



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: SWEDEN

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I POLITICAL CONTEXT

POLITICAL CHANGE

I.1

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

The government is made up of a centre right-wing coalition. It consists of four political parties: Moderate Party (Moderaterna), Centre Party (Centerpartiet), Liberal People's Party (Folkpartiet), and Christian Democrats (Kristdemokraterna). The opposition consists of the centre-left Swedish Social Democratic Party (Socialdemokraterna), Green Party (Miljöpartiet), Left Party (Vänsterpartiet), and the far-right Sweden Democrats (Sverigedemokraterna).

General elections are held every four years, most recently in September 2010, when the centre right-wing coalition was re-elected. In 2010, the Sweden Democrats, a far-right, anti-immigration party, got elected into the Swedish Parliament. In May 2013, some Stockholm suburbs with a heavy immigrant population suffered from riots. While the Government portrayed these riots as the work of a few hundred 'hooligans', the centre-left Social Democrats (Sweden's biggest party) argued that the riots were a question of class and not of immigration. However, in the case of Sweden, these two events can hardly be explained by the Euro-crisis; there are rather other socio-economic explanations to be found. For many reasons, Sweden has not suffered badly by the euro crisis. Sweden suffered by the 2008 global crisis, but recovered soon. The GDP growth was negative throughout 2009, but the Swedish economy had stabilised. In the recession, the Swedish currency weakened, but recovered soon.

In 2003, Sweden held a referendum on the euro. The question was: "are you of the view that Sweden should introduce the euro as currency?" 55.9 % voted against and 42 % in favour.¹ The referendum was only legally non-binding, but the Riksdag decided that Sweden would not adopt the euro for the time being. In the campaign, three political parties in the Parliament were in favour of the euro: Moderaterna, Folkpartiet, and Kristdemokraterna. The centre-left Social Democrats were split. In the recent years, and as a result of the Euro crisis, these parties have introduced more cautious declarations in their party programmes on the euro. No political party is of the opinion that Sweden should join the Euro today. Folkpartiet is the most euro-friendly party, but in the recent two years, it appears split.

¹ The turn-out was 82,6 %. For an economic analysis of the referendum, see Lars Jonung and Jonas Vlachos, "The Euro - What's in it for me? An Economic Analysis of the Swedish Euro Referendum 2003," Sieps 2007:2, available at <http://www.sieps.se/sv/publikationer/the-euro-whats-in-it-for-me-an-economic-analysis-of-the-swedish-euro-referendum-2003-20072>

For the period 2003 to 2007, the public support to join the euro was steadily negative.² In 2009, the public opinion was for the first time in favour of the euro (a poll showed that 47 % were in favour and 42 % against). The reason is likely that the Swedish Krona had been weakened against the Euro. A few months later, when the Krona strengthened, the public opinion changed again. In the beginning of 2010, the public opinion was strongly negative. A poll in June 2010 showed that 61 % were against the Euro and only 24 % in favour. In another poll in December 2011, 87,6 % were against and 9,7 % in favour.

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

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

The Legal Framework

The Swedish budget procedure is regulated by the Instrument of Government ('Regeringsformen', a Constitutional instrument), the Riksdag Act ('Riksdagsordningen', also a Constitutional instrument), and the Budget Act (ordinary legislation). Constitutional practice, developed over the last 15 years, complements this picture.³ The rules on the budget procedure in the Instrument of Government are of a framework character. They regulate the division of competence between the Parliament and the Government. These rules are specified in the Riksdag Act. The Riksdag Act also provides the basic rules for the budget procedure, but they are also somewhat of a framework character, and they mainly concern the working procedures in the Riksdag. The details of the budget procedure are provided in the Budget Act. It also stipulates the overall objectives of fiscal policy.

Legislative preparatory works have a significant role in Sweden; they are considered having the status of legal source. For example, Courts are frequently referring to the legislative preparatory works when in doubt how to interpret a legal rule. These preparatory works consist, *inter alia*, of proposals (sometimes referred to here as 'opinions') from Parliamentary Committees. Such legislative preparatory works are seen as giving a clear indication of the legislator's intentions and also how the legislation should be implemented; they explain the basis for adopted legal acts. Thus, in addition to the legal instruments mentioned above, the Swedish budgetary framework also consists of constitutional practice by the Riksdag and the Government, in the form of legislative preparatory works. The practice is also based

² Interestingly, during the same period, the public opinion to the EU increased. See Sören Holmberg, "Ökat opinionsstöd för EU," Sieps, 2008:5epa.

³ Information to this section mainly comes from the Budget Process Committee's interim report on the Swedish implementation of Council Directive 2011/85/EU, pp. 41 to 42 (on the legal framework for the Swedish budget procedure). See also the English Summary of the Report, p 10.

on political accords within the Parliament and between the Parliament and the Government. It can also be found in documents that are part of the budget process: the ‘Spring Fiscal Policy Bill’, the ‘Budget Bill’, and the ‘Central Government Annual Report’. The budget process is also governed by internal written guidelines within the Parliament and the Government.

As the Budget Process Committee points out in its interim report on the Swedish implementation of Council Directive 2011/85/EU, the established practice has a strong bearing as ‘deviations from the established procedure are judged likely to generate public criticism, from such sources as independent monitors of the application of the budgetary framework by the Riksdag and the Government’.⁴ Thus, any deviations from established practice have to be motivated, and the political opposition and the financial organs would examine it. The economists Boije, Kainelainen and Norlin portray the Swedish fiscal policy framework in the following way⁵:

“To date, the Swedish fiscal policy framework has been regulated by law to only a small extent. Rules enshrined in legislation are likely to be more difficult to reverse or abandon than are rules not supported by law. Acting on government proposals, Parliament has therefore made the use of expenditure ceilings and a medium term net lending target compulsory, by law, from January 1, 2010 and August 1 2010, respectively. The level of the targets should not, however, be subject to legislation. The law concerning expenditure ceilings and the surplus target can be overruled by a simple majority, but changing this law may involve loss of reputation and is therefore likely to be politically costly. Regarding the status of the Fiscal Policy Council, the opposition parties were against its introduction in 2007. However, the opposition’s recent joint budget statement states nothing about the future of the Fiscal Policy Council.”

Instruments

There are two different bills that adopted in the Swedish budgetary process. The Government presents the ‘Spring Fiscal Policy Bill’ in April and the ‘Budget Bill’ in September. These bills are different in content. In the Spring Fiscal Policy Bill, the Government proposes directions and guidelines for the fiscal policy and the budget policy in the longer term; it gives its view on the economy in general; discusses economic-political challenges; and presents estimated effects of implemented measures and reform capacity. The Spring Fiscal Policy Bill also includes give an account of its distribution policy, and an assessment of the sustainability of public finances.

⁴ See the English Summary of the Budget Process Committee’s interim report on the Swedish implementation of Council Directive 2011/85/EU, p 10.

⁵ Robert Boije, Albin Kainelainen and Jonas Norlin, ‘The Swedish fiscal policy framework’, *Nordic Economic Policy Review*, Number 1/ 2010, p 209.

In the Budget Bill, the Government presents concrete proposals for the next fiscal year. It contains detailed budgetary proposals on the allocation of government expenditures and revenue to different areas. The Budget Bill proposes how to distribute the central government's resources to 27 different expenditure areas, and the distribution to about 500 appropriations within these areas. The Government also proposes a net lending target for the general government sector (surplus target), and a ceiling for central government expenditures for the next three years (expenditure ceiling target). The expenditure ceiling is presented to show the available frameworks for expenditures and revenues in order to meet the surplus target.

The Cycle

The 'central government budget process' begins more than a year before the fiscal year.⁶ In December, the Ministry of Finance presents economic forecasts to the Government. In January, the other ministries examine the implications of these forecasts for their respective expenditure areas. They submit 'consequence estimates' for the next three years to the Ministry of Finance, which analyses them and examines whether the budget objectives for the next few years will be achieved, and if it has to propose expenditure cuts or tax increases.

