not against the conclusion by Romania of a new precautionary agreement with the IMF, World Bank and European Commission. But [PDL] saw it otherwise. PDL has another vision of a new agreement with the IMF, European Commission and World Bank. An agreement for development was needed”, stated MP [Gheorghe Ialomițianu](#).[82]

The Senate had more constructive debates on 17 March 2013.[83]

After the formal presentation of the legislative proposal by the Government representative the Senators engaged in substantive debates on the legislative file. The questions raised regarding the role of the Parliament, the national sovereignty and the substance of the adjustment measures for Romania remained rhetorical, with no clear answer coming from the Government.

Senator Dumitru OPREA (PDL) accused the Government of disclosing only partially the information on the financial agreements to the Parliament and that the latter finds out information only from IMF press releases: “Luckily with press statements of the main actors, because otherwise, if we only read the Explanatory Memorandum, it’s all pink [...]; [...]it’s interesting that you never give us this information, we must [look] on the IMF website, even go to the press statements made by the International Monetary Fund for Romania [...]. On February 14, 2014, in Washington D.C. it was stated very clearly by the representative for Europe that there is a big problem in Romania [...]”.[\[84\]](#) [author’s translation from Romanian]

Senator Cristiana-Irina ANGHEL (Conservative Party): “The measures agreed in the new package detailed at length in the Memorandum of Understanding – I quote from the explanatory memorandum: “elements of fiscal policy (public financial management and strengthening fiscal institutions, stimulating the absorption of EU funds and public investment planning law pay unit and functional tests, legislation and tax administration), the health sector; public debt management, financial sector; reforms in the energy and transportation and labor market.” What is this? That we give up the national sovereignty and do what others say? Maybe I did not understand it well.”[\[85\]](#) After an unsatisfying answer she replied: “My question was clear. I want an answer as clear as my question [...] Is there the risk or possibility? Do we give up sovereignty? Because it was about public health, it was about unitary pay. What next?”[\[86\]](#) [author’s translation from Romanian] No answer was given by the Government representative.

Senator Ákos-Daniel MORA (PNL) had a principled question on the powers of the Government to subsequently ratify amendments to the MoU: “If we, the Parliament, are called here today to ratify an agreement to approve a memorandum then I do not understand why Article 5 of this bill mandates the Government, through the Ministry of Finance, to make amendments to this agreement later on?”, he asked.[\[87\]](#) [author’s translation from Romanian] No answer was given.

The legal proposal was adopted with 91 votes for, 18 against and 4 abstentions.[\[88\]](#)

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

The financial assistance instruments imposed a series of adjustment measures to be implemented by the Romanian Government, conditioning the financial assistance and subjecting the country to constant evaluation starting with 2009.

Strict and very clear conditions were inserted in all three Council Decisions providing precautionary EU medium-term financial assistance for Romania from 2009,[\[89\]](#) 2011[\[90\]](#) and 2013.[\[91\]](#) Equally the MoUs, and the addenda to these MoUs, detailed explicit conditions for the disbursement of each instalment.

The adjustment measures corresponding to the three BoP financial assistance packages for Romania were structured around four core areas: fiscal consolidation, fiscal governance, monetary and financial sector policy and structural reforms.

2009 - 2011 BoP assistance programme

According to Art. 1 of Council Decision (2009/459/EC), “the Community shall make available to Romania a medium-term loan amounting to a maximum of EUR 5 billion, with a maximum average maturity of seven year”, over a three year period.[\[92\]](#) The disbursement of each instalment was made dependent on the satisfactory implementation of a list of nine conditions into the new economic programme of the Government of Romania and duly reflected in the Convergence Programme and National Reform Programme. [\[93\]](#)

The EU financial assistance has been disbursed in 5 instalments:

- € 1.5 billion released 27 July 2009
- € 1 billion released 11 March 2010
- € 1.15 billion released 22 September 2010
- € 1.2 billion released 24 March 2011
- € 150 million released 22 June 2011

The average interest rate on the amounts disbursed by the European Commission is around 3%, with repayments starting in 2015.[\[94\]](#)

The MoU signed in June 2009 further clarified the list of adjustments. These concerned:[\[95\]](#)

A. Fiscal consolidation

- Gradual deficit reduction from 5.1% in 2008, 4.1% in 2010 to 3% in 2011 by reducing public sector expenditure, public sector wage bill, subsidies and improving the quality of public spending

B. Fiscal Governance

- Prepare a fiscal responsibility law including a medium term budgetary framework, limitation of budget laws revisions
- Adoption of legislation on a unified wage system in 2009; elimination of bonuses; unified qualifications; pensions sustainable

C. Monetary and financial sector policy

- Ensure price stability and achievement of the set inflation targets

D. Structural reform

- Efficiency and effectiveness of public administration, notably the reform of the Ministry of Transport and restructuring of state-owned transport companies
- Business reform
- Sound and increased absorption of EU Funds
- Adoption of measures to tackle the undeclared work

- Improve the quality of public spending

Following the Commission services mission of October 28 - November 6, 2009 a First Addendum to the MoU was signed in February 2010 complementing the list of conditions for the disbursement of the second instalment of 1 billion.[\[96\]](#) These asked for:

A. Fiscal consolidation: The deficit targets for 2009 and 2010 have been replaced by 7.8% and 6.4%, respectively, given the 'significant worsening of the economic outlook'. Strict measures to reach the targets have been prescribed, including: reduction of the public wage bill up to 8.7%, freeze of pensions at the 2009 level.

B. Fiscal Governance: Adoption of the Fiscal Responsibility Law by the Parliament by the end of March and setting up a Fiscal Council to be fully operational by the end of April 2010; adoption of revised pensions legislation by February 2010; amendment of the Fiscal Code on tax management efficiency by Emergency Ordinance by end of April 2010; arrears monitoring mechanisms for the state-owned companies by the end of April.

C. Monetary and financial sector policy: amendment of credit institution legislation; adoption of legislation on independence of financial supervision institutions by March 2010.

D. Structural reforms: comprehensive functional review of public administration by February 2010; progress in the area of undeclared work.

The second addendum to the MoU was agreed in July 2010, after the April-May mission of the European Commission, IMF and World Bank to prepare the ground for the third assistance tranche:[\[97\]](#)

A. Fiscal consolidation: A subsequent adjustment of the deficit target from 6.4% to 7.3% for 2010 was agreed due to the underperforming economic conditions and slippages in revenue and expenditure adjustments. A harsh set of measures were prescribed to ensure the achievement of the prior missed targets, including:

- 25% cut in public wages from July 1, 2010 up to a minimum of 600 RON (approx. 140 Euros)
- reduction of public sector employees
- 15% reduction of social allowances
- freeze of early retirements
- increase in retirement age
- increase in VAT rate from 19% to 20%
- increase in personal income taxes

All the above measures were to be put in place until July 2010. If Romania failed to attain the prescribed targets, further fiscal consolidation measures were to be put in place.

- B. Fiscal governance: further progress in tax revenue; fighting of tax evasion by 2 billion Romanian LEI (RON); approval of the amended pension legislation by September 2010.
- C. Financial policy: entry into force by September 2010 of the legislation independent supervisory authorities, et al.
- D. Structural reforms: institution of defined targets for the reduction of arrears; privatisation of nominated state-owned companies; streamlining the number of schools and hospitals;

A third addendum to the MoU was agreed in January 2011 after the October- November 2010 mission of European Commission, IMF and World Bank:[\[98\]](#)

- A. Fiscal consolidation: This time the deficit level was on track. Further targets were set to 4.3 % for 2011 and 3% for 2012. Delays in the adoption of the pensions law and unified wage legislation were to be corrected. A budget bill cap for 2011 was established.
- B. Fiscal governance: elaboration and approval of a medium-debt management strategy by the Ministry of Public Finances
- C. Financial policy: Amendment of the legislation of deposit guarantee funds in banking system and ensure credit discipline.
- D. Structural reforms: Control of health sector and state-owned companies arrears; continuing of the progress in the priorly agreed measures, notably within the Ministry of Transport; increased absorption of EU Funds;

A fourth addendum to the MoU was agreed in April 2011 to set the ground for the fifth instalment disbursement and the transition towards a new MoU on pre-cautionary assistance to start from May 2011.[\[99\]](#) This addendum restates the priorly agreed targets and insists on maintaining the achieved ones.

2011 - 2013 BoP pre-cautionary assistance programme[\[100\]](#)

On 12 May 2011, the Council of the European Union adopted a decision to make available a precautionary medium-term financial assistance of up to EUR 1.4 billion for Romania. The recital of Council Decision 2011/288/EU explains that: “[t]he EU assistance for Romania under the Balance of Payments (BoP) facility comes in conjunction with IMF support through a Stand-by Arrangement (SBA) in the amount of SDR 3.090 billion (about EUR 3.5 billion, 300% of Romania’s IMF quota), approved on 25 March 2011. The World Bank continued to provide the earlier committed support of EUR 400 million under its development loan programme and of EUR 750 million of results based financing for social assistance and health reforms.”[\[101\]](#)

The MoU between the EU and Romania signed in June 2011 put in place a comprehensive reform programme for Romania touching upon a vast number of areas including: the product and labour market reform, Labour Code reform, sustainability of the pensions system, infrastructure and efficiency of public transport, EU Structural and Investment Funds absorption and management, economic and fiscal adjustments, energy market reform, monetary stability and reserve losses monitoring mechanisms, et al.[\[102\]](#) The second supplementary MoU was agreed in June 2012

adding certain specific economic policy conditions after a new USL Government was in place.[\[103\]](#)

2013 - 2015 BoP pre-cautionary assistance programme[\[104\]](#)

On 4 July 2013, in the light of remaining risks to its balance of payments, the Romanian authorities requested a third EU medium-term financial assistance programme, again jointly with an IMF Stand-By Arrangement. The Union agreed a financial support to Romania of up to EUR 2 billion on a precautionary basis under the facility providing medium-term financial assistance for Member States' balance of payments established in Regulation (EC) No 332/2002. That assistance was provided in conjunction with support from the IMF through a Stand-by Arrangement in the amount of SDR 1 751,34 million (about EUR 2 000 million, 170 % of Romania's IMF quota), approved on 27 September 2013, which the authorities are also to treat as precautionary medium-term financial assistance. Moreover, "The World Bank has made EUR 1 000 million available under a Development Policy Loan with a deferred drawdown option valid through December 2015. In addition, the World Bank is to continue to provide earlier committed support of EUR 891 million, of which EUR 514 million is still to be disbursed."[\[105\]](#)

The MoU signed between the EU and Romania in November 2013 conditions the pre-cautionary assistance on the implementation of a comprehensive and far-reaching economic social and administrative policy programme, particularly with regard to structural reforms and the implementation of European semester recommendations, as well as continuation of achieved progress in a vast policy areas, including labour markets, pensions and health sector reform.[\[106\]](#)

MISSIONS

X.7

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

The missions conducted by the IMF, European Commission and World Bank constituted one of the main concerns of the Romanian Government as of 2009. Under the agreed Stand-by arrangements the IMF conducted eight reviews as of 26 June 2013.

No specific legal arrangements were made to accommodate the review missions. The 'Troika' review missions mandated for new conditionality arrangements undertaken by the existing public authorities or by the authorities explicitly designated in the amended financial assistance instruments.

