



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

Urska Petrovcic

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I POLITICAL CONTEXT

POLITICAL CHANGE

I.1

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

Political parties in Slovenia:

Desus – democratic party of pensioners
Državljanska lista Gregorja Viranta (DL) – center right
Liberalna Demokracija Slovenije (LDS) – liberal democrats
Nova Slovenija (NSi) – christian party
Pozitivna Slovenija (PS)- center left
Slovenska demokratska stranka (SDS) - democrats
Slovenska Ljudska Stranka (SLS) – conservative
Slovenska Nacionalna stranka (SNS) – extreme nationalist
Socialni demokrati (SD) – social democrats
Strake Mira Cerarja (SMS) – center
Zavezništvo Alenke Bratušek (AZ) – center left
Zares – social liberals
Združena Levica (ZL) – left

Slovenia has gone through a period of high political instability since 2008. In the September 2008 parliamentary elections, the Socialni demokrati (SD) (left) obtained 29 seats, followed by the Socialna Demokratska Stranka (SDS) (right) with 28 seats. The SD leader Borut Pahor became prime minister and formed a (left wing) coalition government with three small parties (LDS – liberal democrats, Zares – social liberals, Desus – democratic party of pensioners). Pahor's government attempted to introduce several changes. The Government of the Slovenian Republic [hereinafter Slovenian Government] proposed reforms in December 2010 to reduce public debt by increasing the retirement age to 65, implementing pension reform, and cutting social benefits. Several reforms were however overturned through referenda, which often had a very low participation. This initiated a strong debate concerning the need to revise the right to petition a referendum, which has been often used as a means of blocking reforms. In September 2011, Pahor's government collapsed after a no confidence vote, leading to early elections in December 2011.

During the December 2011 election, Pozitivna Slovenija (central left), led by Zoran Jankovic, won most votes, with 28 seats, followed by SDS with 26 seats. Janković however failed to secure a parliamentary majority to form a government. That is why Janez Jansa, the leader of SDS, got the mandate and formed a (right wing) government (with DL, Desus, SLS, NSi).

Jansa's government was in power from 2012 until early 2013. A minimal tax reform was

adopted in April and May 2012 that aimed to improve the economic situation —by introducing a tax reduction for businesses and incentives for investments—. A special austerity law was adopted in May 2012 which helped reducing the budget deficit by half. In July of the same year, the government adopted a legislative package for growth, which aimed to lift bureaucratic obstacles for entrepreneurs and citizens. In October 2012, the government adopted the Slovenian Sovereign Holding Act¹ and the Act Determining the Measures of the Republic of Slovenia to Strengthen Bank Stability.² Further, in December 2012, the government adopted a pension reform. The law proposal, which tightened the retirement conditions by raising the retirement age to 65 years or 40 years of pensionable service, was passed without a single opposing vote. The reform nonetheless reduces the burden on public finances only until 2020.³

Several protests took place in December 2012 and January 2013. On January 8, the Corruption Prevention Commission released a report which found that both Janša and Jankovič violated the country's office-holder integrity law, by having failed to report their assets. Three out of five parties left the coalition after Janša rejected their calls to resign as PM. As the government lost its majority, the opposition parties launched talks on an alternative government or early election in a bid to resolve the political crisis.

There were no elections in 2013. The parties agreed to form a new coalition, ruled by PS's leader Bratušek. Bratušek, who was named interim head of the PS on 17 January 2013, after leader Jankovič suspended his position in the wake of a report that found he violated the country's public office integrity law.⁴ The new coalition members were PS, DL, Desus and SD.

In March 2013, the National Assembly of the Republic of Slovenia [hereinafter National Assembly] has passed the labour market reform without a single opposing vote. This was one the most important structural reforms planned by the Government to improve the economic and financial situation aimed to tackling market segmentation and increase Slovenia's competitiveness. The new legislation, which social partners negotiated for five months, enabled easier hiring and firing, which aimed to contribute to a greater competitiveness of the Slovenian economy. In May 2013, the National Assembly adopted also the Act Amending the Public Sector Salary System. This Act regulates the system of salaries for officials and public servants in the public sector, the rules for stipulating, calculating and paying such salaries, and the rules for stipulating the amount of funds for salaries. Slovenia was facing a severe banking crisis, driven by excessive risk taking, weak corporate governance of state-

¹ Zakon o Slovenskem državnem holding, Ur.l. RS, št. 105/2012, *available at* http://zakonodaja.gov.si/rpsi/r07/predpis_ZAKO6457.html.

² Zakon o ukrepih Republike Slovenije za krepitev stabilnosti bank, Ur.l. RS, št. 105/2012, *available at* http://zakonodaja.gov.si/rpsi/r01/predpis_ZAKO6521.html.

³ <http://www.mddsz.gov.si/en/newsroom/news/article/1939/7010/a09775e816a0d5493ae3c6a1fa84fb69/>

⁴ <http://www.freedomhouse.org/report/freedom-world/2012/slovenia> (last visited June 8, 2012). Prease release, Slovenian Times, The End of Janša's Government, PM-designate Bratušek Still Without Clear Coalition, February 27 2013, *available at* <http://www.sloveniatimes.com/today-the-end-of-jansa%C2%B4s-government>; The Slovenian Times, Alenka Bratušek, Slovenia's First Female PM, February 28, 2013, *available at* <http://www.sloveniatimes.com/alenka-bratusek-slovenia-s-first-female-pm/2>.

owned banks and insufficiently effective supervision tools. The government suggested the creation of the Bank Asset Management Company to ring-fence impaired assets.

In April 2014, the leading political party PS held a congress during which it elected the next party's president. Two candidates applied for the post: the previous president Jankovič and Bratušek, at the time, the Slovenian prime minister. The coalition parties SD, DL and DeSUS threatened to leave the government if Jankovič were elected. Jankovič won the election, triggered a formal resignation of Bratušek.

After the resignation of Alenka Bratušek's government, Slovenia had parliamentary elections in June 2014. The Party of Miro Cerar (SMC), a newly formed party led by the lawyer and professor Miro Cerar, won the election obtaining 36 seats. SDS obtained 21 seats, DeSUS 10 seats, the United Left—a new political party—and SD both obtained 6 seats, Nsi 5, and the AB 4 seats. The Slovenian People's Party, Positive Slovenia (the winner of the 2011 election), and Civic List failed to retain seats in the Assembly.

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

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

The basic provisions for the budgetary process are determined in the Constitution of the Republic of Slovenia, more precisely in Article 148 and Article 149. Article 148 determines that “All revenues and expenditures of the state and local communities for the financing of public spending must be included in their budgets. If a budget has not been adopted by the first day it is due to come into force, the beneficiaries financed by the budget are temporarily financed in accordance with the previous budget.” Article 149 provides that “State borrowings and guarantees by the state for loans are only permitted on the basis of law.”

The Public Finance Act is the law that prescribes more precisely the rules on the budgetary process. The Public Finance Act determines the composition, preparation and execution of the state budget and the budgets of the local communities, asset management, borrowing, guarantees, debt management, accounting and budgetary control. The act determines that the Government is accountable to the National Assembly for the execution of the budget, whereas majors are accountable to their local councils. Both need to report to the National Assembly.

The Public Finance act provides that the government submit to the National Assembly, a proposed budget for two consecutive years (Article 13 and 13a). However, the government can suggest changes to the budget for the second year until October 1, if such changes are required because of the changes in the economic development, or fiscal policy. As explained in the OECD report, “It is . . . not the case that Slovenia makes a biannual budget every two years. Rather it makes two annual budgets every year”.⁵

The Decree on the documents of development planning bases and procedures for the preparation of the central and local government budgets determines that,⁶ in adopting the budget, the government should consider the macroeconomic forecasts of the Institute of Macroeconomic Analysis and Development (UMAR) and other independent institutions. The use of the forecasts provided by UMAR has been criticized, given that UMAR is one of the users of the Slovenian budget. However, the forecasts provided by UMAR have been generally considered reliable.

The budget that is approved by the National Assembly is then publicly announced. As explained, it is possible to adopt changes in the budget for the coming year. The

⁵ Dirk-Jan Kraan and Joachim Wehner, budgeting in Slovenia, 4 OECD Journal on Budgeting, ¶ 60 (2005), available at <http://www.oecd.org/slovenia/39997582.pdf>.

⁶ Uredba o dokumentih razvojnega načrtovanja in postopkih za pripravo predloga državnega proračuna in proračunov samoupravnih lokalnih skupnosti, Ur.l. RS, št. 44/2007.

Government shall propose such changes if the assumptions of macroeconomic development, economic policy, and fiscal policy have changed, or in the event that the assessment of the execution of the current budget significantly deviates from the approved budget. The changes have to be finally adopted by the National Assembly. It is also possible to adopt changes to the budget of the current year (i.e. rebalans proračuna). The Government should propose such amendments if new obligations have arisen, the revised economic trends show an increase in spending or reduced revenues, or there is a need to implement measures to balance the budget.⁷

In July of each year, the minister responsible for finance and/or the mayors shall report to the Government and/or the local councils on the implementation of the budget in the first half of the year. The Government shall report to the National Assembly. At the end of the budgetary year, the users must prepare a report of their spending and submit it to the Ministry of Finance. The government must then report to the National Assembly.

The Fiscal council is a consultative body for the independent evaluation of fiscal policy. Its members are appointed by the Government on a proposal of the Minister of Finance. The Fiscal Council performs inter alia the following tasks: (i) ex-post evaluation of the sustainability and stability of fiscal policy; (ii) assessment of the medium-term fiscal targets of the fiscal framework; (iii) assessment of the effectiveness of public spending (iv) provision of an estimate of the trends of individual categories of revenue and expenditure of public finances in terms of impact on the sustainability of public finances; (v) assessment of government compliance of fiscal policy with long-term sustainability of public finances of aging. The fiscal council is financed by the government.