In February, Government Agencies submit annual reports with financial data and information about their activities, including accounts of how the Agencies have met their objectives. The Agencies are also required to present their budget for the next three years. The Government uses this material as a basis to decide how to calculate expenditure. In March, the Government discusses the general orientation of the government budget. It has to decide the preliminary spending framework for 27 expenditure areas (so-called framework preparation). The Swedish National Audit Office, an Agency under the Parliament, presents audit reports on the Government Agencies' annual reports.

In April, the Government presents the Spring Fiscal Policy Bill (see above, under 'Instruments') to the Riksdag. The Government also presents a separate bill, on a proposed supplementary budget, which proposes certain changes in appropriations for the current year. It also submits an annual report for the central government sector ('Central Government Annual Report'), in which it presents actual levels of income and expenditure in the previous fiscal year. The Swedish National Audit Office examines it. In June, the Riksdag takes a formal decision on the Spring Fiscal Policy Bill. The Riksdag also decides on the Central Government Annual Report and the Swedish National Audit Office's audit report. In May, the Fiscal Policy Council submits its report on the Swedish fiscal policy to the Government. In its report, it evaluates the extent to which the fiscal objectives have been achieved.

⁶ For an overview of the budget process in English, see <http://www.regeringen.se/content/1/c6/10/22/20/645d8a9c.pdf>

In May, the Government starts drafting the Budget Bill. The ministries propose how to allocate funds to individual appropriations within the framework for the different expenditure areas (which the Government decided on in March). The Ministry of Finance examines the ministries' proposals. When drafting the Budget Bill, the expenditure framework, previously agreed on, binds the Government. Also in May, the Government submits written communications to the Riksdag where it describes the achieved results in the different activity areas in the last few years. In June, the Government holds deliberations.

The work on the budget resumes in August (Swedes traditionally take their summer break in July), and the Ministry of Finance negotiates the details on the Budget Bill with the other ministries. In September, the government submits a proposal to the Riksdag on the Budget Bill. After that, the Government may not introduce any changes. When presenting the Budget Bill, the Government also presents a supplementary budget with changes in appropriations for the current year. Individual Members of Parliament from the opposition may submit alternative proposals or amendments on the Budget Bill ('motions'). These proposals have to be submitted at the latest 15 days after the Government has presented the draft Bill. Each party generally presents an alternative budget.

The Riksdag then starts examining the draft Budget Bill. The Parliamentary Committee on Finance first examines the expenditure ceilings for the coming years and the allocation of expenditure to different areas. It then examines the estimate of central government revenue and expenditure. Other parliamentary committees than the Committee on Finance may also comment on the draft Budget Bill. The Committee on Finance formulates a proposal ('betänkande'), which is debated in the Riksdag in November. Thereafter, the Parliamentary Committees submit proposals on how to allocate expenditure in the areas for which they are responsible. The Riksdag takes a decision on the Budget Bill in December. Before the end of the calendar year, the Government has to implement the Budget by issuing 'appropriation directions' to the Government Agencies. In these instruments, the Government specifies the Agencies' objectives and the size of available funding.

GENERAL CHANGE

II.2

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

No changes have been introduced since the beginning of the crisis.

INSTITUTIONAL CHANGE

II.3

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

No changes introduced.

CHANGE OF TIME-LINE

II.4

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

No changes introduced.

MISCELLANEOUS

II.5

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

No other relevant information.

III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

NATURE NATIONAL INSTRUMENTS

III.1

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

Changes have so far only been made to ordinary legislation. The procedure and arguments for using that procedure has been described under Question V.2 and Question IX.2.

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?

There have been no constitutional amendments and no amendments have been formally proposed by the Government.

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?

It should first of all be pointed out that most of the relevant rules are not provided in constitutional law, but in ordinary legislation and practice.

As previously explained, Sweden has not suffered badly by the euro-crisis. As explained by Boije, Kainelainen and Norlin⁷:

“Even though the financial crisis affected Sweden similarly to other countries in terms of loss of GDP, the effect on the public finances has, largely, been less severe. Deficits have been modest, even though Sweden has pursued among the most active contra-cyclical policies during the crisis. This combination was made possible by the large pre-crisis net lending surpluses. Each year since 2000, Sweden has abided by the numerical rules in the SGP and is one of the few EU member countries that have

⁷ Robert Boije, Albin Kainelainen and Jonas Norlin, ‘The Swedish fiscal policy framework’, *Nordic Economic Policy Review*, Number 1/ 2010, p 201.

managed to also abide by the rules during the current crisis. The financial markets also seem to have confidence in the sustainability of the Swedish public finances; the interest spread to Germany is close to zero, unlike the case for many other EU countries. This has been important for the effectiveness of the stabilization policy measures taken to combat the crisis.”

How can this then be explained? Why did Sweden do so well in the euro-crisis? According to Boije, Kainelainen and Norlin, one explanation is found in the Swedish fiscal policy framework, which contains many of the elements now introduced by euro-crisis law:

“The relatively favourable development of Sweden’s public finances can probably, to a large extent, be attributed to the introduction in 1997–2000 of a well-defined national fiscal policy framework, consisting of a surplus target for general government, an expenditure ceiling for central government (combined with a stringent top-down budget process), and a budget-balance requirement on local governments. It also reflects a strong political commitment to adhere to this framework. Since 2007, a Fiscal Policy Council has played a central role in the external monitoring of this framework.”⁸

The background to many of these rules is the severe financial and economic crisis that Sweden faced in the early 1990s. There was a sharp recession and the banking system nearly collapsed. In the beginning of the 1990s, Sweden’s deficit was 11 % of GDP and the debt was about 70 % of GDP. This required a government rescue and the implementation of a consolidation programme adopted by a broad support from the political parties. Following the crisis, Sweden established strict budget rules. For example, Sweden already has independent budgetary councils (Question VII.5), balanced budgetary rule for local government (Question IX.4), and MTOs even more ambitious than what is now introduced on the EU level (Question VII.11).

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

No amendments made, and no amendments proposed.

RELATIONSHIP WITH EU LAW

III.5

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

No constitutional amendments.

⁸ Ibid.

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?

No constitutional amendments.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

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

There have been no objections raised to the choice of appropriate legal framework. There has been no such debate.

MISCELLANEOUS

III.9

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

No other relevant information.

IV. EARLY EMERGENCY FUNDING

Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 1st round of Greek loan assistance).

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

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

([http://eur-](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 SWEDEN 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?

It has not been possible to identify parliamentary debate on the EFSM at the negotiation stage. However, the Parliamentary Committee on Finance briefly commented on a Commission Communication on reinforcing economic policy coordination.⁹ The Committee held that it supported the decision of the ECOFIN to establish the EFSM, and that it was similar to the mechanism to support non-euro states already in place.¹⁰

⁹ Communication from the Commission to the European Parliament, the European Council, the council, the European Central Bank, the economic and social committee and the Committee of the Regions Reinforcing economic policy coordination, COM/2010/0250 final.

¹⁰Finansutskottets utlåtande 2009/10:FiU40, Utlåtande om förstärkt samordning av den ekonomiska politiken, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Utlatande-om-forstarkt-samordn_GX01FiU40/

In a debate article in *Financial Times* in November 2010,¹¹ the Swedish Minister for Finance argued:

“The existing EU crisis lending facilities [the EFSF and the EFSM and a balance of payment of support] are financed in a way that neither reflects risk nor provides incentives for sound fiscal policies.

A crisis mechanism needs resources to lend to member states that have run into trouble. An important question is how to mobilise these resources in a way that minimises moral hazard.

This is most unfortunate, since experience has shown that irresponsible fiscal behaviour has adverse effects not only on the sinner but also on the euro area and the EU as a whole. The costs of this externality should be borne, to a much higher degree than is the case today, by those members that act irresponsibly.”

There seems to have been no specific debate on sovereignty, constitutional law, socio-economic fundamental rights, or the budgetary process.

