



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

***THE UNITED KINGDOM***

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## I POLITICAL CONTEXT

### POLITICAL CHANGE

#### I.1

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

The UK's last general election was on 6 May 2010. None of the parties achieved the 326 seats needed for an overall majority. The Conservative Party won 306 seats and so a coalition government was formed with the Liberal Democrat Party. Coalition governments are unusual in the British Parliamentary System. Governments are elected on the basis of the first past the post system which usually leads to one party having a majority.

The Coalition Agreement ruled out Britain joining the euro and further agreed that there would be "no further transfer of sovereignty or powers over the course of the next Parliament." It also set out the intention to "amend the 1972 European Communities Act so that any proposed future treaty that transferred areas of power, or competences, would be subject to a referendum" and to "examine the case for a United Kingdom Sovereignty Bill to make it clear that ultimate authority remains with Parliament."<sup>1</sup>

The European Union Act 2011 intended to implement the Coalition Agreement regarding the EU. In introducing the Bill, the Secretary of State for Foreign and Commonwealth Affairs (William Hague (Conservative)) stated that it intended to address the problem that whereby the EU has "a greatly enlarged place in our national policy and politics" there is also a "growing disconnection between...- the British people, the voters – and the EU's institutions". He also noted that there is a "growing sense... that the EU's democratic legitimacy in the country has been weakened."<sup>2</sup>

The European Union Act 2011 has two main sections relevant for present purposes. Firstly, the Act provides for a referendum to be held in certain circumstances before an amendment of the Treaties, before any new Treaty replacing those currently in force and before a decision that would transfer a power or competence from the UK to the EU. Included within the decisions requiring a referendum is the decision to make the euro the currency of the UK (s.6(5)(e)). Secondly, it declared that EU law is only directly effective in the UK by virtue of an Act of Parliament. This aims to reaffirm the sovereignty of the UK

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<sup>1</sup> Liberal-Conservative Coalition Agreement <https://www.gov.uk/government/publications/the-coalition-documentation>

<sup>2</sup> Second Reading in the House of Commons of European Union Bill, HC Hansard 7 Dec 2010, Col 191 <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101207/debtext/101207-0002.htm#10120737000002>

Parliament.<sup>3</sup>

The British Prime Minister, David Cameron, has expressed his intentions to try to negotiate a better settlement for Britain within the EU. On 23<sup>rd</sup> January 2013, Cameron made a speech in which he stated that the time had come either to renegotiate Britain's settlement within the EU or for Britain to leave the EU.<sup>4</sup> More recently, Cameron stressed the benefits of EU membership,<sup>5</sup> but he still maintains that there ought to be a referendum where the public are able to vote either to stay in (on newly negotiated terms) or to leave the EU. The referendum will take place after 2015 if the Conservative Party wins the next election.<sup>6</sup> It is unclear whether the other parties will hold referendums on Europe if they are elected in 2015, when the next general election takes place.

The pressure for an independent Scotland has also increased since the 2010 election. A referendum will be held in 2014. One issue behind the drive for independence is the dissatisfaction of the current austerity programme in the UK.<sup>7</sup> A further issue is EU membership. A recent poll demonstrated that support for Scottish Independence increased depending upon whether it seemed Britain would be a part of the EU.<sup>8</sup>

The coalition government introduced several constitutional reforms which, according to McEldowney were to ensure a strong government in the face of the "political uncertainties that might lead to financial market instability." For instance, there is now a Fixed Term Parliaments Act 2011 which means that it is no longer up to the Government to decide when to call an election: there is a fixed term of five years. An election will only be called before this point if there is a vote of no confidence in the government or a vote by at least 2/3rds of MPs in favour of an early election. The Cabinet Manual has also now been published, putting large parts of the UK constitution into a written form.

## II CHANGES TO THE BUDGETARY PROCESS

### BUDGETARY PROCESS

#### II.1

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

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<sup>3</sup> Section 18 of European Union Act 2011 states "Directly applicable or directly effective EU law (that is, the rights, powers, liabilities, obligations, restrictions, remedies and procedures referred to in section 2(1) of the European Communities Act 1972) falls to be recognised and available in law in the United Kingdom only by virtue of that Act or where it is required to be recognised and available in law by virtue of any other Act."

<sup>4</sup> <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>

<sup>5</sup> <https://www.gov.uk/government/speeches/plan-for-britains-success-speech-by-the-prime-minister>

<sup>6</sup> [http://www.conservatives.com/Policy/Where\\_we\\_stand/Europe.aspx](http://www.conservatives.com/Policy/Where_we_stand/Europe.aspx)

<sup>7</sup> [http://www.snp.org/sites/default/files/document/file/scotlands\\_economy-\\_the\\_case\\_for\\_independence.pdf](http://www.snp.org/sites/default/files/document/file/scotlands_economy-_the_case_for_independence.pdf)

<sup>8</sup> <http://news.stv.tv/politics/225950-poll-possible-eu-withdrawal-could-boost-scottish-independence-support/>

### Institutional Actors<sup>9</sup>

- The Chancellor of the Exchequer
  - The Chancellor's responsibilities cover fiscal policy, monetary policy and ministerial arrangements. This means he frames the budget, sets limits of departmental spending and sets the inflation target which the Bank must set interest rates to meet.<sup>10</sup>
- The Prime Minister
  - Often the Prime Minister is also First Lord of the Treasury and plays an important role in economic and budgetary policy.
- The Treasury
  - The Treasury oversaw regulatory developments and produced various statutory instruments under the Financial Services and Markets Act 2000. It held the FSA to account through, for example, commissioning the National Audit Office's review of aspects of the FSA's work, and commissioned its own periodic reviews of aspects of regulatory policy.
- Bank of England
  - Following the Bank of England Act 1998, its main role was to manage monetary policy. It had a statutory objective to ensure stability of the financial system. It mainly fulfilled this role by producing periodic reports on macro-economic developments and on the activities of financial institutions that might have implications for financial stability.
- Financial Services Authority
  - The FSA is an 'integrated regulator': it regulates all financial institutions carrying on a wide range of investment business, including banking, dealing, and managing financial instruments, and giving financial advice, and it regulates both the manner in which they conduct their business and their financial soundness.

### Budgetary cycle

The British budget is set annually as some taxes such as income tax are annual and need to

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<sup>9</sup> Some of this is take from J. Black, 'The Credit Crisis and the Constitution', in D. Oliver, T. Prosser, and R. Rawlings (eds.), *The Regulatory State*. Oxford: Oxford University Press, 2010, p. 92-128.

<sup>10</sup> <https://www.gov.uk/government/ministers/chancellor-of-the-exchequer>;  
<http://www.parliament.uk/documents/commons-information-office/Chancellor.pdf>

be renewed.

The main stages in the British budgetary process are:<sup>11</sup>

1. In the autumn, six months before the financial year begins, the Chancellor of the Exchequer makes an autumn statement on the state of the economy to MPs. This is an opportunity for the government to have a mini-budget where the government makes certain proposals on budgetary policy and discusses the economic situation.
2. A Supply and Appropriations (Anticipation and Adjustments) Bill is passed. This authorises the Vote on Account for the next financial year which allows the House of Commons to vote to allocate to the government an amount of money up to a certain limit for the early months of the financial year until the Supply and Appropriation (Main Estimates) Bill is passed, setting a new limit. It also votes in adjustments if the government has already overspent. This bill is not debated.
3. The Chancellor makes a Budget Statement to the House of Commons on a Wednesday in March, ahead of the beginning of the fiscal year on 1<sup>st</sup> April. This sets out plans for how to spend the money that will be authorised by the Commons in the coming financial year. This contains all the revenue legislation for the year. This will be debated for four days in the House of Commons and for one day in the House of Lords.
4. After the Budget Statement, proposals for tax changes and tax continuations contained in a Provisional Collection of Taxes motion must be approved. They may come into effect immediately.
5. Within 10 sitting days a series of Ways and Means Resolutions must be passed for each provision imposing a new tax, renewing an annual tax, increasing or widening the burden of an existing tax, or for other provisions that need to be in operation before the Finance Bill is enacted.
6. The Finance Bill is introduced. This gives a permanent legal basis to the Resolutions and the Provisional Collection of Taxes Act 1968 provides the necessary interim authority for taxes to be collected before it is passed. It must have a second reading within 30 days. Then, the non-controversial measures will go to a public bill committee and the rest to the Committee of the Whole House.
7. The Finance Bill goes to the Report stage and third reading on the same day.
8. Around the time the Finance Bill comes out of Committee there is a day to debate the estimates of each department on what it thinks it will spend in the coming year.