The Court of Audit of the Republic of Slovenia⁸ is the highest body for supervising state accounts, the state budget and all public spending in Slovenia. The Constitution of Slovenia provides that the Court of Audit is independent in the performance of its duties and bound by the Constitution and law (Article X).

In addition to the Budget Implementation Act, there are several lower acts that determine the budgetary process. The fiscal rule was for instance determined in a decree, which could be amended by the Government to adapt the rule to the current economic and political situation. The fiscal rule was not accompanied by any automatic corrective mechanisms, which would prevent deviation from the rule and predetermined sanctions if the fiscal rule would not be respected. There was no body responsible for monitoring compliance with the fiscal rule and thus no determination of supervisory and potential executive powers of such authority.⁹ The fiscal rule was revised through a constitutional amendment adopted in 2013 (see on this under VII.5 below).

⁷ http://www.mf.gov.si/si/delovna_podrocja/proracun/splosno_o_proracunu/dokumenti/

⁸ Računsko sodišče Republike Slovenije

⁹ Court of Audit, Summary of the audit report *Efficiency of the Preparation of Budgets of the Republic of Slovenia for the years 2011 and 2012, August 2013*. See attachment: IVf Court of Audit Summary of the audit report, at 87.

GENERAL CHANGE

II.2

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

Several changes were implemented since the beginning of the crisis.

(i) In 2013, the Government has introduced a fiscal rule in its Constitution, amending Article 148. (see also question IX.4)

(ii) There were also amendments to the Public Finance Act. In 2010, the Act Amending the Public Finance Act was adopted,¹⁰ which did however not address the issues related to the harmonization of the national provisions with the EU provision. Further, in 2011, the government adopted the “Additional 2012 Intervention Measures Act.”¹¹

(iii) In 2009, the Government established the Fiscal Council intended to act as a consultative body for the independent evaluation of fiscal policy. According to the Court of Audit, however, several factors impair the independence of the Fiscal Council. The Court of Audit maintained that the Government “did not enable independent financial operations of the Fiscal Council, failed to provide adequate expert support to the Fiscal Council in carrying out its tasks, while the Fiscal Council evaluates the work of the authority that appointed it and within which it operates.” Further, the Court of Audit stated that Government failed to ensure adequate consideration and reflection of the Fiscal Council evaluations in the planning of the fiscal policy and preparation of the budget.¹² (see also question VII.5)

(iv) After the year 2011, the government adopted several acts that affect the rules of the budgetary process. It adopted the Rules on the completion of the implementation of the central and local government budgets for 2012,¹³ Rules on the common bases for work procedures of financial services of direct spending units of the budget of the Republic of Slovenia,¹⁴ and the Rules on the transmission of information about debt level and changes in debt level of legal entities of the public sector and communities.¹⁵

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

¹⁰ Zakon o spremembah in dopolnitvah Zakona o javnih financah, Ur.l. RS, št. 107/2010

¹¹ Zakon o dodatnih interventnih ukrepih za leto 2012, Ur.l. RS, št. 110/2011.

¹² Court of Audit, Summary of the audit report *Efficiency of the Preparation of Budgets of the Republic of Slovenia for the years 2011 and 2012, augst 2013*. See attachment: IVf Court of Audit Summary of the audit report, at 87

¹³ Pravilnik o zaključku izvrševanja državnega in občinskih proračunov za leto 2012 Ur.l. RS, št. 71/2012.

¹⁴ Pravilnik o skupnih osnovah za postopke dela finančnih služb neposrednih uporabnikov proračuna Republike Slovenije, Ur.l. RS, št. 84/2012.

¹⁵ Pravilnik o pošiljanju podatkov o stanju in spremembah zadolžitve pravnih oseb javnega sektorja in občin, Ur.l. RS, št. 3/2013.

INDEPENDENT ADVISORY BODIES?

No major changes were adopted so far. Perhaps, there will be changes in the role of the Fiscal Council (see also question VII.5).

CHANGE OF TIME-LINE

II.4

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

The budgetary memorandum 2011-2012 explicitly states the intention to harmonize the budgetary cycle in Slovenia with the European semester.¹⁶ I am however not aware of any change in the budgetary cycle.

MISCELLANEOUS

II.5

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

No other relevant information.

¹⁶ http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/tekgib/Proracunski_memorandum/pro_memor.pdf

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)?

There was an amendment of the Constitution. An important reform took place in May 2013 when the fiscal rule was implemented in the Slovenian Constitution (Art. 148). The Constitutional amendment also provided for the adoption of the “implementation law” within six months from the entry into force of the amendments to the Constitution. The Law will determine more precisely the fiscal rule, in a way to fully implement the Council Directive, the regulations, and the Fiscal Compact. In adopting such law, the government intends to propose a detailed solution on the actual fiscal policies, define the role of the independent Fiscal Council, specify what are considered to be exceptional circumstances, and what the correction mechanism looks like. As of October 2014, no such law was adopted.

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. See answer to question III.1 concerning the implementation of the fiscal rule in the Slovenian constitution. See also answer to questions VII.2 and VII.5 concerning the suggestion to implement provisions of the fiscal council in the constitution.

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?

Not applicable.

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

The implementation of the gold fiscal rule aimed to ensure the balanced budget. By implementing in the constitution, the Slovenian government aimed to signal a stronger commitment to respect provisions concerning the budgetary balance.

RELATIONSHIP WITH EU LAW

III.5

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

No.

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?

No.

CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

III.7

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

Not applicable.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

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

There was an intensive debate concerning the revisions to the constitution or to regular laws. Several commentators did not favour the implementation of the golden fiscal rule in the constitution. Dr. Lojze Ude argued that the fiscal function is only one of the state functions. Ude maintained that giving a constitutional status only to one of the activities of the state, while leaving others to lower levels, is not an optimal solution.¹⁷ Ude argued that there are circumstances in which the state should make investments, even if doing so would increase the public debt. The implementation of the fiscal rule in the constitution would prevent the government to make such investment, Ude argued. Further, Ude maintained that there was no need to implement the rule in the Constitution. He reasoned that Slovenia is legally bound by its international agreements, and it is therefore already bound by the fiscal rule provided in the EU legal framework. Several commentators pointed out that countries, as for instance Germany, had such rule but then revoked it. They also maintained that the rule would prevent the government to make investments, particularly those related to the infrastructure.¹⁸ Dr.

¹⁷ <http://imss.dz-rs.si/imis/2cd704e6815827d32ce6.pdf>

¹⁸ http://www.finance.si/992881/Pojem_zlato_pravilo_ni_fiskalno_pravilo

Joze Menzinger similarly argued that the implementation of a fiscal rule in the constitution was not necessary.¹⁹ Dr. Igor Masten, on the contrary, maintained that other countries, like Switzerland and Sweden, have adopted in the past such rule, and, as a result, they were able to cope better with the economic crisis.²⁰ (see also question IX.5)

There was also an intensive discussion about the implementation of provisions concerning the Fiscal council in the constitution. Masten emphasized that if Slovenia wants to assure compliance with the fiscal rule, there is a need for an external body that monitors Government's compliance with the rule. In order to be reliable, such body should be unaffected by the daily political discussion. Such position could be obtained by giving this body a constitutional importance.²¹ Others however rejected such position. Ude, was for example against the implementation of provisions about the Fiscal council in the Constitution, maintaining that the approval of the EU provisions is sufficient.²² (see also question VII.5)

MISCELLANEOUS

III.9

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

No other relevant information.

¹⁹ See attachment: Annex IVc Fiskalni svet- menje 2012, p. 5.

²⁰ See workshop: <http://www.katoliski-institut.si/sl/dogodki/275-javna-tribuna-fiskalno-pravilo>

²¹

<http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VI&type=pmagdt&uid=42954D591788B7BAC12579FE001F59AB>

²² See: Annex IVa Ude's opinion on changes to the Article 148 of the Constitution. See also: <http://www.rtvsllo.si/slovenija/zelena-luc-zlatemu-fiskalnemu-pravilu-rdeca-luc-fiskalnemu-svetu/282739>

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

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

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

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

NEGOTIATION

IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SLOVENIA ENCOUNTER IN THE NEGOTIATION OF THE EFSF AND THE EFSM, IN PARTICULAR IN RELATION TO (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

There is not much information about the position Slovenia adopted in negotiating the EFSF and the EFSM. The position Slovenia was to adopt in negotiating the proposal for the Council Regulation establishing a European financial stabilisation mechanism was discussed by the Slovenian Government on May 9, 2010. However, the transcript of the debate is not publicly available. The discussion that took place on that date is defined as "internal," indicating that the public was excluded from the debate.²³

The position Slovenia adopted during the ECOFIN meeting that took place in Luxembourg on June 8 was discussed by the Slovenian Government on June 3, 2010. On this occasion, the government discussed the position the Slovenian Ministry of Finance would adopt during the meeting of the working group developing the proposal of the measures to be adopted to impose the financial stability of the Member States. However, also the transcript of this

²³ See:

http://www.vlada.si/delo_vlade/seje_vlade/dnevni_redi/dnevni_redi/article/73_dopisna_seja_vlade_rs_dne_9_maja_2010_9785/

debate is not publicly available.²⁴ Therefore, publicly available documents do not clarify what position the Slovenian government adopted during the negotiation.

During the negotiation process of the EFSF and the EFSM, media did not report information about the position adopted by the Slovenian government, nor was such position evident from the Government or the Parliamentary debate. After the two mechanisms were adopted, the press did nonetheless comment that Slovenia provided one of the highest guarantees among the member states, when such guarantee is calculated in relative terms. The Slovenian guarantee represented 5.8 percent of GDP, whereas those of other countries, such as France, Germany, and Belgium, were respectively 4.7 percent, 5 percent, and 4.5 percent.²⁵

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 SLOVENIA AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

To provide the legal basis for the participation in the EFSF, the National Assembly adopted in July 2010 the Act Regulating the Guarantees of the Republic of Slovenia for Ensuring Financial Stability in the Euro Area (Official Gazette of RS, no. 59/10 and 79/2011) [hereinafter Guarantees Act].²⁶ The Government presented the draft of the act on July 1st, 2010²⁷, and the National Assembly approved the draft on July 13, 2010.

