



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

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# I POLITICAL CONTEXT

## POLITICAL CHANGE

### I.1

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

The political context in Bulgaria since 2008 has seen many changes. While in the beginning of the Euro crisis the political situation was relatively stable, since the beginning of 2013 it has been very volatile. It has involved the resignation of two Governments and the respective appointment of two Caretaker Governments,<sup>1</sup> two minority Governments, a recent bank crisis and raging protests for the bigger part of this, less than biannual, period.

#### *1.1.1 Period of stability*

The 40<sup>th</sup> National Assembly was elected on 25 June 2005 and its mandate ended on 25 June 2009. The 86<sup>th</sup> Government was formed on the basis of a three-party coalition between the three biggest parliamentary groups represented in the 40<sup>th</sup> National Assembly. These were, out of 240, (1) Coalition for Bulgaria<sup>2</sup> with 82; (2) National Movement Simeon the Second (known by its Bulgarian abbreviation – NDSV)<sup>3</sup> with 53; (3) Movement for Rights and Freedoms (known by its Bulgarian abbreviation – DPS)<sup>4</sup> with 34. The 86<sup>th</sup> Government governed Bulgaria from 17 August 2005 till 27 July 2009 with Sergei Stanishev as Prime Minister. Sergei Stanishev was the leader of the Bulgarian Socialist Party (BSP), which was the biggest and predominant party in the Coalition for Bulgaria.<sup>5</sup> For now, he is also the President of the Party of European Socialist (PES).

The 41<sup>st</sup> National Assembly was elected on 5 July 2009 and it was dissolved on 14 March 2013. The 87<sup>th</sup> Government was a minority Government formed by Citizens for the European Development of Bulgaria (known by its Bulgarian abbreviation – GERB).<sup>6</sup> GERB obtained

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<sup>1</sup> Caretaker Government is a term of art for Governments of temporary nature which are appointed once the ruling one is dissolved until the new one is formed following elections. See in general P Schleiter and V Belu, 'The Challenge of Periods of Caretaker Government in the UK' (2014) Parliamentary Affairs doi: 10.1093/pa/gsu027 First published online: December 19, 2014.

<sup>2</sup> Coalition for Bulgaria was a coalition of leftist parties concentrated around the Bulgarian Socialist Party. The parties in Coalition for Bulgaria have changed over the years. Coalition for Bulgaria was replaced by "BSP – left Bulgaria" since the National Assembly elections in 2014.

<sup>3</sup> Later renamed National Movement for Stability and Progress. See B Cholova and JM De Waele, 'Populism in Bulgaria: The Politics of Resentment' (2014) 38 Southeastern Europe 56, 62-63.

<sup>4</sup> For further reading see B Stefanova, 'Between ethnopolitics and liberal centrism: the Movement for Rights and Freedoms in the mainstream of Bulgarian party politics' (2012) 40 Nationalities Papers: The Journal of Nationalism and Ethnicity 767.

<sup>5</sup> For further reading see M Spirova, 'The Bulgarian Socialist Party: The long road to Europe' (2008) 41 Communist and Post-Communist Studies 481.

<sup>6</sup> Y Georgiev and M Trifonova, 'Bulgaria' in K Vida (ed) *Strategic Issues for the EU10 Countries: Main Positions and Implications for EU Policy-making* (Foundation for European Progressive Studies, Budapest 2012) 5.

117 seats in the National Assembly and needed further parliamentary support in order to form the Government. GERB found such initial support in three small parties ATAKA,<sup>7</sup> the Blue Coalition and Order Law and Justice<sup>8</sup> (known by its Bulgarian abbreviation – RZS), which were against the parties that were part of the three-party coalition, which hitherto governed Bulgaria. With the vote in the National Assembly on 27 July 2009 the 87<sup>th</sup> Government with GERB's leader – Boyko Borissov – as Prime Minister started governing Bulgaria. In the autumn of 2011 the Presidential and local elections took place together. The first ballot for both took place on 23 October and the second on 30 October. The Presidential elections were won by Rosen Plevneliev who was supported by GERB. These elections were challenged by the opposition (Coalition for Bulgaria), which was held by one of the Bulgarian MEPs to be unprecedented in Bulgaria's history since the democratic changes.<sup>9</sup> The Bulgarian Constitutional Court (BCC) admitted the case but eventually did not annul the elections.<sup>10</sup> GERB was also very successful during the local elections. As it can be seen from the answer to Question III.2, these elections played an important role in the discussions of the proposed constitutional amendment.

### *1.1.2 The beginning of the instability*

The political situation was stable during the biggest part of the mandate of the Borissov Government. However, in the end of 2012 certain level of public discontent turned into sporadic protests. In the beginning of 2013 the protests unified around the discontent against the monopolies of the electricity distributors and the high energy prices, later evolving into protests against the Government's policies in general. A few people even set themselves on fire, which some parts of the public saw as connected to the protests. Amidst the protests, on 27 January 2013 a referendum, which was politically initiated by Sergei Stanishev, took place with a question that read “Should nuclear power in Bulgaria be developed through the building of a new power plant?”. While the results were 60.6% ‘yes’ and 37.9% ‘no’ (the rest to 100% were void bulletins), the referendum failed due to low turnout.<sup>11</sup> These protests eventually led to the resignation of Boyko Borissov on 21 February 2013, a few months

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<sup>7</sup> ATAKA is considered by some as extreme right or even ultranationalist. See for extreme right - S Katsikas, *Negotiating Diplomacy in the New Europe: Foreign Policy in Post-Communist Bulgaria* (I.B Tauris, London 2011) 64; M Meznik and T Thieme, ‘Against all Expectations: Right-Wing Extremism in Romania and Bulgaria’ in U Backes and P Moreau (eds) *The Extreme Right in Europe: Current Trends and Perspectives* (Vandenhoeck & Ruprecht, Göttingen 2012) 205–207. See for ultranationalist - J Bugajski, ‘Bulgaria: Progress and Development’ in S Wolchik and J L Curry (eds) *Central and East European Politics: From Communism to Democracy* (2<sup>nd</sup> ed, Rowman & Littlefield, Lanham 2011) 262

<sup>8</sup> RZS initially formed a parliamentary group but on 9 December 2009 it was dissolved after one of its members left it and its membership fell below the 10-members threshold. Its members continued their work as independent national representatives. Г Моева, 9 декември 2009, Парламентарната група на РЗС престана да съществува <[http://dariknews.bg/view\\_article.php?article\\_id=447744](http://dariknews.bg/view_article.php?article_id=447744)> accessed 14 March 2015.

<sup>9</sup> Statement of Iliana Malinova Iotova on 14 November 2011 <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20111114+ITEM-018+DOC+XML+V0//EN&language=HR>> accessed 14 March 2015.