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 SWEDEN AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

Not relevant for Sweden.

GUARANTEES

IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN SWEDEN? WHAT DEBATES HAVE ARISEN DURING THIS PROCEDURE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE GUARANTEES FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

Not relevant for Sweden.

ACTIVATION PROBLEMS

IV.4

WHAT POLITICAL/LEGAL DIFFICULTIES DID SWEDEN ENCOUNTER DURING THE NATIONAL

¹¹ Anders Borg, Minister for Finance, *Financial Times*, 16 November 2010. Reproduced at the Government’s website, <http://www.regeringen.se/sb/d/3212/a/155944>

PROCEDURES RELATED TO THE ENTRY INTO FORCE OF THE EFSF FRAMEWORK AGREEMENT AND/OR THE ISSUANCE AND INCREASE OF GUARANTEES?

Not relevant for Sweden.

CASE LAW

IV.5

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

Not relevant for Sweden.

IMPLEMENTATION

IV.6

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

Not relevant for Sweden.

IMPLEMENTING PROBLEMS

IV.7

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

Not relevant for Sweden.

BILATERAL SUPPORT

IV.8

IN CASE SWEDEN 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?

Sweden has provided bilateral funding to Ireland (600 million Euros) and to Latvia (720 million euros).¹² Latvia never used the loan; it elapsed in December 2011. Sweden has also provided a loan to Island (495 million euros).¹³

Only the funding to Ireland was debated in the Parliament:

¹²Regeringens skrivelse 2009/10:244, 'Villkoren för Sveriges kredit till Lettland' (On the Conditions for the Swedish Funding to Latvia), Stockholm 2nd of September 2010. <http://www.regeringen.se/content/1/c6/15/18/64/e8573d39.pdf>

¹³Regeringens proposition 2010/11:132, 'Förlängd tillgänglighetsperiod för krediten till Island', <http://www.regeringen.se/sb/d/14250/a/167572>

In March 2012, the Government submitted its proposal on bilateral funding to Ireland.¹⁴ It pointed out that Sweden's economy is sensitive to financial instability in Europe, and that Sweden therefore, if necessary, should provide funding to states in a dire situation and with which Sweden has formed economic and political relations. A precondition was that other states participated in the funding. The Government pointed out that Ireland had suffered badly by the financial crisis and since Ireland had financial relations with many of the biggest economies in Europe, there was a risk that financial turbulence could spread to other states. If Ireland would not get support to manage its economic and financial crisis, there would be an increased risk for smaller euro states and also for Sweden.

Two very different proposals from individual MPs were submitted to the Riksdag (so-called 'motions'¹⁵). In the first one, submitted by two MPs from the far-right 'Sweden Democrats' (Sverigedemokraterna),¹⁶ it was argued that it was not Sweden's responsibility to solve other countries' problems caused by the choice to abolish their monetary policy independence and by their failure to foster sound public finances. In the second one, two individual MPs from the 'Left Party' (Vänsterpartiet),¹⁷ explained that the stabilisation programme for Ireland, adopted after negotiations between Ireland and the lenders, was of such a nature that the Left Party could not support it; the programme emphasised a cutback on public spending, including a decrease in the average pay in the public sector, cutback on welfare programmes, and privatisation.

Before the Riksdag could decide on the Government's proposal, it had to be prepared by a Parliamentary committee. The Government's proposal was sent to the Parliamentary Committee on Finance, which is responsible for any expenditure to the EU.¹⁸ The Committee dismissed the two motions. The Committee stated that it was important that Sweden takes part in the international funding package for Ireland.¹⁹ The argument was of an economic nature; Sweden is a small open economy and therefore sensitive to financial and economic turbulence. It was argued that if Ireland

¹⁴Regeringens proposition 2011/12:119, Stockholm the 22 of March 2012, http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/Utlaning-till-Irland_GZ03119/?html=true

¹⁵Individual members of parliament or a group of members may submit a proposal (a 'motion') to the Riksdag dealing with the same issues as the Government's proposal. This has to be done no later than 15 days after the Government has presented its proposal. The Government has to implement such proposals if the Riksdag approves them.

¹⁶Motion 2011/12:Fi13 by Erik Almqvist and Johnny Skalin (both Sverigedemokraterna), http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Motioner/Utlaning-till-Irland_GZ02Fi13/?text=true

¹⁷Motion 2011/12:Fi14 by Ulla Andersson and others (Vänsterpartiet), http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Motioner/Utlaning-till-Irland_GZ02Fi14/?text=true

¹⁸ According to the Swedish Parliament's website, the Committee on Finance also prepares 'matters concerning general guidelines for financial policy, adoption of the central government budget and matters concerning the activities of the Riksbank. It also prepares matters concerning expenditure limits for expenditure areas and estimates of State revenue'. <http://www.riksdagen.se/en/Committees/The-15-parliamentary-committees/>

¹⁹ Finansutskottet betänkande, 2011/12:FiU41, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/201112Utlaning-till-Irland-_GZ01FiU41/

would not get sufficient support, there was a risk of contamination to other euro members.

The bilateral funding was debated in the Chamber on the 9th of May 2012.²⁰ There were no other relevant arguments in that debate than what had already come up in the Government's proposal, in the two motions, and in the Opinion of the Committee on Finance. In the Chamber, 283 voted for the Government's proposal, 20 against, 18 abstained, and 28 were absent.

MISCELLANEOUS

IV.9

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

No other relevant information.

²⁰ Riksdagens protokoll 2011/12:111, paragraph 10 and 16, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/_GZ09111/

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

Sweden did not encounter any political or legal difficulties in the negotiation of the amendment of Article 136 TFEU.

The issue was not debated in the Parliament until the Government had presented its draft bill in February 2012.

APPROVAL

V.2

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

The rules on EU Treaty ratification are found in the Swedish Constitution, more precisely, in the ‘Instrument of Government’ (Regeringsformen). It is the Government that concludes international agreements with other states or with international organisations (Chapter 10, Article 1, Regeringsformen). If an agreement presupposes an amendment, abrogation or enactment of a legal Act or of it otherwise concerns a matter which it is for the Parliament to determine, the Government may only conclude it after the approval of the Parliament (Riksdag). The Riksdag shall decide with simple majority (Chapter 4, Article 7). If, however, a special procedure has been prescribed for the required Riksdag decision, the same procedure shall apply when approving the agreement (Chapter 10, Article 3). For example, if an international agreement presupposes a constitutional amendment, the Riksdag has to apply the special procedure for constitutional amendments (the procedure for constitutional amendments is found in Chapter 8, Article 14). Another such special procedure is

found in the rules on the transfer of competence to the EU (Chapter 10, Article 6). These rules stipulate that the Riksdag may transfer decision-making authority to the EU that does not affect the basic principles by which Sweden is governed. The Riksdag may approve such transfer of authority, provided that at least three quarters of the members voting and more than half of the members of the Riksdag vote in favour of the decision. The Riksdag's decision may also be taken in accordance with the procedure prescribed for the enactment of constitutional amendments.

Before submitting a proposal, the issue was analysed and examined by officials from the Swedish Prime Minister's Office. A draft proposal including an explanatory memo was published (the 'inquiry stage'),²¹ and then referred to different governmental authorities, organisations, regional municipalities, and other interest parties, for consultation (the 'referral process'). The Swedish Government then adopted a proposal, which it submitted to the Swedish Parliament (the Riksdag) on the 23rd of February 2012,²² suggesting that the Riksdag would approve the European Council Decision (2011/199/EU). The Swedish Government pointed out in its proposal that 'the amendment is editorial in character and it does not involve any transfer of competence to the EU'.