Article 4 of the Guarantees Act determined that the Government should approve the utilisation of the funds for each financial program, which need to be unanimously approved by the Member states of the Eurozone. The act provided that in approving each program, the Government and the National Assembly shall cooperate in accordance with the Act on Cooperation between the National Assembly and the Government in EU Affairs (Official Gazette of RS, no. 34/04 and 43/10).²⁸ Further, the act authorized the Minister of Finance to enter into individual guarantee agreements and make “guarantee statement” for the obligations authorized by the government. Article 4(6) of the Guarantees Act provided that the Government should inform the National assembly each quarter about the approved loans, guarantees, and the loans granted to individual instalments, that are funded by the financial

²⁴ See:

http://www.vlada.si/delo_vlade/seje_vlade/dnevni_redi/dnevni_redi/article/85_redna_seja_vlade_rs_dne_3_juni_ja_2010_10335/

²⁵ <http://www.delo.si/clanek/132909>

²⁶ Zakona o poročtvu Republike Slovenije za zagotavljanje finančne stabilnosti v euroobmočju, Ur.l. RS, št. 59/2010, available at <http://www.uradni-list.si/1/objava.jsp?urlid=201059&stevilka=3275>.

²⁷ http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article/43/555/

²⁸ Zakonom o sodelovanju med državnim zborom in vlado v zadevah Evropske unije, Ur.l. RS, št. 34/04 in 43/10, available at http://zakonodaja.gov.si/rpsi/r00/predpis_ZAKO3840.html

instruments covered by the guarantee of Slovenia.

On September 27, 2011 the National Assembly voted for the amendment of the act, which increased the Slovenian guarantees following the June 2011 Euro-zone Heads of Government decision. The National assembly passed the amendment with 49 votes in favour, 4 against, whereas 24 members did not vote. The Act Amending the Act Regulating the Guarantees of the Republic of Slovenia for Ensuring Financial Stability in the Euro Area entered into force in October 2011, and expanded the guaranty of Slovenia.

GUARANTEES

IV.3

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

The procedure is determined in the Act Regulating the Guarantees of the Republic of Slovenia for Ensuring Financial Stability in the Euro Area. (see answer to question IV.2).

On July 13, 2010 the National Assembly discussed the draft act. There was an intensive debate concerning the adoption of the Guarantees Act among the political parties. Most political parties that were members of the left-wing governing coalition (SD, Desus, LDS) were in favour of the Act. They stressed that the adoption of the Act was an important step in showing the support of Slovenia towards the EU. They also argued that the act was fundamental to ensure a stable economic position of Slovenia, given that Slovenia, as a member of the Euro zone, was affected by the stability of the euro zone. The central left party Zares, at the time a member of the coalition, declared nonetheless that it will not adopt a unified position in the voting of the act and clarified that its representatives will vote based on their personal believes. Zares observed that the Guarantees act would transfer to the Government responsibilities which would regularly lie in the domain of the National Assembly. The Act provided that the government would have the competence to approve the guarantee, whereas the National Assembly—the body that would regularly be in charge of it, would be only informed about the adoption of that measures four times a year.

Political parties part of the opposition did not support the suggested act. SDS, SLS, SNS—all right wing political parties—declared that they will vote against the act.²⁹ SLS maintained that issuing such guarantee would be detrimental to the stability of the Slovenian economy.³⁰ The opponents of the Act suggested that the Act should be amended in the way that the decision for granting each warranty would be established through a law, which would have to

²⁹ Available at <http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=V&type=sz&uid=254AC34BFD191CABC125779A00248CCC>

³⁰ See attachment: Annex I Debate over the adoption of the Guarantees Act.

be adopted by the National Assembly.

The Committee on Finance and Monetary Policy³¹ also provided a negative opinion about the suggested act. It maintained that the Act was in violation of Article 149 of the Slovenian Constitution, which determines that the state guarantees may be established exclusively through the adoption of a law. The Committee also pointed out that, based on the Constitution, it is possible to establish a guarantee only for a determined financial program, whereas the Guarantees act would provide a guarantee for unidentified projects. The National Assembly voted about such amendment and finally rejected it with 31 votes in favour and 43 against.

The Guarantees Act was finally approved with 44 votes in favour and 21 against. The deputy Bogdan Barovič (member of the extreme right party SNS) requested the government to withdraw the draft. The Government however noted that the request was submitted only after the National Assembly had already approved the draft, and thus rejected the request.

ACTIVATION PROBLEMS

IV.4

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

On July 26, 2010 a group of 37 deputies submitted to the Constitutional Court a request for the assessment of the constitutionality of the Guarantees Act.³² The group of deputies suggested that the Guarantees Act was unconstitutional for several reasons. First, they argued that there was no valid justification for bringing the legislative proceeding of the Guarantees Act under the urgent procedure, instead of using the regular legislative procedure. Second, the deputies maintained that the Guarantees Act was in violation of Article 149 of the constitution, which provides that the decision for Slovenia to offer a guarantee can be established only with a legislative act. Third, the group of deputies also argued that the Guarantees Act would restrict too much the role of the National Assembly in approving guarantees, since the role would be limited, according to the Guarantees Act, to being informed about the measures taken by the Government.

On August 4 2010, the Constitutional Court sent to the National Assembly a request to submit its comments on the proposal of the deputies to suspend the implementation of the act. The central right party SDS argued that the act was unconstitutional. They emphasized that Slovenia had in the past negative experiences with giving guarantees. The guarantees offered to Yugoslavia almost drove the country into bankruptcy. Further, SDS argued that the taxpayers' money should be managed in a transparent manner. They emphasized that the limits of the given guarantees are unclear and undefined. It was not clearly determined which countries would benefit from such financial aid. Furthermore, SDS stressed that the decision

³¹ Odbor za finance in monetarno politiko.

³² Zahteva za presojo ustavnosti Zakona o porostvu.

whether to grant a guarantee would not be taken by Slovenia, but rather by the big countries of the European Union—those that will have a direct interest in providing the financial aid. SDS also pointed out that the discussion would not take place within the National Assembly, which will be merely informed about the guarantee, but by the Government. It reiterated that Article 149 of the Constitution requires that a warranty should be given through a legislative act. SDS stated that the aim of this provision is to make sure that an important decision such as giving a guarantee, which has important consequences for the public finance, is taken by the parliament and it should require the agreement of the majority. The majority of deputies needs to be convinced that the issuance of such guarantee is reasonable, SDS argued.

Members of the left wing party SD rejected the criticisms. They emphasized that the act clearly provides for one, single guarantee, and not multiple guarantees, as suggested by the opposition.³³ They thus concluded that the act was in line with the requirement of the constitution.

The National Assembly discussed the issue during the meeting on August 26, 2010. The Government as well as the Legislative and Legal services³⁴ submitted their opinions on the issue. The government stated that the criticisms presented by the deputies were taken into account when the act was drafted, rejecting in this way the plausibility of the criticism.

CASE LAW

IV.5

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

Following the adoption of the Guarantees Act, a group of thirty-seven deputies of the National Assembly challenged the validity of the act on constitutional grounds. In February 2011, The Slovenian constitution court ruled that the act was constitutional.

1. NAME OF THE COURT: Constitutional Court of the Republic of Slovenia
2. PARTIES: NA Case U-I-178/10
3. TYPE OF ACTION/PROCEDURE: The procedure challenged the constitutionality of the Act.
4. ADMISSIBILITY ISSUES: Not applicable
5. LEGALLY RELEVANT FACTUAL SITUATION: Slovenia adopted the guarantees act on July 13, 2010
6. LEGAL QUESTIONS: Is the Act Regulating the Guarantees of the Republic of Slovenia for Ensuring Financial Stability in the Euro Area unconstitutional?

³³

<http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=V&type=pmagdt&uid=EC19D832F01C1C19C12577B200227EA9>

³⁴ Zakonodajno-pravna služba.

7. ARGUMENTS OF THE PARTIES:

Petitioners: A group of thirty-seven deputies of the National Assembly (hereinafter petitioners) required the assessment of the constitutionality of the Act Regulating the Guarantees of the Republic of Slovenia for Ensuring Financial Stability in the Euro Area (hereinafter: the Guarantees Act). They alleged that the Act is inconsistent with Article 2, Article 3, the second paragraph of Article 120, Articles 148, 149, and 153 of the Constitution of the Republic of Slovenia (hereinafter: Constitution). The petitioners maintained that a separate legal act should be adopted whenever a new guarantee is issued. They did not agree that an individual act could establish a duty to provide future guarantees, determining only the total amount and duration of the guarantee, without however determining other mandatory elements. They consequently argued the Act was in violation of Article 149 of the Constitution, which determines that the issuance of a guarantee is only possible with the adoption of a legal act. The petitioners further argued that the Act interfered with the position of the National Assembly, limiting its role to the confirmation of the offered guarantees in accordance with the respective funding programs. Such measure was in their view in violation of the principle of separation of powers determined in Article 3 and the principle of proportionality determined in Article 2 of the Constitution. The petitioners also argued that commitments made by the state were not foreseen in the budget for the years 2010 and 2011. Article 5 of the Public Finance Act³⁵ however provides that the amount of borrowing and any proposed government guarantee needs to be determined through a specific procedure and approved in the Budget Implementation Act.³⁶ Also for this reason the petitioners maintained that the Guarantees Act was in violation of Article 148 of the Constitution. Finally, the petitioners stated that the guarantee placed with the Act did not determine its fundamental elements as provided in the Code of Obligations³⁷ for the establishment of a valid guarantee.

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

The Constitutional court first stated that since the entrance in the Euro-zone, Slovenia shares the monetary policy with the EU. The decision of the Slovenian Government and National Assembly should hence not only respect the interest of Slovenia, but also the interest of the entire EU. The Supreme Court also maintained that the bankruptcy of one of the Member States would not only jeopardize the euro as a common currency, but also the economies of its Member States. For this reason, Member States need to coordinate their activities and

³⁵ Zakon o javnih financah, Ur.l. RS, št. 79/1999, *available at* http://zakonodaja.gov.si/rpsi/r07/predpis_ZAKO1227.html

³⁶ Zakon o izvrševanju državnega proračuna.