<sup>10</sup> Decision № 12 of 13 December 2011 in Case № 11 of 2011, SG 99 of 16 December 2011.

<sup>11</sup> 27 January 2013, Bulgaria nuclear vote 'invalidated by low turnout' <<http://www.bbc.com/news/world-europe-21217882>> accessed 14 March 2015.

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before the end of the four-year mandate.<sup>12</sup> His Government stayed in power until 13 March 2013 when, after all major parties declined to try to form a Government, a Caretaker Government was appointed by the President.<sup>13</sup>

The 42<sup>nd</sup> National Assembly was elected on 12 May 2013 and was also prematurely dissolved on 6 August 2014 by the President.<sup>14</sup> Despite the protests and the resignation that followed in February, GERB won the elections with 30.5%, followed closely by Coalition for Bulgaria with 26.6%.<sup>15</sup> The third and the fourth in the elections were DPS with 11.3% and АТАКА with 7.2%. The turnout was a record low for National Assembly elections – just 51.33%.<sup>16</sup> These elections were also challenged. Interestingly, the elections were challenged by the national representatives from GERB - the party that won the elections.<sup>17</sup> The BCC again did not annul the elections.<sup>18</sup> Eventually, the mandate of the Caretaker Government was ended with the formation of the 89<sup>th</sup> Government on 29 May 2013. The 89<sup>th</sup> Government was formed by Coalition for Bulgaria and DPS, which together had 120 national representatives (exactly half of the total 240). On 29 May it was Volen Siderov (АТАКА's leader) who registered in order to provide the quorum for the Government to be formed, which created much controversy.<sup>19</sup> While Volen Siderov stated that his party will not support this Government, the national representatives of GERB accused АТАКА of participating in a covert three-party coalition. The accusations were based on the fact that registering to secure quorum and then not voting against the, formally, two-party coalition, АТАКА *de facto* allowed for the new Government to be formed.<sup>20</sup> This highly controversial start of the new Government brought up many legitimacy concerns<sup>21</sup> and accusations of backdoor dealings.

### *1.1.3 Increased instability and continuous protests*

On 28 May 2013 – a day before the formation of the 89<sup>th</sup> Government, the leaders of Coalition for Bulgaria and DPS submitted a draft law to the National Assembly for the amendment of the Law on the State Agency for National Security (known by its Bulgarian

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<sup>12</sup> Published 20 February 2013 - 08:56, Updated 20 February 2013 - 15:46, Bulgarian prime minister quits following mass protests over electricity bills <<http://www.euractiv.com/energy/bulgarian-prime-minister-resigns-news-517946>> accessed 14 March 2015.

<sup>13</sup> Presidential Decree № 56 of 13 March 2013, SG 25 of 13 March 2013.

<sup>14</sup> Presidential Decree № 201 of 5 August 2014, SG 65 of 6 August 2014.

<sup>15</sup> В Cholova and JM De Waele, 'Populism in Bulgaria: The Politics of Resentment', *supra* n 3, 65.

<sup>16</sup> Обобщена активност на гласуване за страната към 21:00 ч. <<http://results.cik.bg/pi2013/aktivnost/>> accessed 14 March 2015.

<sup>17</sup> Thursday 16 May 2013, Bulgaria's election results disputed <<http://www.enca.com/world/bulgarias-ex-premier-challenge-election-result>> accessed 14 March 2015.

<sup>18</sup> Decision № 5 of 9 July 2013 in Case № 13 of 2013, SG 63 of 16 July 2013.

<sup>19</sup> National Assembly, Stenographic record of the 4<sup>th</sup> meeting, 29 May 2013.

<sup>20</sup> It must be noted that Volen Siderov, himself, voted 'against' in the actual vote for the formation of the Government. However, he was the only one to vote from АТАКА. The voting inactivity of the other national representatives took the form of passive support, instead of the active opposition that was proclaimed.

<sup>21</sup> Е.г. ПИК, 9 September 2013, Левият Георги Близнашки: Кабинетът управлява без легитимност и кауза <[pik.bg/левият-георги-близнашки-кабинетът-управлява-без-легитимност-и-кауза-news99276.html](http://pik.bg/левият-георги-близнашки-кабинетът-управлява-без-легитимност-и-кауза-news99276.html)> accessed 14 March 2015.

abbreviation – DANS). One of the proposed amendments was to strip the President from his (not constitutional) power to appoint the President of that Agency on a proposal from the Council of Ministers and to give that power to the National Assembly after a proposal of the Prime Minister. The draft law was quickly adopted on 7 June 2013 and in accordance with its last provision it was to enter into force on the day of its promulgation in the State Gazette (SG). The Law was promulgated on 14 June 2013.<sup>22</sup> On 14 June 2013 the plenary session of the National Assembly started in its very beginning with a request to include in its agenda a proposal by the Prime Minister – Plamen Oresharski – on the President of DANS. It was approved and the session started with proposal by the Prime Minister. His first words were that on the basis of Article 8(1) of the abovementioned law he was proposing Delyan Peevski (DPS). The National Assembly adopted a Decision shortly after the proposal with which it appointed Mr Peevski as a President of DANS.<sup>23</sup>

Due to the background of Mr Peevski, his appointment quickly created unprecedented outburst in the society and was held by some to have been the beginning of the end of the Oresharski Government. In a matter of hours thousands of people went on the streets in protests against the appointment, which caught the attention of the international media.<sup>24</sup> The enormous outcry against the appointment led to a statement by Mr Peevski on the very next day, expressing his willingness to step down. On 19 June 2013 the National Assembly with a first point in the agenda adopted a Decision repealing its Decision from 14 June.<sup>25</sup> Lyutvi Mestan (DPS), who presented the annulment Decision stated, with respect to the explanations of the annulment Decision, that

“The politically responsible reading of the situation requires as an obvious necessity that the Decision of 14 June 2013 for the election of the President of DANS to be urgently annulled in order to give the Prime Minister an opportunity to propose a new President of DANS which after the necessary consultations to be discussed and adopted in accordance with the applicable parliamentary procedure.”<sup>26</sup>

However, the protests were gathering force and the protesters were not satisfied with this reversal and started asking for the resignation of the Government, less than a month after it was formed.<sup>27</sup> This appointment and its swift reversal led also to wave of constitutional litigation on the status of Mr Peevski as a national representative considering the failed

<sup>22</sup> Law for amending the Law on the State Agency for National Security, SG 52 of 14 June 2013, 3.

<sup>23</sup> National Assembly, Decision for the election of a President of State Agency for National Security of 14 June 2013 (it did not get to be promulgated in the SG).