Before the Riksdag could take a decision on the Government's Proposal, it had to be prepared by a Parliamentary committee. In the Riksdag, there are 15 permanent committees which consist of 17 members of the Parliament each. The committees' opinions are not legally binding, but the Riksdag often follows them as the distribution of seats in the Committees reflects the distribution of seats in the Riksdag as a whole. The Proposal was sent to the Parliamentary Committee on Finance, which is responsible for any expenditure to the EU.²³ The Committee on the Constitution and the Committee on Foreign Affairs also gave their Opinions on the Act.

The Committee on the Constitution suggested which legislative procedure that should apply when the Riksdag takes its decision on the Treaty amendment.²⁴ The Committee noted that Article 136 TFEU is placed in the third part of the TFEU and that the implication of the Treaty amendment is that Member States whose currency is the Euro may establish a stability mechanism. It further noted that the amendment only intends to clarify and to create a legal framework for the implementation of this

²¹Departementsserie 2011:25, http://www.riksdagen.se/sv/Dokument-Lagar/Utdredningar/Departementsserien/_GZB425/?text=true#attachments

²² Regeringens proposition 2011/12:66 – Godkännande av Europeiska rådets beslut om ändring av artikel 136 i EUF-fördraget - stabilitetsmekanism för euroländer. http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/Godkannande-av-Europeiska-rade_GZ0366/?html=true

²³ According to the Swedish Parliament's website, the Committee on Finance also prepares 'matters concerning general guidelines for financial policy, adoption of the central government budget and matters concerning the activities of the Riksbank. It also prepares matters concerning expenditure limits for expenditure areas and estimates of State revenue'. <http://www.riksdagen.se/en/Committees/The-15-parliamentary-committees/>

²⁴ Konstitutionsutskottets yttrande, 2011/12:KU7y, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Yttranden/Godkannande-av-Europeiska-rade_GZ05KU7y/

mechanism. The Committee emphasised that the amendment does not in itself establish a stability mechanism, but that an intergovernmental agreement is required for the establishment. It also emphasised that the Treaty amendment does not increase the Union's competences, and further, that the Union itself cannot establish a stability mechanism with the amended Article 136 TFEU as a legal basis. The Committee concluded that the Riksdag's approval of the European Council decision would not imply a transfer of competence to the EU. An approval would only require an amendment of the Swedish Accession Act,²⁵ and such an amendment were to be decided by the Riksdag only by simple majority (Chapter 4, Article 7). The Riksdag was to take the decision by simple majority since the Treaty amendment does not imply any transfer of competence to the Union. The Committee concluded that there were no constitutional impediments to adopt the Amendment Act. The Committee also noted that the ESM Treaty was concluded between EU Member States whose currency is the euro, and that Sweden could only become a member of the ESM if Sweden introduces the euro. It pointed out that if Sweden were to join, the question of membership of the ESM should be subject to parliamentary review.

In this context, it should also be pointed out that Sweden does not have a separate constitutional court; rather, any court can review the lawfulness of a legal act. The Swedish system of judicial review is, however, rather weak. For example, the system is such that a court cannot declare a legal Act void, only non-applicable. It should be pointed out that Sweden has a strong system of judicial 'preview'; before the government submits a proposal to the Riksdag, it usually submits a draft proposal to a Council on Legislation (Lagrådet), which controls that the proposal does not collide or breaches constitutional provisions or other legislation.²⁶ Lagrådet cannot be considered being a constitutional court; rather, it is an organ that provides legal input into the legislative procedure. It can only give opinions on draft proposals. The government is only obliged to submit a draft proposal to Lagrådet under certain circumstances enlisted under Chapter 8, Article 21 of the Instrument of Government. The Amendment Act and the Riksdag's approval of the 136 TFEU Treaty amendment was clearly not such a case. The government did not consider it necessary to submit a draft proposal to Lagrådet. There have been no objections against that decision.

²⁵ The 'Accession Act' (1994:1500), which has the status of ordinary legislation, regulates Sweden's accession to the EU. It enlists the EU Treaties that are valid in Sweden since 1995. The Act states, inter alia, that the Swedish Accession Treaty and the EU's founding treaties etc are legally valid in Sweden and that the EU's decisions are applicable to the extent and to the effect that follows from the enumerated Treaties. In order to become part of Swedish legislation and to become legally applicable in Sweden, the European Council's decision 2011/199/EU had to be included in the list enumerating EU Treaties. This had to be done by an amendment of the Accession Act. It should also be noted that Sweden is a dualist state, which means that international agreements do not automatically become part of the national legal system; in order to have legal effect, they have to be incorporated in the Swedish legal system. This is achieved by introduction of a declaration in Swedish legislation that the international agreement shall have legal effect in Sweden. The provisions in the international agreement then become directly applicable. Another method used is 'transformation'. The international agreement or parts of it are then replicated or rewritten into Swedish legal provisions.

²⁶ Lagrådet consists of judges from the Supreme Court and the Supreme Administrative Court.

The Riksdag adopted the Amendment Act (2012:408) on the 30th of May 2012,²⁷ following a debate in the Riksdag on the same day.²⁸ The Amendment Act was approved with 295 for and 19 against (35 absent). Only the Left Socialist Party (the former Communist Party) voted against the Amendment Act.

RATIFICATION DIFFICULTIES

V.3

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

The ratification of the 136 TFEU amendment has not given rise to any political or legal difficulties.

A number of proposals from individual members of the Parliament were submitted to the Riksdag ('motions').²⁹ A proposal from MPs from the Left Socialist Party (Vänsterpartiet),³⁰ dismissed the government's proposal on the ground that the ESM Treaty states that the private sector shall follow IMF practice; that funding may be given to recapitalisation to financial institutions; that the funding shall be provided under too strict conditions; and that the ESM and its organs shall be given legal immunity.³¹ The MPs argued in alternative that the Riksdag should only approve the Government's proposal under the condition that the Government does not ratify the Treaty amendment until a legally binding social protocol has been introduced on an EU level, and that legal guarantees are introduced in the EU Treaties to protect the Swedish system of social bargaining (see the *Laval* Case). The Committee on Foreign Affairs replied that the Lisbon Treaty in itself helps to improve working conditions. It pointed out that this was also the case for the Charter of Fundamental Rights which was made legally binding by the Lisbon Treaty. The Committee concluded that the Treaty amendment should not be made conditional upon the introduction of a legally binding protocol on EU level.

In another motion, also from the Left Party, it was argued that Sweden should negotiate a formal derogation from the euro cooperation (like Denmark and the UK) as a condition to ratify the Treaty amendment.³² The Committee on Foreign Affairs pointed out that after the Swedish referendum on the euro in 2003, the Committee had declared that a formal derogation was not a necessity. The Committee explained that the current Treaty amendment does not change this, and that there was no reason in this context to raise the issue of a formal derogation from the Swedish euro participation. In a proposal from MPs from the far-right party the 'Swedish

²⁷ Riksdagsskrivelse, 2011/12:236, Regeringen, Statsrådsberedningen.

²⁸ Riksdagens protokoll 2011/12:120, the 30st of May, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/_GZ09120/

²⁹ See footnote 12.

³⁰ Motion 2011/12:Fi9, Jonas Sjöstedt and others (Vänsterpartiet).

³¹ An MP from the Green Party (Miljöpartiet) also submitted criticism on the ESM's legal immunity, see footnote 18.

³² Kommittémotion 2011/12:Fi210 by Jonas Sjöstedt and others (V).

Democrats' (Sverigedemokraterna),³³ it was argued that that Sweden should refrain from any commitments such as ESM because there was a risk that Sweden would be 'drawn deeper into the euro cooperation'. They noted that there are provisions in the ESM Treaty that provides that the decision shall be taken with qualified majority.

In a motion by an MP from the Green Party, it was argued that democratic principles should be respected when implementing measures to address the debt crisis in Europe, that there should be a proclamation on transparency, and that the democratic control of the ESM should be strengthened.³⁴ As a reply to this criticism, the Committee of the Constitution emphasised that the approval of the Treaty amendment does not prevent the government from promoting the respect for democratic principles when crisis legislation is implemented in the framework of the EU cooperation.

