CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: SLOVAKIA

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I POLITICAL CONTEXT

POLITICAL CHANGE

I.1

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

Since the early parliamentary elections of 2006, won by a leftist party Smer – sociálna demokracia (Direction – Social Democracy; Smer-SD), the government was composed of Smer-SD (having majority in the Government – 11 out of 16 seats) with its leader Robert Fico being the Prime Minister, far-right party Slovenská národná strana (Slovak National Party; SNS) led by Ján Slota,[1] and national conservative party Ľudová strana – Hnutie za demokratické Slovensko (People's Party – Movement for a Democratic Slovakia; ĽS-HZDS) led by former Prime Minister Vladimír Mečiar.

On January 1, 2009, Slovakia became a member of the Eurozone and was put under the EDP for a second time since the accession in 2004 (EDP is likely to be lifted in mid 2014).[2] In spring 2009, presidential elections were held. The first round took place on March 21. The two most successful candidates from the first round advanced to the second round – incumbent president Ivan Gašparovič (supported by SMER-SD, SNS, and two non-parliamentary and marginal parties HZD and ND) and Iveta Radičová (with support of SDKÚ-DS, KDH, a Hungarian minority party Strana maďarskej komunity (Party of the Hungarian Coalition; SMK), SaS, and two non-parliamentary marginal parties OKS and Liga). In the second round that took on April 4, 2009, Ivan Gašparovič was elected for his second consecutive five-year term.

In the European elections of June 2009, with only 20% eligible voters participating (the lowest in the EU), the coalition party succeeded – Smer-SD gained 32%, SNS 5.5%, and ĽS-HZDS 9%. The main opposition parties, SDKÚ-DS and KDH, received 17% and 11% respectively. A month later, regional elections were held. It was again a success for the governing party Smer-SD that won seven out of eight regions and formed regional governments in all regions, but Bratislava, with six of them being headed by Smer-SD members.

Smer-SD of incumbent Prime Minister Robert Fico also won the general parliamentary elections held on June 12, 2010 receiving 12 more seats in the Parliament (41% of the seats in the Parliament altogether) than in the 2006 elections. Despite this success, the opposition

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[1] Party of European Socialists (PES) suspended the membership of Smer-SD for forming the coalition with SNS. PES considered SNS a "political party which incites or attempts to stir up racial or ethnic prejudices and racial hatred." PES Press Release, SMER suspended from PES political family, Oct. 12, 2006. Available at: http://www.pes.eu/en/news/smer-suspended-pes-political-family.

[2] Slovakia entered the ERM II in November 2005. The assessment of the Maastricht criteria was as follows (2007-08): Deficit of 2.2% GDP, debt of 29.4% GDP, inflation of 2.2%, long-term interest rates of 4.5%.

formed a government lead by Iveta Radičová, the leader for the elections[3] for a liberal conservative party Slovenská demokratická a kresťanská únia – Demokratická strana (Slovak Democratic and Christian Union – Democratic Party; SDKÚ-DS). The coalition was formed by SDKÚ-DS, a centre-right liberal party Sloboda a Solidarita (Freedom and Solidarity; SaS) founded and led by Richard Sulík, a conservative party Kresťanskodemokratické hnutie (Christian Democratic Movement; KDH) lead by Ján Figeľ, and a inter-ethnic rightist party Most-Híd[4] led by Béla Bugár.

A referendum on political reform was held on September 18, 2010. The referendum failed due to a low turnout with only 22.8% of the electorate voting (well below the 50% threshold required by the Constitution). The referendum was called after a successful petition that started as a civil activity and resulted in the foundation of a new liberal party Freedom and Solidarity (SaS). Large majorities voted in favour of the six proposals: First, to abolish the television licence; second, to limit parliamentary immunity; third, to lower the number of MPs from 150 to 100 by 2014; fourth, to set a maximum price for limousines used by the government at €40,000; fifth, to introduce electronic voting via the internet; and sixth, to change the Press Code by removing politicians' automatic right of reply.

In the local elections held on November 27, 2010, Smer-SD of Robert Fico was again the most successful party with 20.6% of the votes.

On September 14, 2011, the opposition called for a vote of non-confidence, which the government survived.[5] However, the Radičová Government lost in a next confidence vote a month later, on October 11, 2011 and resigned. It was a result of an internal coalition struggle for the ratification of the increase of guarantees under the EFSF that was fiercely opposed by the coalition party SaS of Richard Sulík. Slovakia was last to ratify and the Commission and the Eurozone exercised pressure on the Slovak government to speed up the ratification process. PM Radičová, after failing to persuade SaS, linked the vote on the increase of guarantees to vote of confidence, which she lost. The Parliament then recalled Mr. Sulík from his position of the Chairman of the Parliament (Speaker). The remaining three coalition parties made a deal with the main opposition party Smer-SD, which had originally opposed the increase of guarantees. Smer-SD made it clear that it would support the increase of guarantees only in exchange for early elections or government reconstruction. The governing coalition and Smer-SD then passed the increase of guarantees and an early elections

[3] Mikuláš Dzurinda, the founder of the party and former Prime Minister, remained the chairman of the party.
[4] The party aims to "bridge" Hungarian minority and Slovak majority – "Most" and "Híd" are Slovak and Hungarian expressions for "bridge").
[5] The voting was as follows: 69 votes of MPs from Smer-SD and SNS for non-confidence to 78 votes against. 23rd session of the 5th parliamentary term, voting no. 3, Sept. 14, 2011. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=29137. As the reasons for the non-confidence vote, the opposition cited inability to curb the public debt, which has risen during the two years of Radičová Government more than during the four years of the Fico Government (2006-2010), unemployment and inflation growth, stalled economic growth, austerity measures burdening socially weak groups of population, and corruption scandals. See the documents attached to Parliamentary Press no. 493 of Sept. 8, 2011. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=5&ID=493.

constitutional bill.[6] This solution was also accompanied by another constitutional act stipulating that the President would entrust the Government in demise with the execution of its duties until a new Government is appointed only in a limited extent, especially that the Government can appoint and recall state officials only with the consent of the President.[7]

On December 8, 2011, the Parliament adopted Constitutional Act No. 493/2011 Coll. on Fiscal Responsibility (Fiscal Responsibility Constitutional Act), which became effective on March 1, 2012 (with certain provisions becoming effective as of January 1, 2015).

Smer-SD won the early parliamentary elections on March 10, 2012 with a landslide victory. It gained a majority (83 seats out of 150) in the Parliament and Robert Fico formed a single-party government. The Government formed a new ministerial post of deputy PM for economy.

In January 2013, the Parliament considered an action against President Gašparovič for an intentional breach of the Constitution. The reason rest in the fact that although the Parliament elected a candidate for the position of General Prosecutor of Slovakia, the President refused to appoint him citing irregularities during the elections. Smer-SD of Prime Minister Fico, having clear majority, supported the President and stalled the action, which has thus never reached the Constitutional Court.[8] On September 19, 2013, the opposition attempted to vote non-confidence to the Government.[9] All opposition parties voted against the Fico Government, which, however, sustained the vote given its solid majority.[10]

On November 9 and 23, 2013, two-round regional elections took place. Regional parliaments and heads of the regions are elected separately. Centre-left Smer-SD won the elections (it received alone and in coalition with KDH almost 43%) and its candidates governs in four out of eight regions.[11] On March 15 and 24, 2014, presidential elections were held. Incumbent Prime Minister Robert Fico and an entrepreneur Andrej Kiska advanced to the second round. Two other elections will take place in 2014 in Slovakia – European parliamentary elections in

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[6] Similarly to the Czech Constitution prior to a recent revision, the Slovak Constitution does not provide for self-dissolution of Parliament. The Slovak Parliament therefore adopted a special constitutional act on its dissolution and early elections (Constitutional Act No. 330/2011 Coll.; Parliamentary Press no. 533 of Oct. 13, 2011, available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=5&ID=533). It is worth noting that when the same solution was adopted by the Czech Parliament in 2009, the Czech Constitutional Court struck the constitutional act down for breaching unalterable provisions of the Czech Constitution. See more in my Czech Republic Report for this project.

[7] Constitutional Act No. 356/2011 Coll., amending the Slovak Constitution. For the legislative process and the text of the Act see Parliamentary Press No. 548 of Oct. 21, 2011, available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=3878.

[8] Parliamentary File No. 383, 6th parliamentary term, received on January 17, 2013. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=383.

[9] The opposition criticized the Government's decision to acquire ownership in a mother company to strategic gas company named Slovak Gas Industries, which has been in loss for some time. The loss has been bore among others by J&T company, co-owner of the mother company. It was revealed that a document presented by the responsible minister to the Government, on which the Government based its decision, has been prepared by J&T company. This incident has united the opposition and raised suspicions about an excessive influence of certain economic groups on the Government's decision-making.

[10] 24th session of the 6th parliamentary term, voting no. 44, Sept. 19, 2013. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=32779.

[11] A right-wing extremist Milan Kotleba was elected the head of region of Banska Bystrica.

May and municipal election in November.

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

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

The process starts with the Committee for Macroeconomic Forecasts and the Committee for Tax Forecasts, which prepare a macroeconomic and tax reports. By February 15, the Ministry has necessary information for preparing a budgetary framework – a macroeconomic forecast, an overall volume of tax and non-tax revenues and fees (a tax forecast), and determination of a share of deficit/surplus on GDP. Based on that the Ministry of Finance prepares a budgetary framework for upcoming three years alongside the Stability Programme and National Reform Programme usually by the end of March. The budgetary framework includes a medium-term expenditures framework. However, the expenditure ceilings are binding only for the first budgetary year of such three-year budgetary framework and not for the two subsequent years, something that is criticized by the Council for Budget Responsibility.

The Ministry submits the budgetary framework to the Government by April 15. The budgetary framework includes the information on the share of deficit or surplus on GDP. The Government approves the budgetary framework and the Ministry prepares an outline of expenditures and revenues ceilings for individual chapters of the state budget and for budgets of other subjects of the general government's budget by the end of April. By the end of May, the Ministry prepares an analysis of expenditures and revenues ceilings.

Meanwhile, the Government submits the Stability programme and NRP to the Parliament for approval and sends them to the European Commission by the end of April. Until June 30, the Ministry consults the budgetary works with the subjects of the general government's budget. On July 1, the Ministry incorporates updated macroeconomic forecast and expected tax and non-tax revenues and fees into its preparation of a draft budget (the Committee for Macroeconomic Forecasts and the Committee for Tax Forecasts shall submit their respective forecasts by June 30). At this time, the Ministry receives Commission's recommendations approved by the Council and incorporates them into the preparation of a draft budget (this is not regulated by national budgetary rules).

The draft budget must be submitted to the Government by August 15. The deadline of August 15 may be extended if a new Government has been appointed meanwhile, by 60 days since the presentation of a Government program in the Parliament (if this happens before April 15). The Government cannot include such changes that would increase the share of deficit on GDP. The Ministry includes changes and finalizes the draft budget. The Government decides on the draft budget usually by Sept. 30 and submits it to the Parliament by Oct. 15, if not decided otherwise. The Supreme Audit Office submits its report on the draft budget to the Parliament. By the end of December, the budget shall be adopted in the form of a statute by the Parliament and published in the official Collection of Laws.

The cycle is concluded with a State Closing Account, that is prepared by the Ministry of Finance, approved by the Government, and submitted to the Parliament for approval by April 30 of the year following the budgetary year which the report is concerned with. The Government approves the State Closing Account and submits it to the Parliament and the Supreme Audit Office by May 20. The Parliament decides on the use of budgetary surplus if this is the case. The Ministry publishes the State Closing Account on its website within ten days after being approved by the Parliament. By Oct. 3, the Ministry of Finance prepares and submits an Annual Consolidated Report for a previous budgetary year to the Government and the Government submits the report to the Parliament by Nov. 20 for information. The Ministry publishes the Annual Consolidated Report on its website within ten days after being discussed by the Parliament.

Two additional dates are important, although they are not part of the budgetary process. By April 30, the Council for Budget Responsibility publishes its report on long-term sustainability and by Aug. 31, the Council for Budget Responsibility submits its report evaluating the observance of the rules on fiscal responsibility and fiscal transparency in the preceding budgetary year to the Parliament for discussion.

GENERAL CHANGE

II.2

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

The changes were exhaustively covered in the previous sections of this report. Here, I summarize the main changes:

- New deadlines and reports:
    - Specific deadlines were introduced (April 15 for budgetary framework and August 15 for draft budget)
    - Annual Consolidated Report was introduced (prepared annually on Oct. 3 for a previous budgetary year)
- Budget structure:
    - The upper ceiling on public expenditures has been incorporated in the budgetary rules. It represents an instrument to actively manage the general government balance with a view to ensuring its long-term sustainability. Unlike the debt rule, the mechanisms of which are triggered only if a significant deviation from fiscal position occurs, the expenditure ceilings constitute operational instruments linked to the consolidation targets and the plan for improving the indicator of long-term sustainability of public finances.
    - The institute of public expenditure ceiling is relevant especially within the correction mechanism that is triggered in the event of a significant observed deviation from the MTO; as it is explained in the answer to question VII.7, this correction mechanism may require some immediate changes into an ongoing budgetary process
    - Draft budget includes updated information on the expectations on a current

  - budget and realization of budgets for two previous years
  - Various changes were introduced into accounting to comply with revised ESA
  - New indicators and definitions were introduced – e.g. national net welfare, structural primary deficit, implicit and conditional liabilities, indicator of long-term sustainability
- Obligations of public authorities and other subjects involved in the budgetary process
  - Information and data necessary for budget preparation shall be submitted to the Ministry without compensation
  - New system of collecting data and information is introduced for territorial self-governments – electronic submission through a specialized system
- Introduction of debt brakes affects an ongoing budgetary process when upper two ceilings are surpassed (see more in the answer to question IX.4)

INSTITUTIONAL CHANGE

II.3

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

The most significant change is the introduction of an independent Council for Budget Responsibility and strengthening of the independence of two forecasts committees - Committee for Macroeconomic Forecasts and the Committee for Tax Forecasts, which form together an Institute for Financial Policy, an analytical unit within the structure of the Ministry of Finance. The Council for Budget Responsibility also set up an advisory committee for methodology. The Parliament gained a new competence to elect members of the Council for Budget Responsibility suggested by the Government, the President of Slovakia, and the Governor of the central bank (one each). All public entities shall prepare their annual budgets for a period of at least three years and publish information on their budgets within 60 days after a budgetary year is concluded. For the consequences of the introduction of debt brakes for the competences of the Government, Parliament, and territorial self-governments in the extent they affect the budgetary process, see the answer to question IX.4; and for new obligations and role of the Ministry of Finance, the Government, the Parliament, and the Council for Budget Responsibility within the correction mechanism in the event of a significant observed deviation from the MTO see the answer to question VII.7. New competences are also introduced with the new instrument of Annual Consolidated Report prepared by the Ministry of Finance, approved by the Government, and given for information to the Parliament. Finally, the entrenchment of fiscal rules in a constitutional law means that courts, and especially the Constitutional Court, may within existing procedures (abstract review; less probably concrete review) examine a compliance of statutes (for instance a budget act) with the Fiscal Responsibility Constitutional Act.

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?

For details see the answers to question VII.8. The timeline was more or less the same before the Eurocrisis law. The change consists in setting legally binding deadlines and a new obligation for the Ministry to prepare an Annual Consolidated Report, for which a deadline was set as well:

April 15 – The Ministry of Finance submits a budgetary framework for three upcoming years to the Government

August 15 – The Ministry of Finance submits a draft budget to the Government

Oct. 3 – The Ministry of Finance submits an Annual Consolidated Report for a previous budgetary year to the Government and the Government submits the report to the Parliament by Nov. 20 for information.

MISCELLANEOUS

II.5

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

The Law No. 564/2004 Col., on budgetary assignment of income taxes to territorial self-governments was adjusted as a part of a deal between the general government and territorial self-governments on inclusion of territorial self-governments into the Fiscal Responsibility Constitutional Act and their participation in a fiscal consolidation. One of the results was that the exercise of original competences continues to be funded based on a share on the income tax, instead of a tax mix. As part of the effort of fiscal consolidation, the share was decreased from 93,8% to 87,3%. The second part of the consolidation effort was an introduction of debt brakes for territorial self-governments. The Fiscal Responsibility Constitutional Act subjected territorial self-governments to similar fiscal rules applied to the general government. One of the new elements is that municipalities and self-governing regions will be sanctioned if their debt exceeds 60% of their actual current revenues in the previous fiscal year.

The Fiscal Responsibility Constitutional Act in the part concerning the territorial self-governments is implemented through a rather complex amendment to the Law No. 583/2004 Coll., on budgetary rules for territorial self-governments, in force as of January 1, 2014. The amendment creates conditions for the introduction of new electronic system for collecting data and information for the purposes of budgetary process – a budgetary information system for territorial self-governments RIS.SAM administered by the Ministry of Finance. Various changes are introduced regarding the accounting of the self-governments in order to arrive at real debt and deficits information. The amendment introduces a correction mechanism (debt brakes), which is activated when a debt exceeds 50% of actual revenues for the previous year. Changes with a potential impact on deficit may be adopted only until June 30 of a budgetary year. The amendment also restricts economic management under provisional budget and introduced deadline for adoption of budget. Finally, the amendment introduces changes and details to consolidation regime and receivership.