³⁷ Obligacijski zakonik, Ur.l. RS, št. 83/2001, *available at* http://zakonodaja.gov.si/rpsi/r03/predpis_ZAKO1263.html.

cooperate, in mutual respect, and assist each other in the fulfilment of the objectives pursued by the EU. The Supreme Court stated that long-term economic effects and the consequences for the monetary stability cannot be assessed in the light of a single intervention, but must be constantly monitored. The performance of such activities is however not in the hands of the court, but rather of government and parliament. For this reason, the Supreme Court ruled that the constitutional review of such government's and parliament's actions must be very limited.

Next, the Constitutional Court found that the challenged Act regulates the participation of the Republic of Slovenia in the EFSF, and provides the procedure for granting guarantees for the liabilities of the institution. Given that the petitioners did not challenge the participation of Slovenia in the institution, the Constitutional Court evaluated only whether the determination of the guarantees for liabilities of the EFSF was in conformity with the Slovenian Constitution.

The Constitutional Court found that the power the National Assembly granted to the Government through the Guarantee Law was not undefined, but on the contrary clearly determined. The Guarantees Act determined: (i) the purpose of the guarantee (that was, to fund the instruments which will provide adequate funds for Member States in financial difficulty), (ii) the limit of the guarantee (2,073 billion EUR), (iii) the duration of the guarantee; (iv) the debtor (that is, the EFSF), and (v) the types of transactions for which the guarantee is given. The Constitutional Court ruled that it was possible to determine both the content and purpose of the provisions governing the guarantee. The Guarantees Act was therefore not inconsistent with the principle of clarity and definiteness, which is one of the principles of the rule of law (article 2 of the Constitution) and the provisions concerning the organization and work of the state administration (article 102 of the Constitution).

The Constitutional Court has also explained that the legal nature of a guarantee, or the compliance with the element determined in the Code of Obligations were not relevant for the determination of the constitutionality of the legal act, and thus rejected the complaint on this ground.

The Constitutional Court evaluated the statement that the National Assembly should adopt a special law for each guarantee, and not just one, general law. The Constitutional Court rejected such statement. It held that the Guarantees Act does not determine separate guarantees, but a single guarantee in the amount of up to EUR 2.073 billion, which is not taken at once, but in several instalments, depending on the needs. The Supreme Court found there was no need to adopt a law each time an instalment was used. The Act clearly and precisely defined the field within which the Slovenian government can move in approving individual funding programs. Further, the Supreme Court stated that the Government cooperates with the National Assembly when determining the funding programs.

This means that the National Assembly will participate in the creation of the positions of the Republic of Slovenia on the proposed funding program or will adopt its point of view.

The Constitutional Court also rejected the claim that the Act is inconsistent with the first paragraph of Article 148 of the Constitution, which provides that all revenues and expenditures of the state and local communities to finance public expenditure must be included in the budgets. The Constitutional Court clarified that the Revised Budget³⁸ for 2010 provided for all the expenses that have direct financial implications for the budget. It also clarified that one of the fundamental differences between a loan and a guarantee is, *inter alia*, the time when the obligation arises for the guarantor. Since a guarantee is conditional (and as such is a future, uncertain fact), there are no direct financial implications, but they might only arise in some point in the future. For this reason, the budget provided only the means, which are in the view of the legislator sufficient to secure the guarantees in the specific financial period. The Constitutional Court also stated that it is necessary to take into account the characteristics of the European mechanism, where the EFSF in 2010 has not even started to carry out the operations for which it was founded, and the legislature has clearly said that in 2010 no guarantee will be realized.

The Constitutional Court concluded that the Act was constitutional.

9. LEGAL EFFECTS OF THE JUDGMENT/DECISION:

The validity of the Act Regulating the Guarantees of the Republic of Slovenia for Ensuring Financial Stability in the Euro Area was confirmed.

10. SHORTLY DESCRIBE THE MAIN OUTCOME OF THE JUDGMENT/DECISION AND ITS BROADER POLITICAL IMPLICATIONS.

The Constitutional Court concluded that the Guarantees act respected the provisions of the Slovenian Constitution, by conferring to the Slovenian government a limited authority to establish the guarantee. The Constitutional Court concluded that it was possible to determine both the content and purpose of the provisions governing the guarantee. The Guarantees Act was therefore in line with the principles of the Constitution.

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

³⁸ Rebalans proracuna.

APPROVAL BY THE SO-CALLED GUARANTORS, I.E. THE EUROZONE MEMBER STATES?

The National Assembly is involved in several ways in the application of the EFSF. First, the Act on Cooperation between the National Assembly and the Government in EU Affairs determines that there is a general duty of collaboration between the National Assembly and the Government in discussing matters related to EU.³⁹ By law, the Government thus needs to cooperate with the National Assembly when taking decisions related to the application of the EFSF. Further, Article 4(6) of the Guarantees Act in the Euro Area provides that the Government has the duty to inform the National Assembly each quarter of any approved loans and guarantees. Finally, the National Assembly participates in determining the positions of the Republic of Slovenia concerning the proposed funding program, or can alternatively adopt its own position on the specific matter.

IMPLEMENTING PROBLEMS

IV.7

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

See answer to question IV.4.

BILATERAL SUPPORT

IV.8

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

Not applicable.

MISCELLANEOUS

IV.9

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

The revision of the Guarantees Act was discussed first on September 2, 2011, and later on September 27 2011.⁴⁰ The amendment of the act provided for an increase of the Slovenian guarantee (from 2.73 billion to 3.664 billion), as well as for a new procedure for the determination of the total guarantee of Slovenia. The act was adopted through an expedite procedure. Some members were against the adoption of the amendment through an expedite procedure. For example, Jože Tanko—member of the right wing SDS—maintained there was no valid justification for adopting the act through the expedite procedure rather than the regular procedure. However, the decision to adopt the act through an expedite procedure was

³⁹ Zakon o sodelovanju med državnim zborom in vlado v zadevah Evropske unije, Ur.l. RS, št. 34/2004

⁴⁰ http://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=C12565D400354E68C12578FF0033EBE7&db=kon_zak&mandat=V

passed with 41 votes in favour and 32 against.

During the discussion of the amendment, the Committee on Finance and Monetary Policy presented its assessment of the amendment and supported its adoption. Some political parties expressed concerns with the increased guarantee of Slovenia. For example, Franc Pukšič, member of the right wing SLS, maintained that each country should focus on assuring its own financial stability. He maintained that the established mechanism risks driving other countries, including Slovenia, to financial problems. He emphasized that by helping other members, Slovenia is putting itself at risk. Pukšič also maintained that the burden for each Slovenian was much higher. He argued that 100 EUR for a Slovenian have a different value than for a German, given that salaries in Slovenia are much lower, but prices are the same. Matjaž Zanoškar, member of the left wing party Desus, on the other hand maintained that exactly because Slovenia might need a financial aid in the future, Desus will support the suggested amendment. Borut Sajovi, member of the left wing LDS, maintained that the party was concerned about the amount of the guarantee Slovenia was offering, but also argued that there was no other option to address the crisis than adopt the amendment. Luka Jurij, member of the left wing SD, maintained that the rejection of the amendment would jeopardise the effectiveness of the mechanisms for the financial stability. He observed that even if only one of the member states does not confirm the increase in guarantee this would cause a chaos on the European and global financial markets, and consequently on the European and global economy. He maintained that this would be particularly detrimental to the Slovenian financial sector, the Slovenian economy, and thus for Slovenians themselves. The amendment was finally passed with 49 votes in favour and 4 against.

There were two amendments to the Act in February 2011, and October 2011.

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

The report on the Government work states that the Republic of Slovenia supported, in accordance with its mandate determined during the meeting of the National Assembly on December 15, 2010, the amendment of Article 136 TFEU. Nevertheless, the debate that took place at the National Assembly on December 15 is not publicly available—the public was excluded from that particular debate (plenary debates are generally available, but the public was excluded from this particular one).

APPROVAL

V.2

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

The National Assembly discussed and approved the ratification of the amendment on July 11, 2011 (no votes against the approval of the act).⁴¹ The Act ratifying the European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro was then adopted on July 15 2011. The Act was published on August 22, 2011, and it entered into force the next day.⁴²

RATIFICATION DIFFICULTIES

⁴¹

<http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/glasovanje?mandat=V&seja=30.%20Redna&datumInCas=15.07.2011%200:35:27>

⁴² Zakon o ratifikaciji Sklepa Evropskega sveta z dne 25. marca 2011 o spremembi člena 136 Pogodbe o delovanju Evropske unije glede mehanizma za stabilnost za države članice, katerih valuta je euro /MSPDEUMS/ Ur.l. RS-MP, št. 9/2011, available at <http://www.uradni-list.si/1/content?id=104951>

V.3

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

The Government discussed the ratification of Article 136 TFEU amendment during its regular session on June 23 2011. The session report does not provide detailed information about the discussion. It only mentions that “The Republic of Slovenia, in accordance with the mandate given to the National Assembly session 15 December 2011, supports the change of Article 136 of the Treaty on the Functioning of the EU.”⁴³

CASE LAW

V.4

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

No.

MISCELLANEOUS

V.5

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

No other relevant information.

⁴³ Uredba o dokumentih razvojnega načrtovanja in postopkih za pripravo predloga državnega proračuna, Ur.l. RS, št. 54/2010, available at http://zakonodaja.gov.si/rpsi/r03/predpis_URED4053.html.

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

The National Assembly confirmed the position of Slovenia during this meeting on March 18th 2011. The transcript of the debate is however not publicly available.

MISCELLANEOUS

VI.2

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

Not applicable.

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 SLOVENIA 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?