During the last five years, the Romanian Government struggled to meet all the conditions imposed by the 'Troika' missions, with little or no concern towards public criticism. According to the most recent IMF country report, Romania has been largely a 'good student': "the economic program, supported by the Fund, the European Commission, and the World Bank, played an important role in stabilizing the Romanian economy, generating concrete results in maintaining growth and maintaining fiscal and financial stability. Romania's performance under the current program continues to be strong. Extending the program by three months allowed the authorities to continue their efforts to reach the goals of a broad structural agenda, with a focus on structural reforms in the energy, transport and healthcare sectors and state-owned enterprises. Therefore, as of today all prior actions were met. Moreover, in line with their EU commitments, the authorities have reduced

the fiscal deficit (in ESA terms) to below 3 per cent of GDP in 2012, which allowed Romania to exit the EU Excessive Deficit Procedure.”[\[107\]](#)

CASE LAW INTERNATIONAL INSTRUMENTS

X.8

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

There was no direct legal challenge against the financial assistance instruments before national courts, but there were a series of Constitutional Court’s decisions regarding the national legislation adopted for the implementation of the measures imposed by the MoU (see question X.9 below).

CASE LAW IMPLEMENTING MEASURES

X.9

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

The national policies and legislation implementing the Memoranda of Understanding were largely contested in front of the national ordinary courts and challenged in constitutionality before the Constitutional Court. In parallel, the austerity measures have been contested in front of the European Court of Human Rights and the Court of Justice of the EU. Whereas, both European Courts declared the applications and references inadmissible, the national Constitutional Court declared some of the adopted measures unconstitutional.

Constitutional Court of Romania

The implementing measures required by the international financial assistance packages generated two major litigation waves in front of the Constitutional Court. These concerned the 2009 and 2010 national economic redress packages prescribed by the MoU.

A. The first 2009 set of decisions refers to Law 329/2009 on the reorganization of public authorities and institutions, rationalization of public expenditure, business support and compliance with the framework agreements with the European Commission and International Monetary Fund[\[108\]](#) and the Law 330/2009 on a unitary wage system.[\[109\]](#)

The laws were adopted by the engagement of responsibility of the Government in front of the Parliament, thus avoiding a Parliamentary direct scrutiny (please see section III.9 above).[\[110\]](#) The Members of the Parliament challenged the measures in two instances.

I. Constitutional Court Decision 1414/2009 concerning the reorganisation of public institutions, prohibition to cumulate the pension with salary, progressive reduction of public sector employees, reduction of the public wage bill for certain public employees by 15% per month - objection of unconstitutionality rejected with exceptions[\[111\]](#)

1. NAME OF THE COURT:

Constitutional Court of Romania

2. PARTIES

The objection of unconstitutionality was raised before the promulgation of the law - a priori - by a group of 101 Members of the Parliament pursuant to Article 146 a) of the Constitution.

3. TYPE OF ACTION/PROCEDURE

A priori constitutional review ('excepție de neconstituționalitate')

4. ADMISSIBILITY ISSUES

According to Article 146 a) of the Constitution the Constitutional Court may be invested with a constitutionality claim originating from "a number of at least 50 deputies or at least 25 senators". The condition was fulfilled by the objection of unconstitutionality, which was formulated by 101 Members of the Parliament, therefore the claim was found admissible.

5. LEGALLY RELEVANT FACTUAL SITUATION

The constitutional challenge was formulated against the Law on the reorganization of public authorities and institutions, rationalization of public expenditures, business and compliance support framework agreements with the European Commission and International Monetary Fund, in its entirety (Law 329/2009 after the publication in the Official Journal). The law was adopted pursuant to the so-called procedure of 'engagement of responsibility' of the Government in front of the Parliament (on the procedure see section III.9 above).

6. ARGUMENTS OF THE PARTIES, ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The objections of the parties and the conclusions of the Constitutional Court may be summarized as follows:

I. Unconstitutionality of the provisions concerning creation of new public bodies in the subordination of the Government with no prior positive opinion of the Court of Auditors as contrary to Article 117 (2) of the Constitution - rejected. The Court found that the authorization required by Article 117 (2) of the Constitution was applicable only to the acts of the Government. As the contested law was adopted by Government through the so-called 'engagement of responsibility procedure', it is assimilated to the law as normative act of the Parliament and not to an act of the Government. Therefore the unconstitutionality claim was rejected.

II. Unconstitutionality of the provisions concerning the prohibition of cumulating the salary and pension rights as contrary to Article 41(1) of the Constitution on the right to work and to pursue an occupation, Article 16(1) of the Constitution on equality and Article 44 on the right to private property - partially unconstitutional in as much as the prohibition to accumulate the salary and the pension concerns the persons for whom the length of the mandate is prescribed for expressly in the Constitution.

III. Unconstitutionality of the provisions concerning the obligation of the public authorities to cut the personnel expenditure by 15.5% and as a consequence the obligation to renegotiate the work contract as contrary to Article 41 on the right to work and social protection- rejected. The Court noted that the measure limits the constitutional rights as

enshrined by Article 41 of the Constitution. However the Court found that the right is not absolute and might be subject to limitations as prescribed for by Article 53 of the Constitution. In the view of the Court the limitations are provided by law, justified by the “budgetary constraints generated by the economic crisis” and proportionate.

7. LEGAL EFFECTS OF THE JUDGMENT/DECISION

As the contested provisions prescribing for the prohibition to hold simultaneously the salary and the pension was found unconstitutional in as much as the prohibition concerned the persons for whom the length of the mandate is prescribed for expressly in the Constitution, the concerned categories were exempted from the application of the law.

Constitutional Court Decision 1415/2009 on the engagement of responsibility procedure, certain exceptions, the prohibition to cumulate the public functions, exclusion of the maternity leave period from the calculation of the salary base, bonuses cut for persons with disabilities, cut of overtime hours pay - objections of unconstitutionality rejected with exceptions[\[112\]](#)

1. NAME OF THE COURT:

Constitutional Court of Romania

2. PARTIES

The objection of unconstitutionality of Law on a unitary wage system was raised a priori by a group of 62 members of the Chamber of Deputies and 27 members of the Senate, pursuant to Article 146 a) of the Constitution.

3. TYPE OF ACTION/PROCEDURE

A priori constitutional review (‘excepție de neconstituționalitate’)

4. ADMISSIBILITY ISSUES

According to Article 146 a) of the Constitution the Constitutional Court may be invested with a constitutionality claim originating from “a number of at least 50 deputies or at least 25 senators”. The condition was fulfilled by the objection of unconstitutionality, which was formulated by 62 members of the Chamber of Deputies and 27 members of the Senate, therefore the claim was found admissible.

5. LEGALLY RELEVANT FACTUAL SITUATION

The constitutional challenge was formulated against the Law on a unitary wage system, in its entirety (Law 330/2009 after the publication in the Official Journal). The law was adopted pursuant to the so-called procedure of ‘engagement of responsibility’ of the Government in front of the Parliament (on the procedure see section III.9 above).

6. ARGUMENTS OF THE PARTIES, ANSWER BY THE COURT TO THE LEGAL

QUESTIONS AND LEGAL REASONING OF THE COURT

The objections and the reasoning of the Court can be summarized as follows:

I. Unconstitutionality of Law 330/2009 as the use of the ‘engagement of responsibility’ procedure by the Government before the Parliament constituted an abuse of power – rejected as ill founded. The Parliament argued that by engaging the responsibility in front of the Parliament, the Government abused its power and deprived the Parliament of its competences as the law was already examined by the Parliament in legislative procedure. The Court noted that: “[t]he role of such a procedure is to coagulate a parliamentary majority, and to overcome the obstructionist position of the opposition during legislative debates. The adoption of this law by the procedure provided by art. 114 of the Constitution was necessary to respond in a short time to the requirements of the International Monetary Fund. In light of these considerations, the Court finds that the Government has used this procedure in extremis, as Parliament’s political structure did not allow adoption of the bill either by ordinary or emergency procedure”. [\[113\]](#) [author’s translation from Romanian]

II. Unconstitutionality of the provisions concerning the exemption of certain groups of public officials from the established unitary wage system as contrary to Article 16 of the Constitution on equality of rights – rejected. The Court concluded that the exceptions were justified and that these concerned autonomous public institutions as the National Bank, where the remunerations of the officials are negotiated, not established by law.

III. Unconstitutionality of the provisions concerning the prohibition of holding simultaneously two or more public functions (cumulation) as contrary to Article 26 (2) of the Constitution on private life and Article 41(2) of the Constitution on the right to work and social protection. The Court found the provision partially unconstitutional to the extent that the cumulus of the functions is allowed expressly by the Constitution. Such was the case inter alia of the Ombudsman, judges, prosecutors, counselors of the Court of Auditors and judges of the Constitutional Court.

IV. Unconstitutionality of the provisions concerning the exclusion of maternity leave for the calculation of the salary rights – rejected as the period is still considered in the calculation of the pension rights and does not concern the rights of the child.

V. Unconstitutionality of the provisions concerning the maximum cap of public employees bonuses to 30% in the case of persons with disabilities as contrary to Article 50 of the Constitution on the protection of persons with disabilities. The Court stated that in the case of persons with disabilities the text is to be interpreted as comprising a maximum cap of 30% plus the bonus of 15% granted to all the persons of disabilities by law.

VI. Unconstitutionality of the provisions freezing the pay for overtime hours work for 2010 and compensation of the work provided with free time. The Court stated that the overtime hours for 2010 must be paid as long as the Labour Code was not amended correspondingly.

VII. Unconstitutionality of the law as contrary to Article 47 of the Constitution on a decent standard of living – rejected as manifestly ill founded.

7. LEGAL EFFECTS OF THE JUDGMENT/DECISION

As the contested provisions prescribing for the prohibition to hold simultaneously two or more public functions was found unconstitutional in as much as the prohibition concerned the persons for whom the cumulus of functions is expressly allowed by the Constitution. In the outcome of the decision, the concerned categories of public officials conserved their prior rights (such was the case inter alia of the Ombudsman, judges, prosecutors, counsels of the Court of Auditors and judges of the Constitutional Court).

Similarly, the bonus rights of persons with disabilities were interpreted in a favourable manner for public employees falling in the respective category.

Lastly, the freezing the pay for overtime work for 2010 was postponed until the amendment of the Labour Code.

B. The second set of decisions concerned the 2010 adjustment measures adopted by Law 118/2010 on certain measures necessary to restore budgetary balance^[114] and Law 119/2010 on certain measures in the area of pensions.^[115] Again, the laws were adopted by the engagement of responsibility of the Government in front of the Parliament, thus avoiding a Parliamentary direct scrutiny (please see section III.9 above). The Parliament challenged unsuccessfully the constitutionality of the laws a priori on the basis of Article 146 a) of the Constitution (Decision 871/2010 and 874/2010).^[116] So has done the Romanian Supreme Court (High Court of Cassation and Justice) on the same legal basis, both unconstitutionality claims being partially upheld by the Constitutional Court (Decisions 872/2010 and 873/2010). The two latter Decisions of the Constitutional Court represent benchmark decisions in the area. The principled reasoning in the two decisions was upheld in the following hundreds of other decisions, whereby the Constitutional Court was asked to perform an ex post constitutional review of the provisions of Law 118/2010 on budgetary balance and Law 119/2010 on special pensions, respectively.

Constitutional Court Decision 871/2010 concerning the reduction of special pensions as a consequence of their assimilation to the regime applicable to the public pensions system as regulated by Law 19/2000 - objection of unconstitutionality rejected^[117]

1. NAME OF THE COURT:

Constitutional Court of Romania

2. PARTIES

The objection of unconstitutionality of Law on certain measures on pensions was raised by a group of 37 Senators pursuant to Article 146 a) of the Constitution (Law 119/2010 after the publication in the Official Journal).