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<sup>11</sup> <http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=SN00813>

Supply resolutions voting the main estimates are voted through at the end of the day.

9. Finance Bill usually goes to the House of Lords in July, it is given a second reading debate and then is passed without a vote and without further debate on the same day

10. The Supply and Appropriations (Main Estimates) Bill is introduced and passed without debate or going through committee which authorises the government to spend the amount as decided in the main estimates.

## GENERAL CHANGE

### II.2

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

The Labour Government in 2010 began to put in place a plan to reduce the deficit in the UK.<sup>12</sup>

The Labour government proposed, what later became the Fiscal Responsibility Act<sup>13</sup> in 2010. The aim behind this according to Alistair Darling (then Chancellor of the Exchequer) was to introduce rules and objectives to govern fiscal policy. He claimed frequent changes in monetary policy targets had led to an overall lack of coherence. In the Second Reading in the House of Commons Mark Harper MP (Conservative) commented that the EU had called on the UK to reduce its budget deficit below 3% or to half the level proposed by the Government. In response, Mr Darling stated that “The Commission can make recommendations, but as we are not in the euro, we are not obliged to follow them. We have no plans to change our current policy on that issue. The measures that I have announced in the pre-Budget report and before are sensible and, at this stage and when there is still so much uncertainty as countries emerge from the global recession, it is sensible to reduce the deficit in a way that does not damage our economy.”<sup>14</sup>

The Fiscal Responsibility Act placed obligations on the Treasury to ensure that public sector borrowing as a percentage of GDP reduces annually and is less than half the level in 2010 by 2014. It also placed an obligation on the Treasury to report on progress to Parliament when an Economic and Fiscal Strategy Report, or a Pre-Budget Report are laid before Parliament. The Act also gave Parliament the power to vote on the government’s medium term fiscal plans including proposed borrowing and debt totals. Thus new stages were added to the budgetary cycle.

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<sup>12</sup> This closely follows McEldowney, J.F. ‘The Constitution and the Financial Crisis in the UK: Historical and Contemporary Lessons’ in Contiades (ed) *Constitutions in the Global Financial Crisis* (Ashgate, 2013)

<sup>13</sup> Fiscal Responsibility Act 2010 [http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100003\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100003_en_1)

<sup>14</sup> HC Hansard, 5 Jan 2010, Col 65-66

This has now been replaced by a Budget Responsibility and National Audit Act 2011<sup>15</sup>. This Act introduces a number of new measures. Firstly, the Act sets up the Office of Budget Responsibility. This is an independent financial watchdog and fulfils many of the requirements regarding forecasting contained in Directive 2011/85/EU. Secondly, the Treasury is to create a Charter of Budget Responsibility. This has been done and includes debt management objectives and the fiscal mandate. Finally, the Act also introduces a new stage to the budgetary process: an annual Financial Statement and Budget Report.

There are a number of overlaps between the Budget Responsibility Act 2011 and the Six Pack legislation, but the changes are not directly attributed to the EU measures and in some instances pre-date them.

## INSTITUTIONAL CHANGE

### II.3

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

The three main institutions that from 1997 were responsible for the management and regulation of the UK's financial system were the Bank of England, HM Treasury and the Financial Services Authority (FSA). The Tripartite arrangement, as it became known, was in operation during the 2008 financial crisis and subject to much criticism.<sup>16</sup>

With the crisis came the decision to alter the institutional arrangements. The FSA faced criticism for being too weak. In particular it faced criticism for failing to prevent the collapse of Northern Rock and in not foreseeing the extent of the financial crisis. With the advent of the coalition government in May 2010, wide-ranging and radical reforms were proposed.

In this regard, the decision was made to give the regulatory role of the FSA to the Bank of England. The Financial Services Act 2012 will create an independent Financial Policy Committee (FPC) at the Bank of England. The FPC will have responsibility for preventing credit and asset bubbles and ensuring overall financial stability. The FSA will cease to exist and will be replaced by the following: a Prudential Regulation Authority (PRA) part of the Bank of England, focussing on prudential issues; and a Financial Conduct Authority responsible for business and market conduct.

The appointment of leaders of financial institutions has also come under question. A private members' bill was introduced to Parliament which would require the approval of any Bank

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<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100105/debtext/100105-0011.htm>

<sup>15</sup> [http://www.legislation.gov.uk/ukpga/2011/4/pdfs/ukpga\\_20110004\\_en.pdf](http://www.legislation.gov.uk/ukpga/2011/4/pdfs/ukpga_20110004_en.pdf)

<sup>16</sup> This closely follows McEldowney, J.F. 'The Constitution and the Financial Crisis in the UK: Historical and Contemporary Lessons' in Contiades (ed) *Constitutions in the Global Financial Crisis* (Ashgate, 2013)

of England governor being subject to the House of Commons Treasury Select Committee.<sup>17</sup> This follows the change introduced by the Budget Responsibility and National Audit Act 2011 which requires the Chancellor of the Exchequer when appointing the chair to the Office of Budget responsibility to seek the consent of the Treasury Committee of the House of Commons.

The Budget Responsibility and National Audit Act 2011 led to the creation of the Office of Budget Responsibility. This has four main roles:

- Producing five-year forecasts for the economy and public finances twice a year. The forecasts accompany the Chancellor's Budget Statement (usually in March) and his Autumn Statement (usually in late November) and they incorporate the impact of any tax and spending measures announced by the Chancellor.
- Judging the Government's performance against its fiscal targets.
- Scrutinising the Treasury's costing of tax and welfare spending measures.
- Assessing the long-term sustainability of the public finances:

## 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?*

Section 5 of the European Communities (Amendment) Act 1993 requires that the Government, "shall report to Parliament for its approval an assessment of the medium term economic and budgetary position in relation to public investment expenditure and to the social, economic and environmental goals" as set out in the convergence report. The UK's Convergence Programme itself does not require Parliament's approval, but it must be based upon an assessment of the economic and budgetary position which has been reported to Parliament by the Government for its approval.<sup>18</sup> Thus, a debate needs to occur before the submission of the convergence programme.

At times, the UK Convergence Programme is sent to the EU before its approval by Parliament. For example, in 2011 it was deposited with the EU on 28 April 2011 but only approved by Parliament on a deferred Division on 4 May 2011. Mr Hoban noted that the agreed deadline is 30 April for submission of both Convergence Programmes and National

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<sup>17</sup>See Bank of England (Appointment of Governor) Bill (as introduced) <http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0008/2013008.pdf> and accompanying Research Paper <http://www.parliament.uk/briefing-papers/RP12-35>.

<sup>18</sup> HC Hansard, 23 May 2011 : Column 356W  
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110523/text/110523w0001.htm>

Reform Programmes. In such instances, the Commission is advised that the document must be regarded as a draft until parliamentary scrutiny procedures are completed. This has been established practice in recent years where parliamentary debates on the Government's economic and budgetary assessment have not taken place at the time of submitting the Convergence Programme to the EU.

## MISCELLANEOUS

*II.5*

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND CHANGES TO THE BUDGETARY PROCESS?*

Not applicable

### 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)?*

All legal instruments at national level are ordinary legislation but for the European Union (Approval of Treaty Amendment Decision) Bill 2012 a specific legislative procedure required under the European Union Act was followed (see questions on Treaty Amendment).

#### 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?*

In the UK there is no written constitution, Parliament theoretically is sovereign and so there would be no need for any constitutional amendment to introduce any legislation if Parliament chose to do so.

#### CONSTITUTIONAL CONTEXT

##### III.3

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

The Office of Budget Responsibility already existed before the need for a fiscal council became part of Euro-crisis law.

On 17 May 2010 the Chancellor of the Exchequer announced the formation of an interim Office for Budget Responsibility (OBR), led by a Budget Responsibility Committee (BRC). The interim Committee was chaired by Sir Alan Budd.

#### PURPOSE CONSTITUTIONAL AMENDMENT

##### III.4

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

Not applicable.

#### RELATIONSHIP WITH EU LAW

##### III.5

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

Not applicable.

## ORGANIC LAW

### III.6

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

It's difficult to say, the only change that could really exist would be that Parliamentary sovereignty has been further reduced. This itself is difficult to gauge, in part because control over the UK budget may be seen as a further loss of sovereignty over a new field or as further evidence that Parliament is no longer sovereign so long as Britain remains in the EU.