III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

NATURE NATIONAL INSTRUMENTS

III.1

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

Slovakia adopted a complex fiscal legislative reform. On the apex is the Fiscal Responsibility Constitutional Act as a separate constitutional law that introduces debt brakes, new institutional framework (Council for Budget Responsibility and two committees – for macroeconomic forecasts and for tax forecasts), and transparency rules. These rules are further detailed through amendments to budgetary rules (two statutes – for general government and for territorial self-governments), and minor changes to the law on budgetary assignment of taxes (mainly balancing new requirements for territorial self-governments). The details are set by Ministry of Finance's by-laws (especially regarding details on process, content, and form of data and information obligations of public authorities) and statutes of the Council for Budget Responsibility and the committees. Other changes result from activities of the Council for Budget Responsibility, which created an advisory panel for supervising its methodology and other work-in-progress adaptation to the new rules. Finally, information gathered in the course of this report suggests that many obligations resulting from regulations are not explicitly implemented and the authorities rely directly on the EU regulations.

To understand the position of FRCA within the Slovak legal order, I shall briefly explain the structure of the Slovak legal order. In general, there are two forms of parliamentary legislation in Slovakia – constitutional acts and ordinary statutes. All constitutional acts are, in theory, equal. They can take the form of amendment to existing constitutional law or of new constitutional act. One of the constitutional acts is called the Constitution. Although the Constitution is the central constitutional act, the Slovak constitutional order does not contain an eternity clause and so the relationship between different constitutional acts and different constitutional provisions is subject to balancing without being per definition in a hierarchical relationship. That means the position of FRCA within the Slovak legal order would be the same if it were enacted as an amendment to the Constitution as it currently possess as a special constitutional act. Constitutional acts (and amendments) require three-fifth majority of all members of the Parliament (Art. 84/4 of the Constitution), while ordinary statutes require simple majority (Art. 84/2 of the Constitution). Ordinary statutes must be in compliance with the Constitution, constitutional laws and international treaties to which the Parliament has expressed its assent and which were ratified. The Slovak Constitutional Court exercises both an abstract review and concrete review. It decides on conformity of statutes with the Constitution, constitutional laws and international treaties to which the Parliament has expressed its assent and which were ratified. The Constitutional Court also decides upon submission by the President or Government on the compliance of international treaties with the Constitution or constitutional law.

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?

Yes – the Fiscal Responsibility Constitutional Act. Its content and adoption process was exhaustively covered in the previous sections of the report (see especially the answers to questions VII.4, VII.5, VII.16 and IX.5). The previous sections also discuss failed constitutional bill dealing with tax sovereignty (see the answer to question VI.1).

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 Fiscal Responsibility Constitutional Act was adopted in Dec. 2011 and became effective on March 1, 2012. The draft of the Act was submitted to the Parliament on Nov. 8, 2011, that is one month before the December EU Council meeting that agreed on the outline of the Fiscal Compact.[12] The draft of the Act was prepared by an expert group composed of representatives of all parliamentary parties and published in early Oct. 2011,[13] and was a result of talks among political parties that had begun in Dec. 2009.[14] The works on the bill started with mapping out the fiscal rules in EU countries, but also other successful models such as one of New Zealand. For more on the political and legislative process of drafting and adopting the Act see the answer to question IX.5. Evidence show that the works on finalizing the Fiscal Responsibility Constitutional Bill were done in view of the Fiscal Compact negotiations. No changes on the constitutional level have been made after the Fiscal Compact was signed and ratified (the BBR and deficit rules were implemented in the form of an ordinary statute and there are no intentions to anchor these rules in the constitutional law). Regarding the Six-pack legislation, it was enacted at the time the Fiscal Responsibility Constitutional Bill was being finalized and is reflected in the bill. Based on this legislative history, it can be concluded that the constitutional law have been changed in reaction to the Eurocrisis and with account to Eurocrisis law. The requirement of Art. 3/2 of the Fiscal Compact is considered fulfilled by implementation in the form of a statute (see more in the answers to the questions on the Fiscal Compact).

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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[12] It is worth noting that main discussion on the constitutional bill (the second reading) took place on Dec. 8, 2011, that is at the same time as the EC meeting.

[13] Investujeme.sk, Expertná skupina predstavila ústavný návrh zákona o rozpočtovej zodpovednosti, Oct. 5, 2011. Available at: http://www.investujeme.sk/expertna-skupina-predstavila-ustavny-navrh-zakona-o-rozpoctovej-zodpovednosti/.

[14] MP Jozef Kollár, 26th Session of the 5th Parliamentary Term, Dec. 8, 2012. Available at: http://mmserv2.nrsr.sk/NRSRInternet/Vystupenie/75864/Kollar_Jozef.html.

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

The purpose of the Fiscal Responsibility Constitutional Act is to, first, entrench certain fundamental fiscal rules in the legal system (mainly debt brakes and transparency rules), and second to create competences and obligations for public authorities that would otherwise being prevented by other constitutional provisions (for instance by rights of territorial self-government) or constitutionally problematic (e.g. corrective mechanisms within the debt brakes system such as confidence vote) or insufficient (such as independency of Council for Budget Responsibility and Committee for Macroeconomic Forecasts).

The FRCA is a separate constitutional law. All constitutional laws (including the Constitution) are of equal legal force, a conflict is resolved mostly through classic continental law techniques such as lex posteriori derogat priori, lex specialis derogat generali etc., and through a balancing test.

RELATIONSHIP WITH EU LAW

III.5

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

No such discussion emerged. There was a wide consensus on these changes among political parties as described mainly in the answer to question IX.5 and the works on a complex fiscal reform started in Dec. 2009. Moreover, all Slovak parties supported tightening of fiscal rules, strengthening of the SGP, etc. (also the opposition to the ESFS, Greek bailouts, or ESM has been driven by arguments calling for stronger fiscal rules that would prevent these measures to be activated). In sum, the fiscal reform had been on track to a certain extent independently of the Eurocrisis *law* (but of course not independent of the Eurocrisis) and therefore, it can be assumed, was not understood primary as something imposed from the EU or Eurozone group and has not changed the understanding of relationship between the national and European constitutional law. In this connection, it must be noticed that there was no involvement of courts in the process, which would otherwise need to assess these questions.

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 concept of organic law is foreign to the Slovak legal system. As mentioned above, the Ministry of Finance adopted some highly technical by-laws regarding the process, content, and forms for submitting data and information by public authorities for the purposes of its fiscal responsibilities and forecasting. Most specifically the by-law of the Ministry of Finance of the SR of Nov. 22, 2012 No. MF/21513/2012-31, on the layout, content, form, term and place of submission of accounting information and data necessary for the purposes of evaluation of the budget observance by the general government.[15] The Ministry issued also a Methodical Guidelines to the by-law MF/21513/2012-31 providing specific guidelines on the content, form, and process of submitting financial and accounting information to the Ministry for the purposes of central macroeconomic and fiscal evaluations.[16]

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?

Two major statutory amendments have been enacted. The first, an amendment to the budgetary rules for general government, is intended, according to its explanatory report, to implement the Fiscal Compact. However, it implements also the Fiscal Responsibility Constitutional Act (e.g. definition and regime of expenditure ceiling). The second, an amendment to the budgetary rules for territorial governments implements, according to its explanatory report, the Fiscal Responsibility Constitutional Act. The Fiscal Responsibility Constitutional Act created a constitutional basis for changes that would not be possible via ordinary law due to a limitation in competences of some public authorities or possible conflict with other constitutional provisions (such as right to self-government or vote of confidence). Both amendments must be in compliance with all constitutional laws.

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 process of adopting both the constitutional law and ordinary laws implementing the Eurocrisis law is exhaustively described above. In the answer to the previous question I cite the explanatory reports that show that there was a mix of reason for adopting concrete provisions. That is in one bill, several provisions from different "higher sources" such as the Fiscal Responsibility Constitutional Act (national constitutional fiscal law), the Fiscal Compact, the Directive 2011/85, and provisions of various six-pack and two-pack regulations were implemented and a discussion did not follow these differences.

As mentioned repeatedly above, in the case of Slovakia, we must differentiate two groups of

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[15] Opatrenie Ministerstva financií Slovenskej republiky z 22. novembra 2012 č. MF/21513/2012-31, ktorým sa ustanovuje usporiadanie, obsahové vymedzenie, spôsob, termín a miesto predkladania informácií z účtovníctva a údajov potrebných na účely hodnotenia plnenia rozpočtu verejnej správyAvailable at: http://www.kniznica.sk/fileadmin/kniznica/transparentna_kniznica/zakony/Opatrenie_z_22.novembra_2012_c._MF_21513_2012_31_k_FIN_vyk....pdf.

[16] Metodické usmernenie Ministerstva financií Slovenskej republiky z 12. decembra 2012 č. MF/27088/2012-31 k postupu pri aplikácii § 2 opatrenia Ministerstva financií Slovenskej republiky z 22. novembra 2012 č. MF/21513/2012-31, ktorým sa ustanovuje usporiadanie, obsahové vymedzenie, spôsob, termín a miesto predkladania informácií z účtovníctva a údajov potrebných na účely hodnotenia plnenia rozpočtu verejnej správy pre rok 2013.

reforms – financial assistance and stability mechanisms on the one had, and fiscal reform on the EU and Slovak level on the other hand. In the first group of reforms, Slovakia was very critical (see mainly the answers to the questions IV.1, IV.4, IV.6 and IV.7 on the EFSF and questions VIII.1, VIII.3, VIII.6 en VIII.7 on the ESM); while the second group of reforms was supported by virtually all political parties (there were rather minor disagreements on the form of an internal reform and worries about the ability of the EU to enforce strengthened rules against big member states). The second group of reforms, consisting mainly in the six-pack (see the answers to the questions VII.3, VII.6, VII.9, VII.13 and VII.14), two-pack (section forthcoming), and the Fiscal Compact (see the answers to the questions IX.1-IX.3 and IX.5) were rather non-conflicting. This was also in compliance with the Slovak opposition to some of the elements of the first group of reforms (ESFS, ESM, Banking Union); that is if states were fiscally responsible, there would be no need for paying their debts now. Therefore, Slovakia supported the tightening of fiscal rules and their effective enforcement in general (see the answer to question IX.5). It also started its own complex fiscal reform already in Dec. 2009 and in the parliamentary elections of 2010, all politically parties called for fiscal responsibility. A commission, which had been preparing the Fiscal Responsibility Constitutional Act, which stands on the apex of the reform, consisted of representatives of all political parties and the Act was later approved unanimously in the Parliament (see the answer to question IX.5). From all the evidence in the instruments-related sections of this report, it can be concluded that the complex fiscal reform was considered a Slovak reform, that it had built primarily on a comparison of fiscal constitutions existing in 2009 in Europe and the world at large, and that Eurocrisis law rather fitted in well than that Slovakia was following requirements coming from the EU/Eurozone (see the answers to the questions III.3 and III.5). The whole different story is the first group of reforms (EFSF, ESM, Banking Union), which is considered as imposed and has been widely criticized as not fully taking into account Slovak realities and damaging the Slovak economy as a consequence (see the answers to the questions IV.1, IV.7, VIII.1, VIII.6, and section on banking union – forthcoming). However, the support to the first group of reform, the argument goes, must be given in order for Slovakia to stay in the core of the Eurozone and EU integration, because that ensures the best position for negotiations and protection of Slovak interests (see e.g. the answers to the questions VIII.3 and IX.1).

MISCELLANEOUS

III.9

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

Not applicable.

IV EARLY EMERGENCY FUNDING

Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 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 SLOVAKIA 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?

Participation of Slovakia in financial assistance plans, especially the ones resulting in direct financial payments, has been a sensitive political issue; mainly due to the fact that Slovakia is one of the poorest Eurozone members and hence it has been difficult to explain to the electorate a Slovak participation in financial aids or guarantees.

A discussion on the Greek bailout and the EFSF took place during the time political parties were campaigning for upcoming elections in early June 2010. The debates on the Greek bailout and the EFSF were intertwined and driven by the former. The Finance Minister signed both the ESFS Framework Agreement and the 'Greek' Intercreditor Agreement on May 8, 2010. The Intercreditor Agreement was considered, as in the case of the EFSF, an international treaty requiring a ratification under Article 7/4 of the Constitution.[17] The opposition parties, foremost the largest opposition party SDKÚ-DS, criticized the Fico Government for signing both agreements. The Government meeting on May 10, 2010, after the decisions at the EU level were made, was attended both by the President and the

[17] The 80 000 000 000 EUR Loan Facility Agreement was submitted to the Parliament as an attachment not requiring ratification.

Chairman of the Parliament, which highlighted to the delicacy of the issue. In the evening that day, PM Fico asked the public television to let him explain the issue on air. The government position was that both the bailout and the EFSF had to be understood as protecting the Euro in the interest of Slovakia and that it was crucial not to become isolated from the Eurozone decision-making.[18] Due to the attacks from the opposition and the sensitivity of the issue before the upcoming elections, PM Fico started to condition the participation in the bailout by Greece passing laws increasing retirement age, a decrease of state salaries by 25%, decrease of pensions, and more. The two junior coalition parties were split on the issue. Finally, the Government agreed to the EFSF, but left the decision on the Greek bailout to a new government after the elections.[19] The EU and Eurozone intensified their pressure on Slovakia regarding the EFSF ratification; as part of this effort, an opinion started to circulate that even if Slovakia did not ratify the EFSF, it would have to participate on guarantees after the EFSF came into the effect when 90% of the guarantees were confirmed.[20]

After the elections in June 2010, which the party Smer of the incumbent PM Fico won, but was unable to form a government and went into opposition, the new government of Iveta Radičová with her Finance Minister Ivan Mikloš attempted to negotiate better conditions for the Slovak participation in the EFSF. A few days later, the PM and the Finance Minister "tried to convince EU leaders in Brussels that banks should also contribute to the aid to Greece, along with the taxpayers, and that the poorest countries of the Eurozone should pay less. Slovak leaders also stressed that upon entering the Eurozone, their country had to conduct a series of socially painful reforms, whereas the government in Athens has so far ignored the necessity of such reforms. According to Slovak leaders, stricter principles of the Stability and Growth Pact, an introduction of concrete sanctions for breaching the pact and establishment of a mechanism for controlled bankruptcy should be prescribed for Greece's problems, so that the costs of rescuing indebted countries were also imposed on the banks providing the loans."[21] This effort failed and the Government finally agreed on the participation in the EFSF, but not in the Greek aid package.[22]

The vote of 11 August 2010 on the ratification of the EFSF Framework Agreement in the Parliament[23] was 140 votes in favour to 1 vote against (1 abstention and 8 MPs missing).[24]

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[18] TVNoviny.sk, Fico v STV vysvetľoval záchranný plán EÚ a útočil na opozíciu. May 11, 2010. Available at: http://m.tvnoviny.sk/bin/mobile/index.php?article_id=550987&comments_page=2.

[19] Euractiv.sk, Slovensko chce najprv Grékov vidieť konať, potom pomôže, May 4, 2010. Available at: http://www.euractiv.sk/ekonomika-a-euro/analyza/slovensko-chce-najprv-grekov-vidiet-konat-potom-pomoze-015034#sthash.cs4WoRKu.dpuf.

[20] Euractiv.sk, EÚ postoj Slovenska voči stabilizačnému mechanizmu neznepokojuje, June 24, 2010. Available at: http://www.euractiv.sk/ekonomika-a-euro/clanok/eu-postoj-slovenska-voci-stabilizacnemu-mechanizmu-neznepokojuje-015379#sthash.HrTk79Bs.dpuf.

[21] OSW, Slovakia: the Eurogroup's enfant terrible, Oct. 18, 2011. Available at: http://www.osw.waw.pl/en/publikacje/osw-commentary/2011-10-18/slovakia-eurogroups-enfant-terrible. .

[22] Euractiv.sk, Dlhová kríza v eurozóne, March 26, 2012. Available at: http://www.euractiv.sk/ekonomika-a-euro/zoznam_liniek/dlhova-kriza-v-eurozone-000288.

[23] Legislative power in Slovakia rests with unicameral National Council composed of 150 members (MPs).

[24] 4th Session of the 5th Parliamentary Term, voting no. 21, August 11, 2010. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=27083.