3. TYPE OF ACTION/PROCEDURE

A priori constitutional review ('excepție de neconstituționalitate')

4. ADMISSIBILITY ISSUES

According to Article 146 a) of the Constitution the Constitutional Court may be invested with a constitutionality claim originating from "a number of at least 50 deputies or at least 25 senators". The condition was fulfilled by the objection of unconstitutionality, which was formulated by 37 Senators, therefore the complaint was found admissible.

5. LEGALLY RELEVANT FACTUAL SITUATION

The constitutional challenge was formulated against the Law on special pensions, in its entirety (Law 119/2010 after the publication in the Official Journal). The law was adopted pursuant to the so-called procedure of 'engagement of responsibility' of the Government in front of the Parliament (on the procedure see section III.9 above). The law provided for a reduction of special pensions enjoyed by public officers with a special status such as policemen, military service, judges, prosecutors, diplomats, et al. The aim was to reduce the high disparities between the special pensions and the ordinary pensions system. Contrary to the ordinary pensions system, the special pensions (or the 'service pensions') are formed of two components: the contributory part covered from the social assistance budget and a supplementary part provided from the state budget.

6. ARGUMENTS OF THE PARTIES, ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The senators alleged that the cut of the special pensions violated Article 15 (2) of the Constitution on the non-retroactivity of private law, Article 20 on the respect of international law corroborated with the relevant articles on the rights to property enshrined in the UN Charter, ECHR and the EU Charter of Fundamental Rights as well as Article 44 of the Constitution on the right to private property. Furthermore, it was alleged that the law infringed Article 47 (1) and Article 135 (2) concerning the decent standard of living and the obligation of the state to create the necessary conditions for the increase of quality of life, respectively. The Court rejected all the above claims. The Constitutional Court noted that the measures responded to the increased need to ensure a sustainable pension system and equilibrate the high differences between the special pensions and ordinary ones. Moreover, the Court found that the measures were necessary in the view of the economic crisis Romania was facing. The claim of a disproportionate limitation of the right to pension pursuant to Article 53 of the Constitution and the right to equal treatment - Article 16 Constitution - was similarly rejected as ill founded.

Constitutional Court Decision 872/2010 concerning the 25% public sector salary cuts, 15% pensions cuts, 15% cuts of unemployment benefit, social allowances cuts, 15% cut of the child allowance - objection of unconstitutionality partially admitted[\[118\]](#)

1. NAME OF THE COURT:

Constitutional Court of Romania

2. PARTIES

The objection of unconstitutionality of Law on certain measures on pensions was raised by the High

Court of Cassation and Justice of Romania (Inalta Curte de Casatie si Justitie, the 'High Court') pursuant to Article 146 a) of the Constitution.

3. TYPE OF ACTION/PROCEDURE

A priori constitutional review ('exceptie de neconstitucionalitate')

4. ADMISSIBILITY ISSUES

According to Article 146 a) of the Constitution the Constitutional Court may "[...] adjudicate on the constitutionality of laws, before the promulgation thereof upon notification [from][...] the High Court of Cassation and Justice". The condition was fulfilled, therefore the complaint was found admissible.

5. LEGALLY RELEVANT FACTUAL SITUATION

The constitutional challenge was formulated a priori against the Law on certain measures necessary to restore budgetary balance ('Law on budgetary balance') on the basis of Article 146 a) of the Constitution (Law 118/2010 after the publication in the Official Journal). The law was adopted pursuant to the so-called procedure of 'engagement of responsibility' of the Government in front of the Parliament (on the procedure see section III.9 above). The law provided for numerous reduction measures in the public budgetary bill, including 25% public sector salary cuts, 15% pensions cuts, 15% cut of unemployment benefits, social allowances cuts, 15% cut of the child allowance.

6. LEGAL QUESTIONS AND ARGUMENTS OF THE PARTIES

The High Court argued, citing the Constitutional Court's decisions of 2009 (see above), that the limitation for a second time in less than a two years period of the constitutional rights to work, pension and social security is contrary to Article 20 of the Constitution on international treaties on human rights with reference to Article 1 of the first Additional Protocol to the European Convention for the Protection of Human Rights (ECHR).^[119] Furthermore, the High Court held that the claimed temporary character of the measures, which is of essential importance for the legitimate limitation of certain constitutional rights, does not result unequivocally from the text of the contested law. Finally, the High Court argued that the limitation of salary rights of the magistrates would infringe the independence of justice as enshrined in Article 124(3) of the Constitution.

The president of the Senate sent his point of view on the unconstitutionality claim, supporting the objections raised by the High Court.

The Government, on the other hand, claimed that the objection of unconstitutionality is unfounded. The Government recognized that the right to work (including the right to pay), the right to pension and the right to unemployment benefits are fundamental rights guaranteed by the Constitution, but it claimed that these rights are not absolute, therefore their exercise could be restricted pursuant to Article 53 of the Constitution on the limitation of certain rights and liberties.

7. ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The objections raised by the High Court of Cassation and Justice were analysed by the Constitutional Court as follows:

I. Unconstitutionality of the provisions concerning the public sector salary cut by 25 % as contrary to Article 41 of the Constitution on the right to work and social protection of labour.^[120] The Constitutional Court stated that the right to work is a complex right, which includes inter alia, the right to salary. The Court further noted that reduction of the salary constituted a limitation of the right to work, however it was proportionate according to Article 53 of the Constitution relating to the restriction on the exercise of certain rights or freedoms. ^[121] In this sense the Court established that the limitation to the right to work was: provided by law; necessary in a democratic society; proportional to the situation which has engendered it; non-discriminatory and did not hamper the very existence of the right. The Court further noted that the measures complied with the reasons specifically provided by the constitutional text, namely safeguarding national economic stability, which referred implicitly to the safeguarding of public security. In support of the finding that there is a persistent threat to economic stability and implicitly to public security the Court cites from the evaluation of the European Commission on the economic situation of Romania.

II. Unconstitutionality of the provisions concerning the cut of salary/allowance or other pay by 25 % as contrary to Article 124(3) of the Constitution on the independence of justice. The Constitutional Court rejected the unconstitutionality claim. In this sense, the Court held that the financial independence is only one element of the independence of justice and the magistrates, subsequently the cut of the magistrates' salary by 25% could not be seen as limiting the right to an independent justice as enshrined in Article 124 (3) of the Constitution.

III. Unconstitutionality claim of the provisions concerning the cut of pensions by 15 % was found as infringing Article 47(2) of the Constitution on the right to pension^[122] and Article 1 of additional Protocol 1 to ECHR on the right to property. The Court found that the right to pension is contributively gained right, pursuant to the principle of contributivity and Article 53 of the Constitution concerning the limitation of rights cannot be opposed to the protection of the right to pension.

IV. Unconstitutionality claim of the provisions concerning the reduction of the unemployment benefit by 15% as contrary to the right to unemployment benefits as provided for by Article 47 of the Constitution. The Court rejected the claim stating that the right is not absolute and may be thus limited pursuant to Article 53 of the Constitution.

V. As for other social benefits and allowances, the Court noted that those are not explicitly enshrined in the constitutional text, therefore the legislator enjoys the discretion of limiting their quantity proportionately to the budgetary possibilities.

VI. Final provisions. The Constitutional Court finally ordered that: "for a period of 45 days from the date of publication in the Official Gazette of Romania, Part I, of this Decision, the Government may not adopt an emergency ordinance to reconcile the provisions of Law [...] found to be unconstitutional with the provisions of the Constitution, but it can initiate a bill in accordance with those established by this decision". ^[123] Furthermore, the Court directly mandated the Parliament to bring the provisions of the law in line with the constitutional provisions within 45 days. According to the Constitutional Court the act adopted in the procedure of engagement of Government responsibility is still assimilated to the law as normative act of the Parliament, therefore it was for

the latter to amend the provisions declared unconstitutional in the sense of Article 147(1) on the effects of Constitutional Court Decisions. Finally, the Court reminded that, if the Parliament fails to amend the law, pursuant to Article 147 (1) of the Constitution the unconstitutional provisions shall cease to have any legal effect. Article 147(1) reads as follows: “(1) The provisions of the laws and ordinances in force, as well as those of the regulations, which are found to be unconstitutional, shall cease their legal effects within 45 days of the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, cannot bring into line the unconstitutional provisions with the provisions of the Constitution. For this limited length of time the provisions found to be unconstitutional shall be suspended de jure”.[\[124\]](#)

8. LEGAL EFFECTS OF THE JUDGMENT/DECISION

In the aftermath of the decision of the Constitutional Court the law on budgetary balance was sent back to the Parliament and adopted this time pursuant to the ordinary legislative procedure, in accordance with the ‘dictum’ of the Constitutional Court within 3 days. The Constitutional Court decision subjected the legal act to the direct scrutiny of the Parliament who voted the amended act in joined session of the Chamber of Deputies and Senate on 29 June 2010.[\[125\]](#) The opposition also voted in favour of the austerity measures, explaining that the exclusion of the pensions rights cut from the austerity package made it acceptable for the opposition to agree to the proposed budgetary adjustments measures.[\[126\]](#)

9. MAIN OUTCOME OF THE JUDGMENT/DECISION AND ITS BROADER POLITICAL IMPLICATIONS

As the contested provisions prescribing for the 15% cut of pensions rights was found unconstitutional, in the outcome of the decision, the concerned categories of pensioners conserved their prior rights. However, further adjustment measures were shortly enforced to compensate for the failure to reduce the public expenditure bill, the most important being the highly contested 5% raise in the VAT.

Constitutional Court Decision 873/2010 concerning the reduction of the special pensions as a consequence of their assimilation to the regime applicable to the public pensions system as regulated by Law 19/2000 - objection of unconstitutionality partially admitted as regards the special pensions enjoyed by the judges, prosecutors and assistant-magistrates[\[127\]](#)

1. NAME OF THE COURT:

Constitutional Court of Romania

2. PARTIES

The objection of unconstitutionality of Law on certain measures on pensions was raised by the High Court of Cassation and Justice of Romania (Inalta Curte de Casatie si Justitie, the ‘High Court’) pursuant to Article 146 a) of the Constitution.

3. TYPE OF ACTION/PROCEDURE

A priori constitutional review (‘exceptie de neconstitucionalitate’)

4. ADMISSIBILITY ISSUES

According to Article 146 a) of the Constitution the Constitutional Court may “[...] adjudicate on the constitutionality of laws, before the promulgation thereof upon notification [from][...] the High Court of Cassation and Justice”. The condition was fulfilled, therefore the complaint was found admissible.

5. LEGALLY RELEVANT FACTUAL SITUATION

The constitutional challenge was formulated against the Law on special pensions, in its entirety (Law 119/2010 after the publication in the Official Journal). The law was adopted pursuant to the so-called procedure of ‘engagement of responsibility’ of the Government in front of the Parliament (on the procedure see section III.9 above). The law provided for a reduction of special pensions enjoyed by public officers with a special status such as policemen, military service, judges, prosecutors, diplomats, et al. The aim was to reduce the high disparities between the special pensions and the ordinary pensions system. Contrary to the ordinary pensions system, the special pensions (or the ‘service pensions’) are formed of two components: the contributory part covered from the social assistance budget and a supplementary part provided from the state budget.