On November 25 2010 the government discussed the Directive on the requirements for the fiscal framework. Slovenia did in principle agree with the draft.⁴⁴ It however emphasized that although Slovenia’s fiscal framework meets most of the requirements determined in the directive, Slovenia believed that member states should maintain their responsibility in determining their budget. For this reason, Slovenia questioned the European Commission’s decision to use a directive as a tool to address the issue. Slovenia agreed with the need to ensure transparency and the consideration of macroeconomic forecasts. It also supported the implementation of a numerical fiscal rule, in particular the implementation of budgetary rules that are determined for a longer period. Slovenia was sceptical, however, about the introduction of the medium term goals in the fiscal rule, determined through the methodology adopted by the European Commission. Slovenia argued that the methodology suggested by the European Commission gave too much weight to the implicit obligations arising from the ageing of the population, and less to other explicit obligations. Slovenia also maintained that the implementation of the directive is possible in other ways than through legal acts.

On the same day, the Government discussed the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure⁴⁵ Slovenia did in general agree with the proposal. It however maintained that there was a need to revise Article 2 of the draft by taking into account paragraph 23 of the final report prepared by the working group of the European council of the meeting on October 29 2010. The paragraph states that “These

⁴⁴ See attachment: Annex II Government meeting Nov 25 2010.

⁴⁵ *Id.*

sanctions and remedies cannot be used retroactively. Some elements of this proposal will require a transition period.”

The Government also discussed the Regulation on prevention and correction of macroeconomic imbalances.⁴⁶ Slovenia was sceptical towards the proposed regulation. It emphasized that the proposal conferred too much power to the European Commission, and did not comply with the final Task Force Report to the European Council endorsed by the European Council on October 29 2010. Slovenia maintained that the Council should determine the indicators/criteria. They should be better defined and set a higher level. At the same time, they should determine their sustainable threshold, and in this way take into account the specific position of each member state. Slovenia also questioned the measurability of such indicators/criteria. It also suggested that the regulation should also clearly determine that it refers only to those macroeconomic imbalances which are detrimental for the work and stability of the EU and EMU. Additionally, Slovenia maintained that the regulation should clearly distinguish between the concepts of macroeconomic imbalance, appearance of macroeconomic imbalance, and excessive macroeconomic imbalance. Slovenia was also sceptical towards the adoption of an automatic process that would follow in case of excessive macroeconomic imbalances.

Further, the Government discussed its position towards the Regulation on the effective enforcement of budgetary surveillance in the euro area. Slovenia did in principle agree with the suggested Regulation. It emphasized that, as a member of the Euro zone, Slovenia favours a stronger monitoring mechanism. Slovenia held that it is committed to a strong operationalization of the debt criterion, with minimal exceptions.⁴⁷

During the same meeting the Government discussed also the Regulation on enforcement measures to correct excessive macroeconomic imbalances in the euro area. Slovenia maintained that the suggested Regulation conferred too much power to the European Commission and did not comply with the final report prepared by the working group for the European council and endorsed by the European Council during its meeting of October 29 2010. The Government again emphasized that the parameters/indicators should be determined more precisely, they should set a higher limit, and they should set their own sustainability. They should also take into account the position of each member state. The Slovenian Government also questioned the measurability of such parameters. The regulation should also clearly determine that it refers only to those macroeconomic imbalances which are detrimental for the work and stability of the EU and EMU. It should also clearly distinguish between the concepts of macroeconomic imbalance, appearance of macroeconomic imbalance, and excessive macroeconomic imbalance.⁴⁸

Finally, the Government discussed also the revision of Regulation 1466/97. Slovenia was against the introduction of further exceptions in the evaluation of compliance with the

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

Stability Pact.⁴⁹ In this respect, Slovenia suggested to use the agreed wording determined in the final report of the working group of the European Council and, consequently, agree that the text of article 5 does not refer to the high macroeconomic imbalances.⁵⁰

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)?

There was an extensive work on the revision of the Public Finance act, with the aim to implement in national law the requirements of Directive 2011/85/EU. On September 29, 2011, the Government determined the text of the Act amending the Public Finance Act. The government estimated that it could not propose to the National Assembly to adopt a comprehensive reform of the law on public finances. It nonetheless maintained that, to avoid serious negative consequences for the country in international financial markets, it was appropriate to adopt the necessary changes of the Law on public finances through an urgency procedure. Such changes would provide strong legal assurances regarding Slovenia's commitment to the objectives of the medium-term sustainability of public finances.⁵¹ The Government emphasized the need to determine the fiscal rule in an organic law and in this way improve the monitoring of public spending. It also emphasized the need to adopt a medium term budgetary planning. It emphasized that such instrument was in the current year already in use, but there was a need to give it a statutory nature. The Government urged the National Assembly to adopt the Act as soon as possible.⁵² On October 6, 2011, the Government confirmed the text of the Act amending the Public Finance Act. The amendments provided that the National Assembly would have to adopt a medium term public finance framework for the period of 5 years. The act would also determine the limit of the public expenditure for the next five year, and it determines that the debt cannot amount to more than 48% of the BDP, and the cumulative amount of guarantees offered by the state, cannot exceed 20%. The Act also made reference to the Fiscal council.⁵³ The end of the year 2011 was however a period of high political instability in Slovenia. The government led by Pahor fell and, in December 2011, Slovenia had parliamentary elections. On December 22 2011, the president of the National Assembly announced that all the legislative processes initiated by the previous term had ended, including the procedure for the adoption of the Act

⁴⁹ *Id.*

⁵⁰ http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article/43/711/.

⁵¹ *Id.*

⁵² http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article//1019/.

⁵³ http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article//1034/.

amending the Public Finance Act.⁵⁴

On February 10, 2012 a new government was appointed. On January 1, 2012, the (outgoing) Government adopted the Draft of the Act amending the Public finance act and submitted it to the National Assembly.⁵⁵ The draft Act defined the ceiling for budgetary expenditure for the next five years and stipulates that, due to the long-term sustainability of public finances, general government debt should not exceed 48% of GDP, while the total amount of government-issued guarantees should not exceed 20%. “Due to the introduction of the medium-term budgetary framework, the procedures for drafting and passing the budget must be changed. As budget planning at the level of the state and local authorities must be coordinated, local authorities must also introduce biannual budget plans.”⁵⁶ The Act also provided that a “greater transparency will be achieved by systemic reporting on outstanding tax payments and irrecoverable tax (loss of tax-based income due to specific exemptions from tax and deductions). To ensure greater budgetary discipline, the Act provided that the Fiscal Council—a body established already in 2009—would be given more competences and become an advisory body to the National Assembly, which also has the competence to assess the medium-term budgetary framework and the implementation of fiscal rules. With regard to loan-taking, the Act determined the purpose for which the government can take on loans. The Act also determined more stringent rules for loans of indirect budget users (particularly public institutions), as this is permitted only if the user can prove that the debt can be repaid from non-budget funds (commercial activity). In such cases, the Ministry of Finance would issue an approval if the relevant ministry concurs and if the loan is still within the framework stipulated by the annual budget implementation act.”⁵⁷

Public sources do not report, however, any further development on the Act amending the Public finance act in 2012. Only in May 2013, the Government announced again its intention to revise the Public Finance Act and the related Accounting Act.⁵⁸ The Government maintained that the revision of the Public Finance Act should have to take into account the fiscal rule as well as all other obligations incurred by the State under the rules of economic governance and the rules implementing control mechanisms. The main objectives are the following: (i) to comply with EU legislation on economic governance;(ii) modernize the legal framework regulating the management of public finances;(iii) establish a modern system mechanism for governance of public finances, including ensuring the quality of public finances and the corresponding control specific categories of spending;(iv) ensure

⁵⁴ *Dopis predsednika Državnega zbora 22.12.2011,*

<http://imss.dz-rs.si/imis/082bf2979647207c22ab.pdf>

⁵⁵ <http://imss.dz-rs.si/imis/3e56a059a747dca0a085.pdf>.

⁵⁶

http://www.bruselj.predstavnstvo.si/index.php?id=732&L=1&tx_ttnews%5Btt_news%5D=11115&tx_ttnews%5BbackPid%5D=14&cHash=e6aa0dd9f86f79066a864d20b389cf50.

⁵⁷

http://www.bruselj.predstavnstvo.si/index.php?id=732&L=1&tx_ttnews%5Btt_news%5D=11115&tx_ttnews%5BbackPid%5D=14&cHash=e6aa0dd9f86f79066a864d20b389cf50.

⁵⁸ Zakon o računovodstvu, Ur.l. RS, št. 23/1999, available at http://zakonodaja.gov.si/rpsi/r07/predpis_ZAKO1597.html.

macroeconomic stability and sustained and stable national economic development; (v) ensure greater transparency in the collection and spending of public funds through more consistent respect of the principle that all mandatory taxes and charges, as well as all use of the collected funds carried over the budgets of the four public funds. The Act Amending the Public Finance Act was ultimately adopted in November 2013, and entered into force in December 2013.⁵⁹ The revision nonetheless addressed only the acquisition of state capital investments to maintain the stability of the financial system.

In January 2014, Slovenia received an official notice from the European Commission regarding Slovenian's failure to notify national measures transposing Council Directive 2011/85 / EU (8 November 2011). In the report on the work of the Government 2013-2014, the Government maintained that the Fiscal rule Act which for the most part would implement the directive, was discussed but not adopted (as explained in the answer to question IX.4, the provision of a golden fiscal rule has been implemented in the Slovenian constitution in 2013). In June 2014, the proposal of the Law on the fiscal rule proposed by the right wing party SDS was ultimately rejected.⁶⁰ The government further maintained that it is necessary to simultaneously change the process of adopting or changing the state budget, which is determined by the Rules of Procedure of the National Assembly.⁶¹ Further, the Government listed three acts that will be relevant for the implementation of the directive: the Fiscal rule act, the Public Finance act, and the Accounting Act. In October 2014, the European Commission again notified Slovenia about the need to implement the provisions on the budgetary framework. On this occasion, the Commission informed that if Slovenia does not report within two months the national measures for the implementation of the Directive, the Commission may initiate proceedings against it before the Court and request financial penalties.⁶²

IMPLEMENTATION DIFFICULTIES

VII.3

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

An important point of contention between the political parties was the implementation of a golden fiscal rule in the constitution (see answer IX.4).