The EFSF represented an international treaty under Article 7/4 of the Constitution that required ratification by Parliament by absolute majority of the MPs.[25] However, the same day, the Slovak Parliament voted on the Intercreditor Agreement concerning the Greek bailout[26] and results were quite different with 2 votes in favour and 69 votes against (13 abstentions, 66 missing).[27] This created a heated exchange of opinions between Olli Rehn and PM Radičová, who complained about the Commission interfering into a Slovak sovereign decision-making.[28] Failing to ratify the Intercreditor Agreement of 8 May 2010, Slovakia did not provided the Commission with the Commitment Confirmation and the Agreement has not become binding upon Slovakia in line with Art. 1.2 of the Intercreditor Agreement.[29] As a result, Slovakia abstained from providing bilateral loans to Greece within the first Greek aid package. The original amount of €80bn provided by the Greek Loan Facility was eventually reduced by €2.7 billion.[30]

No information on the debate on EFSM is available. The obligations arising from the EFSF Framework Agreement were implemented by a special law (see 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 SLOVAKIA AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

After the ratification of the EFSF Agreement, the Government prepared a bill on specific state guarantees (existing Law No. 386/2002 Coll., on state debt and state guarantees was inadequate for Slovakia to act on time and in the way required by the EFSF Framework Agreement when issuing or realizing the guarantees). The Parliament passed the law on Sept. 10, 2010 (76 in favour to 1 against; 73 MPs of the main opposition party Smer-SD left the

[25] Only a treaty that transfers competences to the EU requires constitutional three-fifth majority of MPs (Art. 7/2 of the Constitution).

[26] Správa o siedmom roku členstva SR v EÚ (Report on the seventh year of the Slovak membership in the EU), Parliamentary Press No. 435, p. 3.

[27] 4th Session of the 5th Parliamentary Term, voting no. 22, August 11, 2010. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=27084. Governing coalition voted mostly against, with an exception of KDH, whose 2 MPs voted in favour and 13 opted for abstention. The main opposition party Smer-SD of Robert Fico, who was the Prime Minister at the time of negotiation of the Intercreditor Agreement, left the voting. According to the Intercreditor Agreement Slovakia would commit to the Facility with €817.850.223,95.

[28] Euractiv.sk, Dlhová kríza v eurozóne, March 26, 2012. Available at: http://www.euractiv.sk/ekonomika-a-euro/zoznam_liniek/dlhova-kriza-v-eurozone-000288.

[29] EUR 80 000 000 000 Loan Facility Agreement and Intercreditor Agreement of 8 May 2010, http://www.minfin.gr/content-api/f/binaryChannel/minfin/datastore/30/2d/05/302d058d2ca156bc35b0e268f9446a71c92782b9/application/pdf/sn_kyrwtikoimf_2010_06_04_A.pdf.

[30] In addition to Slovak's opt out, "Ireland and Portugal stepped down from the facility as they requested financial assistance themselves." European Commission, Financial assistance to Greece, http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/.

voting) and the President signed it. It was published as Law No. 381/2010 Coll., on specific state guarantees and became effective as of Sept. 30, 2010. The Law capped the participation of Slovakia at €4.37bn (Sec. 5). On Sept. 29, 2010, Slovakia provided the Commitment Confirmation as stipulated in the EFSF Agreement (not to be confused with a Commitment Confirmation under Intercreditor Agreement within the framework of the first Greek aid package). The Law entitled the Finance Ministry to approve future financial assistances from the EFSF (Sec. 3).

GUARANTEES

IV.3

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

Once the ratification of the EFSF Framework Agreement, adoption of special law on guarantees, and submission of the Commitment Confirmation were concluded, the Ministry of Finance has been responsible for financing and management of the Slovak asset in the EFSF. The decisions made by the Ministry regarding the guarantees has been implemented by a state institution called the Agency for Managing Debt and Liquidity. No debate was held on the procedure.

ACTIVATION PROBLEMS

IV.4

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

For the EFSF Framework Agreement and issuance of guarantees see the answers to previous questions.

At the time of the talks on increase of guarantees, the Slovak coalition was already undermined by the opposition from the junior coalition party SaS. "Sulík [SaS leader] pointed out that the Eurogroup has changed its principles after Slovakia had joined it, and that financing the debts of other countries through further loans only fuels the crisis. … While SaS has consistently used the same arguments, its coalition partners began talking ever more often about shared responsibility for the Monetary Union, which was at risk of a 'massive debt avalanche', and much less frequently about the 'injustice of the poorer countries financing the richer ones'."[31] Due to these growing differences, the leaders of the coalition parties agreed to wait until Slovakia would be the last to ratify the increase of guarantees of the EFSF. PM Radičová, other leaders of her SDKÚ and a coalition partner KDH most

[31] OSW, Slovakia: the Eurogroup's enfant terrible, Oct. 18, 2011. Available at: http://www.osw.waw.pl/en/publikacje/osw-commentary/2011-10-18/slovakia-eurogroup-s-enfant-terrible.

probably bet on the following development – either another country will fail to ratify and Slovakia will be able to further postpone the ratification, or at the time all other countries ratify the increase of guarantees, Slovakia would be able to leverage its position at the Eurozone level and at the same time to use the pressure from the Eurozone countries for securing internal support for the increase of guarantees.

The Government agreed to the increase of guarantees on Sept. 7, 2011, despite four ministers from the junior party SaS voting against the measure. The governing center-right coalition (SDKÚ, KDH and Most-Híd, SaS) of Prime Minister Iveta Radičová had been unable to reach an agreement on the support for the increase of guarantees for several weeks due to an opposition from SaS of Richard Sulík. The Government linked the vote on the increase of guarantees to confidence vote. The Slovak Parliament on October 11, 2011 refused the increase of guarantees and the Government resigned.

After this first attempt with Slovakia being under pressure from the Commission and the Eurozone countries, the remaining three coalition parties made a deal with the main opposition party Smer-SD, which had originally opposed the increase of guarantees. Smer-SD made it clear that it would support the increase of guarantees only in exchange for early elections or government reconstruction. Following this agreement, the Parliament agreed to the increase of guarantees in a vote of 114 in favor to 30 against (two abstentions; an absolute majority of 76 MPs formed a threshold) on September 13, 2011 and adopted a government bill on early elections to be held on March 3, 2012. The Parliament also recalled Mr. Sulík from his position of the Speaker of the Parliament. Sulík threatened to file a constitutional action against the ratification of the increase of guarantees, which did not materialize.

The increase of the EFSF funds from €440bn to €780bn meant for Slovakia that its guarantees increased from €4.4bn to €7.7bn. During the Eurozone summit on October 26, 2011, Slovakia received certain guarantees concerning a consolidation of the first and second Greek aid packages under the EFSF given that Slovakia did not participate in the first Greek Aid Package. Although the statement of the 26 October 2011 Euro Summit does not mention such agreement,[32] the Master Financial Assistance Facility Agreement between EFSF and Greece states in point 9 of the Preamble: "It is acknowledged and agreed that in accordance with the terms of a unanimous resolution of the Member States made pursuant to Articles 5(3) and 10(5)(f) of the Framework Agreement the Slovak Republic is permitted not to participate in guaranteeing a specified amount of Funding Instruments issued to finance Financial Assistance to the Beneficiary Member State which amount corresponds to the notional share of the Slovak Republic in the cancelled non-utilised portion of the EUR 80 billion loan facility dated 8 May 2010 between the then euro-area Member States and the Beneficiary Member State. The Heads of State or Government of the euro area and EU institutions agreed on 26 October 2011 that the effective aggregate amount to be guaranteed by the Slovak Republic for the new Greek programme would not exceed the amount the Slovak Republic committed to guarantee under the concept endorsed on 21 July 2011 which

[32] Euro Summit Statement, 26 October 2011, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/125644.pdf.

provided for official financing amounting to EUR 109 billion. EFSF and the Guarantors shall enter into such agreements and documents as they see fit to give effect to this arrangement."[33]

CASE LAW

IV.5
IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ABOUT THE EFSM OR EFSF IN SLOVAKIA?

No.

IMPLEMENTATION

IV.6
WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE EFSF, FOR EXAMPLE WITH REGARD TO DECISIONS ON AID PACKAGES (LOAN FACILITY AGREEMENT AND MEMORANDUM OF UNDERSTANDING) AND THE DISBURSEMENT OF TRANCHES, BOTH OF WHICH NEED UNANIMOUS APPROVAL BY THE SO-CALLED GUARANTORS, I.E. THE EUROZONE MEMBER STATES?

Slovakia supported the decision on Irish aid package, "though once again raised objections to the principles of the EFSF [see also question IV.2]. Subsequent reports on the problems with debt servicing in Portugal, Spain and Italy further radicalised the moods in the Slovak ruling coalition. Speaker of the Parliament and leader of the coalition party SaS Richard Sulík appealed for the development of a contingency plan should the Slovak koruna need to be restored."[34]

Law No. 381/2010 Coll., on specific state guarantees entitled the Ministry of Finance to finance and manage the Slovak assets in the EFSF. That includes an approval of any financial assistance from the EFSF. Such a system, where the aid packages were agreed by the Ministry and not by the Government as a whole, meant that junior government parties, especially SaS, were excluded from the decision-making. It could have been one of the reasons for the escalation of political conflict within the Government during the ratification of the increase of guarantees, where the SaS was able to intertwine the issue with the anticipated Second Greek Aid. During these negotiations on the increase of guarantees, SaS called for the formation of a parliamentary committee that would vote on each disbursement of EFSF loans in which each political party in the Parliament would have a veto.[35] The SaS lost, as mentioned before, and its plans were stalled.

Later, in 2012, most of the opposition parties supported an amendment to the Law No. 381/2010 Coll., on specific state guarantees, which would oblige the Ministry of Finance to get consent (in the form of a resolution) of the Parliament for any decision made within the

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33 Master Financial Assistance Facility Agreement – Greece, http://www.efsf.europa.eu/attachments/efsf_greece_fafa.pdf. See also Euroskop, Institucionální záležitosti v říjnu 2011 (Institutional Matters in October 2011), Nov. 4, 2011, available at: https://www.euroskop.cz/8443/19847/clanek/institucionalni-zalezitosti-v-rijnu-2011.
34 OSW, Slovakia: the Eurogroup's enfant terrible, Oct. 18, 2011. Available at: http://www.osw.waw.pl/en/publikacje/osw-commentary/2011-10-18/slovakia-eurogroup-s-enfant-terrible.
35 Reuters, Slovak party sets tough conditions for EFSF approval, Oct. 6, 2011. Available at: http://www.reuters.com/article/2011/10/06/slovakia-eurozone-idUSL5E7L60SK20111006.

Eurozone financial stability schemes (EFSF, ESM). This change would have need to be accompanied by an amendment to the Constitutional law No. 397/2004 Coll., on the cooperation between the Parliament and the Government in EU matters, to grant a competence to the Parliamentary Committee on European Affairs to discuss Slovak position for any decision-making within the Eurozone financial stability schemes and to reserve the final decision on the Slovak position to the plenary of the Parliament.[36] The ruling party Smer-SD of PM Fico did not support the bill and it failed the first reading (vote 37 in favour to 67 against (21 abstentions, 3 MPs not voting, and 22 missing).[37] As a result, neither the amendment to the Law No. 381/2010 Coll., on specific state guarantees, nor an amendment Constitutional law No. 397/2004 Coll., on the cooperation between the Parliament and the Government in EU matters were passed.

IMPLEMENTING PROBLEMS

IV.7

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

The events mentioned above changed significantly the attitude of politicians towards the EFSF and further EU plans. Any increase of Slovak participation in Eurozone stability mechanisms was unpopular among voters. The most categorical refusal of the increase of guarantees and the second Greek bailout came from the junior coalition party SaS, which also refused Slovak participation in the ESM. The chairman of the party and, until the government crisis of October 2011, the Speaker of the Parliament Richard Sulík started to campaign against the measures.

After the fall of the Slovak Government, the agreement on early general elections and final approval of the EFSF in the Parliament, the negotiations of the Slovak position on the second Greek bailout was left to the Radičová cabinet in demise (without confidence in the Parliament). One of the main Slovak conditions was at least 50% participation of private sector. Slovak participation in the EFSF meanwhile increased from 0,99% to 1,06% due to stepping-out guarantor status obtained by Greece, Ireland, and Portugal. In the Stability program for 2012-15, the Finance Ministry announced that the debt to GDP ratio grew by 2.7% due to the Slovak guarantees (although some other sources claimed that ESA methodology does not require including these guarantees).[38] Politicians opposing the EFSF also pointed out that if all guarantees have to be paid, it would represent one third of Slovak annual budget.

Regarding PSI: Slovakia consistently called for the controlled bankruptcy of Greece, a tightening of the rules of the Stability and Growth Pact, and for the private sector's

[36] Parliamentary Press No. 99, 6th Parliamentary Term, June 6, 2012. The text of the bill and report are available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=99.

[37] 3rd Session of the 6th Parliamentary Term, voting no. 143, July 3, 2012. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=30287.

[38] Ministry of Finance of SR, Program stability Slovenskej republiky na roky 2012 až 2015, April 2012, p. 23. Available at: http://ec.europa.eu/europe2020/pdf/nd/sp2012_slovakia_sk.pdf.

participation in financing the rescue packages for indebted states. It was a difficult task for the Slovak cabinet to convince the public that the second loan for Greece was reasonable. First of all, the government had to explain why €109 billion worth of aid for Greece makes sense, since the first loan (rejected and still criticized by the Radičová cabinet), did not bring the expected results, just as Slovakia had anticipated. The cabinet's key argument was the participation of the private sector in the loan.[39]

The main critic and a party that caused the cabinet's fall during the ratification of the increase of guarantees, the junior coalition party SaS of Mr. Sulík published, in September 2011, a document summarizing its arguments on the EFSF, increase of guarantees, Greek bailouts, and the ESM. On the participation of banks in the second Greek aid package, the document reads: "Banks propose in their offer a 1:1 exchange of half of their Greek bonds for new Greek bonds. This means that banks will suffer no loss (!) at the exchange itself, the difference lies in interests. Old bonds bear high interests because they are only secured by Greece, which has the worst rating in the world and hence no financial standing. New Greek bonds will be secured by the EFSF with AAA rating, and hence the best possible financial standing, exactly like Germany. While banks will receive for German bonds less than 3% on average, they will receive 4.73% on average for new Greek bonds with an equally low risk (!). Second half of bonds will also be exchanged but with a haircut - decrease of principal by 20%. However, interest will increase up to 6.8%, which will compensate the overall haircut in the course of 15 or 30 years. This way, bonds of the value of 37 billion euros will be exchanged in a relatively short period of time. Politicians are trying to convince their voters that this is the private sector "participation". In reality, however, banks will annually earn on this money approximately 1.5% more with the same certainty than as if they would invest it into German bonds. In other words, banks will exchange Greek bonds of the value of 37 billion euros for Greek bonds of the value of 37 billion euros while their annual profit will be 500 billion euros. This is a joke, not a "participation" of banks."[40]

Based on these concerns that circulated the debate during summer 2011 (and have been summarized in the above mentioned document later in September 2011), a group of MPs offered, on June 28, 2011, a draft resolution on conditional consent to a financial assistance to Greece provided that the following conditions are fulfilled: 1. Strong participation of private investors (the hair-cut, among others); 2. Collateral with automatic realization if Greece is in default; 3. Commitment to privatize the Greek state asset; 4. Cross-party agreement on the support of the Program; 5. Obligatory participation of the IMF. However, the draft resolution did not pass.[41]

BILATERAL SUPPORT

[39] OSW, Slovakia: the Eurogroup's enfant terrible, October18, 2011. Available at: http://www.osw.waw.pl/en/publikacje/osw-commentary/2011-10-18/slovakia-eurogroup-s-enfant-terrible.

[40] SaS, European Financial Stability Facility: A Road to Socialism. Sept. 5, 2011. Available at: http://www.strana-sas.sk/file/579/ESFS-a_road_to_socialism.pdf, p. 6-7.

[41] Parliamentary Press No. 432, 5th Parliamentary Term, June 28, 2011. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=5&ID=432. Voting results were 35:1 (51 asbtentions, 61 not voting, 2 missing) (July 6, 2011). Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=28825.

IV.8

IN CASE SLOVAKIA 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?

None. For the position of Slovakia and discussion on the first Greek financial aid see above the answer to question IV.1 and related discussion on the Second Greek bailout (within the EFSF, but changing the conditions of the first bailout as well) in the answer to questions IV.4, IV.6, and IV.7.

MISCELLANEOUS

IV.9

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

For a summary of arguments against the EFSF see "SaS, European Financial Stability Facility: A Road to Socialism" cited above.

V TREATY AMENDMENT ARTICLE 136(3) TFEU

At the 16/17 December 2010 European Council a political decision was taken to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. On March 25, 2011 the European Council adopted the legal decision to amend article 136 TFEU by adding a new third paragraph: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."
The process of approval of this decision by the member states in accordance with their respective constitutional requirements as prescribed by article 48(6) has been completed and the amendment has entered into force on 1 May 2013.