6. LEGAL QUESTIONS, ARGUMENTS OF THE PARTIES

The High Court of Cassation and Justice (the ‘High Court’) challenged a priori the constitutionality of Law 119/2010 on certain measures on pensions (‘Law on special pensions’) on the basis of Article 146 a) of the Constitution. The High Court argued that the reduction of the special pensions is unconstitutional as contrary to Article 124(3) of the Constitution on the independence of justice, Article 15(2) on the non-retroactivity of law, Article 47(2) on a right to pension, Article 53 on the limitation of certain rights and liberties and Article 20 on respect of international treaties on human rights with reference to Article 1 of the first Additional Protocol to the European Convention for the Protection of Human Rights (ECHR).

The president of the Senate sent his point of view on the unconstitutionality claim, supporting the objections raised by the High Court. The Government, on the other hand, claimed that the objection of unconstitutionality is unfounded. The Government stated that the adopted measures are applied only for the future and do not infringe the principle of non-retroactivity of the law. Moreover, the unconstitutionality claim cannot be accepted as the Constitution guarantees a right to pension and not the right to a certain amount the pension, a finding also confirmed by the ECtHR. Finally the Government considered that the reductions of special pensions do not go against the independence of justice, as no causal link can be established between the reduction measure and the independence of justice.

7. ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The objections raised by the High Court of Cassation and Justice were analysed by the Constitutional Court as follows:

I. Unconstitutionality of the contested provisions with regards to Article 15(2) on non-

retroactivity of law. The Constitutional Court, citing its prior jurisprudence held that the provisions were compatible with Article 15(2) of the Constitution because a measure regulating for the future a certain situation which has as a consequence the modification of the legal effects given by the prior law cannot be interpreted as going contrary to the principle of non-retroactivity of law as enshrined in the Constitution.

II. Unconstitutionality of the contested provisions with regards to Article 20 of the Constitution and Article 1 of the Additional Protocol 1 to the ECHR. In this respect the Court notes that the special pensions consist of two components: a contributory part and a supplementary part from the state supported by the public budget. The Court held that the suppression of the supplementary part of the special pension cannot be considered an expropriation in the sense of Article 1 Protocol 1 to ECHR as long as the reduction does not touch upon the contributory part of the pension.

III. Unconstitutionality of the contested provisions with regard to Article 53 on the limitations allowed in case of certain rights and liberties. The Court appreciated that the limitation of the right to special pension is justified having regards to the critical economic situation of the Country and the serious adverse consequences for the Country's economic stability absence the contested measures. The Court further noted that the adoption of the reduction measures was necessary in order to benefit from the financial support from the part of the International Financial Institutions, support which would have not been disbursed had the contested measures not been in place. Therefore the Court rejected the unconstitutionality claim.

IV. Unconstitutionality of the contested provisions with regards to Article 124(3) on the independence of justice. The Court upheld the unconstitutionality claim of the relative provisions as conflicting with the independence of justice guaranteed by the Constitution. The Court found that the recalculation of the pensions of the judges, prosecutors and assistant-judges would be equivalent to a complete suppression of the special pensions for the latter professional categories. The Court appreciated that such a measure would affect the independence of justice as the financial stability may not be the only guarantee but constitutes an important one for the independence of judicial system. Moreover, the Court established that the special pension was not a privilege but rather a compensation for the responsibility, limitations, incompatibilities and risks of the profession. Therefore the Court concluded that the cut of the special pension for the judges, prosecutors and assistant-magistrates was contrary to the Constitution. In support of its reasoning the Court cited its prior jurisprudence (Decision 20/2000) as well as the jurisprudence of the Constitutional Court of Latvia (Decision of 18 January 2010 on the unconstitutionality of judges salary cuts), Constitutional Court of Lithuania (Decision of 12 July 2001), Constitutional Court of Czech Republic (Decision of 14 July 2005) and the Decision Cooper v UK of the ECtHR

8. LEGAL EFFECTS OF THE JUDGMENT/DECISION

As the objection of unconstitutionality was partially admitted in as far as the provisions of the contested law regarded the special pensions enjoyed by the judges, prosecutors and assistant-

magistrates. Therefore in the outcome of the decision, the respective categories conserved their special pensions rights.

9. MAIN OUTCOME OF THE JUDGMENT/DECISION AND ITS BROADER POLITICAL IMPLICATIONS

Similarly to the Law on budgetary balance, in the aftermath of the decision of the Constitutional Court the law on special pensions was sent back to the Parliament. This time only the provisions found unconstitutional were amended and adopted in accordance with the 'dictum' of the Constitutional Court within 3 days. The Constitutional Court decision subjected the legal act to the direct scrutiny of the Parliament who voted the amendments in joined session of the Chamber of Deputies and Senate on 29 June 2010.[\[128\]](#) The opposition also voted in favour of the amendments.[\[129\]](#)

The decision generated legal uncertainty with regards to other categories of the judiciary personnel enjoying special pensions rights. Even if the Constitutional Court upheld the right to a special pension exclusively for judges, prosecutors and assistant-magistrates, the High Court mandated the ordinary courts to check on a case-by-case basis the proportionality of the limitation supported by all prior beneficiaries of special pensions. See the decision of the High Court presented below.

Constitutional Court Decision 874/2010 concerning the 25% public sector salary cuts, 15% pensions cuts, 15% cuts of unemployment benefits, social allowances cuts, 15% cut of the child allowance - objection of unconstitutionality partially admitted[\[130\]](#)

1. NAME OF THE COURT:

Constitutional Court of Romania

2. PARTIES

The objection of unconstitutionality of Law on budgetary balance was raised a priori by a group of 30 Senators and 60 members of the Chamber of Deputies pursuant to Article 146 a) of the Constitution (Law 118/2010 after the publication in the Official Journal)..

3. TYPE OF ACTION/PROCEDURE

A priori constitutional review ('excepție de neconstituționalitate')

4. ADMISSIBILITY ISSUES

According to Article 146 a) of the Constitution the Constitutional Court may be invested with a constitutionality claim originating from "a number of at least 50 deputies or at least 25 senators". The condition was fulfilled by the objection of unconstitutionality, which was formulated by 30 Senators and 60 members of the Chamber of Deputies, therefore the complaint was found admissible.

5. LEGALLY RELEVANT FACTUAL SITUATION

The constitutional challenge was formulated against the Law on special pensions, in its entirety (Law 119/2010 after the publication in the Official Journal). The law was adopted pursuant to the so-called

procedure of 'engagement of responsibility' of the Government in front of the Parliament (on the procedure see section III.9 above). The law provided for a

6. LEGAL QUESTIONS AND ARGUMENTS OF THE PARTIES

The members of the Parliament claimed that the respective law infringed Article 1(5) of the Constitution, which guarantees the supremacy of the Constitution, with reference to Article 56(2) on just fiscal policies. Moreover, the Parliament argued that the law infringed the right to a decent standard of living as guaranteed by Article 47 of the Constitution, because the measures were the basis of a 'race to the bottom' towards the minimum salary of 600 Romanian Lei (RON), approx. 145 Euros. Additionally, the Parliament claimed that the cut of salaries and pensions infringes the principle of legitimate expectations and the right to property enshrined by Article 44 of the Constitution. Also the infringement of Article 16 on the equality in rights has been invoked as, according to the Parliament, the law created a discriminatory situation between the public and private sectors. Finally, the Parliament claimed that the limitation to the right to property is not justified and that if the Government claimed an extraordinary emergency situation threatening the national security, the state of emergency had to be priorly declared according to the provisions of Article 93 of the Constitution and the special law.

The president of the Senate sent an address supporting the claims of unconstitutionality. The Government pleaded for rejection of the unconstitutionality pleas.

7. ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The Constitutional Court rejected the claims of unconstitutionality of the 25% salary cut. In doing so, the Court noted that the challenged legislative provisions limited the right to a salary as guaranteed by the Romanian Constitution, nevertheless the limitation was justified by a persistent threat to the national economic and financial security, pursuant to Article 53 of the Constitution on the limits of certain rights and liberties.

With regards to the cut of pensions by 15%, the Court upheld the claim of unconstitutionality for the same reasons as evoked in the Decision 872/2010, re-stating that the right to pension is contributively 'gained right', established in accordance to the principle of contributivity. The pensioners contributed to the public social system throughout their life, gaining their right to pension, therefore no limitation of the right was allowed under the constitutional provisions.

Finally, with regards to the state of emergency claim, the Constitutional Court rejected the argument pursuant to which the state of emergency had to be priorly declared according to the provisions of Article 93 of the Constitution and the special law.[\[131\]](#) The Court reasoned that the restriction of certain rights and liberties according to Article 53 of the Constitution is a 'distinct constitutional prerogative' than the one prescribed for by Article 93. The Court further states that the restriction of certain rights under Article 53 does not always imply in principle the enforcement of the provisions on the state of emergency pursuant to Article 93. The Court found that the authors of the unconstitutionality claim depart from a wrong presumption in the sense that these consider the state of emergency or necessity (Article 93) a mandatory pre-condition for the limitation of certain rights and liberties (Article 53). However, the Court notes that even if in certain cases the

state of emergency may result in the restriction of certain rights provided by the Constitution, the limitation of certain rights can be also enforced based on Article 53 of the Constitution alone, independent from the state of emergency situations, as article 53 comprises a much larger scope of application than Article 93.

8. MAIN OUTCOME OF THE JUDGMENT/DECISION AND ITS BROADER POLITICAL IMPLICATIONS

Since the economic crisis, the Constitutional Court's decisions on the legality of Government's measures generated strong reactions in the political arena and at the level of the civil society.[\[132\]](#)

Following the 2010 decision on unconstitutionality (including decision 872/2010 above), the Government increased the VAT rate by 5% (from 19% to 24%).[\[133\]](#) The Government claimed that it has done so to compensate the prohibited cut of pensions by 15% and to compensate revenue collection necessary to stabilize the economy affected by the global crisis. Shortly after the Decisions of June 2010, the second addendum to the MoU of July 2010 was signed mandating for the increase of VAT by 5% (see section X.6 above). Economic and political implications of the Court's decisions led to debates about the competence of the Constitutional Court to rule on the constitutionality of the tax laws and the budget.[\[134\]](#)

High Court of Cassation and Justice (High Court)

High Court Decision 29/2011 of 12 December 2011 on the recourse in the interest of law on the application of the provisions of Law 119/2010 corroborated to Article 20 (2) of the Constitution and Article 1 Protocol 1 of the ECHR and Article 14 of the ECHR[\[135\]](#)

1. NAME OF THE COURT

The High Court of Cassation and Justice (Înalta Curte de Casație și Justiție a României)

2. PARTIES

The High Court of Cassation and Justice (High Court) was called by the Courts of Appeal of Brasov, Cluj, Galti and Craiova as well as the General Prosecutor attached to the High Court to unify the divergent lines of jurisprudence by a 'recourse in the interest of law' pursuant to Article 330⁶ (2) of the Code of Civil Procedure.

3. TYPE OF ACTION/PROCEDURE

The 'recourse in the interest of law' mandates the High Court to issue a decision on the interpretation of the legal provisions diverging in the jurisprudence of the ordinary national courts. The interpretation given by the High Court is binding on the lower courts according to 330⁷ (4) of the Code of Civil Procedure.

4. ADMISSIBILITY ISSUES

Not applicable.

5. LEGALLY RELEVANT FACTUAL SITUATION

The Decisions of the Constitutional Court on the unconstitutionality of Law 119/2010 on special pensions with regards to judges, prosecutors and assistant-magistrates did not clarify the legal situation of the judiciary auxiliary personnel, categories who also benefited of a right to a special pension, generating divergent national jurisprudence.