As McEldowney notes "the UK's Constitution has shown remarkable resilience... Evaluating the long-term constitutional impact is both complex and confusing. Complex, because banking regulation is difficult to assess and the new regulatory arrangements have yet to be put into place; confusing, because constitutional responses are politically driven under a coalition government, unusual in modern times, and hard to evaluate in terms of their enduring legacy."<sup>19</sup>

## 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?*

The main piece of legislation adopted was the Loans to Ireland Act. In Parliament it was stressed that this was a bilateral loan, although fears were raised that the EU may gain jurisdiction over it (see section II.1)

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<sup>19</sup> McEldowney, J.F. 'The Constitution and the Financial Crisis in the UK: Historical and Contemporary Lessons' in Contiades (ed) *Constitutions in the Global Financial Crisis* (Ashgate, 2013)

UNITED KINGDOM

## MISCELLANEOUS

*III.9*

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND TO CHANGES TO NATIONAL (CONSTITUTIONAL) LAW?*

No.

## IV. EARLY EMERGENCY FUNDING

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

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

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

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

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

*([http://www.efsf.europa.eu/attachments/20111019\\_efsf\\_framework\\_agreement\\_en.pdf](http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf) and [http://www.efsf.europa.eu/attachments/faq\\_en.pdf](http://www.efsf.europa.eu/attachments/faq_en.pdf))*

## NEGOTIATION

### IV.1

*WHAT POLITICAL/LEGAL DIFFICULTIES DID THE UNITED KINGDOM 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?*

The EFSM agreement fell between the UK General Election and the formation of the current Coalition Government. It therefore fell to the previous and outgoing administration to participate in the negotiations. Despite this, the Chancellor at the time, Alistair Darling (now Labour MP Edinburgh South West), consulted George Osborne (now the Chancellor) and Vince Cable (from the Liberal Democrats) about the UK's involvement in the EFSM.<sup>20</sup> There is some disagreement about the course the negotiations took.

According to the Prime Minister (David Cameron), George Osborne specifically objected to the agreement when the decision was taken by Alistair Darling.<sup>21</sup> Alistair Darling argued that he agreed with George Osborne that everything would be done to keep Britain out of

<sup>20</sup> Hansard HC Deb 23 May 2011, vol , cols 356-7W

<sup>21</sup> HC Deb 28 March 2011 c35

the main part of the rescue fund. Apparently they discussed, not voting against the EFSM and EFSF but instead abstaining in recognition that Britain could have been outvoted.<sup>22</sup>

Alistair Darling, giving evidence regarding the ECOFIN meeting of 9-10 May 2010, noted that, in a telephone conversation with Commissioner Rehn, he stated that the UK could not be part of a larger European stabilisation fund and that there could be no question of a residual liability. He notes repeated attempts were made by the Commission and others to get the United Kingdom to contribute to this fund.<sup>23</sup> Alistair Darling also notes that a question did arise as to whether or not it was open to the UK to abstain due to election purdah. The concern, however was that if Britain abstained it may have led to Britain being outvoted anyway as the decision was made by qualified majority, and the UK could not have unilaterally opted-out of the mechanism. The result he feared was that the UK would lose influence in the other matters.<sup>24</sup>

The EFSM Regulation did not undergo Parliamentary scrutiny before its adoption. This was due both to the timing of the Council's decision on it, and the speed with which it was adopted<sup>25</sup>

The legal advice pertaining to Mr Darling's decision remains unpublished. Mr Carswell (Conservative MP for Clacton) asked Mr Hoban (Conservative MP for Fareham) why during Parliamentary debates. Mr Hoban stated that policy advice could not be released too soon since it may stifle discussion.<sup>26</sup>

## 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 THE UNITED KINGDOM AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?*

The United Kingdom is not part of the EFSF.

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<sup>22</sup> HC Deb 28 March 2011 c39

<sup>23</sup> Written evidence submitted by Rt Hon Alistair Darling MP for Political and Constitutional Reform Committee - Fourth Report *Lessons from the process of Government formation after the 2010 General Election* <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpolcon/528/528vw11.htm#note1>

<sup>24</sup> Ibid

<sup>25</sup> Noted in a letter from Justine Greeming MP 18 July 2010 (Source: House of Lords European Union Select Committee. Correspondence from 18 May to 30 November 2010 of Economic and Financial Affairs and International Trade (Sub-Committee A) <http://www.parliament.uk/documents/lords-committees/eu-sub-com-a/CWM/CwMSubAMay-Oct10.pdf> )

<sup>26</sup> Hansard HC Deb 23 May 2011, cols 356W

[http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110523/text/110523w0001.htm#column\\_356W](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110523/text/110523w0001.htm#column_356W)

## GUARANTEES

IV.3

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

Not applicable

## ACTIVATION PROBLEMS

IV.4

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

## CASE LAW

IV.5

*IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ABOUT THE EFSM OR EFSF IN THE UNITED KINGDOM?*

No.

## IMPLEMENTATION

IV.6

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

Not applicable

## IMPLEMENTING PROBLEMS

IV.7

*WHAT POLITICAL/LEGAL DIFFICULTIES DID THE UNITED KINGDOM ENCOUNTER IN THE APPLICATION OF THE EFSF?*

Not applicable

## BILATERAL SUPPORT

IV.8

*IN CASE THE UNITED KINGDOM 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?*

The UK provided a bilateral loan to Ireland. The Loans to Ireland Act 2010 gave the UK the authority to do this. The Bill went through Parliament rapidly. All three readings in the House of Commons were on 15<sup>th</sup> December 2010 and all readings in the House of Lords were on 21<sup>st</sup> December 2010. It received Royal Assent on 21<sup>st</sup> December 2010.

### Legal authority

During the Second Reading in the House of Commons, George Osborne noted that he had the authority under common law to make a loan to Ireland and seek retrospective authority from Parliament. In the end, he decided that that would be a wholly inappropriate thing to do and came to Parliament first.<sup>27</sup>

### Speed of passing

Chris Bryant (Labour MP) noted that an emergency procedure was being used to pass the Bill this time around. He requested reassurance that in the future, if similar arrangements are made, that the Government will use the normal procedure. Mr Hoban expressed his agreement that proper Parliamentary scrutiny is important, but said as the Bill was quite short, it could be passed quickly without compromising scrutiny. Peter Bone (Conservative MP) noted that the Bill was not being passed through an emergency measure, but that the Government simply urged the House to get it through quickly. He noted that “it is not the duty of the House to say to the Executive, “It will be jolly nice to get the Bill through quickly.” We are here to scrutinise the Bill... to hold the Government to account.” He further stressed that since the Bill will be certified as a money bill, the House of Lords will be unable to fully scrutinise it. In his opinion, to pass the Bill so quickly was an abuse of Parliament and its democracy.<sup>28</sup>

It is important to note that the comments regarding the use of a quick procedure to pass this Bill do not relate solely to euro-crisis issues. The comments were that generally, in controversial issues, the Government attempted to reduce proper scrutiny.

### Fear of EU jurisdiction

In the Committee Stage, Mr Cash expressed fears that despite the loan purporting to be bilateral, that it would come under EU jurisdiction. Proposed an amendment to stress the bilateral nature of the loan, which would state that it is “other than a loan by virtue of any provision by or under the European Communities Act 1972.”<sup>29</sup> Most tellingly, he said: “If it

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<sup>27</sup> Second Reading, Hansard HC Deb 15 Dec 2010 col929

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0001.htm#10121530000004>

<sup>28</sup> Allocation of Time Motion, Hansard HC 15 Dec 2010, Col 914ff

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0001.htm#10121530000003>

<sup>29</sup> Committee: 1st sitting, Hansard HC Deb 15 Dec 2010 col 976ff

is within the European Union legal framework, that means the European Court will get its hands on it. It may be that if there was a dispute or default or any of the other difficulties that could arise from the agreement in the Bill as enacted.... that will in no way alter the fact that ultimately, as long as parliamentary sovereignty prevails in the light of the European Communities Act, the Supreme Court will not prevent it from falling within the framework of the European Court of Justice.”<sup>30</sup> Mr Hoban later commented that an EU loan made to Ireland through the EFSM would not be a loan from the UK to Ireland and would not be subject to the Bill.<sup>31</sup>

## MISCELLANEOUS

### IV.9

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND THE EFSM/EFSF?*

The Chairman of the Economic and Financial Affairs and International Trade Subcommittee wrote to Justine Greening MP on 27 July 2010<sup>32</sup> regarding the EFSM. He drew attention to the fact that the basis of the Regulation is Article 122(2) TFEU. He noted that the subcommittee has always found inconsistencies between the no-bail out clause for Eurozone countries in Article 125 and the medium term financing facility available to all Member States outside the euro-area. Justine Greening in her response drew attention to the fact that the mechanism would only allow for the provision of loans and not grants and thus require repayment with interest.<sup>33</sup>

During the Committee Stage of the Loans to Ireland Bill Mr Cash expressed the opinion that Article 122 had been wrongly used. In his opinion, it ought only be used for natural disasters and energy supply and things of that kind.<sup>34</sup> He expressed preference for the use of Article 136 TFEU for such measures since then it would only involve the Eurozone. He also felt that there has been an override of the proper scrutiny in the UK of the EFSM/EFSF.