The Committee on Foreign Affairs emphasised the importance of the establishment of the ESM. It underlined the significance of a transparent Europe, and it held that the principle of transparency should be a fundamental principle in the European cooperation on financial stability and long-term competitiveness.

The Committee on Finance decided to recommend the Parliament to adopt the Amendment Act.³⁵ It explained that the Article 136 amendment opens up for the establishment of the ESM, and that this was a way of providing the euro states with the possibility to build up emergency measures necessary to protect the currency and the economy in times of economic crises. It further explained that the amendment should be seen in the light of the sovereign debt crisis in Europe. The Committee believed it was important that Sweden participates in providing the possibility to build up the stability mechanism. The Committee dismissed the proposals by individual MPs on a declaration on the governance of the ESM, on the future of the EFSM, and a Swedish derogation from the EMU.

The debate in the Chamber was largely the same as the ones in the Committees.

CASE LAW

V.4

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

There are no cases on the 136 TFEU Treaty amendment.

MISCELLANEOUS

V.5

³³ Motion 2011/12:Fi10, Erik Almqvist and Johnny Skalin (SD).

³⁴ Motion 2011/12:Fi11 Per Bolund (MP). The Green Party is an EU sceptical party; until 2008, its party programme demanded a Swedish withdrawal from the EU.

³⁵ Finansutskottets betänkande, 2011/12:FiU40, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/201112Godkannande-av-Europeis_GZ01FiU40/

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

No other relevant information.

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 SWEDEN 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.

Sweden does not participate in the Euro-Plus-Pact.

MISCELLANEOUS

VI.2

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

Sweden does not participate in the Euro-Plus-Pact.

VII SIX-PACK

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

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

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

NEGOTIATION

VII.1

WHAT POSITIONS DID SWEDEN ADOPT IN THE NEGOTIATION OF THE ‘SIX-PACK’, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE ‘SIX-PACK’ FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The Swedish government detailed its views in a memorandum issued to inform the Riksdag.³⁶ The Government welcomed all six Commission proposals. It was of the view that financial policy should continue to be within the sphere of Member State competence, but that the national legislation in several Member States was not sufficient to secure a responsible financial policy in the EU.

The Commission proposals were discussed in the Committee of Finance, which supported the Government’s Opinion.³⁷ A representative from the Left Party was dissenting. She argued that it was ultimately a question of democracy and national sovereignty. By introducing sanctions, the people in some Member States would suffer for something that they had not caused themselves.³⁸

DIRECTIVE 2011/85/EU

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

³⁶ See Faktapromemoria 2010/11:FPM7, Kommissionens förslag om förstärkt ekonomisk styrning Available at: http://www.riksdagen.se/sv/Dokument-Lagar/EU/Fakta-PM-om-EU-forslag/Kommissionens-forslag-om-forst_GY06FPM7/.

³⁷ Utskottsdokument 2010/11:243AF3, Protokoll utskottssammanträde 2010/11:4, October 26, 2010.

³⁸ See the dissenting opinion by Ulla Andersson (V).

IMPLEMENTATION

VII.2

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

In December 2012, the Government decided to set up a parliamentary ‘Inquiry Body’ (called the ‘Budget Process Committee’), which has the task to review the budget process in light of Directive 2011/85/EU.³⁹ The Budget Process Committee presented an interim report on the 3rd of May 2013,⁴⁰ and the final results on the 3rd of October 2013.⁴¹ The interim report includes the proposed amendments of the Swedish legal framework in light of the EU Directive. The Committee emphasises that the Swedish budgetary framework ‘has proven to function well and in line with the Directive’. It concludes:

‘The Committee’s overall assessment is that the Swedish budgetary framework fulfils the requirements of the EU Directive in all areas, except for the requirement concerning regular, objective and comprehensive evaluations of the Government’s macroeconomic and budgetary forecasts. The Committee therefore proposes an amendment to the Budget Act (2011:203) to the effect that the Government is obliged to regularly furnish evaluations of the forecasts presented in the Budget Bill and the Spring Fiscal Policy Bill.’

The Budget Process Committee suggested only some minor amendments of the Budget Act (ordinary legislation). It pointed out:

‘Certain requirements in the EU Directive have no equivalent in Swedish law or legislative history. However, it is the Committee’s view that Sweden, through its practice, fulfils almost all of these requirements. This practice is assessed as being so well-established that deviations from the established procedure are judged likely to generate public criticism, from such sources as independent monitors of the application of the budgetary framework by the Riksdag and the Government. This warrants that the practice can be viewed as being sufficiently binding that most of these requirements can also be considered to be fulfilled.’⁴²

³⁹Dir. 2012:124.

⁴⁰ “Budgettramverket - uppfyller det EU:s direktiv?”, SOU 2013:32 (published in the Swedish Government Official Reports series) http://www.riksdagen.se/sv/Dokument-Lagar/Utdredningar/Statens-offentliga-utredningar/Budgettramverket---uppfyller-de_H1B332/?html=true. For a summary of the report in English, see <http://www.regeringen.se/content/1/c6/21/61/43/62e1236f.pdf>

⁴¹ “En utvecklad budgetprocess - ökad tydlighet och struktur,” SOU 2013:73. For a summary in English, see A developed Budget Process - Increased Transparency and Structure, summary SOU 2013:73. Available at: <http://www.regeringen.se/content/1/c6/22/60/75/7fe3c7e7.pdf>

⁴² See the English Summary of the Budget Process Committee’s interim report on the Swedish implementation of Council Directive 2011/85/EU, page 10.

The Budget Process Committee's report was only one of the first steps in the legislative procedure: the inquiry stage. This is the stage when the issue is analysed and examined by an Inquiry Body, which, in this case, operates independently of the Government. The Inquiry Bodies can be of different kinds; in this case, a parliamentary Inquiry Body was set up in order to gain broad political support in the Parliament. The Budget Process Committee's report was the result of this first step.

The next step is the 'referral process', where the report is sent out to stakeholders such as government agencies, interest groups, and local authorities. Through this process, the Government gets input to its draft proposals (if the referral bodies are very critical to the report, the Government may even choose not to draft a proposal). Thereafter, the responsible Ministry of Government (in this case, the Ministry of Finance) drafts a bill.

The Government presented its proposal in September 2013.⁴³ In its proposal, the Government explained that the Swedish legislation already conforms to most of the obligations set up in the EU Directive (this was also the view of the Budget Process Committee). In the area of forecasts, however, the Government was of the view that it was necessary to introduce some minor additional measures and clarifications in the Budget Act (2011:303) (which is an ordinary legal act). The Government proposed introducing an obligation to provide evaluations of the forecasts presented in the 'Spring Fiscal Policy Bill' (presented by April every year) and the 'Budget Bill' (presented by September every year). The Government also proposed to codify some current practice. The Government suggested that the Budget Act should specify that the Government shall provide forecasts of the macroeconomic development and the revenues, expenditure and debts in the public sector. In the Spring Fiscal Policy Bill, the Government is also to present an assessment of the long-term sustainability of general Government finances.⁴⁴

The Parliament approved the Government's Proposal on December 18, 2013.⁴⁵

IMPLEMENTATION DIFFICULTIES

VII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID SWEDEN ENCOUNTER IN THE IMPLEMENTATION PROCESS, IN PARTICULAR IN RELATION TO IMPLICATIONS OF THE

⁴³ The Government's Proposal (Budgetpropositionen för 2014), Prop. 2013/14:1, September 18, available at: <http://www.regeringen.se/content/1/c6/22/37/09/c4d88fcf.pdf> at Para 12.1, p. 655.

⁴⁴ The Government submitted its proposal to the ('permanent') parliamentary Committee on the Constitution and the Committee of Finance. See Konstitutionsutskottet betänkande 2013/14:KU1, available at: http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Utgiftsomrade-1-Rikets-styrels_H101KU1/?html=true ; and Finansutskottets yttrande, Yttrande 2013/14:FiU10, Ändring i Budgetlagen, available at: http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Yttranden/ndring-i-budgetlagen_H105FiU2y/ The Committee on the Constitution submitted an Opinion to the chamber of the Parliament for approval, suggesting that the Parliament should approve the Government's Proposal.