6. LEGAL QUESTIONS AND ARGUMENTS OF THE PARTIES

The Courts of Appeal claimed that there was a divergent interpretation of the provision of Law 119/2010 on special pensions, in the light of the Decision 873/2010 of the Constitutional Court (see above) and Article 14 and Article 1 Protocol 1 to the European Convention of Human Rights, as interpreted by the European Court of Human Rights.

The two claimed diverging lines of reasoning were:

A. Certain Courts of Appeal considered that the limitation of the right to pension of auxiliary judicial personnel was a disproportionate interference with the right to a pension and moreover held that the legal provisions failed to achieve the legal objective pursued - attainment of more equality - generating in fact more inequality.

Other Courts of Appeal held that the limitation of the special pension rights fell under the state's margin of appreciation and did not constitute an unjustified restriction of the constitutional right to pension.

7. ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The High Court rejected the 'recourse in the interest of the law' (RIL). The Court concluded that there was no divergent interpretation of law, but rather an application and interpretation of the legal provisions of Law 119/2010 on a case-by-case basis. As such, the Court noted that even if the Constitutional Court has confirmed the compatibility of Law 119/2010 on special pensions with the provisions of the Constitution, with the exception of the special pensions enjoyed by judges, as well as the conformity of Law 119/2010 with the provisions of Article 1 Protocol 1 to the ECHR, the Constitutional Court's reasoning proceeded to an examination in abstracto of the contested provisions. As such, the High Court held that even if the decisions of the Constitutional Court are generally binding, these decisions (Decisions 871/2010 and 873/2010) may not prohibit an examination in concreto, on a case-by-case basis whether the limitation to the rights to property was disproportionately restrained vis-à-vis the concrete circumstances of each case before the ordinary courts. The High Court held that it was for the ordinary judges to check in concreto if a just equilibrium between the imposed measures and the legitimate aim pursued by the legislator was observed. In performing the proportionality test, the High Court stated that the national judge must closely follow the jurisprudence of the ECtHR on Article 1 of the additional Protocol 1 to the ECHR, enumerating at the same time some concrete benchmark cases in the area.

8. LEGAL EFFECTS OF THE JUDGMENT/DECISION

The High Court rejected the 'recourse in the interest of law'. In the view of the High Court there was

no divergent interpretation of the same legal provision, rather the situation concerned the application of the law to the concrete facts of the cases pendente in front of the respective Courts of Appeal, which led in concreto to different judicial solutions. As such, the High Court found that there was no scope for unitary interpretation in the case before it and found the application inadmissible.

9. MAIN OUTCOME OF THE JUDGMENT/DECISION AND ITS BROADER POLITICAL IMPLICATIONS

The reasoning of the High Court concerning the variable national jurisprudence led a de facto disapplication of the provisions of Law 119/2010 on special pensions where the ordinary court considered that the interference was disproportionate (especially for the cases decided by the more than seven Courts of Appeal distinct from the ones to ask for the RIL). However the decision raised issues of equality and legal certainty for the claimants subject to the jurisdiction of other Courts of Appeal. The latter claimants challenged the divergent jurisprudence in front of the ECtHR alleging the infringement of Article 6 ECHR on legal certainty and Article 14 on equal treatment. Please see Case *Frimu et al v Romania* presented below.

European Court of Human Rights

After the exhaustion of the domestic judicial remedies, the claimants turned to the European Court of Human Rights (ECtHR) for judicial protection of their rights. The ECtHR held that all the cases brought before it were inadmissible. Two lines of claims have been put in discussion. Firstly the claimants alleged the violation of the right to property as protected by Article 1 of the Additional Protocol 1 to the ECHR. Secondly, the claimants complained of the infringement of the judicial certainty principle under Article 6 of the ECHR and the right to equal treatment as protected by Article 14.

ECtHR, Felicia Mihăieş v Romania (application no. 44232/11), Adrian Gavril Senteş v Romania (application no. 44605/11) public salaries cuts, alleged violation of Article 1 Protocol 1 to the ECHR - inadmissible[\[136\]](#)

1. NAME OF THE COURT

European Court of Human Rights (ECtHR)

2. PARTIES

Applicants: Felicia Mihăieş and Adrian Gavril Senteş

Respondent High Contracting Party: Romania

3. TYPE OF ACTION/PROCEDURE

Individual complaint

4. ADMISSIBILITY ISSUES

The application was found inadmissible by the court for the reasons described below.

5. LEGALLY RELEVANT FACTUAL SITUATION

In fact, the claimants, Ms Mihaies and Mr Sentes, are public employees of the Chisineu Cris city hall. Pursuant to Law 118/2010 on budgetary balance their salaries have been temporary cut by 25% for a period of six months causing the claimants a total damage of 757 RON and 3346 RON respectively (approx. 140 and 800 Euros).

6. LEGAL QUESTIONS AND ARGUMENTS OF THE PARTIES

The claimants argued that the measures adopted by the Romanian authorities (Government and Parliament) infringed their right to enjoyment of property as prescribed by Article 1 Protocol 1 to the ECHR.

7. ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The European Court of Human Rights held first that the Convention did not guarantee the right to continue to be paid a salary of a specific value. Second, the Court reminded that according to its well-established jurisprudence the state has discretion to set the salaries and other salary-related rights of public sector employees paid from the state budget as it considers appropriate. Nevertheless, the Court held that the State is obliged to pay a certain salary when the conditions for the payment have been met as well as when a definitive judicial decision recognised a certain value of the salary to be paid. The ECtHR found that such was not the case in the applications before it. In any case, the Court underlined that the right to a salary can hardly be defined as an 'asset' in the sense of the Convention and even if the Court were to find that the claimants' right to a certain salary constituted an 'asset', the limitation suffered was provided by law and pursued a public interest of maintaining the budgetary balance equilibrium in times of economic crisis. Moreover, the ECtHR recognised a large margin of appreciation for national authorities, holding that these are better placed to decide on appropriate economic and social policy measures than the Court, the latter being limited to the appreciation of whether the aim pursued and the measures undertaken to achieve this aim were in a reasonable proportionality relation. Finally, the Court found that Romania acted within the limits of the state's margin of appreciation and that it balanced in a reasonable manner the competing interests at stake.

This being established the Court declared the claim inadmissible.[\[137\]](#)

ECtHR, Frimu and four others v Romania (application no. 45312/11) and Ionel Panfile v. Romania (application no. 13902/11) special pensions' cuts, alleged violation of Article 6(1) and Article 14 ECHR - manifestly ill-founded [\[138\]](#)

1. NAME OF THE COURT

European Court of Human Rights (ECtHR)

2. PARTIES

Applicants: Ana Maria FRIMU, Judita Vilma TIMAR, Edita TANKO, Marta MOLNAR, Lucia GHEȚU

Respondent High Contracting Party: Romania

3. TYPE OF ACTION/PROCEDURE

Individual complaint

4. ADMISSIBILITY ISSUES

Not applicable.

5. LEGALLY RELEVANT FACTUAL SITUATION

The claimants were retired registrars of several courts and prosecutors' offices in Covasna county, Romania. Their pension was calculated according to the regime of the special pensions provided for the judiciary auxiliary personnel. Their special pensions amounted to a value between approx. 800 - 1200 Euros. By Law 119/2010 on certain measures on pensions, their pensions were recalculated according to the law on public pensions system and decreased to a value between approx. 250 - 350 Euros. The claimants contested the measures in front of the national courts. These measures were upheld by the Covasna Tribunal and subsequently the decision of the Tribunal upholding the claimants special pension rights was rejected under appeal by the Court of Appeal Brasov.

6. LEGAL QUESTIONS ARGUMENTS OF THE PARTIES

The claimants argued in front of the ECtHR that the Romanian state infringed Articles 6 and 14 of the ECHR. As the jurisprudence of the national courts was highly divergent, it constituted a threat to legal certainty and subsequently put the claimants in a disadvantaged position. The claimants showed that certain individuals in similar situation successfully challenged the provisions of Law 119/2010 in front of the national courts, preserving their right to a special pension.

7. ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The ECtHR examined the national jurisprudence with regard to Law 119/2010 summarizing the decision of the Constitutional Court, the divergent positions of the ordinary courts and the point of view of the High Court of Cassation and Justice (see the decisions above).

Having regard to the above facts the Court dismissed the claim as manifestly ill-founded.

In doing so the ECtHR established first that the claimants enjoyed a contradictory trial and that their arguments have been duly analysed by the national courts. Moreover, the divergent jurisprudence of the national courts has been brought to the High Court. The ECtHR concluded that it shared the view of the High Court in the sense that the divergent national jurisprudence did not concern a diverging interpretation of the relevant provision but rather a different outcome generated by the application of the principle to different circumstances on a case-by-case basis. Even if a divergent jurisprudence of the national courts would have been established the Court found that it was neither serious nor persistent in the sense of its prior jurisprudence (Case *Albu and sixty three others v Romania*, App. [34796/09](#)). The Court held that in line with its well-established case-law a period of up to two years to correct the national divergent jurisprudence was to be considered acceptable - in the pending case the divergence lasted from 2010 until 2012. Given the above reasoning, the Court concluded that the judicial procedure applied in the case of the claimants was neither unfair nor discriminatory in the sense of Articles 6 and 14 of ECHR.

Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) has also been seized on several occasions with references for a preliminary ruling regarding the consistency of public sector salary cuts with EU law and notably the provisions of the Charter of Fundamental Rights of the EU (the 'Charter'). In all instances the Court found that the Court was manifestly lacking jurisdiction on the raised issues. One last reference of 2014 is still pending. The 2014 reference addresses explicitly the role of the European Commission in the adopted adjustment measures and the provisions of the MoU.

ECJ, Case C-434/11 Order of the Court (Sixth Chamber) of 14 December 2011 Corpul Național al Polițiștilor v Ministerul Administrației și Internelor (MAI) and Others - clear lack of jurisdiction[\[139\]](#)

By decision of 28 July 2011 the Tribunal of Alba referred a question for a preliminary ruling to the CJEU regarding the consistency of the salary cuts provided by Law 118/2010 with the right to property, equality and non-discrimination as enshrined in Articles 17 (1), 20 and 21(1) of the EU Charter of Fundamental Rights.

The question was raised in proceedings between the national federation of policemen (Corpul Național al Polițiștilor) and the Ministry of Interior. In this context the Court of Appeal sent a preliminary question to the CJEU asking if the relevant provisions of the Charter prohibited a salary cut as the one prescribed by Law 118/2010 on budgetary equilibrium.

The Court stated that pursuant to Article 267 TFEU it was competent to interpret EU law and respect of the fundamental rights by Member States when applying EU law measures. Also according to 51(1) of the Charter, the latter applies only to EU law or national measures implementing EU law. As the Court found the referral did not contain any element leading to the conclusion that law 118/2010 implements EU law, the Court concluded that it manifestly lacked material competence to judge on the issue.

ECJ, Case C-462/11 Order of the Court (Sixth Chamber) of 14 December 2011. Victor Cozman v Teatrul Municipal Târgoviște - Lack of connection to European Union law - clear lack of jurisdiction of the Court[\[140\]](#)

By decision of 7 February 2011 the Tribunal of Dâmbovița addressed a reference for a preliminary ruling to the CJEU asking if the salary cuts of 25% provided by Law 118/2010 on budgetary balance were contrary to Article 1 Protocol 1 to the ECHR.