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[http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0003.htm#column\\_976](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0003.htm#column_976)

<sup>30</sup> Committee: 1st sitting, Hansard HC Deb 15 Dec 2010 col 982

[http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0003.htm#column\\_976](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0003.htm#column_976)

<sup>31</sup> Committee: 1st sitting, Hansard HC Deb 15 Dec 2010 col 989

[http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0003.htm#column\\_976](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101215/debtext/101215-0003.htm#column_976)

<sup>32</sup> House of Lords European Union Select Committee. Correspondence from 18 May to 30 November 2010 of Economic and Financial Affairs and International Trade (Sub-Committee A)

<http://www.parliament.uk/documents/lords-committees/eu-sub-com-a/CWM/CwMSubAMay-Oct10.pdf>

<sup>33</sup> As above, letter of 27 September 2010

<sup>34</sup> Hansard HC Deb 15 Dec 2010 col 978

## 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 THE UNITED KINGDOM ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?*

One of David Cameron’s stated aims in attending the European Council Meeting (16–17 December 2010) was “to make sure that Britain is not liable for bailing out the Eurozone when the new permanent arrangements come into effect.”<sup>35</sup>

Most of the debates in Parliament were in relation to ratification.

### APPROVAL

#### V.2

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

The Article 136 TFEU Treaty amendment has been ratified in the UK following the European Union (Approval of Treaty Amendment Decision) Act 2012 (not to be confused with the European Union Act 2011).

The European Union Act 2011 sets out 3 requirements for the approval, by the UK, of a decision under Article 48(6) TEU: a Ministerial statement as to whether the decision triggers a referendum under section 4 of the Act; an Act of Parliament approving the decision; and compliance with the referendum condition, the exemption condition or the significance condition. Each of those conditions is set out in section 3 of the Act. The “exemption condition” is met if the Act providing for the approval of the decision states that the

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<sup>35</sup> HC Hansard, 20 December 2010, col 1187  
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101220/debtext/101220->

decision does not fall within section 4 of the Act. Section 4 sets out the cases in which an Article 48(6) decision is required. Section 4(4)(b) provides that an Article 48(6) decision does not fall within section 4 if it involves the making of a provision that applies only to Member States other than the United Kingdom.

Under section 5 of the 2011 Act, the Minister must lay a statement before Parliament setting out his or her opinion as to whether a referendum is required under section 4 of the Act. The Foreign Secretary laid a statement before Parliament on 13 October 2011 to the effect that, in his opinion, the Treaty amendment Decision does not fall within section 4 of the 2011 Act. The statement relies on the exemption in section 4(4)(b), on the basis that the Treaty amendment Decision applies only to Member States other than the UK.

## RATIFICATION DIFFICULTIES

### V.3

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

#### Ratification Timeline

- 12 January 2011 considered by House of Commons European Scrutiny Committee<sup>36</sup>
- 26 January 2011 considered by House of Commons European Scrutiny Committee,<sup>37</sup>
- 16 March 2011 House of Commons debated the motion to support the Government's intention to approve the decision to amend the Treaty
- 21 March 2011 House of Lords debated and passed the motion to agree<sup>38</sup>
- 23 March 2011 House of Commons passed the motion to agree 310 votes to 29<sup>39</sup>
- 24 March 2011 considered by House of Lords European Union Committee scrutiny
- Statement under Section 5 European Union Act 2011, 13 October 2011
- 10 May 2012 European Union (Approval of Treaty Amendment Decision) Bill 2012

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0001.htm#1012206000001

<sup>36</sup> House of Commons European Scrutiny Committee, 'Documents considered by the Committee on 12 January 2011,' 27 January 2011.

<sup>37</sup> House of Commons European Scrutiny Committee, Documents considered by the Committee on 26 January 2011, 10 February 2011, HC 428-xiv of session 2010–12

<sup>38</sup> HL Hansard, cols 527–47 <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110321-0002.htm>

<sup>39</sup> HC Hansard, cols 1063–6

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110323/debtext/110323-0004.htm#11032395000003>

introduced in the House of Lords

- 23 May 2012 Second Reading in House of Lord
- 13 June 2012 House of Lords Committee Stage<sup>40</sup>
- 27 June 2012 House of Lords Report
- 4 July 2012 House of Lords Third Reading and House of Commons First Reading
- 3 September 2012 House of Commons Second Reading
- 3 September 2012 House of Commons Programme (No. 2) motion
- 10 September 2012 House of Commons Committee first sitting:
- 10 September 2012 House of Commons Third Reading
- 31 October 2012 Royal Assent

### Difficulties

The UK has specific procedures that must be followed before a Minister may agree to a decision to amend the Treaties under the Article 48 (6) revision procedure. This is specifically for EU law since the ratification of Treaties and their amendment is generally regulated by the Constitutional Reform and Governance Act 2010. The legislation in force at the time the question of Government approval arose was section 6 of the European Union Act 2008 Act. This required Parliamentary approval, specifically the passing of a motion that the House approves the Government's intention to support the adoption of a specified draft decision without amendment. Each House passed an affirmative resolution in March 2011 without amendment.

During the debate on 16 March 2011 the Minister for Europe announced that the draft decision would also be subject to the provisions of the (then draft) European Union Act 2011 once it had entered into force. Approval of the decision under this regime is more difficult since a referendum may be required. The 2011 Act sets out three requirements for the UK approval of a decision under Article 48(6) TEU: a Ministerial statement as to whether the decision triggers a referendum; an Act of Parliament approving the decision; and compliance with the referendum condition, the exemption condition or the significance condition. The Foreign Secretary laid a statement before Parliament on 13 October 2011 stating a referendum was not required on the basis that the Treaty amendment Decision applies only to Member States other than the UK. Since the provision only applies to

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<sup>40</sup> <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/120613-0001.htm#12061358000359>

Member States whose currency is the Euro, the UK has no financial liability under it.

The European Union (Approval of Treaty Amendment Decision) Bill 2012 then needed to pass through the usual legislative stages. Difficulties arising at these stages:

*Proposed amendments*

At the House of Lords Committee Stage<sup>41</sup> there was an attempt to introduce two amendments. The first, tabled by Lord Foulkes of Cumnock, was that a referendum should be held. He relied upon the wording of section 4 of the European Union Act 2011 that no referendum is required *merely* because it involves certain matters. In his opinion the inclusion of “merely” implies that another factor should be involved. The subsequent debate in the House of Lords reaffirmed that government position that no referendum was necessary since “merely” intended to indicate only that other conditions ought to be taken into account. Furthermore, the Ministerial statement that there was no need for a referendum was open to judicial challenge, yet in several months no such challenge arose.

The second proposed amendment, also tabled by Lord Foulkes, was to delay the entry into force of the Act until 1 January 2013 and then only if the membership of the eurozone remained the same as it is now. Lord Foulkes also raised the concern that Greece, Ireland or Spain would have been forced out of the eurozone by this point and so a question over whether the ESM should then continue. The countering argument, from Lord Howell of Guildford, stated the ESM was an essential mechanism ‘regardless of whether there is a change in member states whose currency is the euro’, and that delaying the amendment decision risked further instability in the eurozone, with consequences for the UK economy.