⁴⁵ Riksdagsskrivelse 2013/14:139.

DIRECTIVE FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

As explained in Question VII.2, the ‘Budget Process Committee’ (which consisted of representatives from all political parties in the Parliament) came to the conclusion that Swedish legislation and practice already conforms to the Directive. Only minor changes in the budget law were needed; this might explain the lack of debates on (budgetary) sovereignty and constitutional law. It should be noted, however, that the Left Party’s representative issued a dissenting opinion attached to the Committee report.⁴⁶ He argued that the Member States’ budgetary frameworks should be decided on a national level and that the Directive is a sign of a more ‘federal EU’, which is something the Left Party opposes.

It could also be noted that during the ‘referral process’, some stakeholders opposed the Budget Process Committee’s view that the existence of ‘practice’ was an appropriate way to implement the Directive.⁴⁷

MACROECONOMIC AND BUDGETARY FORECASTS

VII.4

WHAT INSTITUTION WILL BE RESPONSIBLE FOR PRODUCING MACROECONOMIC AND BUDGETARY FORECASTS (ARTICLE 4(5) DIRECTIVE 2011/85/EU)? WHAT INSTITUTION WILL CONDUCT AN UNBIASED AND COMPREHENSIVE EVALUATION OF THESE FORECASTS (ARTICLE 4(6) DIRECTIVE 2011/85/EU)?

In the view of the Budget Process Committee (see Question VII.2), ‘the Swedish budgetary framework fulfils the requirements of the EU Directive in all areas, except for the requirement concerning regular, objective and comprehensive evaluations of the Government’s macroeconomic and budgetary forecasts’. It is the Government that produces the forecasts (see Question II.1).

The Committee proposes an amendment of the Budget Act (2011:203), obliging the Government to regularly furnish evaluations of the forecasts. The Committee also proposes that the Government should be obliged to explain any significant differences relative to the forecasts produced by the European Commission. It further proposes to ‘somewhat clarify the regulations guiding the Government’s forecasts’, but the amendments of the Budget Act would only be minor. The Committee proposes that the Budget Act shall explicitly state that the Government is also to present forecasts of macroeconomic developments and public sector revenues, expenditures and debts. This is, however, in line with current practice, and the amendment of the Budget Act would only clarify *status quo*.

⁴⁶ See the dissenting opinion by Jacob Johnson (V).

⁴⁷ See the opinion of the Swedish Institute for European Policy Studies, available at: http://www.sieps.se/sites/default/files/Budgetramverket_uppfyllerdetEUDirektiv.pdf.

Assessments of the Government's forecasts are also conducted by the National Institute of Economic Research (Konjunkturinstitutet)⁴⁸ and the Swedish Fiscal Policy Council (Finanspolitiska rådet, see also Question VII.5).

FISCAL COUNCIL

VII.5

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

In the view of the Budget Process Committee (see Question VII.2), the Swedish framework fulfils the requirements of the Directive concerning independent monitoring of the fiscal rules.⁴⁹ The Budget Act (2011:203) provides that the Swedish National Audit Office (Riksrevisionen)⁵⁰ has the task to examine the central government annual report and to present a follow-up of the budget policy targets adopted by the Riksdag.

The Swedish National Audit Office (NAO) is an independent authority under the Parliament. Its independence is protected by the Constitution. Its task is to ensure that the Parliament receives an independent audit of the state finances. In addition, it audits the government authorities' efficiency and engages in international operations and collaborates with other Audit Institutions around the world. Three Auditors General, who are appointed by the Parliament for a term of 7 years, manage the NAO. The NAO submits financial audit reports to the Government and Annual Reports to the Parliament. It also submits follow-up reports on the findings and recommendations in the audit reports.

The Budget Process Committee also emphasises the role of the Swedish Fiscal Policy Council (FPC; Finanspolitiska Rådet),⁵¹ which shall perform an independent evaluation of the Swedish Government's fiscal policy. Its main task is to evaluate whether the government's policies are consistent with the fiscal policy targets.⁵² The FPC publishes a report on the Swedish fiscal policy in May each year.⁵³

⁴⁸ See the webpage of the National Audit Office: <http://www.konj.se/698.html>

⁴⁹ See the English Summary of the Budget Process Committee's interim report on the Swedish implementation of Council Directive 2011/85/EU, page 19.

⁵⁰ See the webpage of the Swedish National Audit Office: <http://www.riksrevisionen.se/en/Start/About-us/>

⁵¹ See the webpage of the Swedish Fiscal Policy Council: <http://www.finanspolitiskaradet.se/english/swedishfiscalpolicycouncil/abouttheswedishfpc.4.6f04e222115f0dd09ea8000950.html>

⁵² The FPC shall also examine the clarity of the Government's budget bill, evaluate the quality of the economic forecasts on which the Government's assessments are based, and stimulate public debate on economic policy.

⁵³ Förordning med instruktion för Finanspolitiska Rådet (SFS 2011:446).

The FPC was established in August 2007, as a Government Agency. It consists of six members, which are appointed by the Government for a period of 3 years (6 years for the FPC President). It should be pointed out that in carrying out their responsibilities, Government Agencies should not take instructions from the Government; they are considered legally and politically independent.

The Budget Process Committee does not propose any adaption of these two bodies.

Note: On the FPC's website, there is a link to Professor Simon Wren-Lewis list of Fiscal Policy Councils in different countries (and also academic papers regarding the presence of Fiscal Policy Councils).⁵⁴

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 SWEDEN 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?

Prior to the adoption of the six-pack, three of Sweden's biggest trade-unions sent a formal letter to the Swedish Parliament's EU Committee, arguing that the Commission's proposal (COM(2010)527 final) implied that the EU would have a say in setting the Swedish level of income. They strongly opposed such a development.

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

⁵⁴ See the Swedish Fiscal Policy Council's website: <http://www.finanspolitiskaradet.se/english/swedishfiscalpolicycouncil/fiscalpolicycouncilsabroad.4.6f6062da12c1b40043e800010053.html> and Professor Simon Wren-Lewis's website <https://sites.google.com/site/sjqwrenlewis/fiscal-councils>.

ACCOMMODATE THE AMENDED MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) PROCEDURE?

In its interim report, the Budget Process Committee (see Question VII.2) also considered the fact that there are no provisions which clarify the Riksdag's responsibility to ensure there is a medium-term perspective. However, for the last 15 years, there is an established practice to use of medium-term objectives. The Committee considers that explicit provisions can be introduced in the Riksdag Act (Constitutional instrument) to 'better reflect' this practice. It suggests that such provisions could govern how the Riksdag would decide on the targets and also the relationship between the targets and annual budgetary decisions. The Committee concludes that these questions should be addressed in the Committee's main report and not in its interim report (see Question VII.2).

EUROPEAN SEMESTER

VII.8

WHAT CHANGES HAVE TO BE MADE TO THE RULES AND PRACTICES ON THE NATIONAL BUDGETARY TIMELINE TO IMPLEMENT THE NEW RULES ON A EUROPEAN SEMESTER FOR ECONOMIC POLICY COORDINATION (SECTION 1-A, ARTICLE 2-A CONSOLIDATED REGULATION 1466/97)?

The Budget Process Committee (see Question VII.2) has in its interim report also considered the question of whether it is necessary to clarify the relationship between the national budget process and the European Semester.⁵⁵ It pointed out that while there is a limited time for coordination between the national budget process and the European Semester, the Government's practice has now evolved in a way so that consistency can be ensured. The Committee further points out that the Government informs and consult with the Riksdag on the European Semester in accordance with the relevant provisions of the Constitution (in particular, the Instrument of Government and the provisions of the Riksdag Act), and that no further regulation is needed in this regard.