Further, political parties had different views on the revision of the role of the Fiscal Council, a body that was established in 2009. On January 26, 2012, the Government adopted an

⁵⁹ Zakon o dopolnitvi Zakona o javnih financah (Uradni list RS, št. 101/13).

⁶⁰ <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6992>.

⁶¹ Poročilo o delu vlade 2013-2014, *available at*

http://www.vlada.si/fileadmin/dokumenti/si/dokumenti/Porocilo_o_delu_vlade_AB_sept_2014.pdf

⁶² Sporočilo za medije 24. oktober 2014, *available at*

http://ec.europa.eu/slovenija/novinarsko_sredisce/sporocila_za_medije/index_sl.htm

official position towards the letter sent by the National Assembly concerning the amendment of the Public Finance Act, in particular with respect to the revisions of the Fiscal Council. The National Assembly pointed out that the draft uses several economic concepts that have an unclear meaning. The use of such terms decreases the legal certainty and the general understanding of the act. The National Assembly thus suggested to provide the definition of such terms. The National Assembly had also extensive comments on the suggestion to revise the Fiscal Council. The revisions provided that the Fiscal Council would become an independent body at the National Assembly, which would finance its activities, the operational work would be conducted by the technical-professional Secretariat of the National Assembly, which would report to the president of the Fiscal Council.⁶³ The National Assembly pointed out that this would represent a big change to the current system, and in the National Assembly's view, there were insufficient reasons to support such change.⁶⁴ It also pointed out that under the new system the Fiscal Council would have fewer members, and the draft act did not clarify how the transition would occur.

On January 27, 2012, the Government discussed again the proposal concerning the revision of the Public Finance act, in the part where it addresses the Fiscal Council.⁶⁵ The Government clarified that the Directive on requirements for budgetary frameworks of the Member States requires in Article 4 that the macroeconomic and budgetary forecasts on which the fiscal planning is based is an impartial and comprehensive evaluation. The arguments for the establishment of the Fiscal Council are based on the perception that governments do not run their fiscal policy optimally, and there is consequently a need to establish a Fiscal Council that is independent from the executive branch, and able to monitor and assess their activities. The government agreed with the National Assembly that the independence of the Fiscal Council does not depend so much on the legislative framework, but there is a need to assure that its members perform their function in autonomy, without due constraints. The Government pointed out that it would be however difficult to achieve this if the institution that is part of the executive branch would also monitor its activities. The proposed amendment thus aimed to expand the duties of the Fiscal Council and assure its independence. The Government also emphasized that the proposed amendment took into account the current fiscal situation of Slovenia, in particular, a tendency to reduce the state's operational costs. The Government agreed that the establishment of an independent body would be more desirable. However, such action would also involve a higher financial budget, and it would be in contradiction with the policy of reducing the public costs. Notwithstanding, the Government re-examined the proposed amendment to Article 12.g, where it determined that the technical-professional secretariat of the National Assembly would report to the President of the Fiscal Council, and evaluated the option to implement a transition period for the launch of the Fiscal Council. Finally, the Government emphasized that the final decision regarding the position and modus operandi of operation of the Fiscal

⁶³ http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article/43/1133/

⁶⁴ <http://imss.dz-rs.si/imis/849a650e6da0e6ac8667.pdf>.

⁶⁵ http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article/43/1133/.

Council had to be adopted by the National Assembly.⁶⁶

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)?

Under the current legislation, the Institute of Macroeconomic Analysis and Development (IMAD)⁶⁷ provides the macroeconomic and budgetary forecasts. ⁶⁸The government can nevertheless also rely on the forecast of other independent bodies.

FISCAL COUNCIL

VII.5

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

Slovenia has had a Fiscal Council since 2009. It is a consultative body for an independent assessment of the fiscal policy. The Fiscal Council should provide, among other thing, a subsequent assessment of the sustainability and stability of fiscal policy determined by the annual budget memorandum. It should also provide an opinion on the stability programme, and its compliance with the rules of the Stability and Growth Pact. The assessment of compliance shall consider the cyclical economic situation, and may be based on an independent assessment of economic trends by the Fiscal Council.⁶⁹

The implementation of Directive 2011/85/EU would nonetheless require some revision to the Fiscal Council. As mentioned in the answer to question VII.2, the Draft Law of the amendment of the Public finance act proposed to introduce changes to the responsibilities of the Fiscal council. In May 2012, the Constitutional Commission⁷⁰ of the National Assembly discussed the possibility to adopt changes to Article 148 of the Slovenian constitution, which determine the basic principles of the budgetary process. There was a suggestion to introduce in the article a provision regarding the Fiscal Council.⁷¹

⁶⁶ Ad 19.

⁶⁷ Urad za makroekonomske analize.(UMAR).

⁶⁸ See Resolution on the Organisation and Work of the Institute of Macroeconomic Analysis and Development of the Republic of Slovenia; (2) Government of the Republic of Slovenia Act; (3) Decree on the Documents of Development Planning Bases and Procedures for the Preparation of the Central and Local Government Budgets.

⁶⁹ <http://www.fiskalnisvet.si/fs/fs-eng.nsf>.

⁷⁰ Ustavna Komisija Državnega zbora RS.

⁷¹

There was however a strong disagreement with respect to the proposal to implement the provisions on the Fiscal council in the constitution. The economist Dr. Igor Masten emphasized that the Fiscal Council would have an ex ante function in the determination of the budget. It would monitor ex ante compliance with the fiscal rule. He emphasized that an ex post monitoring mechanism is often not sufficient because too late. If Slovenia wants to assure compliance with the fiscal rule, there is a need for an external body that monitors the Government's compliance with the rule. To be reliable, such body should be unaffected by the daily political discussion. Such reliability could be obtained by giving this body a constitutional importance, Masten argued. In the relationship between the government and the central bank, there is an unwritten rule that, when a conflict arises, the central bank is the one which should step back. Masten suggested that a similar approach should be adopted also in the relation between the government and the Fiscal Council. The government would thus have the option to adopt a decision against the position of the Fiscal Council. Such decision would however not come without costs. Ignoring the experts' opinion stating that the suggested budget does not comply with the fiscal rule, and is thus unconstitutional, would be an important step. It would thus assure that the government takes seriously its compliance with the fiscal rule.⁷² Kristijan Petrovič—deputy president of the Court of Audit— also supported such position, maintaining that the highest level of independence of the Fiscal Council can only be assured through its incorporation in the constitution.

Borut Pahord (SD) however opposed such solution and suggested to delete the part of the act discussing the Fiscal Council. Although he agreed that the institution should have an important role, he maintained that the suggested solution would confer to the Fiscal council too much power, but too little responsibility. Other experts, such as Dr. Lojze Ude, were also against the implementation of provisions about the Fiscal council in the Constitution.⁷³ Andrej Širčelj (SDS) emphasized that Slovenia already has a Fiscal Council, and in his view, the state does not have great benefits from it. Moreover, he maintained that the solution suggested would also require more financial resources. The party did however agree with the implementation of the provision in the constitution. The party NSi was also against the implementation of the provision in the constitution. At the time of the voting 13 votes were in favour, and 6 against.

On May 2013, the National Assembly approved the changes of Article 148 of the constitution. There is however no reference to the Fiscal council in the constitutional provision. The Constitutional amendment nonetheless provides for the adoption of the "implementation law "within six months from the entry into force of amendments to the Constitution. The Law will determine, inter alia, the role of the independent Fiscal Council.

rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VI&type=pmagdt&uid=42954D591788B7BAC12579FE001F59AB.

⁷²

<http://www.dz->

rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VI&type=pmagdt&uid=42954D591788B7BAC12579FE001F59AB

⁷³ See also: Annex IVa Ude's opinion on changes to the Article 148 of the Constitution.

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 SLOVENIA 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?

See answer to question VII.1.

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 draft Act Amending the Public Finance Act provided for the introduction of a Medium-term Budgetary Objective. In particular it determined a ceiling for budgetary expenditure for the next five years. Due to the introduction of the medium-term budgetary framework, the procedures for drafting and passing the budget must be changed. During the discussion on January 27, 2011, the National Assembly pointed out that the introduction of a medium-term fiscal objective would require changes in the Rules of Procedure of the National Assembly,⁷⁴ given that it would affect the procedure for adopting the budget.⁷⁵ As of October 2014 the Act Amending the Public Finance Act has not been adopted.

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)?

⁷⁴ Poslovnik državnega zbora.

⁷⁵ <http://imss.dz-rs.si/imis/849a650e6da0e6ac8667.pdf>.

The Budgetary memorandum for 2010-2011 reports that to harmonize the budget cycle in Slovenia with the European Semester Slovenia should unify the Stability Program⁷⁶ and Budgetary Memorandum.⁷⁷

MTO DIFFICULTIES

VII.9

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

There seems to have been no such discussion about the medium-term budgetary process.

RESPECT MTO

VII.10

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

There does not seem to be, so far, a legal act which imposes the compliance of mid-term budgetary objective. However, the government referred to the Medium-term Budgetary Objective in its documents. See answer to question VII.11.

CURRENT MTO

VII.11

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

Based on the Budgetary plan for 2015 Slovenia plans to reach 4.4 % of GDP general government deficit in 2014 with one -off measures (recapitalisation of banks) and 3.5% GDP without. For 2015 the target is set at 2.8% GDP.⁷⁸ The budgetary plan is likely to be revised in 2015.