NEGOTIATION

V.1

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

The Government adopted its preliminary position on the draft Art. 136 TFEU Treaty amendment after the EC meeting in December 2010. The Government was of the opinion that even the most sophisticated and effective enforcement of fiscal rules could not rule out debt crises in the future and that the EMU architecture were missing bankruptcy and financial assistance rules, which created turbulences at the financial markets during a crisis. However, the credibility of a new mechanism would have been undermined without the Treaty Amendment. Such Treaty backing also eliminated constitutional problems in several Member States that emerged during the debates on the EFSF. Slovakia therefore agreed to the draft Art. 136 TFEU Treaty amendment. The Government underlined that the draft was preceded by bilateral consultations between the EU and the MSs, which has helped to build a wide consensus. PM Radičová expressed during the EC meeting her view that the draft represented the right direction to deal with the crisis and the response from the financial markets was the evidence.[42]

APPROVAL

V.2

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

The Slovak Government agreed to the draft EC Decision on March 23, 2011.[43] On August 17, 2011, the Government approved the meanwhile adopted EC Decision[44] and initiated the

[42] Preliminary position of the Slovak Republic on the Draft European Council Decision amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro. Available at http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-130288?prefixFile=m_.
[43] Resolution of the Government of the Slovak Republic no. 213 of March 23, 2011.
[44] Resolution of the Government of the Slovak Republic no. 543 of August 17, 2011.

ratification process. The latter Government's resolution (no. 543/2011) answered several constitutional questions arising from the use of simplified revision procedure on the EU level. The legal nature of the EC Decision from the point of view of the Slovak Constitution was interpreted in the following way – the EC Decision is considered to be an international political treaty, for which ratification is needed (Art. 7(4) of the Constitution);[45] at the same time, the EC Decision does not represent an international treaty referred to in Art. 7(2) of the Constitution (that is, it is not a treaty that would "transfer the exercise of a part of [Slovak Republic] powers to … the European Union") given that the simplified procedure provided by the Art. 48(6) TEU cannot create new competences of the EU. Qualifying the EC Decision as a treaty referred to in Art. 7(4) instead of Art. 7(2) of the Constitution was important for determining what majority in the Parliament is required for the ratification process. The chosen interpretation meant an absolute majority was sufficient (Art. 84/3 of the Constitution (while qualifying the EC Decision as a treaty transferring competences to the EU would require three-fifth majority of all Members of the Parliament; Art. 84/4 of the Constitution).

RATIFICATION DIFFICULTIES

V.3

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

The EC Decision was submitted to the Parliament in August 19, 2011. Due to the political crisis surrounding the EFSF increase of guarantees, described in the previous section (see the answer to question IV.4), which resulted in the fall of Radičová cabinet and agreement on early elections, which took place in March 2012 only, the Parliament did not deal with this issue (in so far as it was connected to the ESM, which became rather a sensitive issue after the heated debates on the EFSF increase of guarantees and the second Greek bailout). The new cabinet of PM Fico (Smer-SD) re-submitted the EC Decision to the Parliament on March 4, 2012.

The Parliament agreed to the EC Decision in May 2012 by overwhelming majority of 130 MPs in favour to 11 against (one abstention, 8 missing)[46] with only Sulík's SaS being against. Opposition MP Ivan Štefanec, former chairman of the European Affairs Committee of the Parliament, offered a resolution asking the Government to submit to the Parliament for its approval any intended financial assistance from the mechanisms for Eurozone stability (EFSF and later ESM). The resolution was supported by all opposition parties, but SaS. The governing party Smer-SD, however, was against and the resolution failed.

CASE LAW

V.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT IN SLOVAKIA ON THE 136 TFEU TREATY

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[45] The Constitution of the Slovak Republic is available in English at http://www.concourt.sk/en/A_ustava/ustava_a.pdf.

[46] 2nd session of the 6th Parliamentary Term, May 15, 2012, voting no. 11. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=30079.

AMENDMENT?

No.

MISCELLANEOUS

V.5

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

Not applicable.

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 SLOVAKIA 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.

Slovakia focused on two priorities in the negotiations of the Pact: first, to include an explicit notion that direct taxes remained in the Member States' competences, and, second, to maintain that the retirement age would depend on demographic developments in a MS.[47] Especially the idea of EU corporate tax was strictly refused by then PM Radičová.[48] This fear led to several constitutional bills being proposed stipulating that the competences in direct taxes could not be transferred to the EU. Neither of these efforts materialized.

MISCELLANEOUS

VI.2
WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO SLOVAKIA AND THE EURO-PLUS-PACT?

Major changes were adopted through a constitutional law, the Fiscal Responsibility Act, and implementing laws (see the answers to questions VI.2, IX.4 and IX.5).

The National Reform Programme of 2012 stated that "[t]he Slovak Government made a political commitment under the Euro Plus Pact initiative to adopt several key measures (fiscal consolidation, pension and contribution reform, fiscal responsibility act, Labour Code, reducing administrative burden on businesses, fight against corruption and improved

[47] Správa o siedmom roku členstva SR v EÚ (Report on the seventh year of the Slovak membership in the EU), Parliamentary Press No. 435, p. 4.
[48] Trend.sk, Lídri eurozóny sa dohodli na pakte pre euro, March 11, 2011. Available at: http://ekonomika.etrend.sk/svet/lidri-eurozony-sa-dohodli-na-pakte-pre-euro.html.

transparency)."[49] These measures were also part of the effort to implement the EU recommendations for the period of 2011-12.

I. Sustainability of public finances and financial stability aims of the Pact[50]

Fiscal consolidation

Measures in the total amount of €1.8bn, or 2.5% of GDP, were implemented in 2011 (compared to an unchanged policy scenario). General government deficit were expected to stand at 4.8% of GDP in 2011. This figure also included debts of healthcare facilities and debts towards railway companies incurred from 2004 to 2010. The total amount of these debts represented €633 million (0.9% of GDP) which, taking into account the 2011 bailout, accounted for a net negative effect on the public balance of 0.83% of GDP.[51]

The general government budget for 2012-2014 contained further consolidation measures to reduce the deficit in 2012. They include measures on the expenditure side, especially frozen wage expenditures and overhead costs, as well as savings on capital expenditures, which, however, should be compensated for by a more effective use of EU funds. On the revenue side, moderate changes were made in corporate income tax, the excise duty on tobacco products was increased and a bank levy was introduced.

In order to protect expenditures that promote economic growth, two basic and political expenditure priorities were apparent in the 2012 budget. The first one was the transport infrastructure, where allocations increased in the road and railway transport sectors. The second priority area was education where the volume of funds for regional schools per student increased by 5.0% year-on-year and in the tertiary school sector by 4.7%.

Pension and contribution reform

The reform of the second (fully-funded) pension system pillar came into force on November 1, 2011, but several changes in pension funds became only applicable as of April 1, 2012. The reform introduced the fourth type of pension fund, so-called index-linked, whose performance will replicate developments in one or more stock market indices. The proposed change enables savers to divide their savings into two pension funds, one of which must be a bond pension fund. In connection with this change, a gradual transfer of personal savings to a bond pension fund has been introduced, depending on the age of savers. The scope of insurers was defined anew, based on the principle of automatic entry, while the pension savers have the possibility to unilaterally opt out from the second pillar anytime during the first two years after their entry to the old-age pension saving scheme. A change was also made to one of the eligibility criteria for old-age pension payments from the 2nd pillar,

[49] National Reform Programme of the Slovak Republic 2012, April 2012, p. 14. Available at: https://www.finance.gov.sk/Default.aspx?CatID=5197.
[50] This is an abridged version quoted from the National Reform Programme 2012, id. at 8-14.
[51] A positive effect on the balance also came from one-off VAT revenue in the amount of €173.4 million (0.25% of GDP) in connection with the completion of R1 expressway sections built under a PPP project.

namely that savers must participate in the old-age pension saving scheme for at least 10 years, compared to the original 15-year limit.[52]

Fiscal Responsibility Constitutional Act

The Fiscal Responsibility Constitutional Act approved by a constitutional majority in the Parliament on Dec. 8, 2011 and effective as of March 1, 2012 governs the establishment and competences of a Fiscal Responsibility Council, rules of fiscal responsibility and rules of fiscal transparency. The Fiscal Responsibility Council will be an independent body, which will monitor and assess the fulfilment of Government's fiscal targets. The act sets the maximum limit on general government debt, including measures that must be implemented if the reported level of the general government debt reaches a certain limit, sets out the transparency rules to be observed when drafting a general government budget and introduces more stringent budgetary rules for local government. More information on the legal framework is supplied in the section on the Fiscal Compact.

II. Employment aim of the Pact

Labour Code

Under the amendment to the Labour Code effective from Sept. 1, 2011, the practice which entitled employees to both severance pay and full wage over the course of the notice period was cancelled; the notice period was cut from two months to one month for employment contracts shorter than one year; the maximum duration of fixed-term employment contracts was extended and the maximum number of their renewals was increased from two to three. Changes concerning working time and new provisions on overtime work without prior consent from employee representatives gave the employers better possibility to flexibly respond to changing economic conditions, but led to deterioration in the social dialogue. The amendment also introduced a working time account and made the flexi-account a permanent instrument.

III. Competitiveness aim of the Pact

Reducing administrative burden on businesses

The project to decrease the administrative burden on businesses contains a set of 94 legislative and deregulatory measures. Fourteen of them were fulfilled by the end of October 2011. For example, the Parliament approved an amendment to the Act on Business Register in December 2011, under which the statutory period for entry of data to the business register was shortened from five to two working days. Another change facilitating improvements in

[52] The mechanism for calculating the annual success fee also changed. Changes also occurred with respect to guarantees: the requirement to replenish assets in under-performing stock pension funds and mixed pension funds was cancelled; the monitoring period for guarantee purposes was extended to 60 months for bond pension funds. No guarantees are provided in index-linked pension funds. New obligations were introduced in risk management and assessment in pension funds. The law also permits to acquire so-called exchange traded funds to the portfolios of pension funds and introduces an obligation to protect and secure the value of the assets of the fund against various risks. Investment in securities representing precious metals is also permitted (20% of net value of assets of mixed and stock pension funds). Id. at 9-10.

the business environment was the introduction of electronic publication of the Commercial Journal, which allowed for, among other things, shortening of publication periods from several months to a few days. The launch of its electronic version turned the Commercial Journal into a real source of information for entrepreneurs.

Single points of contact (SPC) were put in operation in January 2012, following the completion and testing of their electronic system. SPCs help remove redundant administrative burden on business entities and allow, for example, the submission of electronic applications/notifications when starting a business, including electronic payments, or applications for incorporation of companies in the business register. Entrepreneurs may thus handle all the necessary administrative requirements before starting their business in one place, including in electronic format.

Under an amendment to the Act on Bankruptcy and Restructuring, creditors have been permitted to file proposals for bankruptcy against their debtors due to debtor's insolvency, which has put a natural pressure towards observing payment discipline. Debtors are also encouraged to timely resolve their pending insolvency or insolvency by means other than bankruptcy, namely through informal or formal restructuring. The amendment will also put an end to speculative practices used by some companies within bankruptcy proceedings, such as when a debtor company has declared bankruptcy too late, i.e., at a time when it officially held no assets to satisfy its creditors, or, possibly, when the bankruptcy proceedings have been agreed with "friendly creditors" and only served to transfer assets from one company to another.

Fight against corruption and improved transparency

The Slovak Government introduced rules for a more transparent and cost-efficient use of public assets and public funds. Contracts concluded by government entities and municipalities, as well as contracts involving public funds, may only enter into force on the day following the day of their publication on the Internet. A requirement was introduced to use electronic auctions to the greatest extent possible. The use of electronic auctions increased considerably last year; in the second half of 2011, approximately a quarter of all public tenders were carried out by means of electronic auctions. In 2011, contracting authorities bought goods and services 14% cheaper than planned.[53]

[53] Regarding the tax policy coordination aim, Slovakia was mostly concerned with direct tax sovereignty and has opposed EU plans on corporate tax.

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)

NEGOTIATIONS

VII.1
WHAT POSITIONS DID SLOVAKIA 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?

Slovakia supported the six-pack reforms. There was only little substantive discussion on the proposals, as well as on their implementation with few exceptions mentioned in the relevant parts of this section below. Among other things, Slovakia insisted that the reformed SGP acknowledges the importance of systemic pension reforms and a need to reflect their impacts on debt and deficit in the new rules.[54]

DIRECTIVE 2011/85/EU

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

IMPLEMENTATION

VII.2
WHAT MEASURES ARE BEING TAKEN TO IMPLEMENT DIRECTIVE 2011/85/EU ON REQUIREMENTS FOR BUDGETARY FRAMEWORKS (REQUIRED BEFORE 31 DECEMBER 2013, ARTICLE 15 DIRECTIVE 2011/85/EU)?

The Directive was implemented through a series of law:

- Constitutional Law No. 493/2011 Coll., on Fiscal Responsibility (Fiscal Responsibility Constitutional Act)
- Law No. 523/2004 Coll., on the budgetary rules for general government

[54] Report from the EC summit on Oct. 28-29, 2010, prepared for the Slovak Government. Available at: https://lt.justice.gov.sk/Attachment/vlastny%20material_doc.pdf?instEID=-1&attEID=29369&docEID=142350&matEID=3364&langEID=1&tStamp=20101122092002857.

- Law No. 583/2004 Coll., on the budgetary rules for territorial self-government
- Law No. 511/2011 Coll., on the 2012 state budget.
- by-law of the Ministry of Finance of the SR of Nov. 22, 2012 No. MF/21513/2012-31, on the layout, content, form, term and place of submission of accounting information and data necessary for the purposes of evaluation of the budget observance by the general government.[55] The Ministry issued also a Methodical Guidelines to the by-law No. MF/21513/2012-31 providing specific guidelines on the content, form, and process of submitting financial and accounting information to the Ministry for the purposes of central macroeconomic and fiscal evaluations.[56]

IMPLEMENTATION DIFFICULTIES

VII.3

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

See the discussion on the Fiscal Responsibility Constitutional Act in the answer to question IX.5. There was a wide agreement on the law, which was prepared by an expert committee consisting of representatives of all parliamentary parties that had been working on the Act between Dec. 2009 and Oct. 2011. Due to this fact, there was little public debate, which is indicated also by the fact that the law passed unanimously and in a shortened procedure.

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 Fiscal Responsibility Constitutional Act consists of two major parts – rules on fiscal responsibility (debt brakes) and a fiscal council (Council for Budget Responsibility) and rules on fiscal transparency. The latter part strengthened the role of two committees – Committee for Tax Forecasts and Committee for Macroeconomic Forecasts. The committees have been established in 2004 and 2005 as analytical unit of the Ministry of Finance, are re-established as advisory organs of the Finance Minister (Art. 8/1 of the Fiscal Responsibility Constitutional Act). The Act strengthened the position of the two committees and set specific

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[55] Opatrenie Ministerstva financií Slovenskej republiky z 22. novembra 2012 č. MF/21513/2012-31, ktorým sa ustanovuje usporiadanie, obsahové vymedzenie, spôsob, termín a miesto predkladania informácií z účtovníctva a údajov potrebných na účely hodnotenia plnenia rozpočtu verejnej správy. Available at: http://www.kniznica.sk/fileadmin/kniznica/transparentna_kniznica/zakony/Opatrenie_z_22.novembra_2012_c._MF_21513_2012_31_k_FIN_vyk....pdf.

[56] Metodické usmernenie Ministerstva financií Slovenskej republiky z 12. decembra 2012 č. MF/27088/2012-31 k postupu pri aplikácii § 2 opatrenia Ministerstva financií Slovenskej republiky z 22. novembra 2012 č. MF/21513/2012-31, ktorým sa ustanovuje usporiadanie, obsahové vymedzenie, spôsob, termín a miesto predkladania informácií z účtovníctva a údajov potrebných na účely hodnotenia plnenia rozpočtu verejnej správy pre rok 2013.

dates for submitting their forecasts. The Committee for Tax Forecasts prepares at least twice a year (on Feb. 15 and June 30 of a current budgetary year) prognoses of revenues from taxes and fees. The Committee for Macroeconomic Forecasts prepares also at least twice a year on the same dates prognoses on macroeconomic development (Art. 8/2). The Ministry of Finance publishes these forecasts. The Council for Budget Responsibility is obliged to take into account the macroeconomic forecasts of the respective Committee (alongside the long-term macroeconomic forecasts of the EU) as one of the information (alongside the value of structural primary deficit, demographic forecasts of Eurostat, long-term prognoses of expenditures sensitive to aging of population calculated by the European Commission, long-term forecasts of capital incomes calculated by the European Commission, implicit and conditional liabilities, and other indicators affecting long-term sustainability) for determining an indicator of long-term sustainability (Art. 7).

Although, the Act does not explicitly require an unbiased evaluation of the forecasts, by embedding the Macroeconomic Committee in a law of constitutional force, the Committee enjoys more independence, although it is an advisory organ of the Finance Minister. The new status of the Macroeconomic Committee provides that the main aim of the Committee is to increase the quality of macroeconomic forecasts and increase the transparency of the budgetary process. The Committee's functioning shall not be influenced by political power and it exercises its tasks independently on the executive power represented by the Government. Further, the Council for Budget Responsibility will have to compare the macroeconomic forecasts of the Committee with the ones prepared by the EU when determining an indicator of sustainable development, based on which it will then prepare its main report on sustainable development (for the competences of the Council for Budget Responsibility see below). Finally, both committees are parts of the Institute for Financial Policy that shall be independent of the Finance Minister and political power (Art. 2 of Statute of the Committee for Macroeconomic Forecasts).