<sup>24</sup> Tsvetelia Tsoleva, 14 June 2013, Bulgarians protests over media magnate as security chief <<http://www.reuters.com/article/2013/06/14/us-bulgaria-government-idUSBRE95D0ML20130614>> accessed 14 March 2015.

<sup>25</sup> National Assembly, Decision for annulment of the Decision for the election of a President of State Agency for National Security of 14 June 2013 of 19 June 2013, SG 54 of 21 June 2013, 2.

<sup>26</sup> National Assembly, Stenographic record of the 13<sup>th</sup> meeting, 19 June 2013.

<sup>27</sup> V. Ganev, 3 October 2013, The Summer of Bulgarian Discontent <<http://councilforeuropeanstudies.org/critcom/the-summer-of-bulgarian-discontent/>> accessed 14 March 2015.

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appointment.<sup>28</sup> This litigation eventually ended on 14 January 2014 with the BCC upholding the status of Mr Peevski as a national representative.<sup>29</sup> After its first, largely unpopular, Decision in these cases the BCC was demoralised when it was mockingly put for sale on Ebay.<sup>30</sup> After 140 days of protests, further impetus was given to them in the autumn of 2013 when, following the BCC Decision in one of the Peevski cases, the students of the Sofia University occupied the main lecture hall during a lecture of one of the BCC judges, which led to a months-long occupation of the whole University.<sup>31</sup> The protests have been widely covered in the media and this Report will not go in further detail. Since the political situation was hugely affected by these protests it was necessary to give this overview, which does not claim to be exhaustive and to necessarily be giving the complete picture. Thus, this author invites the reader to further examine the situation in order to fully comprehend the situation.

In times of continuing, but much less active, protests, another important turning point during the 89<sup>th</sup> Government came about – the European Parliament elections. In December 2013 Lyutvi Mestan (DPS) saw the forthcoming European Parliament elections as an opportunity for the Government to show that it has legitimacy.<sup>32</sup> The elections took place on 25 May 2014 and were again won by GERB with 30.4%, followed by Coalition for Bulgaria with 18.9%, DPS with 17.2%, the newly formed (and soon after dissolved) coalition of Bulgaria Without Censorship (BWC) with 10% and another newly formed coalition – the Reformist Bloc, with 6.4% (see *infra* an introduction of the last two).<sup>33</sup> These results fuelled even more the feeling of illegitimacy among the general public with respect to the Government in power and gave further impetus to the continuing, for almost a year at that time, protests.<sup>34</sup> The legality of the elections was challenged before the BCC, as it was the case in the previous two National Assembly and Presidential elections. The BCC this time rejected the request for declaring the elections unlawful, citing lack of powers to do this with respect to the whole of the European Parliament elections in Bulgaria.<sup>35</sup> The BCC considered itself having the power to declare unlawful only the election of particular MEPs but not the elections as a

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<sup>28</sup> Decision № 7 of 8 October 2013 in Case № 16 of 2013, SG 89 of 11 October 2013; Decision № 14 of 18 December 2013 in Case № 17 of 2013, SG 1 of 3 January 2014; Determination № 1 of 14 January 2014 in Case № 21 of 2013, SG 7 of 24 January 2014.

<sup>29</sup> Правен свят, 14 January 2014, КС прие за недопустимо искането на президента по решението за отмяна избора на Пеевски <<http://legalworld.bg/34010.ks-prie-za-nedopustimo-iskaneto-na-prezidenta-po-reshenieto-za-otmiana-izbora-na-peeovski.html>> accessed 14 March 2015.

<sup>30</sup> D Cohen, 12 November 2013, For Sale: Bulgaria's Constitutional Court <<http://www.usnews.com/opinion/blogs/world-report/2013/11/12/bulgarias-constitutional-court-is-for-sale-amid-a-sea-of-corruption>> accessed 14 March 2015.

<sup>31</sup> G K, 31 October 2013, Students on the barricades <<http://www.economist.com/blogs/easternapproaches/2013/10/bulgaria>> accessed 14 March 2015.

<sup>32</sup> 21 December 2013, Местан: Евроизборите ще покажат легитимността на правителството <<http://novinite.bg/articles/59395/Mestan-Evroizborite-shte-pokajat-legitimnostta-na-pravitelstvoto#sthash.7tXLB6vg.dpuf>> accessed 14 March 2015.

<sup>33</sup> These are the figures only for the parties and coalitions that actually won seats in the EP. Резултати от избори за Европейски парламент 25.05.2014 г. за страната <<http://results.cik.bg/ep2014/rezultati/index.html>> accessed 14 March 2015.

<sup>34</sup> 28 May 2014, Нов протест пред парламента <<http://bnt.bg/news/obshtestvo/nov-protest-pred-parlamenta>> accessed 14 March 2015.

<sup>35</sup> Determination № 3 of 17 July 2014 in Case No 11 of 2014, SG 61 of 25 June 2014.

whole due to the provisions of the Elections Code.<sup>36</sup>

#### *1.1.4 The banking crisis*

Yet another crucial issue that destabilised the political situation in Bulgaria was the 2014 banking crisis. Before giving a short overview of the banking crisis, it is worth quoting one statement, made about three years before the crisis, by Qnaki Stoilov (Coalition for Bulgaria) during the 15 June 2011 discussions in the National Assembly on the amendments of the Law for the Planning of the State Budget (LPSB). Mr Stoilov stated:

“While here it is being talked about the stability of the banking system in Bulgaria, I would like to focus your attention to one risk. I am not going to discuss anything concrete because this is a sensitive matter and we should not create disturbances in it. Let a report be made and you ask for it Mr [Finance] Minister from the management of the Bulgarian National Bank, on how many of the commercial banks in Bulgaria dare to credit their own enterprises, that is, the same people participating in the ownership and the management of the commercial banks to collect resources from the public and then invest them in their own enterprises. I could not call this in any other way than draining of the financial capital for corporate and self-serving goals. If these are going to be the fundamentals of this stability [that the LPSB is trying to ensure] they can come out to be very shaky.”

The crisis started with an alleged assassination attempt against Delyan Peevski in the beginning of June 2014, which was rumoured to be ordered by the majority shareholder of Corporate Commercial Bank (CCB) – Tsvetan Vasilev.<sup>37</sup> The Prosecution Office in Bulgaria responded with searches in different corporate enterprises, including CCB’s office building.<sup>38</sup> However, it was not clear whether or not these searches were connected with a signal made to the Prosecution Office in the beginning of 2014 by activists from “Protest Network” concerning alleged illegal activities of financial nature of Delyan Peevski, Tsvetan Vasilev and Nikolai Barekov – BWC’s initial leader.<sup>39</sup> In the public space rumours followed that Mr Peevski was removing large amounts of his own funds from CCB.<sup>40</sup> A bank run followed, which enormously damaged the liquidity of CCB and another, recently acquired by CCB, bank.<sup>41</sup> Soon after this, the Bulgarian National Bank (BNB) announced nationalisation of CCB and its recent acquisition, suspended operations at both and stated that it will

<sup>36</sup> For further discussion on the BCC’s powers on that point see M Vatsov, European integration through preliminary rulings? The case of the Bulgarian Constitutional Court, German Law Journal (Special Issue on 'The preliminary reference to the Court of Justice by Constitutional Courts' M Dicosola, C Fasone & I Spigno (eds) forthcoming).