The Court found that it was clearly incompetent to rule on the matter. Similarly the Court noted that it was incompetent to rule on the compatibility of the contested measures with Article 17 of the Charter in view of Article 51(1) thereof. In this sense the Court stated that: "it is clear that the present referral contains no specific evidence to consider that Law No. 118/2010 aims to implement EU law. It follows that the jurisdiction of the Court to answer to this preliminary reference is not established."[\[141\]](#) [author's translation from French]

ECJ, Case C-134/12, Order of the Court (Sixth Chamber) of 10 May 2012. Ministerul Administrației și Internelor (MAI), Inspectoratul General al Poliției Române (IGPR) and Inspectoratul de Poliție al Județului Tulcea (IPJ) v Corpul Național al Polițiștilor - clear

lack of jurisdiction[\[142\]](#)

By decision of 7 February 2011 the Court of Appeal Constanța seized the CJEU with a preliminary question on the conformity of the provisions of Law 18/2010 with the relevant Charter articles. In this sense, the referring court asked whether Articles 17(1), 20 and 21(1) of the Charter prohibited a decrease in salaries of certain public officers. As well, the referring court asked whether the failure of the Romanian Government to respect the provisions of Article 15 of the ECHR on the obligation to notify the general Secretary of the Council of Europe on the adopted salary cut measures including on their duration, were capable of invalidating the provisions of the contested national law.

The Court following the same reasoning as in the cases presented above concluded that it clearly lacked jurisdiction to rule on the referred issue.

ECJ, Case C-369/12 Order of the Court (Ninth Chamber) of 15 November 2012. Corpul Național al Polițiștilor v Ministerul Administrației și Internelor and Others - clear lack of jurisdiction[\[143\]](#)

By decision of 27 June 2012 the Court of Appeal Brașov addressed a reference for a preliminary ruling to the CJEU on the interpretation of Articles 17(1), 20, 21(1) and 51(1) of the Charter with regard to the provisions of Law 118/2010 imposing salary reductions on a number of categories of public servants.

The Court, reiterating its prior case law, restated that as none of the elements raised indicated that the provisions of Law 118/2010 aimed to implement EU law, it was manifestly incompetent.

ECJ, Case C-258/14 Florescu and others, challenging the MoU between Romania and EU of 23 June 2009 arrangements - pending[\[144\]](#)

The preliminary questions were raised by the Court of Appeal Alba Iulia during the proceedings between Ms Florescu and others against the County pensions authority, National pensions authority, Ministry of Labour and social protection, Romanian State represented by the Ministry of Public Finances. The questions raise several interesting issues concerning the role of the European Union and the European Commission in the adoption of pensions' cuts. The referral court asks essentially:

- “May a memorandum such as the Memorandum of Understanding between the European Community and Romania of 23 June 2009 [...] be subject to CJEU’s interpretation?”
- “May the MoU be interpreted as allowing the European Commission to require [...] the adoption of a national law which completely and indefinitely withdraws a person’s right to receive a contributory pension [...] on the ground that the person in question receives a salary for activity, carried out on the basis of an employment contract, other than the activity in respect of which he receives the pension?”
- “[...] was it lawful for the European Commission to require, for the purposes of reducing the effects of the economic crisis, the adoption of a national law which barred retired officials of the public institutions from receiving a salary in addition to the pension?”

As well, the Court of Appeal asks to which extent the above measures are consistent with the

relevant provisions of the Charter. The case is still pending before the CJEU.

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).

Romania did not benefit from the SMP.

CONDITIONALITY BOND PURCHASES ECB

X.11

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

Romania did not benefit from the SMP.

MISCELLANEOUS

X.12

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

As part of the obligations imposed by the international lenders, the Romanian budgetary, fiscal, social, financial and structural environment has known tremendous transformations in a very short period of time. Even if adopted with celerity, the effects of the crisis-driven changes tend to preserve a long-term character if not a permanent one. As such, the Government undertook severe reforms of the public revenues and spending frameworks. The public wage bill decreased to below 7 per cent of GDP, from its peak of over 9 per cent of GDP in 2009. The public personnel reductions continued throughout the crisis period, employment being still modestly encouraged in the public sector. Special salaries, pensions rights and bonuses have been largely suppressed. A functional review of line ministries has been undertaken and is further currently complemented by an increased effort towards administrative capacity building. Comprehensive reforms have been undertaken in fiscal and budgetary discipline. Improved oversight of state-owned enterprises was another outcome of the financial assistance agreements. The attached structural reform conditions led to the introduction into national legislation of concepts unknown before as for instance the Emergency Ordinance no. 46/2013 regarding the financial crisis and the insolvency of the administrative-territorial unities on 24th May 2013.^[145] The current 2013-2015 BoP financial assistance programme for Romania extends the transformative practice to a far-reaching list of conditions touching upon a vast number of policy areas.^[146]

[1] Ministry of Public Finances, external financial packages 2009-2015, available at: <http://www.mfinante.ro/pachete.html?pagina=pachete>

[2] IMF, Press release 09/86 of 25.03.2009, available at: <https://www.imf.org/external/np/sec/pr/2009/pr0986.htm>

[3] Joint statement by the Presidency of the Ecofin Council and the Commission on providing EU medium-term

- financial assistance to Romania, IP/09/475, Brussels, 25 March 2008, available at: http://europa.eu/rapid/press-release_IP-09-475_en.htm?locale=en
- [4] G. Zaman and G. Georgescu, The Impact of Global Crisis on Romania's Economic Development, *Annales Universitatis Apulensis Series Oeconomica*, 11(2), 2009, p. 620, available at <http://www.oeconomica.uab.ro/upload/lucrari/1120092/01.pdf>
- [5] European Commission, available at: http://ec.europa.eu/economy_finance/assistance_eu_ms/romania/index_en.htm
- [6] IMF, Romania-Fall 2007 Staff Visit — Aide Mémoire, October 2, 2007, available at: <https://www.imf.org/external/np/ms/2007/100207.htm>
- [7] World Bank, Country Partnership Strategy for Romania for the period July 2009-June 2013, June 12, 2009, p.5, available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/07/20/000333038_20090720233846/Rendered/PDF/486650CAS0P1161C0Disclosed071171091.pdf
- [8] IMF, op.cit. note 218 supra; see also: IMF Executive Board Concludes 2008 Article IV Consultation with Romania Public Information Notice (PIN) No. 08/76 June 27, 2008, <https://www.imf.org/external/np/sec/pn/2008/pn0876.htm>
- [9] Central Electoral Bureau on Referendum for dismissal of the President, 10 of May 2007, <http://www.becreferendum2007.ro>
- [10] Central Electoral Bureau on Referendum for dismissal of the President, results, available at: <http://www.becreferendum2007.ro/document3/rezultat.pdf>
- [11] Decree of the President of Romania on the organization of a referendum No 909 of October 23, 2007.
- [12] Central Electoral Bureau on Referendum on uninominal vote, 2007, results, <http://www.becreferendum2007vu.ro/documente/rezultatefinale0001.pdf>
- [13] Central Electoral Bureau on European Parliament elections, 25 of November 2007, all information available in Romanian at: http://www.roaep.ro/bec_eu_07/?page_id=11
- [14] Central Electoral Bureau on Parliamentary elections, 30 November 2008, results, available at: <http://www.becparlamentare2008.ro/rezultate.html>
- [15] Romania-2008 Article IV Consultation: Concluding Statement of the Mission Bucharest, April 21, 2008, <https://www.imf.org/external/np/ms/2008/042108.htm>
- [16] Parliament of Romania, Chamber of senate, legislative file No L828/2007, available in Romanian at: <http://www.senat.ro/Legis/Lista.aspx?cod=12659>
- [17] IMF Country Report No. 12/64, Romania: Ex Post Evaluation of Exceptional Access Under the 2009 Stand-By Arrangement, p. 6, available at: <http://www.imf.org/external/pubs/ft/scr/2012/cr1264.pdf>
- [18] World Bank, Country Partnership Strategy for Romania for the period July 2009-June 2013, June 12, 2009, p.5., available at:

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/07/20/000333038_20090720233846/Rendered/PDF/486650CAS0P1161C0Disclosed071171091.pdf

[19] IMF Country Report No. 08/210, July 2008, para. 5, available at: <https://www.imf.org/external/pubs/ft/scr/2008/cr08210.pdf>

[20] Ibidem, para 6.

[21] Ibidem, para.43.

[22] World Bank, World Bank, Country Partnership Strategy for Romania for the period July 2009-June 2013, June 12, 2009, p.5., available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/07/20/000333038_20090720233846/Rendered/PDF/486650CAS0P1161C0Disclosed071171091.pdf, para.7.

[23] Ibidem, para.8

[24] IMF Country Report No. 08/210, IMF Country Report No. 08/210, July 2008, para. 5, available at: <https://www.imf.org/external/pubs/ft/scr/2008/cr08210.pdf>, supra, p.22, figure 12.

[25] Ibidem, p.27.

[26] World Bank, World Bank, Country Partnership Strategy for Romania for the period July 2009-June 2013, June 12, 2009, p.5., available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/07/20/000333038_20090720233846/Rendered/PDF/486650CAS0P1161C0Disclosed071171091.pdf, p.8 and IMF, IMF Country Report No. 08/210, July 2008, para. 5, available at: <https://www.imf.org/external/pubs/ft/scr/2008/cr08210.pdf>, para.24

[27] IMF Country Report No. 08/210, IMF Country Report No. 08/210, July 2008, para. 5, available at: <https://www.imf.org/external/pubs/ft/scr/2008/cr08210.pdf>, para.28.

[28] World Bank, World Bank, Country Partnership Strategy for Romania for the period July 2009-June 2013, June 12, 2009, p.5., available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/07/20/000333038_20090720233846/Rendered/PDF/486650CAS0P1161C0Disclosed071171091.pdf, p.1.

[29] IMF, Press Release No.09/24, Statement by the IMF Mission to Romania February 4, 2009, available at: <https://www.imf.org/external/np/sec/pr/2009/pr0924.htm>

[30] Ibidem.

[31] IMF, Press Release No.09/86, IMF Announces Staff-Level Agreement with Romania on €12.95 Billion Loan as Part of Coordinated Financial Support, March 25, 2009, available at: <https://www.imf.org/external/np/sec/pr/2009/pr0986.htm>

[32] IMF, Washington, D.C., Thursday, January 29, 2009, Transcript of a Press Briefing by David Hawley, Senior Advisor, External Relations Department, available at: <https://www.imf.org/external/np/tr/2009/tr012909.htm>

[33] IMF, Press Release No.09/24, Statement by the IMF Mission to Romania February 4, 2009, available at: <https://www.imf.org/external/np/sec/pr/2009/pr0924.htm>

[34] IMF, Washington, D.C., Thursday, January 29, 2009, Transcript of a Press Briefing by David Hawley, Senior Advisor, External Relations Department available at: <https://www.imf.org/external/np/tr/2009/tr012909.htm>

[35] IMF, Romania- Letter of Intent and Technical Memorandum of Understanding, 24 April 2009, <https://www.imf.org/external/np/loi/2009/rou/042409.pdf>

[36] <http://www.romanalibera.ro/politica/institutii/basescu-acordul-cu-fmi-se-mai-poate-negocia-186159>

[37]

<http://www.romanalibera.ro/politica/institutii/ponta-basescu-ne-a-mintit-acordul-cu-fmi-nu-poate-fi-renegociat-186633>

[38] European Commission, news item, available at: http://ec.europa.eu/economy_finance/articles/financial_operations/article14634_en.htm

[39] Ministry of Public Finances, financial assistance programmes implementing legislation, available in Romanian at: <http://www.mfinante.ro/pachete.html?pagina=pachete>

[40] OJEU L 150, 13.6.2009, p. 8.