FISCAL COUNCIL

VII.5

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

A Council for Budget Responsibility was created by the Fiscal Responsibility Constitutional Act of 2011 (effective from March 2012). The original bill was amended upon a request from the ECB resulting from the obligatory submission of bills with a possible impact on the ESCB or ECB. The aim to ensure the highest possible independence of the Council for Budget Responsibility lead the drafters to adopt a solution that the Council for Budget Responsibility will be attached to the National Bank of Slovakia (the central bank) as an independent institution and its budget will be financed from the budget of the National Bank of Slovakia. The reason was to avoid a situation that happened in Hungary where the Government and Parliament once exercised a political pressure on the Council for Budget

Responsibility by substantially limiting its budget. However, the ECB was of an opinion that such solution is not in compliance with rules on independence of central banks because a government cannot obliges a central bank to make payments to any institution.[57] The solution that was adopted keeps the system where expenditures of the Office of the Council for Budget Responsibility[58] are paid from the budget of the Slovak National Bank, however these payments are reimbursed by the Ministry of Finance from the general government's budget without delay when the Slovak National Bank requests so (Art. 3/8 of the Fiscal Responsibility Constitutional Act of 2011).

The Council for Budget Responsibility has three members appointed for seven years. The chairman is elected by a three-fifths majority of the Parliament on the suggestion from the Government. A member of the Council for Budget Responsibility is elected by a simple majority of the Parliament on the suggestion from the President of Slovakia and the other member is elected by a simple majority of the Parliament on the suggestion from the Governor of the Slovak National Bank (Art. 3). The tasks of the Council for Budget Responsibility are monitoring and evaluation of Slovak economic development and evaluation of observance of the fiscal responsibility rules (Art. 3/1). More specifically, the Council for Budget Responsibility (Art.4/1):

- prepares and publishes a report on long-term sustainability including a baseline scenario and determination of an indicator of long-term sustainability annually on April 30 and regularly within 30 days after a vote of confidence to a new government;
- prepares and publishes for the purpose of discussion in the Parliament a report evaluating the fulfillment of the fiscal responsibility rules and the fiscal transparency rules as specified in the Fiscal Responsibility Constitutional Act for the period of a preceding year annually on August 31;
- prepares and publishes from its own initiative an opinion on bills discussed in the Parliament regarding the impacts on general and territorial self-governments' budgets and long-term sustainability; it may do so also on the request of parliamentary caucuses
- exercise other functions connected to the monitoring and evaluation of the Slovak economic development and evaluation of fiscal transparency rules.

The Council for Budget Responsibility may require cooperation from other organs of general and territorial self-governments in collecting data and information and shall cooperate and share data with the Slovak National Bank if requested (Art. 4/2).

Based on the OECD recommendation for fiscal councils, the Council for Budget Responsibility created five-member Advisory Panel composed of high-profile foreign economists. The Advisory Panel met first time in Oct. 2013. Its task is to supervise methods

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[57] MP Jozef Kollár, 26th Session of the 5th Parliamentary Term, Dec. 8, 2012. Available at: http://mmserv2.nrsr.sk/NRSRInternet/Vystupenie/75864/Kollar_Jozef.html.

[58] The Office of the Council for Budget Responsibility is an organization with legal personality with a seat in Bratislava that provides expertize, personal and organizational, administrative, and technical support to the Council for Budget Responsibility (Art. 3/7).

and processes used by the Council for Budget Responsibility.[59]

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

No political debate or legal difficulties noticed. Only the Slovak National Bank in its May 2012 Report on Financial Stability after the first Alert Mechanism pointed out that imbalances are not necessary resulting from domestic causes. The biggest danger rests in out-of-control increase of credit and therefore more focus shall be given to the financial sector (portfolio investments and inter-banking operations mainly) than to goods and services market, which are much more stable. If credit sources come from abroad, there is little to do on the national level to remedy macroeconomic imbalances thus created. The Slovak central bank also raised doubts about whether the Commission will be able, due to sovereignty concerns, to really push for and enforce under a threat of sanctions within the MIP a country to adopt specific tax measures, liberalization of labour market, etc. Finally, the bank raises some concerns about informative value of some of the indicators used in the MIP. The bank concludes that corrective measures might be successful only if coordinated on a supranational level given the financial interconnectedness of countries.[60]

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?

The Parliament adopted as of January 1, 2014 an amendment to Law No. 523/2004 Coll., on budgetary rules for general government implementing in § 30a the MTO and the correction mechanism. First, it states that "[a]chieving a balanced or surplus budget of the general

[59] Advisory Panel of the Council for Fiscal Responsibility. Available at: http://www.rozpoctovarada.sk/svk/rozpocet/173/panel-poradcov.

[60] Slovak National Bank, Report on Financial Stability, May 2012, Annex 2, p. 67-69. Available at: http://www.nbs.sk/_img/Documents/ZAKLNBS/PUBLIK/SFS/protected/SFS-052012.pdf.

government including a procedure leading to the medium-term objective is ensured by" Art. 3/1 b) of the Fiscal Compact. Second, it provides that in the event of a significant observed deviation from the MTO or an adjustment path towards it, a correction mechanism is triggered; the Ministry of Finance according to a published method of calculation evaluates twice a year (June 30 and Nov. 30 of a current budgetary year) whether a significant observed deviation occurred. If the Ministry concludes that a significant observed deviation occurred, it will suggest to the Government a public expenditures ceiling for a period of the correction of such significant observed deviation. It shall respect annual reduction of the general government's debt to GDP ratio in line with Art. 6 of the consolidated version of the Reg. 1466/97. The public expenditure ceiling means the maximum amount of the total accrued consolidated expenditures of the general government.[61] The Ministry discusses the draft correction measure that impacts on territorial self-governments with associations of municipalities (local governments) and representatives of regional governments. The Government decides on the correction mechanism, including the Ministry's suggestion on public expenditures ceiling, and approves measures that shall be realized under the correction mechanism. If the Government decides not to activate the correction mechanism, it shall submit its reasoned decision in writing to the Parliament. The obligation to realize a correction mechanism is suspended in the event of exceptional circumstances as defined in Art. 3/3 b) of the Fiscal Treaty. The Government, on the recommendation of the Ministry of Finance, decides on the beginning and the end of exceptional circumstances situation. The Council for Budget Responsibility evaluates the realization of corrective mechanism and the decision not to activate the mechanism. It also reconsiders decisions of the Government on the existence of an exceptional circumstances situation. The Council for Budget Responsibility publishes its reports and the Ministry of Finance publishes its opinion on the Council for Budget Responsibility's reports.

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)?

Some changes to the budgetary process were adopted by an amendment (Law No. 69/2012 Coll.) to Law No. 523/2004 Coll., on Budgetary Rules for General Government, which became effective on March 1, 2012 alongside the major fiscal reform introduced by the Fiscal Responsibility Constitutional Act. Although, the 2012 amendment to the budgetary rules does not mention a European Semester, it sets two new deadlines within the budgetary process – the Ministry of Finance shall submit a budgetary framework of general government to the Government by April 15 and a draft budget by August 15. Deadlines for and processes of submissions of a Stability Programme, a National Reform Programme, and reaction to recommendations are not provided or mentioned. Major strategic documents (Stability

[61] The term "public expenditure ceiling" is explained in detail in the footnote to question VII.10.

Programme and National Reform Programme) mention the introduction of the European Semester. Slovakia probably considers direct applicability of the Regulation sufficient for the Ministry of Finance and the Government to adjust its internal working schedule to the European Semester cycle. Both, the budgetary framework and the draft budget are prepared for the period of three subsequent years. The budgetary framework (submitted to the Government by the Ministry of Finance by April 15 the latest) is the most important document within the European semester cycle. Based on that, the Ministry prepares the Stability Programme and NRP and submits them to the Commission in April (in 2013, the programmes were approved by the Government on April 24). When the Council adopts specific recommendations in late June/early July, the Ministry has enough time to include them into a draft budget to be submitted to the Government by August 15.

Further changes were introduced to the process of observation of budget realization. The Fiscal Responsibility Constitutional Act (Art. 9/5) and the Law No. 69/2012 introduced an obligation to prepare Annual Consolidated Report (§ 29a of the consolidated version of the law on budgetary process for general government). The Ministry of Finance shall submit the report for a previous budgetary year to the Government by Oct. 3 for approval and the Government submits the report to the Parliament by Nov. 20 for information. The timing matches the beginning of a European Semester (in November, the Commission publishes Annual Growth Survey and Alert Mechanism Report).

MTO DIFFICULTIES

VII.9

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

No discussion noticed. All the changes introduced by the six-pack, two-pack, and Fiscal Compact were understood as one package and introduced in Slovakia through a major fiscal reform consisting of the Fiscal Responsibility Constitutional Act and several implementing statutes. There was a wide consensus on these reforms among political parties that has been triggered by the financial crisis and built up through an expert commission of representatives of all political parties that since late 2009 worked on these reforms. Furthermore, it must be taken into account that many processes that the six-pack, two-pack, or Fiscal Compact strengthened, formalized, and updated in fact existed before these measures were introduced and so their technical realization was not consider problematic. Of course, major political discussions were about formally superior legal acts – Fiscal Compact, Fiscal Constitution, EMS, etc., which were more intelligible for the electorate and therefore more suitable for political debates.

Surely there were frictions, which however, took place rather outside public space and are difficult to reconstruct. One of the most important issues seems to be tightening of fiscal surveillance of territorial self-governments by the general government. That was one of the reasons why the fiscal reform had to be embedded in a law of constitutional force to balance rather sensitive issue of constitutional right to self-government. During the process, the representatives of territorial self-governments demanded assurances within the new fiscal schemes, such as changes to the law on redistribution of tax revenues between the general government and territorial self-governments.

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 obligation to respect MTO and the correction mechanism triggered in case of a significant deviation has been explained above in the answer to question VII.7 and the text of the relevant provisions of implementing law is supplied in the footnote.[62] The obligation to observe MTO and the correction mechanism is set in § 30a of Law No. 523/2004 Coll., on

[62] It is regulated by § 30a/2-4 of Law No. 523/2004 Coll., on Budgetary Rules for General Government that reads (translation by the Council for Budget Responsibility, available at http://www.rozpoctovarada.sk/download/523_2004_en.pdf): "(2) In the case of a significant deviation42af) from the medium-term objective or from the adjustment path towards the objective referred to in paragraph 1, a correction mechanism shall be applied; the Ministry of Finance shall, pursuant to separate regulations42ag), publish a notice on whether a significant deviation has occurred, twice a year, by 30 June and 30 November of the current budgetary year. If the Ministry of Finance publishes a notice that a significant deviation has occurred, it shall propose to the Government a public expenditure ceiling and measures for the period of correction of the significant deviation, taking into account the magnitude of the deviation and respecting the medium-term objective and annual reduction in the share of the general government deficit in gross domestic product pursuant to separate regulations42ag); the public expenditure ceiling is defined as the maximum amount of accrued consolidated expenditures of the general government. The Ministry of Finance shall discuss, in advance, any proposal for measures with impact on local governments with the national associations of municipalities and representatives of higher territorial units. The Government shall decide on the correction mechanism, as part of which it shall also decide on the proposed public expenditure ceiling and approve measures to be implemented as part of the correction mechanism; before the Government takes the decision, the proposal shall be assessed by the Council for Budget Responsibility.42ah) If the Government chooses not to apply the correction mechanism, it shall deliver to the Parliament a written justification of the decision not to apply correction mechanism.
(3) The obligation to activate the correction mechanism shall not apply during the existence of exceptional circumstances.42ai) The beginning and end of the duration of exceptional circumstances shall be declared by the Government based on the proposal by the Ministry of Finance and subject to prior assessment thereof by the Council for Budget Responsibility.
1(4) The Council for Budget Responsibility shall assess and publish its assessment of the application or non-application of the correction mechanism pursuant to paragraph 2 and of the beginning and end of the duration of extraordinary circumstances pursuant to paragraph 3; the Ministry of Finance shall publish its opinions on such assessments.".
Footnotes to references 42ac to 42ai shall have the wording as follows:
42ac) Article 3, paragraph 1 (b) of the Treaty on Stability, Coordination and Governance. Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (Extraordinary issue OJ EU, chapter 10/vol. 1, OJ EC L 209, 2.08.1997), as amended. Council Regulation (EC) No. 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (Extraordinary issue OJ EU, chapter 10/vol.1, OJ EC L 209, 02.08.1997), as amended.
42ad) Article 5(2) of constitutional act 493/2011 Coll.
42ae) Article 2, paragraph (a) of constitutional act 493/2011 Coll.
42af) Article 6 of Regulation (EC) No 1466/97.
42ag) Articles 5 and 6 of Regulation (EC) No 1466/97. Article 3(4) of Regulation (EC) No. 1467/97.
42ah) Article 3 of constitutional act 493/2011 Coll.
42ai) Article 3, paragraph 3(b) of the Treaty on Stability, Coordination and Governance (Notification No. 18/2013 of the Ministry of Foreign and European Affairs).

Budgetary Rules for General Government, which also refers to the Art. 3/1 b) Fiscal Compact, consolidated Reg. 1466/97 and 1467/97 that are therefore directly applicable. Budgetary framework as well as the Stability Programme give budgetary outlook for three years and indicate concrete steps towards reaching the MTO. MTO itself is set in a Stability Programme only, which must be approved, including MTO, by the Parliament. The Council for Budget Responsibility evaluates whether the MTO is observed. In its May 2013 report, which reacts to the 2013 budgetary framework submitted by the Ministry of Finance to the Government before April 15, the Council for Budget Responsibility stated that the Government plans towards reaching the MTO by 2018 has not been supported by specific measures yet and concrete steps how to reach the MTO in case of worsening of external environment with negative impact on the general government's debt have not been indicated.[63] It also pointed out that the 2013 budgetary framework was not specific enough and so the Council for Budget Responsibility's evaluation of whether the MTO is observed is based on the Stability Programme mainly (the budgetary framework and Stability Programme are finalized simultaneously in April).

CURRENT MTO

VII.11

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

According to Stability Program for 2013-2016, Slovakia continues in consolidation of public finances in order to meet the medium-term budgetary objective for the general government's structural deficit of 0.5% of GDP by 2018.[64]

ADOPTION MTO

VII.12

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

The process is not regulated by national law, direct applicability of the Reg. seems probably sufficient. The process starts with the Committee for Macroeconomic Forecasts, which prepares and publishes a macroeconomic report in February. Based on that the Ministry of Finance prepares a budgetary framework for upcoming three years (in April) alongside the Stability Programme. The MTO has been specified in the 2012 Stability Programme and has not been changed yet. That means the annual budgetary frameworks work with such MTO and implements it for each of the upcoming three years in an annual budgetary framework and later in a year in a draft budget. However, only the expenditures and revenues for the first

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[63] Council for Fiscal Responsibility, Evaluation of medium-term budgetary objectives, May 2013, p. 4. Available at: http://www.rozpoctovarada.sk/download2/strednodobe_ciele_2013_final.pdf.

[64] Stability Programme of the Slovak Republic for 2013 – 2016, April 2013, p.5. Available at: http://ec.europa.eu/europe2020/pdf/nd/sp2013_slovakia_en.pdf. According to the current General Government Budget Framework for 2014-2016, the target deficit values have been set at 2.6% of GDP in 2014, 2.0% of GDP in 2015 and 1.3% of GDP in 2016. Id.

year are binding indicators (not for two subsequent years). In June 2013, the Council for Budget Responsibility (fiscal council) criticized the Government that such procedure is insufficient. It recognizes that the Fiscal Responsibility Constitutional Act creates a system of public expenditures ceiling. It held that a legislative framework that would specify the process of public expenditures ceiling's calculation and observance was indispensable for realization of the MTO. The Council for Budget Responsibility specifies guidelines for the creation of an effective system of a public expenditures ceiling, including the necessity to be of a permanent character, so "that it cannot be changed by an annual budget act."[65] Three months later, the Government submitted a bill amending the Law No. 523/2004 Coll., on budgetary rules for general government to the Parliament, that implements the Fiscal Responsibility Constitutional Act, where it specifies that "the public expenditure ceiling is defined as the maximum amount of accrued consolidated expenditures of the general government."[66] In the case of a significant deviation from the MTO or from the adjustment path towards it, the Ministry of Finance proposes to the Government a public expenditure ceiling and measures for the period of correction. If the Government chooses not to apply the correction mechanism, it shall deliver to the Parliament a written justification of the decision not to apply correction mechanism. The Council for Budget Responsibility shall assess and publish its assessment of the application or non-application of the correction mechanism. (§ 30a/2,4 of Law No. 523/2004 Coll., on budgetary rules for general government).