<sup>37</sup> Б Митов, 13 June 2014, Трима души са обвинени за готвено убийство на Пеевски <<http://www.mediapool.bg/trima-dushi-sa-obvineni-za-gotveno-ubiystvo-na-peevski-news221460.html>> accessed 14 March 2015.

<sup>38</sup> *Ibid.*

<sup>39</sup> 25 February, Активисти на "Протестна мрежа" внесоха сигнал срещу "Пеевски-Василев-Бареков" <[http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2014/02/25/2249408\\_aktivisti\\_na\\_prottestna\\_mreja\\_vnesoha\\_signal\\_sreshthu/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2014/02/25/2249408_aktivisti_na_prottestna_mreja_vnesoha_signal_sreshthu/)> accessed 14 March 2015.

<sup>40</sup> F Coppola, 30 June 2014, What On Earth Is Going On In Bulgaria? <<http://www.forbes.com/sites/francescoppola/2014/06/30/what-on-earth-is-going-on-in-bulgaria/>> accessed 14 March 2015.

<sup>41</sup> *Ibid.*

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recapitalise it out of the deposit guarantee fund.<sup>42</sup>

The crisis deepened when a bank run on another, unrelated to CCB, bank – First Investment Bank (FIB) took place on 27 June 2014, which led the President of Bulgaria to make a public statement saying to the depositors that their funds were safe.<sup>43</sup> The president also announced that the National Assembly was planned to be dissolved in late July and that new elections were to take place in the beginning of October. The bank run on FIB later became clear to have been separately plotted to deliberately destabilise the banking system by using e-mails and SMSes.<sup>44</sup> The plot did not completely succeed and FIB's situation quickly stabilised a few days later and depositors' trust was regained.<sup>45</sup> Support for this was also given by the favourable position of the Commission on the credit line for the banking system.<sup>46</sup>

The situation with CCB, unfortunately, worsened. An audit of the CCB by the BNB found credit records missing for more than €1.7 billion (while CCB's credits in total amounted to €2.7 billion).<sup>47</sup> According to BNB, the credit records that were missing were relating to debtors in close relationship with Tsvetan Vasilev.<sup>48</sup> This shows the relevance of the statement of Qnaki Stoilov that was quoted above. Even more, in the day before CCB was put under special supervision, more than €100 million were drained in cash, allegedly, under the command of Mr Vasilev.<sup>49</sup> At certain point Mr Vasilev was also put on Interpol's list.<sup>50</sup> At the moment Mr Vasilev is in Serbia and court proceedings for his extradition are undergoing.<sup>51</sup> On 12 March 2015, during a visit of the Bulgarian President in Serbia, the Serbian President, in answering a question on his relationship with Mr Vasilev, while saying

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<sup>42</sup> K Hope, 22 June 2014, Bulgaria rushes to nationalise politically-connected bank <<http://www.ft.com/intl/cms/s/0/cf0ed87a-fa2b-11e3-a328-00144feab7de.html#axzz3U1s9w3HB>> accessed 14 March 2015.

<sup>43</sup> E Konstantinova, 29 June 2014, Bulgaria Has Resources to Stop Run on Banks, President Says <<http://www.bloomberg.com/news/articles/2014-06-29/bulgaria-arrests-two-men-amid-efforts-to-stop-run-on-banks>> accessed 14 March 2015.

<sup>44</sup> G K, 1 July 2014, Why the run on banks? <<http://www.economist.com/blogs/easternapproaches/2014/07/bulgaria>> accessed 14 March 2015.

<sup>45</sup> K Hope, M Arnold and N Buckley, 30 June 2014, Fears of Bulgarian financial crisis ease with central bank action <<http://www.ft.com/cms/s/0/eb671570-004b-11e4-a3f2-00144feab7de.html#axzz3U1s9w3HB>> accessed 14 March 2015.

<sup>46</sup> G Jones, 30 June 2014, EU approves Bulgaria credit line for banking system <<http://www.reuters.com/article/2014/06/30/bulgaria-crisis-eu-idUSL6N0PB14Z20140630?feedType=RSS>> accessed 14 March 2015.

<sup>47</sup> E Konstantinova and B Groendahl, 15 July 2014, Bulgaria Asks ECB to Supervise Banks as Crisis Festers <<http://www.bloomberg.com/news/articles/2014-07-15/bulgaria-asks-ecb-to-supervise-banks-as-crisis-festers>> accessed 14 March 2015.

<sup>48</sup> 12 July 2014, Цветан Василев откраднал 3,5 млрд. лв. от КТБ <<http://www.monitor.bg/article?id=435586>> accessed 14 March 2015.

<sup>49</sup> *Ibid.*

<sup>50</sup> 12 August 2014, KTB Majority Owner Tsvetan Vasilev Indicted, Sought through Interpol <<http://www.novinite.com/articles/162679/KTB+Majority+Owner+Tsvetan+Vasilev+Indicted,+Sought+through+Interpol>> accessed 14 March 2015.

<sup>51</sup> A Vasovic and T Tsoleva, 11 March 2015, Serbian court overturns extradition for Bulgarian fugitive businessman <<http://uk.reuters.com/article/2015/03/11/uk-serbia-bulgaria-corpbank-idUKKBN0M71V920150311>> accessed 14 March 2015.

that Mr Vasilev was not friend of his did say that his investments in Serbia were excellent.<sup>52</sup>

For Bulgaria, covering the costs over CCB meant increasing its sovereign debt, which also increased its budgetary deficit from about 1.8% to almost 3%.<sup>53</sup> With this the budget also had to be updated, which furthered the political spats.<sup>54</sup> Eventually, the BNB put CCB in insolvency proceedings. This short overview shows how controversial and politically relevant this banking crisis really was and still is. Further detail on this point will be spared for now. It must be noted, however, that the CCB issue and the recovery of the deposits was decided to be a political question and was left to be solved for after the elections.