MTO DIFFICULTIES

VII.9

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

No debates so far, see explanation under Question VII.2.

RESPECT MTO

VII.10

⁵⁵ See the English Summary of the Budget Process Committee's interim report on the Swedish implementation of Council Directive 2011/85/EU, page 21.

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

The Budget Act (2011:203) provides the MTOs.

CURRENT MTO

VII.11

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

There are two main budget policy objectives. First, the Swedish Budget Act (2011:203) provides that the Government has to submit proposals to the Riksdag on surplus targets (Chapter 2, Article 1), which has a medium-term definition. The surplus target was introduced in the year of 2000, and since then, it has remained unchanged. The budget surplus is set to 1 % of GDP on average over the business cycle. The Government aims to maintain this level as long as it is necessary to enable general government finances to develop in a sustainable way. This provides a considerable margin for increased expenditure and lower tax revenue during a recession. The Government can run a structural deficit during a recession provided that this is counterweight by a correspondingly greater surplus during the next upturn. Over time, the 1 % level can also contribute to a reduction of the central government debt.

In order to clarify the difference between the national framework and the obligations imposed on Sweden as a Member of the EU, the convergence programme 2012 makes a distinction between the surplus target and the MTO. Sweden's MTO is set to minus 1 % of GDP in accordance with estimations by the European Commission. However, this is seen as a minimum requirement; Sweden's own objective, the surplus target of 1 % of GDP, is considered more ambitious.

Second, the Budget Act provides that the Government in its Budget Bill (see Question II.1) shall propose expenditure ceilings for the third year ahead (Chapter 2, Article 2). This means that the budget for each year is constrained by the three previous years. The system with expenditure ceilings have been applied since 1997, but it only became mandatory in 2010. The Budget Act does not explicitly provide that the Riksdag must adopt the Government's proposals, but this is assumed.

The Budget Act also provides that the Government (in the Budget Bill) presents an estimate for the distribution of expenditures between expenditure areas. This shall be done in the second and third budget years ahead.

As stated in Question VII.7, there are no plans to revise the Medium-term Budgetary Objectives.

ADOPTION MTO

VII.12

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

As explained in Question VII.11, it is the Budget Act that provides the Medium-term Budgetary Objectives. This has the status of ordinary law and can be amended by the Riksdag. It is the Government that implements the objectives, after the approval of the Riksdag.

REGULATION No 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF>

EDP DIFFICULTIES

VII.13

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

Not relevant for Sweden.

REGULATION No 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

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

SANCTIONS

VII.14

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

Not relevant for Sweden.

GENERAL CHANGES

VII.15

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

Not relevant for Sweden.

MISCELLANEOUS

VII.16

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

No other relevant information.

VIII ESM TREATY

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

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

and

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SWEDEN ENCOUNTER IN THE NEGOTIATION OF THE ESM TREATY, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

Not relevant for Sweden.

RATIFICATION

VIII.2

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

Not relevant for Sweden.

RATIFICATION DIFFICULTIES

VIII.3

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

Not relevant for Sweden.

CASE LAW

VIII.4

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

No.

CAPITAL PAYMENT

VIII.5

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

Not relevant for Sweden.

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.

Not relevant for Sweden.

APPLICATION DIFFICULTIES

VIII.7

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

Not relevant for Sweden.

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?

Not relevant for Sweden.

MISCELLANEOUS

VIII.9

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

No other relevant information.

IX FISCAL COMPACT

The Fiscal Compact (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) was signed on March 2, 2012. Negotiations on this Treaty began between 26 member states of the EU (all but the UK) after the 8/9 December 2011 European Council. 25 contracting parties eventually decided to sign the Treaty (not the Czech Republic).

After ratification by the twelfth Eurozone member state (Finland) in December 2012, the Fiscal Compact entered into force on 1 January 2013. For several contracting parties the ratification is still on-going.

(<http://www.european-council.europa.eu/eurozone-governance/treaty-on-stability?lang=it>)

NEGOTIATION

IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SWEDEN 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.

In its proposal for a Riksdag decision, the Government explained that it decided to support the adoption of the Treaty as Sweden has a strong interest in a well-functioning Eurozone.⁵⁶ It pointed out that it should be the Euro members themselves that decide on measures how to improve economic development, and that the Treaty can help prevent future crises and strengthen the fiscal framework to achieve sustainable public finances in the euro area.

The Swedish Government was also of the opinion that the Treaty should not lead to any legal obligations for non-euro States. Further, it was also important that the Treaty would clearly recognise the role of social partners in labour relations, and that non-euro States would be allowed to participate in certain euro summits. The government was critical to the initial proposal that countries would have to introduce the Fiscal Compact Treaty rules in their national constitutions. The government met all its priorities.

The government informed the Parliamentary Committee on Finance, Committee on the Constitution, and the Committee on EU Affairs during the negotiations. It was the view of the Government that Sweden would not declare itself legally bound by the Treaty provisions. The debate only took place during the ratification process.

⁵⁶ See the Government's proposal, Proposition 2012/13:39, http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/Fordraget-om-stabilitet-samor_H00339/?html=true

RATIFICATION

IX.2

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

It is the position of the Government and the Riksdag that Sweden has no legal obligations arising from the Treaty as long as Sweden does not have the euro as its currency or declare itself bound by the Treaty provisions. Sweden has not made such a declaration. The Government was therefore of the view that the Treaty should be approved by the Riksdag according to the procedure in Chapter 10, Article 3, first indent, of the Instrument of Government (Regeringsformen), meaning that only a simple majority would be required.⁵⁷ If the treaty provisions would become legally binding for Sweden, amendments have to be made in the Budget Act (2011:203).

The Fiscal Compact Treaty was debated in the Chamber of the Riksdag on the 6th of March 2012⁵⁸ and approved on the 7th of March.⁵⁹

RATIFICATION DIFFICULTIES

IX.3

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

There have been no political or legal difficulties during the ratification of the Fiscal Compact.

The Government's Proposal and the Motions

The Government's proposal⁶⁰ to the Riksdag emphasised that the Treaty does not create any legal obligations for non-euro states. It argued that by ratifying the Treaty, Sweden gives its support to the work of the Eurozone to strengthen the economic-political framework in the Eurozone, and at the same time, Sweden preserves its influence, and it prevents a division between the Euro members and the non-euro members. The Government welcomed the fact that the Treaty is clearly linked to EU law and the processes that already exist for economic policy coordination. In the Government's view, this can contribute to cohesion within the EU and ensures compliance with existing rules.

⁵⁷ Ibid. This is further explained under Question V.2.

⁵⁸ Riksdagens protokoll 2012/13:73, the 6th of March 2012, debate under paragraphs 10 and 13, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Protokoll/_H00973/

⁵⁹ Riksdagsskrivelse 2012/13:167, http://www.riksdagen.se/sv/Dokument-Lagar/Kammaren/Riksdagsskrivelser/201213167_H00K167/ In the Chamber, 251 voted yes, 23 voted no, 37 abstained from voting, and 38 were absent.

⁶⁰ Ibid. See also the memo prepared by the Government, Ds 2012:30, the 13th of July, 2012, <http://www.regeringen.se/sb/d/15681/a/196897>.

A number of proposals from individual members of parliament were submitted to the Riksdag.⁶¹ A proposal by some MPs from the Left Party,⁶² requested the Riksdag to disapprove the Government's proposal to approve agreement. The MPs were of the view that the Treaty would restrict Member States' competence on fiscal policy matters. They also argued that there was an obvious risk that the Treaty would consolidate a policy based on austerity measures and that this could hamper economic recovery in the Eurozone. This could subsequently also have negative effects on the Swedish economy, which is an export-dependent economy.