However, regarding the MTO, the implementing law (Law No. 523/2004 Coll.) only refers to Art. 3/1 b) of the Council for Budget Responsibility. According to the explanatory report to the bill, the MTO is set by a Stability Programme. A Stability Programme specifies both the timeline and process of reaching the MTO and these specifications are binding.

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

No explicit changes to implement the Regulation were made. It shall be noted that Slovakia has been under EDP twice already (2004-2008 and since 2009 onwards). It is well adjusted to this process and followed (at least on paper) the recommendations for the EDP to be ceased. Both the Stability Programme and NRP seem to take EDP seriously, independently of what

[65] Council for Fiscal Responsibility, Report evaluating the observance of the rules on fiscal responsibility and transparency in the year of 2012, June 2013, p. 6. Available at: http://www.rozpoctovarada.sk/download2/hodnotenie_pravidiel2013_final.pdf.

[66] §30a/2 of Law No. 523/2004 Coll., on budgetary rules for general government. See also more extensive definition used in practice in footnote to question VII.10.

political parties have been in power, and no political opposition to these processes has been noticed. With the creation of the Council for Budget Responsibility and the independent Committee for Macroeconomic Forecasts, the fulfilment of corrections under the EDP is more scrutinized.

Two other specific procedures aim to control the level of deficit. First, § 30a of Law No. 523/2004 Coll., on budgetary rules for general government dealing with the procedure in the case of a significant deviation from the MTO explicitly refers to Article 3/4 of Regulation 1467/97 as amended. Within this correction mechanism, the Government sets public expenditure ceiling, which directly affects the level of deficit for the period of correction. Second, the debt brakes introduced by the Fiscal Responsibility Constitutional Act also affect the level of deficit. Under the second debt break, the Government must submit to the Parliament a proposal of measures aimed at reducing the debt; under the third debt break, the Government may not propose to the Parliament a draft state budget featuring any nominal year-on-year increase in general government expenditures; and under the fourth and fifth breaks, the Government may not submit to the Parliament a proposal for a deficit-based budget of the general government. The fulfillment of the obligations under the second and third breaks will mostly likely involve deficit reduction. The obligation under the fourth and fifth breaks is then explicitly dealing with deficit (balanced or surplus budget requirement). In 2013, the first debt brake was activated, which however does not involve any correction towards deficit. According to a report of the Council for Budget Responsibility of November 2013, the threshold for activation of the second debt break was surpassed in late 2013 and the threshold for activation of the third debt break will be surpassed in the course of 2014 which will mean that general and territorial self-governments' expenditures will be frozen on the level of 2014 for the following budgetary year.[67]

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

No specific political discussion on this topic (see above more generally). For more expert discussion see the position of the Council for Budget Responsibility regarding the MTO, expenditures ceiling, and correction mechanism above.

GENERAL CHANGES

[67] Council for Budget Responsibility, Evaluation of the draft budget for general government for years 2014-2016. Nov. 2013, p. 45. Available at http://www.rozpoctovarada.sk/download2/HodnotenieRVS_2014_2016_FINAL_01.pdf.

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?

As mentioned above, the six-pack implementation was concluded with the adoption of the amendment to Law No. 523/2004 Coll., on budgetary rules for general government and the amendment to Law No. 583/2004 Coll., on budgetary rules for territorial self-government. It seems, based on the 2013 annual report of the Council for Budget Responsibility that some gaps will persist, especially regarding a binding nature of MTO and creation of an effective expenditures ceiling system.

MISCELLANEOUS

VII.16

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

Macroeconomic imbalances procedure

In the first Alert Mechanism report on Feb. 2012, the Commission found that Slovakia exceeded the limits in five indicators – 3 year average of current account balance was -4.1% of GDP; net international investment position was -66.2% of GDP, change in 3 years of real effective exchange rate with HIPC deflators was 12.1%, change in 3 years of nominal ULC was 10.1%,[68] 3 year average of unemployment was 12%.[69] The excesses from the tolerated values were mostly minor only and so the Commission concluded no economic imbalances in Slovakia:

"[T[he current account for Slovakia recorded large and sustained deficits during the last decade, partially financed through capital transfers from abroad. Nevertheless, the current account indicator remains above the indicative threshold although marginally. Foreign direct investment, which was largely directed to productive export-oriented industries, accounted for a dominant share of the gradually deteriorating net international investment position. Loss in price competitiveness reflected in a value of the REER indicator that is above the indicative threshold is mainly due to a strong nominal appreciation, and came together with high growth in productivity, exports and world shares of trade. Overall, public as well as private sector indebtedness levels remain low."[70]

Also, in the second cycle of MIP, the Commission did not select in its Alert Mechanism Report Slovakia for in-depth review. The conclusions were more detailed this time:

"In the previous round of the MIP, Slovakia was not identified as experiencing imbalances. In the updated scoreboard, a couple of indicators are above the indicative thresholds, namely the

[68] This should be within the tolerated range according to the scoreboard, however it is indicated as excessive. Either the number is wrong or there is another problem in the scoreboard.

[69] European Commission, Alert Mechanism Report, Brussels Feb 2, 2012 COM(2012) 68 final, pp. 4. Available at: http://ec.europa.eu/economy_finance/economic_governance/documents/alert_mechanism_report_2012_en.pdf.

[70] Id. at 17-18.

net international investment position and the unemployment rate. In 2011, the net international investment position recorded a marginal improvement, but most of the external liabilities are in non-debt instruments (notably foreign direct investment, which has been directed primarily towards export-oriented industries). An improving position on the goods and services balances and an increasing outflow of income has contributed to a stable current account balance since 2009. Due to strong growth in manufacturing export, the trade balance and the current account are expected to improve from 2012 onwards. The indicators for the real effective exchange rate and the nominal unit labour cost are now below their respective thresholds, as the impact of the strong nominal appreciation prior to euro adoption and the recession-induced drop in productivity in 2009 is fading away. With unemployment expected to remain well above the pre-crisis level in the coming years, wage pressures are accordingly forecast to remain in check. The continued relatively favourable development of competitiveness indicators is also reflected in an on-going increase in labour productivity and export market shares. The largely foreign-owned banking sector avoided a strong expansion in lending, which spared Slovakia from excessive credit growth, and helped to keep public and private debt relatively contained. However, the public debt ratio has increased substantially in recent years. The unemployment rate – well above the threshold – remains one of the most pressing structural issues weighing on the domestic economy. Persistently high unemployment reflects a lack of labour market improvements since the outbreak of the crisis and the persistence of major regional disparities in economic growth and employment. *Overall, the Commission will at this stage not carry out further in-depth analysis in the context of the MIP*."[71]

Based on the Alert Mechanism conclusions, Slovakia was not selected for in-depth review either in 2012 or 2013.[72]

As to policy changes following from the first application of the Macroeconomic Imbalances Procedure, the 2012 Alert Mechanism was not mentioned in any strategic documents like National Reform Programme or Stability Programme either in 2012 or 2013. As no corrective action were recommended, the reason probably rests in the fact that there are other, more specific, guidelines of the Commission aimed to improve structural economic problems in Slovakia, namely the Country-specific Recommendations 2012[73] and 2013 as parts of the European Semester (although they do not focus on macroeconomic imbalances as such, the reasons for most of the macroeconomic problems in case of Slovakia identified in the MIP are connected to structural problems identified in the recommendations or the excessive deficit procedure Slovakia has been subjected to since 2009). The responses to these recommendations are exhaustively covered in the NRP 2012. In sum, there have been no immediate responses to the MIP, because all problems mentioned in the Alert Mechanism Report (AMR) have been circulating in political debates in Slovakia and measures to deal

[71] European Commission, Alert Mechanism Report 2013, Brussels Nov. 28, 2012 COM(2012) 751 final, pp. 17. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0751:FIN:EN:PDF.
[72] Id. at 19.
[73] Council Recommendation on the National Reform Programme 2012 of Slovakia and delivering a Council opinion on Stability Programme of Slovakia, 2012-2015, Brussels July 6, 2012. Available at: http://register.consilium.europa.eu/pdf/en/12/st11/st11271.en12.pdf.

with them had started before the AMR.

Division of responsibility for imposed sanctions between different levels of government

Slovakia has not introduced any new rules that would specifically deal with a division of responsibility for imposed sanctions arising from the Macroeconomic imbalances procedure. However, the Fiscal Responsibility Constitutional Act created a better sanction mechanism applicable to territorial self-government units that are in breach of debt rules. Although this sanction mechanism is primarily directed towards fiscal responsibility of territorial self-government units, fiscal problems of territorial self-governments would often result from deeper structural problems, where some of such structural problems may be connected to neglected macroeconomic imbalances. Municipalities and self-governing regions will be sanctioned if their debt exceeds 60% of their actual current revenues in the previous fiscal year (the possibility of sanctions existed before, however now this possibility is based on constitutional law and sanctions increased). Various measures, described in the answer to question II.5, were introduced to increase control of general government over territorial self-governments' fiscal behaviour. Automatic sanctions were introduced by the Fiscal Responsibility Constitutional Act when certain debt ceilings are surpassed by the territorial self-governments. These changes indicate that the general government assumes responsibility for macroeconomic imbalances caused by the territorial self-governments and there is no need to divide responsibility for sanctions; at least at this stage when no major imbalances exist. However, the described sanction mechanism is not to be considered an implementation of the Regulation.

Division of responsibility for imposed sanctions between different levels of government? Regulation (EU) No 1173/2011 of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area

No specific provision on the division of responsibility exists. However, there is a specific sanction regime for territorial self-governments in case of exceeding a debt ceiling of 60% (the sanction is 5% of the difference between the ceiling and the actual debt) (Art. 6 of the Fiscal Responsibility Constitutional Act).

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 SLOVAKIA 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.

In the negotiations, Slovakia focused on changing the distribution key, which it considered disproportional and disadvantaging smaller Member States. Radičová cabinet demanded that the calculations be based exclusively on the countries' economic potential and not, as in the case of guarantees for the EFSF, half on the economic potential and half on the country's population. "To push this demand through, the Slovak government was ready to support most of the provisions of the German and French Competitiveness Pact, presented in early February, and to mute its objections to the idea of a harmonisation of the base of the corporate income tax. During the meeting of the Eurogroup ministers of finance on March 21 a compromise was reached under which for 12 years from the accession to the euro area, the contribution of Slovakia and other countries whose GDP does not exceed 75% of the EU average, will be 75% based on their economic potential, and 25% based on the previous conditions (half on the economic potential and half on the population). Slovakia will thus save nearly 17% compared with the previous principles."[74] The new key[75] "is just, better reflecting economic strength of the individual countries and for Slovakia, it means an overall decrease of its contribution up to €1.162bn."[76] Slovakia's contribution to the ESM, estimated at €4.77 billion over five years (nearly €650 million annually, of which €132 million in the form of a direct transfer) is to be covered from loans, increasing its debt to GDP ratio.

Regarding the collateral request, then coalition party SaS, which effectively brought down the government during the EFSF increase of guarantees vote in the Slovak Parliament, called for loan repayment guarantees from the Greek government (the 'collateral deal') as the condition for Greek second package aid. This was carried through neither then nor in the case of the

[74] OSW, Slovakia: the Eurogroup's enfant terrible, Oct. 18, 2011. Available at: http://www.osw.waw.pl/en/publikacje/osw-commentary/2011-10-18/slovakia-eurogroup-s-enfant-terrible.
[75] The correction of the key for Slovakia is temporary – until 2021.
[76] Správa o siedmom roku členstva SR v EÚ (Report on the seventh year of the Slovak membership in the EU), Parliamentary Press No. 435, p. 4.

ESM later.

RATIFICATION

VIII.2

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

The Parliament agreed to shorten a legislative procedure for the ratification of the ESM.[77] The Treaty was qualified as a presidential international treaty (Art. 7/4 of the Constitution) that requires implementation by a statute (Art. 7/5 of the Constitution). The specific law adopted for implementation of the obligations under the EFSF did not suffice. Given this qualification (meaning that the treaty was not considered as transferring new competences to the EU under Art. 7/2 of the Constitution and therefore did not require approval of the constitutional three-fifth majority in the Parliament), an absolute majority of MPs (that is of 76 MPs) was needed for the ratification. The Treaty is not directly applicable and does not enjoy primacy over statutes.

The vote on June 22, 2012 was rather persuasive with 118 MPs voting in favor to 20 against (5 abstentions, 1 not voting, 6 missing). Only opposition party SaS and most of the MPs of a new parliamentary party Obyčajní ĺudia a nezávislé osobnosti (Ordinary People and Independent Personalities; OĹaNO), which was in the previous parliamentary term a part of SaS, voted against.[78]

RATIFICATION DIFFICULTIES

VIII.3

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

At the time of the ESM ratification (approved by the Parliament on June 22, 2012, ratification concluded upon signature by the President on June 28, 2012, ratification notified to EU Council on June 29, 2012), Slovakia had a new government formed by a single party, Smer-SD of Robert Fico, which disposed of convincing majority of 83 out of 150 MPs in the Parliament. PM Fico is considered far less troublesome for the Eurozone economic governance reforms plans than the previous cabinet of center-right parties led by Iveta Radičová has been. "The chair of Smer-SD is convinced that since Slovakia is economically dependent on Germany and France, it must cooperate with these countries also politically, otherwise it will find itself on the sidelines of Europe."[79] Although Smer-SD of PM Fico disposed of sufficient majority for the ESM approval, PM Fico convened, in June 2012, a meeting of all parliamentary parties on the support to the ESM ratification and plans on fiscal

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[77] 3rd session of the 6th parliamentary term, voting no. 74. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=30214.
[78] 3rd session of the 6th parliamentary term, voting no. 54. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=30192.
[79] OSW, Slovakia: the Eurogroup's enfant terrible, Oct. 18, 2011. Available at: http://www.osw.waw.pl/en/publikacje/osw-commentary/2011-10-18/slovakia-eurogroup-s-enfant-terrible.

consolidation in Slovakia. Leaders of all parliamentary parties, but Richard Sulík of SaS, pledged to support the ESM.[80]

The capital contributions for paid-in shares started 15 days after the implementing statute was effective (the first contribution of €131.84M; the second contribution of €131.84M in Oct. 2012 and in 2013-14 three more payments totaling €359.52M (in April 2013, Oct. 2013, and first half of 2014)). The first payment was secured from state financial assets without a need to increase debt. The subsequent payments have been financed from the loans and thus have caused an increase of the state debt, which could lead to an obligation to adopt further austerity measures to keep the debt and deficit in line with the amended SGP, Fiscal Compact, and Fiscal Constitutional Responsibility Act (in 2013, the first threshold of the FRCA when debt brakes are activated has been surpassed). The main opponent of the ESM, SaS of Sulík, urged PM Fico to slow down the ratification process to allow for more public debate. Mr. Sulík commented that PM Fico was moving too quickly, stating that the poorest country of Europe (Slovakia) must by June 30 by any means declare in the Parliament that "it will save everybody around." The remaining opposition parties partly agreed to "push the final decision to as late in June as possible, since by then it should be clear whether Germany and Greece will support the creation of the ESM."[81] The ESM ratification was closely connected to the consolidation of public finances efforts, where the division between Smer-SD and opposition was substantial. Although Smer-SD declared that it would seriously consider the solutions suggested by the opposition, its sufficient majority in the Parliament also bound Smer-SD to fulfill its promises to the voters, which meant to increase revenues (especially increasing corporate income tax) instead of cutting on expenditures, while the opposition urged for an opposite approach.

CASE LAW

VIII.4

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

No.

CAPITAL PAYMENT

VIII.5

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

There is no direct involvement of the Parliament in the first and subsequent instalments of the paid-in capital. However, the Parliament decided on these instalments indirectly by giving its consent to the ESM Treaty (the amounts and schedule of instalments were known and debated) and by adopting a statute implementing the ESM Treaty – Law No. 296/2012 Coll.,

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[80] The Slovak Spectator, Slovakia to ratify ESM by the end of June, June 20, 2012. Available at: http://spectator.sme.sk/articles/view/46752/3/slovakia_to_ratify_esm_by_the_end_of_june.html.

[81] Id.

on the European Stability Mechanism (ESM Act). The ESM Act entered into force on Sept. 28, 2012 and the first payment was due 15 days later. The Act also amended Law No. 386/2002 Coll., on State Debt and State Guarantees, to allow for an exception from an obligation of the Finance Ministry not to exceed resources for financing a state debt by more than 30% of state debt guarantees due in a budgetary year during that budgetary year (that is payments for the Slovak contribution to the ESM capital are not counted for the purposes of the 30% cap). It also provided that the resources obtained for the financing of the Slovak contribution to the ESM capital are considered state financial actives (§ 4/3 of the State Debt and State Guarantees Act). For more information on the role of the Parliament (or rather a lack of it) in the ESM application see the answer to the question VIII.6. For the debates that related to the payments see the answers to questions VIII.3 and VIII.6.