*Necessity of Treaty amendment*

The UK Government considered the Treaty amendment did not change the legal situation. The Financial Secretary to the Treasury stated in a letter to the European Scrutiny Committee that “...the Government has no concerns about the legality of the ESM Treaty or its compatibility with the EU Treaties. It is not legally necessary for the Article 136 Treaty change to have been made before the ESM can come into force.”<sup>42</sup> He explained the need for amendment on the basis that the German Constitutional Court required further confirmation of the meaning of the provision.<sup>43</sup>

The House of Commons European Scrutiny Committee disagreed on this point. In its opinion recitals 2 and 3 of the Decision for amendment, reinforced by European Council

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<sup>41</sup> HC Hansard cols 1343ff <http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/120613-0001.htm#12061358000359>

<sup>42</sup> Letter from Rt Hon Mark Hoban MP, Financial Secretary to the Treasury to the Chairman of the European Stability Mechanism, 13 March 2012

<sup>43</sup> Uncorrected transcript of oral evidence to the European Scrutiny Committee, 14 Mar 2012 (see in particular Q196-7) <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/uc1817-iv/uc181701.htm>

Conclusions of October 2010 (paragraph 2), December 2010 (paragraph 1) and March 2011 (paragraph 16), it strongly suggested that Treaty amendment was the necessary precursor of the ESM.<sup>44</sup>

#### Lack of UK liability

The Bill was widely publicised as ending UK liability for bailouts,<sup>45</sup> although most statements by officials that the amendment will create no *new* liabilities, but not end existing ones.<sup>46</sup>

The UK Government stressed the lack of any UK liability. David Cameron stated that “In the current emergency arrangements established under article 122 of the treaty, we do have such a liability. That was a decision taken by the previous Government, and it is a decision that we disagreed with at the time. We are stuck with it for the duration of the emergency mechanism, but I have been determined to ensure that when the permanent mechanism starts, Britain’s liability should end, and that is exactly what we agreed at the European Council.” David Lidington, when introducing the motion, stated “It does not apply to non-euro area member states and cannot confer any obligations upon them”<sup>47</sup> and Lord Howell, the Foreign Office Minister, stated the fund will be ‘by the eurozone, for the Eurozone.’<sup>48</sup> Lord Howell further stressed the benefit to the UK’s financial interests. In his opinion, the Treaty change was in the UK’s national interest since stable and healthy Eurozone is important for the UK’s long-term growth and prosperity.

#### No transfer of powers

David Cameron reported that the “change does not affect the UK, and it does not transfer any powers from Britain to the European Union. Throughout the Parliamentary debates, the lack of any transfer of power was stressed, especially since a referendum would be required otherwise.

#### Exclusion of UK from Eurozone arrangements

Lord Lamont noted that the Treaty amendment was part of a larger political deal that included among others the Euro-plus-pact. Concerns were expressed that enhancements to the single market might result in adverse repercussions to countries outside the

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<sup>44</sup> Commons European Scrutiny Committee Report on the Treaty on Stability, Coordination and Governance: impact on the eurozone and the rule of law (the fiscal compact treaty) April 2012

<sup>45</sup> See, for instance, BBC News Queen’s Speech: plans to withdraw UK from bailouts, 9 May 2012 <http://www.bbc.co.uk/news/uk-politics-18002961>

<sup>46</sup> See ‘European Union (Approval of Treaty Amendment Decision) Bill, Bill 57 of 2012-13’, House of Commons Research Paper 12/47 30 August 2012.

<sup>47</sup> HC Hansard, 16 March 2011, col 427.

<sup>48</sup> Announcement: Foreign Office Minister introduces EU Treaty Amendment Bill to the House of Lords <https://www.gov.uk/government/news/foreign-office-minister-introduces-eu-treaty-amendment-bill-to-the-house-of-lords>.

eurozone.<sup>49</sup> Fears were also expressed regarding a shift in the balance of power, leading potentially to a 'Eurozone bloc' with a bigger influence on the economic policies of the whole of the EU.<sup>50</sup>

## CASE LAW

V.4

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

No

## MISCELLANEOUS

V.5

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND THE 136 TFEU TREATY AMENDMENT?*

No.

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<sup>49</sup> See Lord Lamont of Lerwick HL Hansard, 21 March 2011, cols 532–3

<sup>50</sup> Lord Liddle, *ibid* cols 537–8

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

### NEGOTIATION

#### VI.1

*WHAT POLITICAL/LEGAL DIFFICULTIES DID THE UNITED KINGDOM 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?*

#### *Why Britain did not join*

David Lidington MP (Conservative, Minister for Europe) noted that the pact is an instrument that has been created in order to help the eurozone to overcome its problems. Since Britain is not planning to join the euro, he believes that it is right to stay outside of it. He accepts that the position is different for those countries that see their future as joining the euro.

#### *Britain side-lined?*

David Lidington MP also noted that the language of the 24-25 March Council conclusions focus primarily on areas that fall under national competence and not so much on those measures of economic policy that are governed already by various articles of the Treaty—a single-market Europe by 2020, economic governance and macro-economic surveillance. Those are all areas of economic policy in which he believes all of the EU will need to talk and to act together. He noted further the explicit commitment written into the March conclusions that the Euro Plus pact will respect the integrity of the single market and should not undermine the functioning of the single market. Lidington later stressed that, if the members of the Euro Plus pact were to decide, hypothetically, to act in a way that ran contrary to the principles of the single market, they would be open as individual Member States to infraction proceedings in a way that any other Member State would be for breach of treaty obligations.

On 25 April 2012, Lord De Mauley stated that "Of course, as the euro area moves closer towards integration, we must and will remain vigilant to protect the UK's interests. Where

matters are, rightly, for discussion or agreement by all 27 member states, for example on the single market or financial services, they must be agreed by all 27 member states."<sup>51</sup>

*Status of the decision whether to join*

He also noted that the decision whether or not to join the Plus-Pact is a political decision, not a legal decision. The Government, or any future United Kingdom Government could decide to change policy and take part in the pact without the need for a referendum, or indeed legislation.<sup>52</sup>

## MISCELLANEOUS

### VI.2

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND THE EURO-PLUS-PACT?*

The United Kingdom decided to stay out of the Euro-Plus-Pact

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<sup>51</sup>House of Lords, Handsard, 25 April 2012, Col 1836

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120425-0002.htm>

<sup>52</sup> Revised Transcript of Evidence Taken Before the Select Committee on the European Union: Inquiry on European Councils of 4 February, 11 March and 24-25 March 2011, Evidence Session No. 1.

<http://www.parliament.uk/documents/lords-committees/eu-select/Transcripts/cEUS040511ev1.pdf>

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

### NEGOTIATION

#### VII.1

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

In relation to the six pack negotiations, Sharon Bowles, British MEP, commented “when we were trying to negotiate the pieces of legislation on economic governance, the so-called six pack; we had to battle on for another three months to get the French Government to agree to a change in the voting system so that it was more likely that the Council would make the decision and press the sanctions button.”<sup>53</sup>

The Government originally felt that the draft of Directive 2011/85 did not satisfy the requirements of subsidiarity.<sup>54</sup>

The UK Government also felt that sanctioning should not be automatic. According to Mark Hoban, Financial Secretary to the Treasury, "the Government feels strongly that this process should not become fully automatic, as that could excessively diminish the Council's role — it should retain a role in launching the excessive deficit procedure and taking major decisions related to the treatment of Member States."<sup>55</sup>

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<sup>53</sup> The Select Committee on the European Union, Economic and Financial Affairs and International Trade (Sub-Committee A), Inquiry on EURO AREA CRISIS, Evidence Session No. 2.

<http://www.parliament.uk/documents/lords-committees/eu-sub-com-a/EuroCrisis/cEUA111011ev2.pdf>

<sup>54</sup> European Scrutiny Committee, 5th Report, Session 2010–11

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/428-v/428v.pdf>

<sup>55</sup> European Scrutiny Committee, 5th Report, Session 2010–11

## 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)?*

According to article 8 of the Directive, articles 5-7 do not apply to the UK.

The UK considers that it meets the requirements already to have successfully implemented Directive 2011/85/EU.<sup>56</sup> It did not specifically introduce any measures to implement the Directive.

#### Accounting and statistics

There is a monthly statistical release on Public Sector Finances issued by the Office for National Statistics and Whole of Government Accounts are released yearly.

#### Forecasts

The Office of Budget Responsibility does this. This was created in 2010 and according to the UK should already perform the role required by EU law.

#### Budgetary frameworks

The UK follows a forward-looking fiscal mandate to achieve a cyclically adjusted current balance by the end of a rolling, five-year forecast period and achieve a target for public sector net debt to be falling as a percentage of GDP by 2015-16. In order to bring back public finances onto a sustainable path and ensure that it stays within this medium-term framework, the Government sets out four-year spending plans through spending reviews.