[41] OJEU L 83, 30.03.2010, p. 19.

[42] Memorandum of Understanding between EC and Romania, 2009, available at http://ec.europa.eu/economy_finance/publications/publication15409_en.pdf

[43] OUG 82/2009 ratifying the Memorandum of Understanding between the European Community and Romania, signed in Bucharest and Brussels on 23 June 2009 and of the Loan Agreement in the amount of up to 5.000.000.000 euro, of Romania, as borrowed, NBR, as agent of the Borrower, and the European Community, as lender, signed in Luxembourg on 23 June 2009 in Bucharest on 18 June 2009, Official Journal 455 of 01.07.2009, available in Romanian at: <http://www.mfinante.ro/pachete.html?pagina=pachete> .

[44] OUG 99/2009 on the ratification of the stand-by arrangement between Romania and the IMF, agreed by letter of intent sent by the Romanian authorities, signed in Bucharest on 24 April 2009 and Decision of the Board of the International Monetary Fund in April May 2009, and a supplementary letter of intent signed by the Romanian authorities on September 8, 2009 and approved by Council Decision Director International Monetary Fund from September 21, 2009. OUG 98/2009 for the ratification of the loan (First Development Policy Loan) between Romania and the International Bank for Reconstruction and Development, signed in Bucharest on September 1, 2009 available in Romanian at: <http://www.mfinante.ro/pachete.html?pagina=pachete>

[45] Ministry of Public Finances, financial assistance programmes 29009-2015, implementing legislation, OUG 82/2009, available in Romanian at: http://discutii.mfinante.ro/static/10/Mfp/pachet_acorduri/OUG82_2009.pdf

[46] Legislative file PL x 352/2009, Opinion of the Budget Committee, available at: <http://www.cdep.ro/comisii/buget/pdf/2009/rp352.pdf>

[47] Legislative file PL x 352/2009, Emergency Ordinance 82/2009 approved by Law 364/2009, published in the Official Journal 806/2009, available in Romanian at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=10323&cam=2; The Law contains a single approval article,

available at: http://www.cdep.ro/proiecte/2009/300/50/2/cd352_09.pdf

Published in the Official Monitor no 806/25.11.2009.

[48] OUG 82/2009, Loan Agreement, June 23, 2009, Article 12, available in Romanian at: http://discutii.mfinante.ro/static/10/Mfp/pachet_acorduri/OUG82_2009.pdf

[49] Ibidem.

[50] Ibidem, Article 13.

[51] Ibidem, Annex 3.

[52] Ibidem, Annex 3.

[53] OUG No. 11/2010 on the ratification of the Memorandum of Understanding further (the first addendum to the Memorandum of Understanding) between the EU and Romania, signed in Bucharest on 18 February 2010 and in Brussels on February 22, 2010; OUG No. 81/2010 on the ratification of the Memorandum of Understanding additional (second addendum to the Memorandum of Understanding) between the EU and Romania, signed in Brussels on 20 July 2010 in Bucharest on August 2, 2010; OUG No. 5/2011 on the ratification of additional Memorandum of Understanding (third addendum to the Memorandum of Understanding) between the EU and Romania, signed in Bucharest on 12 January 2011 and in Brussels on January 19, 2011, the Memorandum of Understanding between the European Community and Romania, Bucharest and Brussels signed on June 23, 2009; OUG No. 43/2011 on the ratification of the Memorandum of Understanding additional (fourth addendum to the Memorandum of Understanding) between the EU and Romania, signed in Brussels on 8 April 2011 in Bucharest on April 1, 2011, the Memorandum of Understanding between the European Community and Romania, Bucharest and Brussels signed on 23 June 2009. All available in Romanian at: <http://www.mfinante.ro/pachete.html?pagina=pachete>

[54] Legislative file PL x 352/2009, Opinion of the Budget Committee, available at: <http://www.cdep.ro/comisii/buget/pdf/2009/rp352.pdf>

[55] Rules of Procedure of the Chambers of Deputies, Section 4, Emergency procedure, Articles 115-120: available at: <http://www.cdep.ro/pls/dic/site.page?id=235&idl=2>; Rules of Procedure of the Senate, Section 4, Emergency procedure, Articles 107-112, available in Romanian at: http://www.senat.ro/pagini/reg_sen/reg_senat.htm.

[56] Ibidem.

[57] Law 27/2013 and Law 31/2014 on the second (2011-2013) and third (2013-2015) BoP programmes for Romania.

[58] Legislative file PL x 352/2009, the Emergency Ordinance 82/2009 was approved by Law 364/2009, published in the Official Journal 806/2009, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=10323&cam=2

[59] Parliament of Romania, Chamber of Deputies, session of September 16, 2009, debates, <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6686&idm=7>

[60] Parliament of Romania, Chamber of Deputies, session of September 16, 2009, vote, <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6686&idm=27,04>

[61] Parliament of Romania, Senate, session of November 3, 2009, debates, p.30 <http://www.senat.ro/PAGINI/Stenograme/Stenograme2009/09.11.03.PDF>

[62] Ibidem.

[63] Parliament of Romania, debates on the legal proposal for approval of OUG No. 11/2010 on the ratification of the Memorandum of Understanding further (the first addendum to the Memorandum of Understanding) between the EU and Romania, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6782&idm=13>

[64] Parliament of Romania, debates on the legal proposal for approval of No. 81/2010 on the ratification of the Memorandum of Understanding additional (second addendum to the Memorandum of Understanding) between the EU and Romania, signed in Brussels on 20 July 2010 in Bucharest on August 2, 2010, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6901&idm=12>

[65] Parliament of Romania, debates on the legal proposal for approval of OUG No. 5/2011 on the ratification of additional Memorandum of Understanding (third addendum to the Memorandum of Understanding) between the EU and Romania, signed in Bucharest on 12 January 2011 and in Brussels on January 19, 2011, the Memorandum of Understanding between the European Community and Romania, Bucharest and Brussels signed on June 23, 2009, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6974&idm=4>

[66] Parliament of Romania, legal proposal for approval of OUG No. 5/2011 on the ratification of additional Memorandum of Understanding (third addendum to the Memorandum of Understanding), vote, <http://www.cdep.ro/pls/steno/eVot.Nominal?idv=7678>

[67] Parliament of Romania, debates on the legal proposal on the approval of OUG No. 5/2011 on the ratification of additional Memorandum of Understanding (third addendum to the Memorandum of Understanding), March 8, 2011, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6974&idm=4>

[68] Parliament of Romania, debates on the legal proposal on the approval of OUG No. 5/2011 on the ratification of additional Memorandum of Understanding (third addendum to the Memorandum of Understanding), March 8, 2011, [author's translation from Romanian] available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6974&idm=4>

[69] Parliament of Romania, legislative proposal on the approval of OUG No. 43/2011 on the ratification of the Memorandum of Understanding additional (fourth addendum to the Memorandum of Understanding) Romania http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12034

[70] Parliament of Romania, legislative file PL x- 185/2011, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11928

[71] Article 114 Assumption of responsibility by the Government: (1) The Government may assume responsibility before the Chamber of Deputies and the Senate, in joint sitting, upon a programme, a general policy statement, or a bill. <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6994&idm=1.27&idl=1>

[72] Clauwaert, S. and Schömann, I. , The crisis and national labour law reforms: a mapping exercise. Country report: Romania, January 2013, p. 1

[73] Emergency Ordinance No. 108/2011 on the ratification of the Framework Agreement between the European Union loan, as the borrower, Romania, as Borrower, and the National Bank of Romania, as agent of the Borrower, a maximum of 1,400. 000.000 euros, signed in Bucharest on 28 June 2011 and in Luxembourg on 30 June 2011, and the Memorandum of Understanding between the European Union and Romania, signed in Bucharest on 28 June 2011 and in Brussels on June 29, 2011 http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12462

- [74] Parliament of Romania, Chamber of Senate, session of September 18, 2012, pp.37-40, available in Romanian at: <http://www.senat.ro/pagini/stenograme/Stenograme2012/12.09.18.pdf>
- [75] Law No. 27/2013 on the ratification of the first additional Memorandum of Understanding between the European Union and Romania, signed in Bucharest on December 14, 2011 and in Brussels on December 27, 2011, and the Second Supplementary Memorandum of Understanding between the European Union and Romania signed in Bucharest on 22 June 2012 and in Brussels on June 29, 2012 http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12907
- [76] Parliament of Romania, Chamber of Senate, session of February 11, 2013, debates, p.11, available in Romanian at: <http://www.senat.ro/PAGINI/Stenograme/Stenograme2013/13.02.11.pdf>
- [77] Parliament of Romania, Chamber of Deputies, session of October 22, 2012, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7169&idm=11>
- [78] Parliament of Romania, Chamber of Senate, session of February 11, 2013, pp.10-11, <http://www.senat.ro/PAGINI/Stenograme/Stenograme2013/13.02.11.pdf>
- [79] Law No. 31/2014 on the ratification of the precautionary lending facility from the European Union and Romania as Borrower, as Borrower and the National Bank of Romania, worth more than 2 billion euros, signed on 5 November 2013 and in Luxembourg on 19 November 2013 and the Memorandum of Understanding between the European Union and Romania, signed in Bucharest on November 5, 2013 and in Brussels on November 6, 2013, legislative file available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=13907
- [80] Parliament of Romania, Chamber of Deputies, session of February 18, 2014, vote, available at: <http://www.cdep.ro/pls/steno/eVot.Nominal?idv=11486>
- [81] Parliament of Romania, Chamber of Deputies, session of February 18, 2014, debates, <http://www.cdep.ro/pls/steno/steno.stenograma?ids=7349&idm=8>
- [82] Ibidem.
- [83] Parliament of Romania, Chamber of Senate, session of 17 March 2014, stenograph, pp.18-28, <http://www.senat.ro/PAGINI/Stenograme/Stenograme2014/14.03.17.pdf>
- [84] Ibidem, p. 18-19
- [85] Ibidem, p. 19-20
- [86] Ibidem, p. 22
- [87] Ibidem, p. 24
- [88] Ibidem, p. 28, <http://www.senat.ro/PAGINI/Stenograme/Stenograme2014/14.03.17.pdf>
- [89] Council Decision of 6 May 2009 providing Community medium-term financial assistance for Romania (2009/459/EC) published in Official Journal L 150/8 of 13.06.2009.
- [90] Council Decision of 12 May 2011 providing precautionary EU medium-term financial assistance for Romania (2011/288/EU), Article 3, published in Official Journal L 138/15 of 19.05.2011.