Another proposal came from two MPs from the far-right party 'Swedish Democrats'.⁶³ Also they requested the Riksdag to dismiss the Government's proposal. They argued that each country must have the right and possibility to independently adopt its monetary and fiscal policy. They pointed out that the EMU implies that there is a central procedure for countries with very different prerequisites. According to the MPs, this is a threat to peace because it undermines national sovereignty and trust between the countries. In the MPs' view, the Fiscal Compact would strengthen this development and the EU's competence would increase at the Member States' expense. The MPs also opposed further centralization of the EMU since, they argued, Sweden does not have a formal, permanent derogation from the EMU.

A proposal by some MPs from the central-left Social Democrats⁶⁴ set out that Party's requirements on the Treaty in order to give its support in the Riksdag: Swedish influence would have to be ensured; Sweden should not be bound by the Treaty's fiscal rules; and the Treaty should respect the role of the social partners in their national systems. Since these requirements were met, they supported Sweden's accession to the Treaty. The MPs emphasised that the fiscal rules must not become legally binding to Sweden and that if they are to be incorporated in the EU Treaties, the Riksdag must give its approval to any treaty change.

A proposal by MPs from the Green Party rejected the Government's proposal.⁶⁵ They argued that the Government should negotiate a Swedish permanent derogation from the EMU, and that Sweden should not make any commitments as long as Sweden does not have such derogation. They welcomed in principle the Treaty's balanced budget rule as a means to bring order to the sovereign debt problems in certain countries. However, they argued that there could be a risk that the target for the budget balance is set as an annual structural balance: there is no established definition of the structural balance, and this may open the way to manipulation. Further, the

⁶¹ See footnote 15.

⁶² Motion 2012/13:Fi5 by Ulla Andersson and others (Vänsterpartiet), http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Motioner/Fordraget-om-stabilitet-samor_H002Fi5/?text=true

⁶³ Motion 2012/13:Fi6 by Sven-Olof Sällström and Johnny Skalin (both Sverigedemokraterna), http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Motioner/Fordraget-om-stabilitet-samor_H002Fi6/?text=true

⁶⁴ Motion 2012/13:Fi7 by Fredrik Olovsson and others (S), http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Motioner/Fordraget-om-stabilitet-samor_H002Fi7/?text=true

⁶⁵ Motion 2012/13:Fi8 by Per Bolund and others (Miljöpartiet).

annual balanced budget limits the scope for government incentives in rapid decline in demand.

In another proposal from the Green Party,⁶⁶ it was proposed that the Government should negotiate derogation from the third stage of the EMU, similar to the UK or Denmark. In 2003, Sweden held a referendum on the introduction of the euro with a negative outcome. In the view of the MPs, this should lead to a formal derogation from the third stage of the EMU and to not negotiate such derogation would demonstrate a lack of respect for democracy. The MPs further pointed out that Sweden is legally obliged to join the EMU. The EU has passively accepted this and it is further unlikely that other Member States would force Sweden to join. However, argued the MPs, since Sweden is legally bound under the EU Treaties, there is a risk that this may be invoked in different contexts and this necessitates a legally binding derogation.

The Committees

Before the Riksdag could decide on the proposal, it had to be prepared by a Parliamentary committee. In its Opinion, the Committee on Finance⁶⁷ gave its support to the Government's proposal. It pointed out that the Treaty only becomes legally binding to Sweden the day Sweden introduces the euro as a currency or declares itself bound by the Treaty rules. The Committee shared the Government's view that Sweden should not declare itself bound by the rules. In the view of the Committee, it was a prerequisite for the Riksdag's approval of the Treaty that the Treaty does not affect Sweden's sovereignty in fiscal policy matters. The Committee was of the view that additional considerations and an approval of the Riksdag would be required in case the Treaty rules are to become legally binding for Sweden, and likewise, that the Riksdag's approval would be necessary in case the rules of the Fiscal Compact Treaty would be inserted into the EU Treaties. The Committee proposed that the Riksdag would make a declaration to the Government that the Riksdag's approval is necessary if Sweden becomes legally bound by the Fiscal Compact Treaty or by EU Treaty rules equivalent to those in the Fiscal Compact Treaty.

The Committee on Finance also asked the Committee on the Constitution for an Opinion. The Committee on the Constitution mainly considered the constitutional requirements for the Swedish approval of the Treaty.⁶⁸ It held that the Riksdag could decide by simple majority since the Treaty neither presupposes an amendment of the Constitution nor imply a transfer of competence (see Question V.2). The Committee pointed out that the Treaty rules only could become binding if Sweden introduces the euro or declare it legally bound by the rules. The Committee held that in such a case, it would be necessary that the Riksdag further considers and approves the rules.

⁶⁶ Motion 2012/13: Fi295 by Ulf Holm and Mats Pertoft (both Miljöpartiet).

⁶⁷ Finansutskottets betänkande, 2012/13:FiU28, http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/201213Fordraget-om-stabilitet_H001FiU28/

⁶⁸ Konstitutionsutskottets betänkande, 2012/13:KU4. http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/201213Fordraget-om-stabilitet_H001FiU28/

The Committee further held that the Government should inform and consult with the Riksdag before Sweden participates in euro summits. The same procedure should apply as before EU summits, despite the fact that Sweden's participation in the euro summits is based on the Fiscal Compact Treaty and not on EU rules. The Committee explained that the Fiscal Compact Treaty is characterised by an institutional and legal infinity to the EU cooperation and EU law, and it would therefore only be necessary if the same procedure would apply. If necessary, the Riksdag Act (a constitutional instrument) needs to be amended, this should be considered in due course.

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 SWEDEN? 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.

Sweden does not intend to make any changes in its national legislation. There is already, since the year of 2000, a budget-balance requirement on local governments. Moreover, it is the position of the Swedish Government that the Fiscal Compact Treaty does not give rise to legal obligations for Sweden.

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.

It is the position of the Swedish Government that the Fiscal Compact Treaty does not give rise to legal obligations for Sweden.

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)?

Sweden is not legally bound by the Fiscal Compact, and does not intend to make any changes in national legislation.

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 SWEDEN 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?

See the answers to questions IX.5 and IX.6.

MISCELLANEOUS

IX.9

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

No other relevant information.

X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT

A number of member states have received direct financial assistance through balance of payments support (Hungary, Rumania, Latvia), bilateral agreements/IMF (Greece), the temporary emergency funds/IMF (Ireland, Portugal, Greece), and the permanent emergency fund (Spain and Cyprus).

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

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.

Not relevant for Sweden.

NEGOTIATION

X.2

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

Not relevant for Sweden.

STATUS INSTRUMENTS

X.3

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

Not relevant for Sweden.

TRANSPOSITION NATIONAL LEGAL ORDER

X.4

CONSIDERING THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS, WHAT

PROCEDURE DOES THE CONSTITUTION PRESCRIBE FOR THEIR ADOPTION/TRANSPPOSITION INTO THE NATIONAL LEGAL ORDER?

Not applicable.

ROLE PARLIAMENT

X.5

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

Not relevant for Sweden.

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

Not relevant for Sweden.

MISSIONS

X.7

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

Not relevant for Sweden.

CASE LAW INTERNATIONAL INSTRUMENTS

X.8

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

Not relevant for Sweden.

CASE LAW IMPLEMENTING MEASURES

X.9

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

No.

BOND PURCHASES ECB

X.10

DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE

SWEDEN

MOMENT WHERE THE EUROPEAN CENTRAL BANKS STARTED BUYING GOVERNMENT BONDS ON THE SECONDARY MARKET (THROUGH THE SECURITIES MARKETS PROGRAMME, SMP).

Not relevant for Sweden.

CONDITIONALITY BOND PURCHASES ECB

X.11

WHAT NATIONAL POLICY MEASURES HAVE BEEN REQUESTED BY THE ECB IN EXCHANGE FOR THE ACQUISITION OF GOVERNMENT BONDS ON THE SECONDARY MARKET? HOW HAVE THESE REQUESTS BEEN SUBJECT TO DEBATE IN LIGHT OF THEIR IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

Not relevant for Sweden.

MISCELLANEOUS

X.12

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

Not relevant for Sweden.