The Spending Review 2010 covers the four years from 2011-12 to 2014-15, setting out expenditure ceilings for each government department and that maintaining adherence to the five-year rolling fiscal mandate and the expenditure limits set out in Spending Review 2010 is a central part of the annual budgetary process.

The Office of Budget Responsibility's remit requires it to provide "an analysis of the sustainability of the public finances at least once each financial year" and that its annual fiscal sustainability report sets out long-term projections for different categories of

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<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/428-v/428v.pdf>

<sup>56</sup> European Scrutiny Committee Twenty-ninth Report of Session 2012-13, Chapter 18

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xxix/8620.htm>

spending and revenue, analyses the public sector's balance sheet and reports different indicators of long-term sustainability.

See also the answers to questions II.2 and II.3.

## IMPLEMENTATION DIFFICULTIES

### VII.3

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

Before the directive entered into force, Bill Cash noted on his blog that “Although the UK already complies with some of the proposed provisions, for instances the UK already has independent statistical and fiscal authorities as well as a multiannual budget but, one could wonder if the draft directive respects the UK's national fiscal competence and the subsidiarity principle. It should be for each Member State to decide their fiscal frameworks however as abovementioned, the Commission is proposing uniform requirements for national fiscal frameworks.”<sup>57</sup>

## MACROECONOMIC AND BUDGETARY FORECASTS

### VII.4

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

The Office of Budget Responsibility does both. See answers to questions II.2 and II.3.

## FISCAL COUNCIL

### VII.5

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

Articles 5-7 of Directive 2011/85/EU do not apply to the UK.

The Office of Budget Responsibility may be considered a Fiscal Council though. See answers to questions II.2 and II.3.

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<sup>57</sup> Bill Cash MP, EU Economic Governance proposals will affect the UK, 9 November 2010  
[http://www.europeanfoundation.org/my\\_weblog/2010/11/eu-economic-governance-proposals-will-affect-the-uk-1.html](http://www.europeanfoundation.org/my_weblog/2010/11/eu-economic-governance-proposals-will-affect-the-uk-1.html)

## 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 THE UNITED KINGDOM 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?*

Mark Hoban (Financial Secretary to the Treasury), in commenting on the Commissions first Alert Mechanism Report stressed that the UK is not subject to sanctions of any form.<sup>58</sup>

The Commercial Secretary, Lord Sassoon, noted that the UK is opposed to any new financial transactions tax to fund the budgetary process. The Government considers that it is important for Member States to retain the flexibility to shape their own tax policies to suit their economic circumstances and compete in a global environment.

In relation to high unemployment rates, the Government notes that the Commission encourages it to focus on the employability of young people in its in-depth review. The Government intends to work on this, but to do so taking a broad approach. The Government hopes to end child poverty by 2020 and also improve access to finance for small companies.<sup>59</sup>

The European Scrutiny Committee concludes its consideration of the Commission's in depth report by noting that while the "UK as a non-eurozone Member State is not as constrained in determining its economic policies as those within the Eurozone, the... consideration of policy opinions is important."<sup>60</sup>

As for the Alert Mechanism of the new Macroeconomic Imbalances Procedure (article 3 Regulation 1176/2011), the UK is subject to an in-depth review. In 2012 in its analysis of the UK the Commission:<sup>61</sup>

“found that the UK exceeds the threshold values on four indicators in the scoreboard — Real Effective Exchange Rate, Export Market Share, Private Sector Debt and Public Sector Debt;

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<sup>58</sup> European Scrutiny Committee, 59<sup>th</sup> Report, Session 2010-2012

<sup>59</sup> House of Commons European Scrutiny Committee, 4<sup>th</sup> Report of Session 2012-13

<sup>60</sup> House of Commons European Scrutiny Committee, 4<sup>th</sup> Report of Session 2012-13

<sup>61</sup> Discussed by House of Commons European Scrutiny Committee Report 59<sup>th</sup> Report of Session 2010-12

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-liv/428.pdf>

“noted, however, that for many of these indicators the trend is towards stabilisation or reduction in potential imbalances

“drew particular attention to the UK’s loss of export market shares;

“noted that, although this trend has stabilised in recent years, the loss of market share has taken place in the context of an increase in the price competitiveness of UK exports;

“considered that the level of private debt in the UK may be a potential source for concern and points to mortgages and high house prices as root causes of the generally high household debt burden; and

“while it recognised that both household debt and real house prices have fallen in recent years, nevertheless considers that they remain high in absolute terms.”

The Government, in response to the Commission’s findings in the 2012 Alert Mechanism Report commented<sup>62</sup>

“the Government's economic strategy is designed to reduce the deficit, restore stability, equip the UK to succeed in the global race and rebalance the economy;

“this strategy has ensured the public finances are restored to a sustainable path, and the UK is seen as a relative safe haven;

the deficit has been reduced by a quarter over the two years since 2009-10;

“the Office for Budget Responsibility's most recent forecast shows that it expects the economy to rebalance more slowly, compared to Budget 2012, towards private investment and net trade, consistent with global uncertainty and eurozone recession holding back demand for UK exports and weighing on business and household investment decisions;

“slower growth in private consumption will reduce demand for imports, but by less than the impact of the euro area recession and other factors on UK exports;

“the Government also considers that it will be important for the Commission to take into account the historical context behind the indicators where Member States have exceeded pre-determined thresholds;

“it looks forward to working alongside the Commission as it conducts its IDR; and

“it expects the Commission to clearly present the evidence underpinning its

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<sup>62</sup> European Scrutiny Committee, ‘Twenty-Sixth Report Documents considered by the Committee on 9 January 2013’, 21 January 2013 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86->

analysis.”

The government has also announced its intention to introduce a number of other policy initiatives directly related to the Commission’s Alert Mechanism Report:

- In order to alleviate problems within the housing sector, the Government is introducing a range of financial incentives for local authorities to promote house building.
- through the New Homes Bonus, communities are being offered significant incentives to build new homes<sup>63</sup>
- The UK is addressing the issue of the employability of young people by:
  - the Youth Contract;
  - investing in continuing the expansion of apprenticeship programmes which have seen record growth, and in particular encouraging more take-up of apprenticeships by SMEs — the new measures include the new Apprenticeship Grant for Employers, which offers up to 40,000 incentive payments to encourage SME employers to take on 16–24 year olds.
  - encouraging growth in apprenticeships at advanced and higher skills levels, including through the Higher Apprenticeship Fund, which will create over 19,000 new apprenticeship places at Level 4 and above

The 2012 application of the In-depth Review (article 5 Regulation 1176/2011) shows that the UK is considered to have a generally flexible economy. The UK’s labour market performance is assessed as somewhat more resilient than that of the EU as a whole. The main findings of the review are that:<sup>64</sup>

- high levels of household debt accumulated over the past decade are linked to high house prices and that this represents an internal imbalance for the UK economy; and
- the external competitiveness and export position of the UK is worthy of attention, although the potential risks associated with this are less pressing.

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xxvi/8606.htm

<sup>63</sup> House of Commons European Scrutiny Committee, 4<sup>th</sup> Report of Session 2012-13, Documents considered by the Committee on 14 June 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86iv/86iv.pdf>

<sup>64</sup> House of Commons European Scrutiny Committee, 4<sup>th</sup> Report of Session 2012-13, Documents considered by the Committee on 14 June 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86iv/86iv.pdf>

## 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?*

It's not clear that any changes have been made in order to meet the MTO Procedure.

### 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)?*

As the UK's fiscal year is different from that of the Eurozone and because the Government wishes to respect s5 of the 1972 European Communities Act,<sup>65</sup> the UK in June 2010 secured a provision in the stability and growth pact code of conduct to say that the UK will present a final budget, and not budgetary plans to the EU. In that way the UK budget will already be publicly available and have been presented to Parliament.<sup>66</sup>

At times, the UK Convergence Programme is sent to the EU before its approval by Parliament. For example, in 2011 it was deposited with the EU on 28 April 2011 but only approved by Parliament on a deferred Division on 4 May 2011. Mr Hoban noted that the agreed deadline is 30 April for submission of both Convergence Programmes and National Reform Programmes. In such instances, the Commission is advised that the document must be regarded as a draft until parliamentary scrutiny procedures are completed. This has been established practice in recent years where parliamentary debates on the Government's economic and budgetary assessment have not taken place at the time of submitting the Convergence Programme to the EU. The UK's Convergence Programme itself does not require Parliament's approval, but it must be based upon an assessment of the economic and budgetary position which has been reported to Parliament by the

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<sup>65</sup> This states that the UK will only submit fiscal data to the Commission if it has already been presented to Parliament first.