Eventually, with the decline in the, initially low, public support for the Government and the retraction by DPS of its political support<sup>55</sup> the Prime Minister was forced to submit his resignation and he did so on 23 July 2014.<sup>56</sup> The resignation was accepted by the National Assembly the next day with 180 votes in favour and 8 against.<sup>57</sup> The President dissolved the National Assembly and appointed a Caretaker Government on 6 August 2014.<sup>58</sup> This Caretaker Government had as a Prime Minister Georgi Bliznashki – a former senior member of the BSP up until earlier that year, when he was expelled from the party for openly supporting the anti-Government student-occupation protests.<sup>59</sup>

### *1.1.5 The transformation of the political parties and coalitions*

This political situation, leading to the elections for the 43<sup>rd</sup> National Assembly, also caused a major rearrangement and restructuring of the political background, where new parties and coalitions appeared on their own, other parties appeared after splitting from already existing ones and others went through a leadership change. All of these changes can probably be the object of separate political science research project and cannot be examined in detail here. However, a very basic overview will be provided here as it is needed to understand the election results for the 43<sup>rd</sup> National Assembly and the political developments that followed.

<sup>52</sup> 13 March 2015, Tsvetan Vasilev is no friend of mine: Serbian President Tomislav Nikolic <<http://www.focus-fen.net/news/2015/03/13/365989/tsvetan-vasilev-is-no-friend-of-mine-serbian-president-tomislav-nikolic.html>> accessed 14 March 2015.

<sup>53</sup> Л Границка, 16 July 2014, Нов държавен заем ще решава проблемите в КТБ <<http://www.mediapool.bg/nov-darzhaven-zaem-shte-reshava-problemite-v-ktb-news222706.html>> accessed 14 March 2015.

<sup>54</sup> *Ibid.*

<sup>55</sup> 5 June 2014, Bulgarian Co-ruling Party DPS Calls for Early Elections by end-2014 <<http://www.novinite.com/articles/161086/Bulgarian+Co-ruling+Party+DPS+Calls+for+Early+Elections+by+end-2014>> accessed 14 March 2015.

<sup>56</sup> Published 24 July 2014 - 10:05, Updated 8 January 2015 - 15:45, Bulgarian government resigns without nominating a Commissioner <<http://www.euractiv.com/sections/eu-elections-2014/bulgarian-government-resigns-without-nominating-commissioner-303687>> accessed 14 March 2015.

<sup>57</sup> 24 July 2014, National Assembly accepts resignation of Plamen Oresharski's Government with 180 "yes" and 8 "against" votes <<http://www.parliament.bg/en/news/ID/3221>> accessed 14 March 2015.

<sup>58</sup> Presidential Decree № 200 of 5 August 2014, SG 65 of 6 August 2014.

<sup>59</sup> T Tsolova and M Williams, Troubled Bulgaria names law professor as interim prime minister <<http://www.irishtimes.com/news/world/europe/troubled-bulgaria-names-law-professor-as-interim-prime-minister-1.1888281>> accessed 14 March 2015.

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A little earlier, in the beginning of 2013 an attempted assassination (that later seemed to be just a hoax<sup>60</sup>) of DPS's leader – Ahmed Dogan, happened right before his resignation from the leadership position and his nomination of Lyutvi Mestan as his successor.<sup>61</sup> Later in 2013, one of the new coalitions was formed – the Reformist Bloc. It was cofounded by Democrats for Strong Bulgaria, the Union of Democratic Forces (both of which formed the core of the former Blue Coalition), Bulgaria for Citizens (led by Meglena Kuneva<sup>62</sup>), as well as the Freedom and Dignity People's Party (led by Kasim Dal<sup>63</sup>), and the Bulgarian Agrarian People's Union.<sup>64</sup> Another new party which also created a coalition was BWC.<sup>65</sup> It made a coalition with three small parties<sup>66</sup> and together they got two MEP places. Soon after the European Parliament elections the coalition dissolved. In preparation for the new elections BWC entered in another coalition with LIDER (a small party that has existed since 2007 but never had elected representatives).<sup>67</sup> Another new coalition was formed in August 2014 – the Patriotic Front. It combined the National Front for the Salvation of Bulgaria (NFSB)<sup>68</sup> and VMRO, one of the earlier coalition partners of BWC.<sup>69</sup>

Yet another new party that was created in the meantime, in January 2014, was Alternative

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<sup>60</sup> T Brady, 21 January 2013, Was 'assassination' attempt on Bulgarian politician a hoax? Gunman used gas pistol loaded with pepper spray that would not have killed opposition leader <<http://www.dailymail.co.uk/news/article-2265805/Ahmed-Dogan-Was-assassination-attempt-Bulgarian-politician-hoax.html>> accessed 14 March 2015.

<sup>61</sup> 19 January 2013, Bulgaria's Ethnic Turkish Leader Resigns after Surviving Attempt on His Life <<http://www.novinite.com/articles/147011/Bulgaria's+Ethnic+Turkish+Leader+Resigns+after+Surviving+Attempt+on+His+Life>> accessed 14 March 2015.

<sup>62</sup> Meglena Kuneva was a founding member of NDSV and after it came to power became a Chief Negotiator of Bulgaria with the EU. Later-on she became the Minister of European Affairs in Bulgaria until she was appointed Bulgaria's first Commissioner at the EU.

<sup>63</sup> Kasim Dal was considered second in rank in DPS, which he co-founded with Ahmed Dogan. In January 2011, however, after blaming Ahmed Dogan for the decline of the party he left the party. 18 February 2011, Bulgaria's Ethnic Turkish Party DPS Expels Dissenter <<http://www.novinite.com/articles/125419/Bulgaria's+Ethnic+Turkish+Party+DPS+Expels+Dissenter>> accessed 14 March 2015.

<sup>64</sup> 20 December 2013, Bulgarian Rightists Seal Reformist Bloc Coalition <<http://www.novinite.com/articles/156583/Bulgarian+Rightists+Seal+Reformist+Bloc+Coalition>> accessed 14 March 2015.

<sup>65</sup> G K, 4 May 2014, A controversial newcomer could be kingmaker <<http://www.economist.com/blogs/easternapproaches/2014/03/bulgaria>> accessed 14 March 2015.

<sup>66</sup> VMRO- Bulgarian National Movement, the Agrarian National Union (not the same as the one forming part of the Reformist Bloc) and Movement "Gergiovdan".

<sup>67</sup> 18 August 2014, Bulgaria without Censorship Strikes Alliance with Lider Party <<http://www.novinite.com/articles/162782>> accessed 14 March 2015.

<sup>68</sup> NFSB was formed in May 2011 after its founder – the owner of SKAT TV station – separated from ATAKA. SKAT TV was used by the leader of ATAKA – Volen Siderov – to gain popularity with his TV show, also called ATAKA, and then join the political scene.