APPLICATION & PARLIAMENT

VIII.6

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

During the ratification process in the Parliament, two resolutions dealing with the role of the Parliament in the application of the ESM Treaty were considered, though both failed. The first was offered by the vice-chairman of the Parliament and chairman of KDH Ján Figeľ.[82] According to this draft resolution, the Governor for Slovakia is obliged to vote in favor, against, or abstain from a voting on financial assistance to the member of the ESM in compliance with a mandate given to him by the Parliament. In emergency situation, where the Board of Governors must decide quickly and the mandate from the Parliament cannot be obtained within such time frame, the Committee for European Affairs or the Budget Committee of the Parliament may act instead. The Governor is obliged to respect the mandate given by the Parliament in the following situations under the ESM Treaty:

- decision on the change of authorised capital stock (Art. 10/1 ESM Treaty)
- decision on the call in of authorised unpaid capital (Art. 9/1 and 4 of ESM Treaty)
- decision on whether to entrust the European Commission with the task of negotiating a MoU with the ESM Member concerned (Art. 13/3 of ESM Treaty)
- decision on the approval of conditions set in the MoU by the Board of Governors (Art. 13/4 of ESM Treaty)
- decision on the change of list of instruments of financial assistance when the volume of the assistance remain unchanged.[83]

The resolution received support of all opposition parties. However, because the governing

[82] Ján Figeľ is a former Commisioner in the first Barosso Commission and former vice-PM in the Radičová cabinet.
[83] Draft resolution of the National Council of the Slovak Republic (Ján Figeľ), Parliamentary Press No. 42, June 12, 2012. Available at:
http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=42.

party Smer-SD abstained from the voting, the resolution was short of 12 votes to pass (while for the approval of the ESM Treaty absolute majority was required, for the resolution to pass simply majority would suffice – that is the quorum depended on the number of MPs present).[84]

The second resolution offered by MP Daniel Lipšic of KDH read: "National Council of the Slovak Republic calls upon the Government of the Slovak Republic to ensure, in relation to the Treaty Establishing the European Stability Mechanism (ESM), that any payment of the contribution of the Slovak Republic to the capital, or its part, of the ESM will be conditioned by providing sufficient guarantees to the Slovak Republic from a receiver of the financial assistance."[85] The resolution was justified by the following arguments that have circulated in the Slovak political debate on the EU response to the sovereign-debt crisis since the first Greek aid package was negotiated: "1. Slovak share on the ESM capital represents 0.824% and is therefore irrelevant for the ESM entry into force (90% suffice). 2. Slovakia without any assistance bailed out its banking sector ten years ago by an overall amount of €3.3bn, which is not reflected in any way in the position of Slovakia in the ESM and this fact creates a substantial disadvantage for Slovakia. 3. Slovakia due to its prudent fiscal policy reached a situation, where, from the point of view of citizens' level of pensions, incomes, and living standards, Slovakia belongs to the group of poorest members of the Eurozone. It is therefore absolutely unacceptable that Slovakia contributes from its funds for current and future modest pensions to several fold higher pensions of rich countries without proper compensations and guarantees. That is not solidarity as we understand it. 4. ESM Treaty in its current version means that citizens of Slovakia, one of the poorest members of the Eurozone, will lend the amount of €5.8bn or more (€1000 per capita) and voluntarily give up its ability to decide on how these resources are used, while having no remedy against such decisions (given the immunity and competences of the Board of Directors)."[86]

The second resolution failed as well with similar results (61 MPs of the opposition voted in favor, while governing party Smer-SD abstained from the vote).[87]

The law implementing the ESM Treaty, the ESM Act, gives competence regarding the management of Slovak asset in the ESM to the Ministry of Finance (§ 2/2 of the ESM Act). For the use of state financial actives for the payments of Slovak contributions to the ESM (for both paid-in and callable shares), consent of the Government is required (§ 2/4). The Ministry is responsible among others for monitoring of fulfillment of the conditions assumed by debtors based on the ESM Treaty, MoU, and other legally binding documents (§ 3). Slovakia is represented in the ESM by the Finance Minister in the Board of Governors and in his absence by an alternate governor, who is appointed by the Government on a recommendation

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[84] 60 MPs voted in favour, 2 against (80 abstentions, 8 missing). 3rd Session of the 6th Parliamentary Term, June 22, 2012. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=30193.
[85] Draft resolution of the National Council of the Slovak Republic (Daniel Lipšic), Parliamentary Press No. 42, June 12, 2012. Available at:
http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=42.
[86] Id.
[87] 80 abstentions, 7 missing. 3rd Session of the 6th Parliamentary Term, June 22, 2012. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=30194.

from the Finance Minister from high-ranking officials of the Ministry. The Director and alternate Director for Slovakia are also appointed by the Government on a recommendation from the Finance Minister (§ 4/1 and 2).

For the following decision made by the Finance Minister (Governor) in the Board of Governors, the Government must give consent before the decision is taken:

- a decision to make the capital call (§ 4/3).

For the following decisions made by the Finance Minister (Governor) in the Board of Governors, the Parliament must give consent before the decision is taken:

- a decision to change the authorized capital stock and adapt the maximum lending volume of the ESM
- a decision on update of the key for contributions (§ 4/4/).

The Government decides with consent of the Parliament on the financial assistance to Slovakia (§ 5).

With regard to decisions to grant financial assistance and the disbursement of tranches, the ESM Act does not explicitly provide for the decision-making in these cases, which means that the decision is in the competence of the Finance Ministry (§ 2/2 – the Ministry manages the Slovak asset in the ESM).[88] The Finance Minister, his alternate, the Director and his alternate enjoy criminal immunity for their decisions made in the ESM (Art. 35 of the ESM Treaty and § 4/5 of the ESM Act).[89] During the legislative process on the ESM Act, the opposition parties offered two amendments explicitly providing that consent of the Parliament is required for any decision on financial assistance from the ESM. Neither of these amendments passed.[90]

APPLICATION DIFFICULTIES

VIII.7

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

The decisions were effectively in the hands of the Prime Minister and the Government, although the Ministry of Finance is formally responsible. According to Radko Kuruc, an advisor to the Finance Minister, Slovakia joined others in conditioning the financial aid by having direct supervision on the Spanish Fund for Orderly Bank Restructuring and guarantees from Spain that managers of restructured banks would not receive bonuses.

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[88] In reality, decisions on financial assistance from the ESM are discussed by the Government, PM, and the coalition partners, at least.

[89] While the ESM Act provides for criminal immunity, the ESM Treaty provides for "immunity from legal proceedings", which seems to denote a broader immunity – beside the criminal proceedings, also an immunity from administrative and civil actions.

[90] See amendments offered by MP Pavol Hrušovský and MP Ivan Štefanec. Parliamentary Press No. 85, 6th Parliamentary Term, June 1 , 2012. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=6&CPT=85.

PM Fico conditioned his support to a financial assistance to Cyprus by "active cooperation on exchange of information," mentioning that there were many firms incorporated in Cyprus operating in Slovakia, without a possibility to discover their true owners and avoid possible money-laundering.[91] The Government adopted a resolution approving the financial aid to Cyprus from the ESM.[92] At this time, PM Fico made the Slovak position much stricter: The conditions of the financial aid must mean "total control over the finances of this state. This state must implement harsh measures… in the social security system, in the area of privatization, and in the banking system."[93]

The opposition have not attempted to block application of the ESM and rather supported it with an exception of SaS. However, any attempts to increase capital would be problematic.

IMPLEMENTATION

VIII.8

HAVE THERE BEEN ANY RELEVANT CHANGES IN NATIONAL LEGISLATION IN ORDER TO IMPLEMENT OR TO COMPLY WITH REQUIREMENTS SET BY THE ESM-TREATY?

The ESM Treaty was implemented by Law No. 296/2012 Coll., on the European Stability Mechanism (ESM Act). The ESM Act also amended Law No. 530/1990 Coll., on Bonds, Law No. 350/1996 Coll., on Rules of Procedure of the National Council of the Slovak Republic, and Law No. 386/2002 Coll., on State Debt and State Guarantees. These changed were discussed above.

MISCELLANEOUS

VIII.9

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

On Sept. 28, 2012, a group of MPs offered a draft resolution on a potential increase of funds of the ESM. The draft resolution reacted to the German plan on increasing the ESM funds by involving private capital through the so-called leveraging. The draft resolution required that the Government would need to secure consent of the Parliament before supporting such decision in the ESM.[94] However, in the vote on Nov. 7, 2012, the Parliament voted down the draft resolution with governing Smer-SD voting against (all opposition parties supported the draft resolution).

[91] Akuality.sk, Slovensko má podmienky pre poskytnutie finančnej pomoci Cypru, tvrdí premiér Fico, March 15, 2013. Available at: http://www.aktuality.sk/clanok/224917/slovensko-ma-podmienky-pre-poskytnutie-financnej-pomoci-cypru-tvrdi-premier-fico/.

[92] Resolution of the Government of the Slovak Republic No. 206 of April 24, 2013 on Financial Assistance to Cyprus Republic through the European Stability Mechanism. Available at: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-13297?prefixFile=u_.

[93] SITA, Vláda schválila pomoc Cypru, Fico vraví o krvavých šenkoch, April 24, 2013. Available at: http://www.webnoviny.sk/ekonomika/vlada-schvalila-pomoc-cypru-fico-vrav/663357-clanok.html?from=naj_vclanku_24hod.

[94] Parliamentary Press No. 253, 6th Parliamentary Term, Sept. 28, 2012. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=253.

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 SLOVAKIA 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.

Negotiating position of Slovakia within the Eurozone was considerably shaken after its stand over the first Greek aid package, EFSF increase of guarantees, and push for re-negotiation of the key for Slovak contribution to the ESM. The Fiscal Compact negotiations represented an opportunity to regain credibility. Moreover, the plan fit the arguments circulated in previous external and internal debates – prudent fiscal policy of Slovakia lead the country to more or less stable fiscal situation and moderate economic growth, however at the cost of living standard in the country. To bind other countries to these rules and accompanying austerity measures seemed uncontroversial and something Slovakia should support. At the EU summit of Dec. 2011, Slovakia, then still represented by the Radičová cabinet in demise, "was in favour of measures aimed at the immediate introduction of fiscal discipline as well as automatic sanctioning mechanisms and monitoring. Slovakia supports a strong and independent position of the European Central Bank… With regard to the countries with excessive deficits, Slovakia's preference is to put them under surveillance by the European Commission."[95] A coalition party SaS was in favour of strengthening fiscal discipline and surveillance over the deviating countries, however, it opposed "fiscal centralization in the EU."[96] After the general elections in March 2012, new PM Fico explicitly said: "We no longer want to be the troublemakers … [w]ithin our means, we will contribute to all measures and support all decisions aimed at protecting the euro… [t]he euro region can't function with a common currency and different economic and fiscal policies… [w]hat is wrong with consulting budgets with the European Commission?"[97] PM Fico due to his stands during

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[95] Vida, K. (ed.) Strategic Issues for the EU10 Countries. Main Positions and Implications for EU Policy-Making. FEPS – Foundation for European Progressive Studies: Budapest, 2012. Available at: http://www.feps-europe.eu/assets/42fa2ca1-1d64-49fd-b833-78dfb9c06dc8/strategic-issues-for-the-eu10.pdf.
[96] Euractiv.sk, Nová európska zmluva – v ústrety viacrýchlostnej Únii?, Jan. 21, 2013. Available at: http://www.euractiv.sk/ekonomika-a-euro/zoznam_liniek/nova-europska-zmluva--v-ustrety-viacrychlostnej-unii-000297#sthash.FNxyXdwl.dpuf.
[97] Bloomberg, Slovakia Seeks to Lose Euro Troublemaker Image, Fico Says, March 22, 2012. Available at:

2006-2010 premiership and comfort majority his cabinet enjoys in the current Parliament was considered more reliable partner than the difficult coalition of previous PM Radičová, who was not able to ensure that her positions at the Eurozone level would be backed by the Parliament.

RATIFICATION

IX.2

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

The Fiscal Compact was designated a presidential treaty under Art. 7/4 of the Constitution that requires implementation by a statute. That means the Treaty does not enjoy primacy over statutes (Art. 7/5 of the Constitution).[98] The Treaty did not fall under the category of a treaty that transfers competences to the EU (Art. 7/2 of the Constitution) and therefore an absolute majority (instead of the constitutional three-fifths majority) was required for its approval.

The position of international treaties within the Slovak legal system needs a short explanation. A dichotomy of monist-dualist systems is not anymore a viable concept to describe effects of international treaties and decisions of international institutions within many states, especially EU Member States. Slovakia, as other Member States, differentiates between an effect of treaties that transfer powers to an international organization and treaties that do not transfer sovereign powers. Also, it differs between treaties that create rights and obligations to individuals and treaties that do not. Internal effect of these treaties differs. According to the Slovak Constitution, international treaties on human rights and fundamental freedoms and *international treaties for whose exercise a law is not necessary*, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law have precedence over laws. The Fiscal Compact was interpreted as an international treaty that needs an implementation by a law and so it is not directly applicable. The Fiscal Compact is implemented in § 30a of Law No. 523/2004 Coll., on budgetary rules for general government (MTO and correction mechanism). FCRA provides a constitutional basis for this implementing act, to which the budgetary rules refers as well as they referred to the Fiscal Compact directly. Thus § 30a of Law No. 523/2004 Coll. states that "[a] balanced budget or a surplus budget of the general government, including the adjustment path towards the medium-term objective, shall be ensured in compliance with the international treaty binding for the Slovak Republic and pursuant to separate regulations." These separate regulations are the Fiscal Compact, Reg. 1466/97 and Reg. 1467/97. What the consequences of this construction are will have to be interpreted by courts. In my understanding, the Fiscal Compact is not directly applicable and does not enjoy primacy over statutes. It cannot be invoked by individuals. § 30a of Law No. 523/2004 Coll. obliges state organs to interpret this

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http://www.bloomberg.com/news/2012-03-22/slovakia-seeks-to-lose-euro-troublemaker-image-fico-says.html.

[98] Report on the submission of the Treaty to the Parliament for consent. Parliamentary Press No. 257, 6th Parliamentary Term, Nov. 16, 2012. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=257.

provision in compliance with the Fiscal Compact, which will also fill gaps of § 30a.

The Parliament approved the Fiscal Compact almost unanimously – 138 MPs were in favour, nobody voted against (2 MPs abstained from the vote, 1 not voting, and 9 missing). This vote signifies that neither of the Slovak political parties has a problem with strengthening of the economic governance, especially with tightening the rules, but rather with mutualizing debts[99] and Slovakia guarantees thereof. Even all MPs from SaS were in favour.[100] After the Parliament gave consent to the Treaty, the President signed the ratification documents on Jan. 11, 2013. The ratification documents were deposited on Jan. 17, 2013.

RATIFICATION DIFFICULTIES

IX.3

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

The Report on the submission of the Treaty to the Parliament for consent emphasized that a role of the Commission is in no way supervisory, but only advisory, and that the obligations arising from the Treaty will be enforced by the CJEU.[101] The report's extensive focus on the role of these two institutions suggests that the intent of the Government was to highlight that, unlike the experiences with the SGP before it was amended, the Fiscal Compact will ensure that the rules are obeyed (and hence the ESM will be used less). Although SaS voted in favour of the ratification, it was the main critic of the Treaty and reasons were exactly of the kind the Government tried to prevent. SaS claimed that although the Fiscal Compact aimed to replace the toothless Maastricht criteria, it would end up the same way, because it finally did not enact automatic sanctions and accepted too many exemptions, for which the big countries like Italy or France pushed. Moreover it was becoming clear that countries like Spain and Italy, and probably France, would observe the deficit limits in neither 2012 nor 2013. In sum, SaS claimed that while big countries would be given ad hoc exemptions if in troubles, the small countries, like Slovakia, would have to strictly obey the rules of the Fiscal Compact, which would mean, at least for Slovakia, increase of taxes. According to SaS, PM Fico has been in fact using the arguments that for the implementation and observation of the new fiscal rules taxes must be increased in order to advance his own political program, which builds on increasing the revenue side of the budget.[102]

It shall be noted that a year before the ratification of the Treaty, the Parliament passed a

[99] On the other hand, PM Fico had no problem with such measures. He said his Cabinet might even consider supporting an introduction of common euro-area bonds once the fiscal union and the permanent bailout fund are in place. However, the previous events, that I repeatedly mention, constrain the policy space for any extension of Slovak involvement in direct or indirect bailouts of better off countries.

[100] 11th Session of the 6th Parliamentary Term, Dec. 18. 2012, voting no. 231. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=31384.

[101] Report on the submission of the Treaty to the Parliament for consent. Parliamentary Press No. 257, 6th Parliamentary Term, Nov. 16, 2012. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=257.