ADOPTION MTO

VII.12

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

The Draft Act revising the Public finance act provided that the Government prepares the Medium-term Budgetary Objective. The document should be prepared on a yearly basis, by taking into account the forecast prepared by the Institute of Macroeconomic Analysis and

⁷⁶ Program stabilnosti

⁷⁷ Proračunski memorandum

⁷⁸ Draft Budgetary Plan – Slovenia 2015, *available at*

http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/dbp/2014/2014-10-15_si_dbp_en.pdf

Development (UMAR). The document needs to be adopted by the National Assembly, and represent the basis for the adoption of the budget. The adopted budget must be aligned with the Medium-term Budgetary Objective.⁷⁹

REGULATION NO 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF\)](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF)

EDP DIFFICULTIES

VII.13

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

See answer to question VII.1.

REGULATION NO 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1173:EN:NOT\)](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1173:EN:NOT)

SANCTIONS

VII.14

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

See answer to question VII.1.

GENERAL CHANGES

VII.15

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

After the year 2011, the government adopted several executive decisions that affect the rules of the budgetary process. It adopted the Rules on the completion of implementation of the central and local government budgets for 2012,⁸⁰ Rules on the common bases for work procedures of financial services of direct spending units of the budget of the Republic of

⁷⁹ See attachment: Annex III Draft of the Act amending the Public Finance Act.

⁸⁰ Pravilnik o zaključku izvrševanja državnega in občinskih proračunov za leto 2012, Ur.l. RS, št. 71/2012.

Slovenia,⁸¹ and the Rules on the transmission of information about the debt level and changes in the debt level of legal entities of the public sector and communities.⁸² Further, in December 2013, the Act Amending the Provision of Payment Services to Budget Users was adopted.⁸³

MISCELLANEOUS

VII.16

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

In October 2012, Slovenia adopted the Slovenian Sovereign Holding Act,⁸⁴ and the Act Determining the Measures of the Republic of Slovenia to Strengthen Bank Stability.⁸⁵ The adoption of those acts was part of the process aiming to reform fiscal governance and adopt policies that will ensure a long-term fiscal sustainability. A number of deputies called for a legislative referendum to verify the approval of the rules. However, the Constitutional Court rejected such referendum, maintaining that it could have unconstitutional effects, if the two acts were rejected.⁸⁶

1. NAME OF THE COURT Constitutional Court (Ustavno sodišče)
2. PARTIES -
3. TYPE OF ACTION/PROCEDURE Constitutionality of a referendum
4. ADMISSIBILITY ISSUES
5. LEGALLY RELEVANT FACTUAL SITUATION

Slovenia adopted two laws to meet the requirements determined in the six pack. In October 2012, Slovenia adopted the Slovenian Sovereign Holding Act, and the Act Determining the Measures of the Republic of Slovenia to Strengthen Bank Stability. An initiative was started to approve the adopted legal act through a referendum. If the majority of participants would vote against the act, the acts would have been rejected.

In November 2012, the National Assembly asked the Constitutional Court to

⁸¹ Pravilnik o skupnih osnovah za postopke dela finančnih služb neposrednih uporabnikov proračuna Republike Slovenije, Ur.l. RS, št. 84/2012.

⁸² Pravilnik o pošiljanju podatkov o stanju in spremembah zadolžitve pravnih oseb javnega sektorja in občin, Ur.l. RS, št. 3/2013.

⁸³ Zakon o spremembah in dopolnitvah Zakona o opravljanju plačilnih storitev za proračunske uporabnike, Uradni list RS, št. 111/13.

⁸⁴ Zakon o Slovenskem državnem holdingu, Ur.l. RS, št. 105/2012, *available at* http://zakonodaja.gov.si/rpsi/r07/predpis_ZAKO6457.html.

⁸⁵ Zakon o ukrepih Republike Slovenije za krepitev stabilnosti bank, Ur.l. RS, št. 105/2012, *available at* http://zakonodaja.gov.si/rpsi/r01/predpis_ZAKO6521.html.

⁸⁶ <http://www.us-rs.si/media/u-ii-1-12.u-ii-2-12.odlocba.pdf>.

evaluate whether such referendum would impose unconstitutional effects, by postponing or preventing the adoption of the suggested acts. The National Assembly maintained, inter alia, that a referendum could prevent Slovenia's compliance with the obligations arising from the European Directives, in particular Directive 2011/85/EU.

6. LEGAL QUESTIONS

7. ARGUMENTS OF THE PARTIES

The National Assembly emphasized that if the reforms were not approved, Slovenia would have to ask for international financial aid. The commitments that would be required to obtain such aid would have major implications for the sovereignty of Slovenia. The Troika would have an important role, having the ability to dictate the adoption of several measures. The National Assembly also emphasized that Slovenia needs to comply with the requirements of the Directive 2011/85/EU, and the Fiscal Compact, which has been ratified through the Act ratifying the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. A delay in the adoption of the suggested reforms could undermine Slovenia's compliance with the international commitments. The National Assembly emphasized that Article 3a and 8 of the Slovenian constitution determine that Slovenia must comply with the commitments given to its partners in the Eurozone. The non-compliance with the given commitment would not only amount to a violation of EU law, but would also lead to an unconstitutional position in Slovenia. Without the suggested changes, Slovenia would not be able to deal with the excessive public deficit, and thus assure the compliance with the duties determined in Article 119 and Article 123 TFEU. The National Assembly maintained, among other things, that the adoption of the two acts was essential for the improvement of the country's rating. The resulting difficulty in borrowing money in the international financial markets would hinder the public financing and would amount to a violation of Constitutional law, given that it would interfere with the constitutional provisions concerning social security and human dignity.

The group of deputies who suggested a referendum disagreed with the position of the National Assembly and maintained that the case did not meet the legal requirements for the prohibition of a referendum. In their view, the statements of the National Assembly concerning the sovereignty of Slovenia were misplaced, given that they concerned a future and uncertain situation.

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

The court emphasized that the right to initiate a referendum on a proposed law is one of the fundamental rights granted by the constitution. It however also emphasized that such right is not absolute. A referendum should not take place

whenever the legal conditions for it are met. It noted that in parallel to the constitutional right to a referendum, there are also other rights protected by the constitution that need to be taken into account. The importance of the protection of such rights might be so strong to out-weigh the right to a referendum. It is thus possible that a referendum will not be allowed, if it could impose unconstitutional effects.

The Constitutional Court did not agree with the National Assembly's statement that the referendum could hinder the Slovenian sovereignty. It found there was no evidence that the refusal of the referendum would have a direct impact on the Slovenian sovereignty, given that the allegation concerned only a possible, future situation. The sovereignty was not directly endangered.

The Constitutional Court however emphasized that other constitutional rights could be affected by such referendum. The referendum could hinder the state's ability to assure some basic rights, which are also protected by the constitution. There is consequently the need to balance the right to a referendum to the other rights that would be affected if the referendum is allowed.

The Constitutional Court agreed that the referendum could affect other rights granted by the Slovenian constitution. In particular, the effective functioning of a state based on the rule of law, a social state, which assures the respect of basic rights, such as the right to free economic initiative (article 74), the opportunities for employment and work (article 66), and social security rights. At the same time, the Constitutional Court stressed the important to respect the duties arising from an international agreement. Slovenia must also, in line with article 3a of the Constitution, comply with its duties arising from the membership in the EU. In particular, Slovenia cannot engage in acts that would run counter to the duties imposed by the directives.

The Constitutional Court thus concluded that there was a valid reason to limit the constitutional right to a referendum, given that this was necessary to protect other rights granted by the constitution.

9. LEGAL EFFECTS OF THE JUDGMENT/DECISION

The referendum was not admitted.

10. SHORTLY DESCRIBE THE MAIN OUTCOME OF THE JUDGMENT/DECISION AND ITS BROADER POLITICAL IMPLICATIONS.

The Constitutional Court agreed with the National Assembly by deciding that allowing a referendum that would challenge the adopted acts could lead to unconstitutional effects.

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 19 contracting parties are the member states of the Eurozone, but the ESM Treaty is concluded outside EU law.

*(<http://www.esm.europa.eu/about/legal-documents/index.htm>
<http://www.esm.europa.eu/pdf/FAQ%20ESM%2008102012.pdf>)*

and

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SLOVENIA 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.

According to the media, the Committee on Foreign Policy⁸⁷ of the National Assembly discussed the stipulation of the ESM during the session that took place on June 2, 2011. The transcript of the session is not available. During this meeting the National Assembly conferred to the Minister of Finance the right to sign the treaty on July 11, 2011.

The Committee on Foreign Policy of the National Assembly discussed the issue again on October 12, 2011, evaluated again the initiative for the conclusion of the agreement and decided to approve it. The transcript is however not available.⁸⁸

RATIFICATION

VIII.2

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

The ESM was ratified through the Act ratifying the Treaty Establishing the European Stability Mechanism, adopted in April 2012,⁸⁹ a regular parliamentary act. The act was amended in February 2013, with the Act amending the act ratifying the Treaty establishing the European Stability Mechanism.

16 and 18 members of respectively the Committee on Finance and Monetary Policy and the Committee on Foreign Policy voted in favour of the act. The Act ratifying the Treaty Establishing the European Stability Mechanism was finally adopted on April 19, 2012. The

⁸⁷ Odbor za zunanje zadeve.

⁸⁸ Odbor za zunanje zadeve.

⁸⁹ Zakon o ratifikaciji Pogodbe o ustanovitvi Evropskega mehanizma, Ur.l. RS-MP, št. 4/2012, available at http://zakonodaja.gov.si/rpsi/r09/predpis_ZAKO6349.html.

Act was later amended two times. The Act amending the act ratifying the Treaty establishing the European Stability Mechanism was adopted in February 2013, with 86 votes in favour and none against. Further, in November 2013, the Act ratifying the adaptation to be made to the Treaty establishing the European Stability Mechanism was adopted.