<sup>69</sup> 3 August 2014, Two Bulgarian Nationalist Parties Team Up for Early Elections <<http://www.novinite.com/articles/162454/Two+Bulgarian+Nationalist+Parties+Team+Up+for+Early+Electio ns>> accessed 14 March 2015.

for Bulgarian Renaissance (known by its Bulgarian abbreviation – ABV).<sup>70</sup> ABV is a reanimated project from 2010 of the former President – Georgi Parvanov (2001-2012) leader of BSP until he stepped in office.<sup>71</sup> The new party was created in anticipation of the European Parliament elections and attracted major figures from the BSP, leading to its major political split.<sup>72</sup> These recent developments for the BSP reflected heavily on its leader Sergei Stanishev who eventually stepped down from the leadership position on 27 July 2014 when Mihail Mikov was chosen as the new leader.<sup>73</sup> With the change in leadership, the coalition in which BSP hitherto participated also changed its name. From Coalition for Bulgaria it became BSP – left Bulgaria. Not long after this leadership change, Mr Stanishev’s leadership position in PES also came under attack.<sup>74</sup> With this major political reshuffle for a relative small amount of time Bulgaria prepared for a new round of National Assembly elections.

### *1.1.6 Towards relative (in)stability*

The 43<sup>rd</sup> National Assembly was elected on 5 October 2014. The election was won by GERB with 32.7%, followed by BSP with 15.4%, DPS with 14.8%, the Reformist Bloc with 8.9%, Patriotic Front with 7.3%, BWC with 5.7%, ATAKA with 4.5%, and ABV with 4.15%.<sup>75</sup> The lack of majority for any one party led to long and difficult negotiations, which culminated in the formation of a coalition Government on 7 November 2014. The 91<sup>st</sup> Government was formally formed by GERB and the Reformist Bloc with the parliamentary support of ABV and the Patriotic Front.<sup>76</sup>

Since the formation of the 91<sup>st</sup> Government the political situation achieved some balance but it is still by far not stable. Some of the main issues, relevant for this Report, that have frequented the public discussion have been (1) the continuous CCB crisis, (2) the diversification of the gas supplies, and (3) accruing new sovereign debt of 16 billion leva (about €8 billion).

The CCB crisis saw new developments from the European Union (EU) level. In particular,

<sup>70</sup> 12 January 2014, Bulgaria's Ex-President Revives Leftist ABV Movement <<http://www.novinite.com/articles/157170/Bulgaria's+Ex-President+Revives+Leftist+ABV+Movement>> accessed 14 March 2015.

<sup>71</sup> V Zhelev, 8 November 2010, Bulgarian president sets up new political group <<https://euobserver.com/news/31220>> accessed 14 March 2015.

<sup>72</sup> Published 14 January 2014 - 08:57, Updated 08 January 2015 - 15:53, Influential MEP splits Bulgarian Socialist Party before EU election <<http://www.euractiv.com/eu-elections-2014/prominent-mep-splits-bulgarian-s-news-532728>> accessed 14 March 2015.

<sup>73</sup> A Krasimirov, 27 July 2014, Bulgaria's Socialists pick new leader as election looms <<http://uk.reuters.com/article/2014/07/27/uk-bulgaria-socialists-idUKKBN0FW0PS20140727>> accessed 14 March 2015.

<sup>74</sup> Published 26 September 2014 - 08:15, Updated 8 January 2015 - 15:45, PES to hold congress and seek successor to Stanishev <<http://www.euractiv.com/sections/eu-elections-2014/pes-hold-congress-and-seek-successor-stanishev-308723>> accessed 14 March 2015.

<sup>75</sup> Резултати от избори за народни представители 05.10.2014 г. за страната <<http://results.cik.bg/pi2014/rezultati/index.html>> accessed 14 March 2015.

<sup>76</sup> Published: 07 November 2014 - 07:57, Updated: 08 January 2015 - 15:13, Bulgarian parties approve coalition agreement, cabinet <<http://www.euractiv.com/sections/elections/bulgarian-parties-agree-coalition-agreement-cabinet-309849>> accessed 14 March 2015.

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the Commission (1) found Bulgaria to be “in a situation of excessive imbalances requiring decisive policy action and specific monitoring”,<sup>77</sup> largely due to the CCB situation and (2) initiated infringement proceedings<sup>78</sup> against Bulgaria. The infringement proceedings relate to the way Bulgaria handled the CCB guaranteed deposits. In particular, the Commission brought proceedings for a failure to correctly transpose the Deposit Guarantee Scheme Directive and a violation of the free movement of capital under Article 63 TFEU. This has put even further pressure for the swift solution of the CCB crisis. CCB is currently in insolvency proceedings but a liquidator is not yet appointed due to appeals by the shareholders of CCB against the Decision to revoke CCB’s licence.<sup>79</sup> On 11 March 2015 Prime Minister Borissov warned that CCB’s property is being plundered and said to the National Assembly that the Government will make a proposal for such a liquidator.<sup>80</sup> With respect to the economic impact of CCB on the Bulgarian budget, it must be noted that the budget deficit for 2014 ended up rocketed as high as 3.7% of the Gross Domestic Product (GDP) (almost 2% increase since before the beginning of the crisis).<sup>81</sup>

With respect to the gas supplies the political developments have been closely related to the Ukraine crisis and have evolved around the status (and possible revival) of South Stream,<sup>82</sup> Nabuko<sup>83</sup> and other pipeline projects going through Turkey.<sup>84</sup> The insecurity created around these projects weighs heavily on the political situation in Bulgaria because of the full dependence on Russian gas, on the one hand, and the economic importance of these projects for Bulgaria in terms of transition fees, on the other hand. In light of the banking crisis such questions have become even more politically charged.

Most recently the National Assembly approved the accruing of new sovereign debt

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<sup>77</sup> European Commission, Communication, 2015 European Semester: Assessment of growth challenges, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, SWD(2015) 20 final to SWD(2015) 47 final, 26 February 2014, 14.

<sup>78</sup> European Commission, Press Release IP/14/1041, Bulgaria must allow bank customers to access their money, 25 September 2014 <[http://europa.eu/rapid/press-release\\_IP-14-1041\\_bg.htm](http://europa.eu/rapid/press-release_IP-14-1041_bg.htm)> accessed 14 March 2015.

<sup>79</sup> For a short appraisal by the Commission of the banking crisis see European Commission, Country Report Bulgaria 2015: Including an In-Depth Review on the prevention and correction of macroeconomic imbalances SWD(2015) 22 final, 26 February 2015, 17.

<sup>80</sup> 11 March 2015, Bulgaria PM: We will propose liquidator for CorpBank today <<http://www.focus-fen.net/news/2015/03/11/365819/bulgaria-pm-we-will-propose-liquidator-for-corpbank-today.html>> accessed 14 March 2015.