[102] SaS, Márnosť fiškálnej zmluvy – minimálne 3 veľké krajiny zrejme nesplnia rozpočtové plány, May 12, 2012. Available at: http://www.strana-sas.sk/marnost-fiskalnej-zmluvy---minimalne-3-velke-krajiny-zrejme-nesplnia-rozpoctove-plany/949.

constitutional law on fiscal responsibility (Fiscal Responsibility Constitutional Act) (see the answer to question IX.4), implementing mainly the numerical rules concerning debt level. Some competence issues were implemented by Law No. 36/2013 Coll., on the competences of the organs of the Slovak Republic in ensuring fiscal responsibility in the European Union, which became effective on Feb. 27, 2013, and specific provisions on balanced budget rule and deficit level were implemented through an amendment to Law No. 523/2004 Coll., on budgetary rules for general government and an amendment to Law No. 583/2004 Coll., on budgetary rules for territorial self-government.

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 SLOVAKIA? 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.

Balanced budget rule was implemented by an amendment to Law No. 523/2004 Coll., on budgetary rules for general government, in force as of January 1, 2014. § 30a/1 of this law is titled Specific Provisions on the Balanced Budget of the General Government. It reads: "The general government budget shall be balanced or in surplus. The general government budget shall be deemed balanced also in a situation where the general government deficit, adjusted for the impact of the economic cycle and one-off impacts (hereinafter referred to as the "structural deficit") is equal to or below 0.5% of gross domestic product [Fiscal Compact]; the one-off impact is a revenue or expenditure which is not of a permanent or recurring nature and the impact of which on the general government balance is limited in time. If the ratio of the general government debt [Art. 5/2 FCRA] is significantly below 60% of gross domestic product and the risks in terms of long-term sustainability [Art. 2 FCRA] are minimal, the structural deficit may be equal to or lower than 1% of gross domestic product. A balanced budget or a surplus budget of the general government, including the adjustment path towards the medium-term objective, shall be ensured in compliance with the international treaty binding for the Slovak Republic and pursuant to separate regulations [Fiscal Compact]."

According to the explanatory report accompanying the law, the amendment to the budgetary rules (ordinary law) is the implementation of the Fiscal Compact. The report, inaccurately, states that the deficit rule, according to the Treaty "should be binding and permanent", which sounds rather as a recommendation than an obligation, whereas the Fiscal Compact obliges the MS implement the rules through provisions of binding force and permanent character, guaranteed to be fully respected, etc. Only the notion of "constitutional character" may be understood as recommendation (there is no deviation of the Slovak version of the Fiscal

Compact from the English version in this regard). Thus although the balanced budget rule is enacted in the form of ordinary statute on budgetary rules and an annual budget is also enacted on the form of ordinary statute, the budgetary rules are specifically directed to constrain preparation of annual budget. In sum, budgetary rules shall be considered permanent and binding enough for the preparation and adoption of annual budgets, fulfilling the requirement of Art. 3/2 of the Fiscal Compact.

Such interpretation is also in line with fundamental reform of public finances. A special constitutional law, No. 493/2011 Coll., on Fiscal Responsibility (Fiscal Responsibility Constitutional Act), to which the above described provision of § 30a/1 of Law No. 523/2004 Coll. refers, created a constitutional framework for fiscal responsibility, making fiscal responsibility a constitutional value. It does not contain, however, a general balanced budget rule. Its considers a balanced budget requirement a remedy that must be taken when certain level of debt-GDP ratio is surpassed (more specifically when the debt surpasses 57% of GDP temporarily until the end of 2017,[103] then it will be lowered by 1% a year, and so from 2028 this particular debt brake will be 47% of GDP; see below).

The implementation of the Fiscal Compact therefore must be seen as part of more complex legal reform that has on its apex the Fiscal Responsibility Constitutional Act (FRCA) implemented on a statutory level mainly by amendments to budgetary rules. While FRCA contains a debt rule, § 30a of Law No. 523/2004 Coll., on budgetary rules for general government contains balanced budget rule and deficit rule.

The Parliament passed the Fiscal Responsibility Constitutional Act in a shortened procedure,[104] which was concluded within a month since the bill was submitted to the Parliament as an initiative of a group of MPs led by then opposition MP Peter Kažimír, who became later, after the March 2012 elections, the Finance Minister, and consisting of MPs from all Parliamentary parties.[105] The Act, requiring a three-fifths constitutional majority, passed in a unanimous vote of 146 MPs in favour (1 abstention, 3 missing).[106] As explained in detail in the answer to the following question, FRCA had been negotiated on cross-partisan basis for nearly two years before it was submitted to the Parliament. A broad consensus that had been reached in these negotiations allowed the FRCA to pass rather quickly once it reached the Parliament, as the unanimous voting clearly indicates.

Given the central position of the FRCA in the new fiscal regulatory scheme, I shall summarize its major provisions. The Fiscal Responsibility Constitutional Act creates a fiscal council and sets rules for fiscal transparency (see the answers to questions on the six-pack).

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[103] Art. 12 of the Fiscal Responsibility Constitutional Act.
[104] 26th Session of the 5th Parliamentary Term, Nov. 30, 2011, voting no 52. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=29486. All coalition party voted in favour of the resolution on shortening the legislative procedure, while opposition party Smer-SD voted against the resolution.
[105] Parliamentary Press No. 556, 5th Parliamentary Term, Nov. 8, 2011. Available at: http://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=5&CPT=556. It shall be noted that the Government was in demise at the time and early elections scheduled for March 2012.
[106] 26th Session of the 5th Parliamentary Term, Dec. 8, 2011, voting no 153. Available at: http://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=29604.

As main instruments for fiscal responsibility it uses an indicator of long-term sustainability, public expenditure ceiling, and debt brakes:

"General government gross debt-to-GDP limits and sanction mechanisms in 2012-2017

- Debt amounting to 50–53% of GDP – the Ministry of Finance sends to the Parliament a written explanation of the amount of debt, including the proposed measures for its reduction
- Debt amounting to 53–55% of GDP – the Government will submit to the Parliament a proposal of measures aimed at reducing the debt; the salaries of Cabinet members will be reduced to the level applicable in the previous fiscal year
- Debt amounting to 55–57% of GDP – The Ministry of Finance will set aside 3% of the total state budget expenditures (other than those on the government debt service, EU funds, contributions paid to the EU, transfers to the Social Insurance Company); at the same time, the Government may not propose to the Parliament a draft state budget featuring any nominal year-on-year increase in general government expenditures and the local governments are required to approve budgets with expenditures not exceeding those in the previous year's budgets.
- Debt amounting to 57–60% of GDP – the Government may not submit to the Parliament a proposal for a deficit-based budget of the general government, while the local governments are required to approve a balanced or surplus budget for the next fiscal year.
- Debt exceeding 60% of GDP – in addition to the steps described above, the Government will ask the Parliament for a vote of confidence.

As from 2018, the brackets for the application of the sanction mechanism, as well as the general government debt ceiling, will be reduced annually by 1 p.p. until the upper ceiling drops to 50% of GDP (in 2027)."[107] The upper ceiling on public expenditures was introduced by the above mentioned amendment[108] to Law No. 523/2004 Coll, on Budgetary Rules for General and "represents an instrument to actively manage the general government balance with a view to ensure its long-term sustainability. Unlike the debt rule, the mechanisms of which are triggered only if a significant deviation from the fiscal position occurs, the expenditure ceilings constitute operational instruments linked to the consolidation targets and the plan for improving the indicator of long-term sustainability of public finances."[109]

[107] Stability Programme of the Slovak Republic for 2012 – 2015, April 2012, p.52 (Box 10) (emphases omitted). Available at: http://ec.europa.eu/europe2020/pdf/nd/sp2012_slovakia_en.pdf.

[108] Law No. 436/2013 Coll.

[109] Id. at 54. "The public expenditure ceiling means the maximum amount of the total accrued consolidated expenditures of the general government adjusted for the economic cycle and tax expenditures, except for the expenditures of local governments. The ceiling does not include the funds from the EU and the state budget earmarked for the financing of joint programmes of the Slovak Republic and the European Union, contributions to the EU budget, and expenditures associated with the management of the general government debt less the expenditures associated with the management of local government debt. The expenditure ceiling will be set for a period covering the next four fiscal years and expressed in absolute rather than relative terms." Id.

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 position of the government and main political parties in Parliament on the Fiscal Compact and balanced budget rues were presented in the answer to question IX.1. The approach of Slovak elites to the Fiscal Compact and the BBR must be seen in the context of a deeper reform of public finances management that had started with the rules on fiscal discipline enacted on the constitutional level by the Fiscal Responsibility Constitutional Act a year before the ratification of the Fiscal Compact. The draft of the Act was submitted to the Parliament on Nov. 8, 2011, that is one month before the December EU Council meeting that agreed on the outline of the Fiscal Compact.[110] A draft constitutional bill was prepared by an expert group composed of representatives of all parliamentary parties and published in early Oct. 2011,[111] and was a result of talks among political parties that had begun in Dec. 2009.[112] The works on the constitutional bill started with mapping out the fiscal rules in EU countries, but also other successful models such as one of New Zealand. MP Jozef Kollár (SaS), one of the participants in the expert group, stated that the construction of debt breaks in what became FRCA was stricter than in the case of the German or the Polish legislation on the issue. The Slovak approach was based on the Net National Welfare as the main indicator from which the reference values are calculated. The NNW provided, in the view of the authors of the Act, the most realistic picture of the nation's debt. It precluded the Government to hide any structural problems with the debt behind one-off operations.[113] It took into account implicit and conditional obligations. In the debates, it was also appreciated that the corrective measures were bound to the public debt, not deficit, which was calculated as structural deficit cleared off temporal and cyclical measures and servicing of the debt.[114]

Given that the Act was prepared in an agreement of all political parties and passed unanimously in the Parliament,[115] at the time the Fiscal Compact came to the Parliament for ratification, there was almost no discontent about it. Slovakia was in advantageous position, it was argued, to have the fiscal rules already in force and its implementation would require

[110] It is worth noting that main discussion on the constitutional bill (the second reading) took place on Dec. 8, 2011, that is at the same time as the EC meeting.
[111] Investujeme.sk, Expertná skupina predstavila ústavný návrh zákona o rozpočtovej zodpovednosti, Oct. 5, 2011. Available at: http://www.investujeme.sk/expertna-skupina-predstavila-ustavny-navrh-zakona-o-rozpoctovej-zodpovednosti/.
[112] MP Jozef Kollár, 26th Session of the 5th Parliamentary Term, Dec. 8, 2012. Available at: http://mmserv2.nrsr.sk/NRSRInternet/Vystupenie/75864/Kollar_Jozef.html.
[113] Such as selling state asset – any Slovak state property (asset) is included in the NNW and if sold under price, the overall debt increases, if sold for a market price, the debt does not change. Id.
[114] Id.
[115] Commentators pointed out that such a wide agreement on a major economic law is an unusual event in Slovak politic. E.g. Finweb, O fiškálnej zodpovednosti, Oct. 5, 2011. Available at: http://finweb.hnonline.sk/komentare-a-analyzy-123/o-fiskalnej-zodpovednosti-465666.

"only cosmetic adjustments of the law on debt brake."[116] Only concerns were expressed by SaS – MP Jozef Kollár warned that given the experience with the SGP for the previous fifteen years, nothing in the Compact ensures that similar ignorance of the rules will not continue.[117]

RELATIONSHIP BBR AND MTO

IX.6

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

The provisions on BBR of the Fiscal Compact and on the correction mechanism in the case of significant deviation from the MTO have been implemented by § 30a of Law No. 523/2004 Coll., on budgetary rules for general government, where first paragraph deals with BBR and structural deficit level, and the second paragraph with the MTO correction mechanism. This solution suggests legislator clearly links the two issues together. No specific political debate on the relationship between BBR and MTO has been noticed.

CASE LAW

IX.7

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

No.

NON-EUROZONE AND BINDING FORCE

IX.8

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

No.

MISCELLANEOUS

IX.9

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

There has been so far no evidence on a public debate on the Commission material "Towards a Deep and Genuine Economic and Monetary Union Ex ante coordination of plans for major

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[116] State Secretary of the Finance Ministry Peter Pelegrini. SITA, Finančný výbor odobril návrh fiškálnej zmluvy Európskej únie, Nov. 23, 2011. Available at: http://www.poistenie.sk/financny-vybor-odobril-navrh-fiskalnej-zmluvy-europskej-unie.

[117] Id.

economic policy reforms."

During the legislative process, the Council for Budget Responsibility published its comments on the amendment on budgetary rules for general government implementing the Fiscal Compact. It stated that the amendment did not follow fully the Commission Communication on Common principles on national fiscal correction mechanisms (COM(2012)342 final) envisaged in the Fiscal Compact (Art. 3/2). In particular, the Council for Budget Responsibility urged the following changes:

- To oblige the Government to respond publicly to a Council for Budget Responsibility's negative evaluation of a Government's decision on a correction mechanism (principle "comply or explain"). In response, § 30a/4 of Law No. 523/2004 Coll., on budgetary rules for general government requires the Ministry of Finance shall publish its opinions on the Council for Budget Responsibility's assessments.
- To provide a procedure and definition of correction mechanism, which the bill leaves to a Government's decision, which contradicts to the requirement for automatic triggering of the correction mechanism (that is without Government's discretion). The final version of the amendment does not rely on the automatic triggering of correction mechanism. If the Government chooses not to apply the correction mechanism, it shall deliver to the Parliament a written justification of the decision not to apply correction mechanism. The Council for Budget Responsibility criticized the legislative framework on public expenditures once again in November 2013. It states that expenditure ceiling is the main instrument for operative budget management and that it must be of permanent character, not only a correction mechanism (see § 30a/2 of Law No. 523/2004 Coll., on budgetary rules for general government). According to the Council, the Ministry of Finance plans to discuss a legislative change on the regime of expenditure ceiling in 2014.[118]
- To bound the process of detection of a significant deviation to a Council's decision in line with Art. 6 of Reg. 1466/97 instead of giving this competence to the Ministry of Finance, which would anyway have to base its evaluation on a Council's decision. The final version of the amendment specifies that the Ministry of Finance shall, pursuant to Articles 5 and 6 of Regulation (EC) No 1466/97, publish a notice on whether a significant deviation has occurred, which seems to link the Ministry's judgment to the Council's decision.

Slovakia also adopted a specific Law No. 36/2013 Coll., on competences of the organs of the Slovak Republic in ensuring fiscal responsibility in the European Union.

In § 1, the law states that the Prime Minister represents Slovakia on the Eurozone summits, when fundamental rules and future cooperation in the areas specified by the Fiscal Compact are discussed.

[118] Council for Budget Responsibility, Evaluation of the draft budget for general government for years 2014-2016. Nov. 2013, p. 47. Available at http://www.rozpoctovarada.sk/download2/HodnotenieRVS_2014_2016_FINAL_01.pdf.

§ 3 obliges the Ministry of Finance to submit in compliance with the Fiscal Compact to the Council and to the European Commission programs of budgetary and economic cooperation for the purposes of their approval and monitoring and realize these programs; and to report on plans to issue state bonds.

The most interesting is § 4, which sets up an internal system for enforcing the Fiscal Compact against another contracting party by the CJEU (Art. 8 of the Fiscal Compact). The Ministry of Justice based on a suggestion from the Ministry of Finance and after an approval by the Government asks the CJEU to commence a proceeding against a contracting party that, according to the Commission report, has failed to comply with an obligation to introduce the fiscal rules and correction mechanism.

- The Ministry of Finance *is obliged* to suggest such action if the following conditions are cumulatively given: Slovakia is one of the MSs in the group of three MSs that hold or assist with the Council Presidency (Dec. 2009/908/EU); Slovakia is not considered a MS that has not fulfilled its obligations to introduce the fiscal rules and correction mechanism; there is no proceeding against Slovakia in front of the CJEU under the Fiscal Compact; and Slovakia is not prevented from such action for other reasons in compliance with general principles of international law.
- The Ministry of Finance *may* suggest to the Ministry of Justice to bring a contracting party to the CJEU if, disregarding the Commission report, concludes that another contracting party breached the obligation under the Fiscal Compact to introduce the fiscal rules and correction mechanism; or if, based on its own evaluation, concludes that another contracting party has not adopted measures necessary to comply with a CJEU decision on an action under the Fiscal Compact and may also suggest a fine.

In both cases, the Slovak Government adopts the final decision. A Government's approval is also needed for the support to proposals or recommendations of the Commission where it considers that a MS is in breach of the deficit criterion in the framework of an EDP (Art. 7 of the Fiscal Compact).

X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT

A number of member states have received direct financial assistance through balance of payments support (Hungary, Rumania, Latvia), bilateral agreements/IMF (Greece), the temporary emergency funds/IMF (Ireland, Portugal, Greece), and the permanent emergency fund (Spain and Cyprus).
(http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm)
Several member states have (also) indirectly benefited through the Securities Markets Programme (SMP) created in May 2010, a bond-buying programme of the European Central Bank that was replaced in September 2012 by the Outright Monetary Transactions (OMT) programme (Greece, Ireland, Portugal, Italy, Spain).
(http://www.ecb.int/mopo/liq/html/index.en.html#portfolios)

CONTEXT

X.1

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

Slovakia has not received financial assistance.