<sup>66</sup> HL Hansard, 3 Feb 2011, Col WS 84

Government for its approval.<sup>67</sup>

## MTO DIFFICULTIES

### VII.9

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

Mark Hoban MP (Financial Secretary to the Treasury) informed the House of Commons European Scrutiny Committee about the Employment and Social Affairs Council on 17<sup>th</sup> June 2011, the ECOFIN Council on 20<sup>th</sup> June 2011 and the General Affairs Council on 21<sup>st</sup> June 2011 when Ministers discussed the Commission's draft recommendations.<sup>68</sup> He noted that the UK Government maintained a scrutiny reserve throughout these discussions and that changes were made to guard against financial risks and to protect the balance of competences between the EU and the Member States. The Prime Minister also maintained a scrutiny reserve at the European Council on 24<sup>th</sup> June 2011 when the draft recommendations were given political endorsement by the Heads of the Member States.

#### No sanctions

The government repeatedly stressed that no sanctions can result from the UK's failure to follow the Commission's recommendations. This is due to the UK's opt-out in Protocol (no 15) to the Treaties.

#### EU competences

Chris Heaton-Harris raised the question about European competences. He noted that the Commission's recommendations pertain to matters such as the decentralisation of council tax benefit, spatial planning reform and housing supply policy. He therefore requested to know what the impact of these recommendations would be on the government's decision-making process. Greg Clark informed him that the Government notes the recommendations, but that they are non-binding. He does note concerns regarding 'mission creep' though. Later, Kelvin Hopkins states that he believes "countries in the Eurozone have all but given up their power over their domestic economies."<sup>69</sup>

#### UK subordinate to the EU?

This is a key issue since Parliamentary sovereignty is particularly important in the British constitution. Opposition is mostly raised to the fact that Britain is bound to submit a

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<sup>67</sup> HC Hansard, 23 May 2011 : Column 356W

<sup>68</sup> 'Economic governance: the European Semester' House of Commons, European Scrutiny Committee, 5 Documents Considered by the Committee on 6 July 2011

<sup>69</sup> 'Economic Governance: The European Semester and Macroeconomic Imbalances', House of Commons,

convergence report. Lord Pearson of Rannoch, stated in the House of Lords “the Government have rightly refused the insolent demand by Brussels that they should submit our Budget to Brussels before the House of Commons sees it. They are to be congratulated on that small show of defiance.”<sup>70</sup> Similarly, Ian Davidson MP stated in a House of Commons debate “Will the Minister remind me exactly why we have to produce all this information for the European Union? I have not read it in enormous detail but it seems; that Parliament is telling teacher or the boss why we have done what has been done. That places the House of Commons very much in the position of being subordinate to the European Union.”<sup>71</sup> And again, Kate Hoey, (Labour MP) asked “Given that the requirement for the Government’s assessment was passed under the Maastricht treaty for which no one in this country voted, and that it must go to a Commission that no one in this country has elected, why does an independent British Parliament have to go through this procedure – this charade – every year?”<sup>72</sup>

William Cash MP noted that now the UK effectively has to comply with the convergence criteria and other criteria that are laid down by the European Union. According to him, this indicates that Britain has been moving inexorably, regrettably and avoidably towards deeper and deeper European integration, with more and more requirements and obligations being imposed on us”.

## 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)?*

It is not clear, the UK does not (as noted below) seem to have introduced a Medium-term Budgetary Objective, even if it is making similar efforts and so it is difficult to see how such an objective has been explicitly included.

## CURRENT MTO

### VII.11

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

The UK has not set a specific medium-term budgetary objective, even if it is making efforts along the same lines. This is clearly stated by the Commission in its draft recommendations.

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European Committee B 17<sup>th</sup> June 2013.

<sup>70</sup> HL, Hansard 25 April 2012, Col

1844 <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120425-0002.htm>

<sup>71</sup> HC, Hansard 27 Apr 2011, Col 290

<sup>72</sup> HC, Hansard, 24 April 2012, Col 855

In the Charter for Budget Responsibility however, it is stated that the Treasury's mandate for fiscal policy for this Parliament, announced in the Budget on 22 June 2010, is to achieve cyclically-adjusted current balance by the end of the rolling, five-year forecast period.

## ADOPTION MTO

VII.12

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

As there is no specific UK Medium-term Budgetary Objective for the UK there is no specific institution or procedure.

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

There is very little debate regarding this regulation.

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

The question is not relevant for the UK as it is not in the Eurozone.

## 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?*

## UNITED KINGDOM

It's very difficult to assess the changes that Britain has made in order to comply with the Six-pack. Britain submits data to the EU but due to Protocol (No 15) it does not consider itself, strictly speaking, to need to comply with the EU legislation. There is a clear emphasis in Parliament that all changes are British initiatives that the EU is free to comment on. How true this is, and whether changes are in reality made to be in line with EU requirements remains difficult to assess.

## MISCELLANEOUS

VII.16

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM 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> and*

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

### NEGOTIATION

#### VIII.1

*WHAT POLITICAL/LEGAL DIFFICULTIES DID THE UNITED KINGDOM 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.*

The UK is not part of the Eurozone

### RATIFICATION

#### VIII.2

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

Not applicable.

### RATIFICATION DIFFICULTIES

#### VIII.3

*WHAT POLITICAL/LEGAL DIFFICULTIES DID THE UNITED KINGDOM ENCOUNTER DURING THE RATIFICATION OF THE ESM TREATY?*

Not applicable.

### CASE LAW

#### VIII.4

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

Not applicable.

### CAPITAL PAYMENT

#### VIII.5

UNITED KINGDOM

*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 applicable.

## **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 applicable.

## **APPLICATION DIFFICULTIES**

*VIII.7*

*WHAT POLITICAL/LEGAL DIFFICULTIES DID THE UNITED KINGDOM ENCOUNTER IN THE APPLICATION OF THE ESM TREATY?*

Not applicable.

## **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 applicable.

## **MISCELLANEOUS**

*VIII.9*

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND THE ESM TREATY?*

Not applicable.

## 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 THE UNITED KINGDOM 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.*

Britain did not agree to the Fiscal Compact. It claimed to exercise a veto, however the result was simply that a separate agreement was made between 25 other Member States. The negotiations have been referred to as carried out in a "Flashman" way. The need has been stressed in the future for Britain to come up with a clear line defining our constitutional bottom line and what we are rightfully to demand. This is because Britain needs to recognise that as the Eurozone crisis unfolds and constitutional changes are being made, and there are deep and profound consequences for the constitution of this country.<sup>73</sup>

David Cameron (The Prime Minister (Conservative)) made a statement in the House of Commons on 12 December 2011.<sup>74</sup> He claimed his objective in Brussels was solely to protect Britain's national interest and that he made it clear that if the eurozone countries wanted a treaty involving all 27 members of the European Union, we would insist on some safeguards for Britain to protect our own national interests. According to him, some thought that the safeguards asked for -on the single market and on financial services-were modest, reasonable and relevant. He claims there was no intention to create an unfair advantage for Britain.

It is unclear exactly what were the safeguards sought and the House of Lords European Union Select Committee strongly criticised the Government for not releasing the full details

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<sup>73</sup> Lord Owen, HL Hansard 10 May 2012, Col 93 ff

<sup>74</sup> HC Hansard, 12 Dec 2011,

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111212/debtext/111212-0001.htm#1112127000001>

of this. Instead, it set out three potential explanations of the safeguards sought:<sup>75</sup>

1. According to the Minister for Europe, the Government focused on two areas, seeking: “some sort of general safeguard with respect to the integrity of the single market and ... something more specific on the issue of financial services” ... to protect “the financial services industry in every EU Member State against the risk of discriminatory legislation or protectionist legislation on financial services”.
2. According to the Financial Times, the UK’s demands included: a clear statement that euro area integration would preserve the interests of the single market and would not undermine the common interest of all 27 Member States; a “protocol on financial services” in relation to the powers of the new European Supervisory Authorities (including a reassurance that the EBA would remain in London) and including a unanimous vote on any “user charges” in financial services regulation, which would have attempted to clarify that the UK would have been able to veto any variant of the financial transaction tax proposal; ensuring that stringent rules did not close off the EU to US or Asian financial groups; and allowing the UK the flexibility to raise capital requirements for retail banks, in reflection of the recommendation of the Vickers Commission.<sup>76</sup>
3. According to French President Nicolas Sarkozy: “in order to accept treaty revision among the 27 EU states, David Cameron asked us—something we all judged unacceptable—for a protocol to be inserted into the treaty granting the United Kingdom a certain number of exonerations on financial services regulations ... We could not accept this, since we consider, quite on the contrary, that a part of the world’s woes stem from the deregulation of the financial sector.”