<sup>81</sup> 31 December 2014, 2014 Budget Deficit Projected at 3.7% of GDP <<http://www.bta.bg/en/c/DF/id/984333>> accessed 14 March 2015.

<sup>82</sup> 3 December 2014, Sinking of South Stream gives Brussels a headache <<http://www.euractiv.com/sections/global-europe/sinking-south-stream-gives-brussels-headache-310529>> accessed 14 March 2015.

<sup>83</sup> 5 March 2015, Bulgaria wants to revive Nabucco, Azerbaijan says pipeline name ‘not important’ <<http://www.euractiv.com/sections/energy/bulgaria-wants-revive-nabucco-azerbaijan-says-pipeline-name-not-important-312645>> accessed 14 March 2015.

<sup>84</sup> 11 March 2015, Political concerns mar Turkish Stream project <<http://www.euractiv.com/sections/energy/political-concerns-mar-turkish-stream-project-312815>> accessed 14 March 2015.

amounting to 16 billion leva (about €8 billion).<sup>85</sup> The debates for this debt sparked a lot of controversies and its approval by the National Assembly was not certain up until the actual vote. The controversies evolved mainly around the amount of the debt and if it really was necessary to be as big. The stakes were very high with respect to the debt because the Prime Minister suggested a possible resignation of the Government if it was not approved by the National Assembly.<sup>86</sup> The debt also got the support of the President.<sup>87</sup>

Since the elections for the 43<sup>rd</sup> National Assembly, some of the newly formed parties also went through leadership changes. BWC went through structural changes including a change in its name (to Bulgarian Democratic Centre) and its leadership.<sup>88</sup> Also, the leadership of ABV fell into uncertainty when its leader – Georgi Parvanov resigned as a sign of protest against the support of ABV's national representatives for the new sovereign debt.<sup>89</sup> However, he will remain the leader at least until 25 April 2015 when ABV's national council will convene. Last but not least, on 9 March the European Parliament Committee on Legal Affairs unanimously decided to recommend to the European Parliament to waive the parliamentary immunity of Sergei Stanishev, in light of the request by the Chief Public Prosecutor of the Republic of Bulgaria on 24 November 2014.<sup>90</sup>

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<sup>85</sup> S Okov, 25 February 2015, Bulgarian lawmakers back 8 billion-euro bond sale plan <<http://www.chicagotribune.com/news/sns-wp-blm-news-bc-bulgaria25-20150225-story.html>> accessed 14 March 2015.

<sup>86</sup> A Krasimirov and T Tsoleva, Bulgaria approves 8 billion euro overseas borrowing plan <<http://www.reuters.com/article/2015/02/25/us-bulgaria-debt-idUSKBN0LT18R20150225>> accessed 14 March 2015.

<sup>87</sup> 23 February 2015, Bulgarian President Supports Government Proposal for BGN 16 B Debt <<http://www.novinite.com/articles/166729/Bulgarian+President+Supports+Government+Proposal+for+BGN+16+B+Debt>> accessed 14 March 2015.

<sup>88</sup> Sofia Globe, 22 December 2014, Barekov resigns as leader of 'Bulgaria Without Censorship' coalition <<http://sofiaglobe.com/2014/12/22/barekov-resigns-as-leader-of-bulgaria-without-censorship-coalition/>> accessed 14 March 2015.

<sup>89</sup> 6 March 2015, Bulgaria's ABV Accepts Resignation of Leader Georgi Parvanov <<http://www.novinite.com/articles/167038/Bulgaria's+ABV+Accepts+Resignation+of+Leader+Georgi+Parvanov>> accessed 14 March 2015.

<sup>90</sup> Committee on Legal Affairs, Report on the request for waiver of the immunity of Sergei Stanishev of 9 March 2015 (2014/2259(IMM)).

## II CHANGES TO THE BUDGETARY PROCESS

### BUDGETARY PROCESS

#### II.1

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

The regime of the budgetary process in Bulgaria is set out in three levels of norms. This is done at the level of (1) the Constitution of the Republic of Bulgaria (CRB), (2) laws and (3) regulations (norms standing lower than laws in the hierarchy of norms). There are four provisions in the CRB that relate to the budgetary process as such. First, Article 87 CRB sets out the exclusive power of the Council of Ministers to draw up and submit the draft Law on the State Budget (LSB) to the National Assembly. Second, Article 84 CRB sets out the power of the National Assembly to adopt the LSB and the Report on the Budget. Thirdly, Article 91(1) CRB provides that the Court of Auditors exercises control over the implementation of the budget. Fourth, Article 106 CRB states that the Council of Ministers manages the implementation of the budget.

There are several other provisions in the Constitution relating to the budget and setting out rules for the budgets of certain constitutionally defined organs. Under Article 62 CRB the National Assembly has an autonomous budget. Article 117(3) CRB states the same for the branch of the judiciary. The draft budget of the judiciary, according to Article 130a CRB, is proposed by the Minister of Justice and it is submitted to the Supreme Judicial Council which, according to Article 130(6)(4) CRB, approves the draft budget of the judiciary. Article 132a CRB provides for the creation of an independent Inspectorate which supervises the activities of the judiciary and the budget of this Inspectorate is approved by the National Assembly while being in the framework of the budget of the judiciary. Finally, Article 141 CRB states that the municipalities also have autonomous budgets and that the State supports the activities of the municipalities through *inter alia* the State Budget.

All of these constitutional provisions, however, need to be further supplemented and elaborated upon in order to be operationalised. This is done at the level of laws with the Law on the Public Finances (LPF).<sup>91</sup> Before going into the explanation of the budgetary process, it is first needed to explain the scope *ratione materiae* of the State Budget and its relationship with the other budgets that are set out in the CRB. According to Article 42 LPF the State Budget includes the central budget,<sup>92</sup> the autonomous budgets of the National Assembly and the judiciary, the budgets of the organs of the executive, the budgets of the other State organs and budgetary organisations *excluding* the autonomous budgets of the municipalities, social security funds and the budgets of the budgetary organisations under Article 13(3) and (4)

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<sup>91</sup> Law on the Public Finances, SG 15 of 15 February 2013.

<sup>92</sup> The central budget is administered by the Minister of Finance in accordance with the LPF, the LSB and, according to Article 12(1) LPF, acts of the Council of Ministers.

LPF.<sup>93</sup> Although some budgets are excluded from the State Budget *stricto sensu*, they still have special relationship with the State Budget and are governed to a certain extent by the general provisions of the LPF but going in further detail on this point is beyond the scope of the present Report.