[91] Art. 3 of Council Decision 2013/531/EU of 22 October 2013 providing precautionary Union medium-term financial assistance to Romania (2013/531/EU) published in Official Journal L 286 of 29.10.2013, reads as follows: “a) the adoption of budgets and the implementation of policies in line with the fiscal consolidation path derived from Romania’s obligations under the Stability and Growth Pact with a view to reaching Romania’s medium-term budgetary objective by 2015, and to maintaining it thereafter;(b) the full preservation of the measures agreed under the previous two programmes and the implementation of any remaining parts of yet unfulfilled conditionality;(c) the further strengthening of the fiscal governance framework, including through the implementation of the Treaty on Stability, Coordination, and Governance, so as to ensure that fiscal consolidation is well anchored. Particular attention shall be given to reinforcing multi- annual budgetary planning, to the implementation of an effective commitment control system, to improving tax collection, and to improving the capital budgeting process;(d) the implementation of the action plans adopted in response to the findings of the functional reviews carried out by the World Bank in 2010-2011 in a timely manner and the establishment of a central delivery unit to improve the government-wide policy prioritisation;(e) the clearing of arrears and the strengthening of budget control mechanisms in the health sector through improved reporting and monitoring frameworks; (f) the implementation of the strategic action plan for healthcare, rationalising the hospital structure and increasing the scope for primary care activities, in order to improve health outcomes; (g) the of public debt management with a view to reducing risks and to consolidating and extending the yield curve for sovereign debt; (h) the further strengthening of bank-resolution framework, the Central Bank of Romania’s contingency planning and the corporate governance of the Deposit Guarantee Fund, as well as the implementation of measures to speed up the process of national banks’ balance sheet cleaning and the preservation of credit discipline in the banking sector; (i) the alignment of the legislation on the Financial Supervisory Authority to international good practices to strengthen the supervision of the non-banking market; (j) the restructuring of state-owned enterprises (SOEs), including sales of stakes in their capital, and the corporate governance of SOEs; (k) the further implementation of measures to improve the business environment, including through the reduction of administrative burdens for the small and medium-sized enterprises (SMEs), and measures to facilitate access to finance for SMEs.”

[92] Council Decision of 6 May 2009 providing Community medium-term financial assistance for Romania (2009/459/EC) published in Official Journal L 150/8 of 13.06.2009.

[93] The list of conditions is to be found in Art. 5 of Council Decision 2009/459/EC: “a)adopting a clearly-set medium-term fiscal programme designed to lower by 2011 the general government deficit to not more than the Treaty reference level of 3 % of GDP; (b) adopting and executing an amended budget for 2009 (by the second quarter of 2009), targeting a general government deficit of no higher than 5,1 % of GDP in ESA 95 terms; (c) reducing the public sector wage bill in nominal terms compared to the 2008 outcome by foregoing public sector wage increases (totalling 5 % in nominal terms) scheduled for 2009 (or equivalent further cuts in employment) and by reducing public employment, including by replacing only one of seven departing employees;(d) additional reductions in spending on goods and services and in subsidies to public enterprises;(e) improving the budgetary management by the adoption and implementation of a binding medium-term fiscal framework, establishing limits on budget revisions during the year, including fiscal rules and creating a fiscal council to provide independent and expert scrutiny;(f) reforming the public compensation system, including by unifying and simplifying the pay scales and reforming the bonus system;(g) reforming key parameters of the pension system by moving towards indexation of pensions to consumer prices rather than wages, gradually adjusting retirement age beyond the currently agreed plans, especially for women, and phasing in pension contributions of groups of public employees currently excluded from such contributions Structural reform measures in the areas of the Country Specific Recommendations issued in the context of the

Lisbon strategy. These will include measures improving the efficiency and effectiveness of public administration, enhancing the quality of public expenditure, sound use and increased absorption of EU funds, reducing administrative, fiscal and legal burdens on business and tackling undeclared work, thereby broadening the tax base.”

[94] European Commission, Balance-of-payments assistance to Romania, available at: http://ec.europa.eu/economy_finance/assistance_eu_ms/romania/index_en.htm

[95] Memorandum of Understanding between European Community and Romania, signed on 23 June 2009, available at: http://ec.europa.eu/economy_finance/publications/publication15409_en.pdf

[96] First addendum to the Memorandum of Understanding between European Union and Romania, signed on 22 February 2010, available at: http://ec.europa.eu/economy_finance/articles/financial_operations/pdf/2010-02-25-smou_romania_en.pdf

[97] Second addendum to the Memorandum of Understanding between European Union and Romania, July 2010, available at: http://ec.europa.eu/economy_finance/articles/financial_operations/pdf/2010-07-20-mou-romania_en.pdf

[98] Third addendum to the Memorandum of Understanding between European Union and Romania, January 2011, available at: http://ec.europa.eu/economy_finance/eu_borrower/balance_of_payments/pdf/2011-01-19-3rd-mou-romania.pdf

[99] Fourth addendum to the Memorandum of Understanding between European Union and Romania, April 2011, available at: http://ec.europa.eu/economy_finance/articles/pdf/2011-04-08-smou-romania-en.pdf

[100] Council Decision of 12 May 2011 providing precautionary EU medium-term financial assistance for Romania (2011/288/EU) published in Official Journal L 132/15 of 19.05.2011.

[101] See recital 4 of preamble of the Council Decision 2011/288/EU, available at http://ec.europa.eu/economy_finance/assistance_eu_ms/romania/index_en.htm

[102] Memorandum of Understanding between European Union and Romania, June 2011, available at: http://ec.europa.eu/economy_finance/eu_borrower/mou/20110629-mou-romania_en.pdf

[103] Second Supplemental Memorandum of Understanding between European Union and Romania, June 2012, available at: http://ec.europa.eu/economy_finance/eu_borrower/balance_of_payments/pdf/2012-07-02-romania-mou_en.pdf

[104] Council Decision of 22 October 2013 providing precautionary Union medium-term financial assistance to Romania (2013/531/EU) published in the Official Journal L 286/1 of 29.10.2013.

[105] See recital 4 of the Council Decision 2013/531/EU preamble, available at http://ec.europa.eu/economy_finance/assistance_eu_ms/romania/index_en.htm

[106] Memorandum of Understanding between European Union and Romania, November 2013, available at: http://ec.europa.eu/economy_finance/assistance_eu_ms/romania/pdf/mou_20131106_en.pdf

[107] IMF Country Report No. 13/204, Romania: Seventh and Eighth Reviews Under the Stand-By Arrangement and Request for Waiver of Nonobservance of Performance Criteria—Staff Report; Staff Supplement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for Romania, p. 97.

[108] Law 329/2009, available in Romanian at: http://www.cdep.ro/proiecte/2009/300/90/5/pr395_09.pdf

[109] Parliament of Romania, full legislative file PL x- 394/2009 on the Law on unitary wage system, available in Romanian at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10367

[110] Parliament of Romania, Legislative file PLx- 395/2009, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10368

[111] Constitutional Court Decision 1414/2009, published un Official Journal 796 of 23.11.2009.

[112] Constitutional Court Decision 1415/2009, published un Official Journal 796 of 23.11.2009.

[113] Ibidem.

[114] Parliament of Romania, Legislative file PL-x no. 367/2010 on legal initiative on certain measures necessary to restore budgetary balance, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11168

[115] Parliament of Romania, Legislative file PL-x no. 368/2010 on legal initiative on certain measure on pensions, available at http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11169

[116] Constitution of Romania, Article 146: The Constitutional Court shall have the following powers: a) to adjudicate on the constitutionality of laws, before the promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution;, available at: http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=5#t5c0s0a146

[117] Constitutional Court of Romania, Decision 871/2010, published in the Official Journal 433 of 28.06.2010.

[118] Constitutional Court of Romania, Decision 872/2010, published in the Official Journal 433 of 28.06.2010, available in English available at: http://www.ccr.ro/files/products/D0872_101.pdf

[119] Art. 20 reads as follows: "Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions."

[120] Article 41 has five paragraphs. Art. 41(1) reads as follows: "The right to work shall not be restricted. Everyone has a free choice of his/her profession, trade or occupation, as well as work place." The Romanian Constitution is available in English at: http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0a41

[121] Article 53 Constitution of Romania, available at: http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0a41

[122] Art. 47(2) reads as follows: "Citizens have the right to pensions, paid maternity leave, medical care in public health centres, unemployment benefits, and other forms of public or private social securities, as stipulated by the law. Citizens have the right to social assistance, according to the

law.”

[123] Decision 872/2010 available at: http://www.ccr.ro/files/products/D0872_101.pdf

[124] Constitution of Romania, available in English at: http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=5#t5c0s0a147

[125] Parliament of Romania, Legislative file Pl-x 367/2010, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11168

[126] Ibidem, debates, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6865&idm=2>

[127] Constitutional Court of Romania, Decision 873/2010, published in the Official Journal 433 of 28.06.2010.

[128] Parliament of Romania, Legislative file Pl-x 368/2010, available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11169

[129] Ibidem, debates, available at: <http://www.cdep.ro/pls/steno/steno.stenograma?ids=6865&idm=3>

[130] Constitutional Court of Romania, Decision 874/2010, published in the Official Journal 433 of 28.06.2010.

[131] Constitution of Romania, **ARTICLE 93, Emergency Measures:** “(1) The President of Romania shall, according to the law, institute the state of siege or state of emergency in the entire country or in some territorial-administrative units, and ask for the Parliament’s approval for the measure adopted, within 5 days of the date of taking it, at the latest. (2) If Parliament does not sit in a session, it shall be convened de jure within 48 hours of the institution of the state of siege or emergency, and shall function throughout this state.”

[132] The Constitutional Court decided after the decision no. 872/2010 on more than 500 challenges against the same Law no. 118/2010 on measures necessary to restore budgetary balance, according to its official database, available at <http://www.ccr.ro/ccrSearch/MainSearch/SearchForm.aspx>. We have chosen to analyse the above benchmark decisions because these were the first ones, no additional arguments were brought in subsequent ones.

[133] Government Emergency Ordinance no. 58/2010.

[134] This issue was discussed by Vlad Perju, Constitutional issues regarding the austerity measures generated by the economic crisis, available in Romanian at <http://www.contributors.ro/fara-categorie/aspecte-constitutionale-ale-masurilor-de-austeritate-generate-de-criza-economica/>

[135] High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie) Decision 21/2011 on the rejection of the recourse in the interest of law, published in the Official Journal 925 of 27.12.2011, available in Romanian at: <http://www.scj.ro/Decizii%20Complet%20RIL/RIL%20Decizie%20nr29%20din%202011.html>

[136] ECtHR, judgement of 6 December 2011, Mihaies and Sentes v Romania, applications no 44232/11 and no. 44605/11, available in French and Romanian at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108354#{“itemid”:\[“001-108354”\]”}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108354#{“itemid”:[“001-108354”]”})

[137] See also the Press Release issued by the Registrar of the Court, ECHR 088 (2012) of 02.03.2012.

[138] Frimu and four others v Romania applications no [45312/11](#), [45581/11](#) [45583/11](#) [45587/11](#) [45588/11](#) and

Panfile v Romania application no13902/11, Judgment of 13 November 2012, available in French and Romanian at:
[http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-115053#{"itemid":\["001-115053"\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-115053#{)

[139] Case C-434/11, Corpul Național al Polițiștilor, 2011, I-00196

[140] Case C-462/11, Corpul Național al Polițiștilor, 2011, I-00197

[141] Ibidem, para. 15.

[142] Case C-134/12, Corpul Național al Polițiștilor, 2012, nyr

[143] Case C-369/12, Corpul Național al Polițiștilor, 2012, nyr

[144] Case C-258/14, Florescu and others, case in progress

[145]

<http://www.legalis.ro/2013/05/28/guvernul-a-reglementat-cadrul-legislativ-privind-criza-financiara-si-insolventa-unitatilor-administrativ-teritoriale/>

[146] See further on the BoPs for Romania:
http://ec.europa.eu/economy_finance/assistance_eu_ms/romania/index_en.htm