David Cameron went on to state that the EU treaty is the treaty of those outside the euro as much as it is for those inside the euro and so creating a new eurozone treaty within the existing EU treaty without proper safeguards would have changed the EU for the UK. It would not just have meant a whole new bureaucracy, with rules and competences for the eurozone countries being incorporated directly into the EU treaty; it would have changed the nature of the EU—strengthening the eurozone without balancing measures to strengthen the single market.

He later referred to the balance of powers between Britain and Europe stating that he believes these are not right. He claims that the Treaty was prevented from going ahead because there were not adequate safeguards but that, furthermore, no one knows where this new organisation outside the European Treaties will go, what powers it will seek and how it will act. The concern in such a scenario is to protect and defend national interests.

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<sup>75</sup> ‘The euro area crisis,’ 25<sup>th</sup> Report of Session 2010-12, HL Paper 260

<sup>76</sup> “Cameron’s demands over financial regulation spark French resistance”, Financial Times, 9 December 2011.

The main issues of debate in Parliament were:

*Use of EU institutions*

One of the main concerns in the debates was the use of EU institutions as part of the fiscal compact. David Cameron commented that there would be extensive debate about “how institutions built for 27 should continue to operate fairly for all member states, Britain included. The UK is supportive of the role of the institutions, not least because of the role they play in safeguarding the single market, so we will look constructively at any proposals with an open mind.”<sup>77</sup>

It was later commented by Edward Miliband (Leader of the Labour Party) that the Prime Minister rests his whole case on the fact that 26 countries will not be able to use the existing treaties or institutions - that is “apparently the win that he got for this country.”<sup>78</sup>

*Protection of the British financial services industry*

Edward Miliband (Leader of the Labour Party) also raised this issue. According to him, it was never even proposed that the fiscal rules being imposed on euro area countries would have applied to Britain. He also notes that the Prime Minister did not secure any extra protection for financial services such as a veto on financial services regulation or a guarantee on the location of the European Banking Authority.<sup>79</sup>

*Britain isolated and marginalised*

A further major concern was that Britain would be left without a voice.

The Prime Minister commented regarding the idea of a ‘two-speed’ Europe that “This is not about the speed at which different organisations travel: it is about the fact that Europe already has different facets. Britain is not in the single currency or in the Schengen no-borders agreement, but we are a leading member of the single market and we play a huge role in foreign and defence policy throughout Europe and NATO. We should not be embarrassed about that, and we should do what is in our national interest-rather than thinking that the right thing to do is to sign up whether or not it suits us.”<sup>80</sup>

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<sup>77</sup> HC Hansard, 12 Dec 2011, Col 521

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111212/debtext/111212-0001.htm#1112127000001>

<sup>78</sup> HC Hansard, 12 Dec 2011, Col 523

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111212/debtext/111212-0001.htm#1112127000001>

<sup>79</sup> HC Hansard, 12 Dec 2011, Col 523

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111212/debtext/111212-0001.htm#1112127000001>

<sup>80</sup> HC Hansard, 12 Dec 2011, Col 527

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111212/debtext/111212->

### *A European superstate*

Mr Jeffrey M. Donaldson ((MP Lagan Valley) (Democratic Unionist Party)) “The reality is that a bandwagon driven by Germany and France is taking the EU inexorably towards a European superstate. Those countries are using the current crisis in the eurozone as a cover to advance their agenda, and the fiscal compact is deepening and strengthening their desire—and the mechanisms that go with it—to build that European superstate.”<sup>81</sup>

He then went on to comment on how the Irish Government are subjected to the ignominy of having to give their budget to Europe for approval before their Finance Minister has the opportunity to get up in the national Parliament to tell the people of the country what their Government are doing. Many people in Dublin now regard Berlin as the capital of the Republic of Ireland, not Dublin, because that is where the real decisions are being taken about their future. For this reason he believes the real agenda is to build a European superstate, which is to denude nations of their democratic sovereignty. In his opinion, the fiscal compact exists precisely to benefit that agenda, as when a country and a nation cedes fiscal independence, it cedes a huge part of its national sovereignty. DUP Members are strongly against UK fiscal independence being abrogated and given to those in Brussels, who are accountable to nobody, who were not elected by anyone in this country and who are not answerable to the Parliament or people of this country.

## **RATIFICATION**

### *IX.2*

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

Not applicable

## **RATIFICATION DIFFICULTIES**

### *IX.3*

*WHAT POLITICAL/LEGAL DIFFICULTIES DID THE UNITED KINGDOM ENCOUNTER DURING THE RATIFICATION OF THE FISCAL COMPACT?*

Not applicable

## **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 THE UNITED KINGDOM? 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.*

Not relevant

## **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.*

Not applicable

## **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 V.10)?*

Not applicable

## **CASE LAW**

IX.7

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

Not applicable

## **NON-EUROZONE AND BINDING FORCE**

IX.8

*HAS THE UNITED KINGDOM 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

## MISCELLANEOUS

### IX.9

#### *WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND THE FISCAL COMPACT?*

The House of Commons EU Select Committee have produced a report entitled “Treaty on Stability, Coordination and Governance: impact on the eurozone and the rule of law.”<sup>82</sup> Similarly, the House of Lords European Union Select Committee has produced a report entitled ‘The euro area crisis’.<sup>83</sup>

The Government’s main concerns regarding the Fiscal Compact appear to be the risk that the new procedures and competences it gives the EU institutions may ‘spillover’ into other areas of the Treaties and thus affect the functioning of EU law. For example, the first concern related to the reverse qualified majority voting mechanism and the potential this might have for a precedent possibly being set for the use of this mechanism in other areas of the European Union treaties.

A second concern related to the possible role both of the Commission and of the European Court of Justice to judge national budgets. David Lidington MP on behalf of the government gave evidence to the Commons that the “The principle that [the government] continue[s] to assert is that we think EU institutions should only be used outside the EU treaties with the consent of all Member States, and any such use must respect the treaties, because it is the treaties that have primacy in any clash.”<sup>84</sup> The concern that the Fiscal Compact is illegal due to the conferral of powers on the EU institutions without the agreement of all Member States has been repeated in Parliament is. On 29<sup>th</sup> February 2012, Bill Cash (Conservative MP) scheduled an emergency debate to encourage further discussion on the legality of the Treaty.<sup>85</sup>

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<sup>82</sup> Sixty-second Report of Session 2010-12

<sup>83</sup> 25<sup>th</sup> Report of Session 2010-12, HL Paper 260

<sup>84</sup> David Lidington MP response to Question 142, in HC European Scrutiny Committee inquiry, *Reinforcing the Eurozone*, 23 February 2012

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/uc1817-iii/uc181701.htm>

<sup>85</sup> HC, Hansard, 29<sup>th</sup> Feb 2012 Col 298ff

## **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](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.*

The UK has not received financial assistance.

### **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.*

The UK has not received financial assistance.

### **STATUS INSTRUMENTS**

#### **X.3**

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

The UK has not received financial assistance.

### **TRANSPOSITION NATIONAL LEGAL ORDER**

#### **X.4**

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

The UK has not received financial assistance.

## **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?*

The UK has not received financial assistance.

## **ADJUSTMENT REQUIREMENTS**

X.6

*DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.*

The UK has not received financial assistance.

## **MISSIONS**

X.7

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

The UK has not received financial assistance.

## **CASE LAW INTERNATIONAL INSTRUMENTS**

X.8

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

No. The UK has not received financial assistance.

## **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. The UK has not received financial assistance.

## **BOND PURCHASES ECB**

X.10

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

The UK has not received financial assistance.

## 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?*

The UK has not received financial assistance.

## MISCELLANEOUS

X.12

*WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE UNITED KINGDOM AND FINANCIAL SUPPORT?*

No.