RATIFICATION DIFFICULTIES

VIII.3

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

The proposed Act ratifying the Treaty Establishing the European Stability Mechanism was discussed by the Committee for Foreign Affairs on April 11, 2012. During the session Jozse Horvat (NSi) asked whether there will be some implications for the sovereignty of Slovenia in designing its economic policy. Alenka Bratusek (PS) asked why such agreement would be good for Slovenia. Jozse Jerovsek (SDS) questioned how such institution could be monitored. Marija Pelvack (DeSus) asked what implications the treaty would have for the budget of Slovenia. Ultimately, the Committee of Foreign Policy supported the act.⁹⁰

The vote for the act took place on April 19, 2012. The leading coalition supported the ratification. Also some parties in the opposition supported the ratification. Pozitivna Slovenia, for instance maintained that being a member of the Eurozone mitigates the negative impact of the crisis for Slovenia, and emphasized that the destiny of Slovenia is strictly related to the destiny of the Euro. It thus concluded that it is in the interest of Slovenia to safeguard the Euro. At the time of the voting, 74 deputies out of a total of 90 voted in favour of the ratification, none voted against.⁹¹

Dejan Krušec, the State Secretary at the Ministry of Finance, explained that ratification of the ESM will not have a direct impact on the sovereign decisions of Slovenia in its monetary policy. He maintained that the ESM financial assistance will help the euro area, which was facing severe difficulties.⁹² Mitja Mavko for the Ministry of Finance explained that the government believed that the law was necessary to bring financial stability in the euro area. He emphasized that the developments in global financial markets are increasingly uncertain, and the establishment of such a permanent mechanism will provide a better defense to the euro area.⁹³ Political parties member of the opposition supported the ratification process.

CASE LAW

VIII.4

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

⁹⁰ <http://www.delajozate.si/seje/6-mandat/16/9-nujna/2012-04-11/>

⁹¹ <http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VI&type=sz&uid=3D22052A78BDB6CAC12579FA0048193B>

⁹² <http://www.delo.si/novice/politika/odbora-drzavnega-zbora-za-ratifikacijo-pogodbe.html>

⁹³ Id.

Not applicable.

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?

Given that the payment of the first instalment is provided in the annual budget, its approval probably followed the general procedure for the approval of the budget. In other words, the government suggested the payment of the first instalment as part of the annual budget, and the National Assembly had to confirm it.

APPLICATION & PARLIAMENT

VIII.6

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

The ESM Treaty was ratified through an act which does not clarify the role of the parliament in granting financial assistance. Article 4 of the Act Regulating the Guarantees of the Republic of Slovenia for Ensuring Financial Stability in the Euro Area however provides that the Government should inform the National Assembly about the decisions to grant any guaranty. In the adoption of each funding program the government and the National Assembly shall cooperate in accordance with the Act on Cooperation between the National Assembly and the Government in EU Affairs. It seems that this approach has been adopted also for financial aid granted through the ESM mechanism. This was for instance the case when financial aid was granted to Spain.⁹⁴

APPLICATION DIFFICULTIES

VIII.7

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

On July 19, 2012, the *Committee on EU Affairs* discussed the proposal to confirm the financial assistance to Spain. Several members questioned how such aid would affect Slovenia's own financial stability. For example, Saša Kos (PS) asked whether it would be possible to freeze Slovenia's obligation, until the financial position of Slovenia becomes more stable. Roman Jakič (PS) asked whether Slovenia would have to actually pay money, or, for the time, it was only offering a guarantee. He also questioned whether Slovenia would have the actual ability to pay such guarantee, if such obligation arises. The Committee

⁹⁴ <http://www.delajozate.si/seje/6-mandat/32/13-nujna/2012-07-19/>

ultimately supported the proposal with 9 votes in favour (15 in total), and none against.⁹⁵

See also answer to question 46.

IMPLEMENTATION

VIII.8

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

No reference has been found to this.

MISCELLANEOUS

VIII.9

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

Not applicable.

⁹⁵ <http://www.delajozate.si/seje/6-mandat/32/13-nujna/2012-07-19/>

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.consilium.europa.eu/european-council/pdf/Treaty-on-Stability-Coordination-and-Governance-TSCG/>)

NEGOTIATION

IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SLOVENIA 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.

On January 19 2012, the Government determined the strategy for the negotiations on the Treaty on stability, coordination and governance in the economic and monetary union. One of the key observations presented by Slovenia referred to the methodology for calculating the medium-term objective for each Member State. Slovenia suggested that the methodology should reflect an appropriate balance between explicit liabilities and implicit liabilities (taking into account the implicit liabilities arising from an aging population) that are projected to arise in the long term.⁹⁶

RATIFICATION

IX.2

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

Slovenia ratified the Treaty through a regular parliamentary act - the Act ratifying the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union adopted in April 2012. The adoption of the act was approved by the National Assembly (The Committee for Finance and the Committee for international affairs), adopted on April 11, 2012.

RATIFICATION DIFFICULTIES

IX.3

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

There were no major difficulties in the ratification of the Fiscal Compact. The Committee on

⁹⁶ http://www.mf.gov.si/nc/si/medijsko_sredisce/novica/article//1132/

Finance and Monetary Policy and the Committee on Foreign Policy discussed the ratification on April 11, 2012. During the discussion that took place at the National Assembly some deputies raised questions about the Treaty. Roman Jakic of Pozitivna Slovenija asked the rhetorical question whether this is just the first step in giving up Slovenian sovereignty. He questioned the coexistence of two systems that will manage public finances. The party nonetheless confirmed that it will vote in favour of the ratification.⁹⁷

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

The legislative basis for the Slovenia’s fiscal framework is established in Article 148 of the Slovenian Constitution. Before 2013, a fiscal rule was determined in an executive decree—the Decree on the documents of development planning bases and procedures for the preparation of the central and local government budgets. The Decree prescribed the annual procedure for budget formulation and set the upper limit on public expenditure. In March, 2012, the Government approved the proposal to begin the procedure to amend article 148 of the Constitution of the Republic of Slovenia that would introduce the fiscal rule in the Slovenian constitution. The amendment would determine that the national budget must be either balanced or in surplus within a mid-term. Such constitutional amendment would have to be approved by two-thirds majority of the present members of the National Assembly. The proposal for the constitutional amendment was nonetheless abandoned during the change of the government that took place in March 2013.

On May 24, 2013, a vote took place concerning the implementation of the fiscal rule in the Constitution. 78 deputies voted in favour and 8 against (the deputy that voted against are from the party SD) of the implementation of the fiscal rule in the constitution. The major argument for the SD was that the introduction of the fiscal rule by 2015 would have a major impact on the social aspect of the country.

The constitutional act amending article 148 of the Constitution entered into force in May 2013, and provides as follow: “All revenues and expenditures for the financing of public spending must be included in the budgets of the states. Revenues and expenditures of the

budgets of the state must be balanced in the medium-term without borrowing, or revenues must exceed expenditures. Temporary deviation from this principle is only allowed when exceptional circumstances affect the state. The manner and the time frame of the implementation of the principle referred in the preceding paragraph, the criteria for determining exceptional circumstances, and the course of action when they arise, shall be determined by a law adopted by the National Assembly by a two-third majority vote of all deputies.”

The adopted Constitutional amendment thus provided for the adoption of the “implementation law” within six months from the entry into force of the amendment to the Constitution. The Law should determine more precisely the fiscal rule, in the way to fully implement the Council Directive and the regulations and Fiscal Compact. The law should propose a detailed solution on the actual fiscal policies, define the role of the independent Fiscal Council, specify what are considered to be exceptional circumstances, and what the correction mechanism looks like. In December 2014, the Government presented a draft of the Fiscal rule Act, but the act has not been adopted yet.⁹⁸

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.

In April 11, 2012 the National Assembly discussed the process for changing Article 148 of the Constitution. The Constitutional Commission was in charge to prepare a draft of the amendment. There was an intensive debate about the implementation of the fiscal rule in the constitution.

Several commentators questioned the impact of the golden rule on the Slovenian economy. Professor Dr. Lojze Ude did not agree with the idea of a fiscal rule. He argued that the adoption of the fiscal rule reflects the position of only part of the economic theory, and neglects other economic theories. Further, Dr. Ude maintained that there is no need to implement the rule in the Constitution. He maintained that Slovenia was legally bound by its international agreements, and it was therefore already bound by a fiscal rule. Dr. Ude suggested that the rule should determine lower acts, rather than the constitution. He further argued that the fiscal function is only one of the state’s functions. He maintained that giving within a constitution priority to only one of the activities of the state, while leaving others to lower levels, is not an optimal solution. Likewise, also the economist Dr. Joze Mencinger questioned the reasonableness of the fiscal rule and its implementation in the constitution. In his view, the EU legislation imposes the “correct” fiscal rule to states with completely

⁹⁸ See, e.g., Vlada pošilja zakon o fiskalnem pravilu v DZ, DELO (Dec. 4, 2014), <http://www.delo.si/novice/politika/vlada-potrdila-predlog-zakona-o-fiskalnem-pravilu.html>.

different environments and economical situations.⁹⁹ He maintains that the Fiscal compact limits the Slovenian budgetary sovereignty, and transfers the competences to the European Commission.

Some parties shared the opinion expressed by those economists. For example, Roman Jakic (Pozitivna Slovenia) was against the implementation of the rule in the constitution. He maintained that the ratification is sufficiently binding. He also pointed out that the “fiscal rule” is already part of the Public finance act adopted in 1992.

Other commentators were nonetheless more supportive regarding the implementation of a fiscal rule in the constitution. For example, Dr. Tone Jerovsek argued that the EU Treaty requires such changes to be implemented.¹⁰⁰ The economist Dr. Igor Masten emphasized that other countries, like Switzerland and Sweden, have adopted such a rule in the past, and, as a result, they were able to cope better with the economic crisis.

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)?

No references have been found.

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

Not applicable, since Slovenia is a member of the Eurozone.

⁹⁹ See attachment: Annex IVc Fiscal council – mnenje 2012 , p. 5-6.

¹⁰⁰

<http://www.dz-rs.si/wps/portal/Home/deloDZ/seje/evidenca?mandat=VI&type=pmagdt&uid=42954D591788B7BAC12579FE001F59AB>

MISCELLANEOUS

IX.9

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

Not applicable.

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.

Slovenia has not received financial assistance.