One of the said aims of the LPF, during the debates for its adoption, was to achieve a certain level of decentralisation, that is – to impose the obligations of following a budgetary discipline to a multitude of actors that hitherto participated in a certain way in the management of public resources through adopting a budget. As such, the LPF included a great number of entities in the budgetary process in one way or another. For the sake of clarity the current answer will focus only on the main actors. The main actors are summarised in Article 7(1) LPF. According to it, the Council of Ministers organises and manages the drafting, the submission to the National Assembly and implementation of the State Budget through the Minister of Finance and the primary authorising officers. Primary authorising officers are authorising officers that draft, implement and report a budget and are identified as such through law.<sup>94</sup> Article 7(1) is, of course, without prejudice to the special provisions on the Supreme Judicial Council, the National Assembly, the social security funds, the mayors and other authorising officers.<sup>95</sup> The Court of Auditors is another main actor, providing audits for the Report on the implementation of the State Budget. The Law for the Fiscal Council is still not adopted but when it is, that Council will also be one of the main actors in the budgetary process.

The cycle of the budgets is annual and the budgetary year starts on 1 January and ends on 31 December.<sup>96</sup> However, the cycle of a LSB is longer and can be divided in two – cycle of adoption and cycle of implementation. The cycle of adoption is divided by several temporal indicators. First, under Article 67(1) LPF, annually, until 31 January, the Council of Ministers acting on a proposal of the Minister of Finance adopts a budgetary procedure for the drafting of the medium-term budgetary forecast and the draft LSB. This procedure is adopted by a Council of Ministers' Decision and represents the third level of norms that comprise the budgetary process. The Decision sets out the stages, the deadlines, the allocation of responsibilities and requirements for the drafting of the forecast and the draft Law in great detail. The Minister of Finance also provides Guidelines for the implementation of the budgetary procedure. In the framework of the budgetary procedure the Finance Minister prepares a spring and autumn macroeconomic forecast by 25 March and 25

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<sup>93</sup> Article 13(3) refers to the Bulgarian Academy of Science, the public institutions of higher education, the Bulgarian News Agency, the Bulgarian National Television and the Bulgarian National Radio. Article 13(4) refers to the budgetary parameters of other economically defined entities and structural units that are included in the consolidated fiscal programme. These entities and structural units were not determined during the research.

<sup>94</sup> LPF, *supra*, n 91, art 11(3). Such are, for example, (1) for the National Assembly – its President, (2) for the judiciary – the Supreme Judiciary Council, (3) for the municipalities – the mayors and (4) for the Ministries – the respective Ministers.

<sup>95</sup> *Ibid.*, art 7(2)-(7).

<sup>96</sup> *Ibid.* art 10.

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September, respectively.<sup>97</sup>

Next, by 20 April the Council of Ministers, acting on a proposal of the Minister of Finance, approves the medium-term budgetary forecast and the revision of the Strategy for the management of the State debt.<sup>98</sup> The Minister of Finance also prepares, in collaboration with the primary authorising officers, the draft of the LSB and the draft of the revised medium-term budgetary forecast.<sup>99</sup> The Recommendations of the Council of the European Union and the divergences between the spring and autumn macroeconomic forecasts are reflected in the revised forecast.<sup>100</sup> The Council of Ministers approves the draft LSB and the revised medium-term budgetary forecast and adopts an Opinion that is prepared by the Minister of Finance on the budget of the judiciary. By 31 October the Council of Ministers submits the draft LSB to the National Assembly together with the revised medium-term budgetary forecast which serves as the explanations to the draft Law and the Opinion on the budget of the judiciary.<sup>101</sup> If the need arises the medium-term budgetary forecast may be amended by the Council of Ministers, acting on a proposal of the Minister of Finance, within a month of the promulgation of the Laws on the State Budget, the Budget for the Social Security and the Budget of the National Health Insurance Fund in accordance with the parameters of the adopted Laws.<sup>102</sup>

If the LSB is not adopted by 31 December, the revenues are collected in accordance with the applicable laws and the expenditures shall not be greater than the expenditures for the same period during the preceding year, unless the National Assembly or the Council of Ministers adopt acts providing for additional or decreased budgetary resources.<sup>103</sup> This regime can be applied for only three months after which the National Assembly adopts a Decision proposed by the Council of Ministers with which additional period of time is prescribed for collecting revenue and making expenditures.<sup>104</sup>

After the LSB is adopted and 31 December passes, the implementation cycle starts. The relevant point here is the oversight of the Court of Auditors and the preparation of the Report on the implementation of the State Budget. The Minister of Finance prepares the Report on the implementation of the State Budget and presents it to the Court of Auditors by 30 June. Together with the audits that are provided the Minister of Finance then submits the Report to the Council of Ministers by 30 September. The Report is then adopted by the Council of Ministers and submitted to the National Assembly. The National Assembly adopts the Report on the implementation of the State Budget by 31 December.

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<sup>97</sup> *Ibid.* art 68(1).

<sup>98</sup> *Ibid.* art 72.

<sup>99</sup> *Ibid.* art 78.

<sup>100</sup> *Ibid.* art 79(1)(2).

<sup>101</sup> *Ibid.* art 79(5)(4).

<sup>102</sup> *Ibid.* art 79(5)(7).

<sup>103</sup> *Ibid.* art 87(1).

<sup>104</sup> *Ibid.* art 87(2)-(3).

## GENERAL CHANGE

### II.2

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

There have been two main stages of changes in the Bulgarian budgetary process in its broader meaning, since the beginning of the crisis. These two stages can be called pre-LPF adoption and post-LPF adoption.

#### *II.2.1 Pre-LPF adoption*

During this stage there was only one amendment of the budgetary process in its wider meaning at the level of laws. This was the amendment of the LPSB, which was made in mid-2011 and entered into force in 1 January 2012. The amendment put the fiscal rules of 2% deficit and a limitation of the State's redistribution role at a level of up to 40% GDP in the LPSB as part of the Bulgarian self-imposed Pact for Financial Stability. This amendment changed the process by putting limits to the discretion of the Government while drafting the LSB. This amendment, itself, however, did not present a considerable change to the budgetary process *stricto sensu*. On a more subtle level, in order to appreciate the real change in the budgetary process, it is worth considering the Decisions of the Council of Ministers on the budgetary procedure and the Guidelines of the Minister of Finance since the beginning of the crisis. It is worth considering because these two instruments *de facto* channelled the budgetary process in the direction of the Euro-crisis measures, within the framework of the LPSB that was applicable at the time. In particular, in these instruments it can be seen how the Euro-crisis measures increasingly influenced certain parts of the budgetary procedure. The overview provided *infra* deals with the explicit references in one way or another to the Euro-crisis measures and not with integrated changes that are discussed in other answers.

The first mentioning of the financial crisis in one of these instruments was in the 27 August 2009 Guidelines for the preparation of the Three-year Budgetary Forecast (TBF) and the expenditure limits for 2010-2012 and the draft budgets of the authorising authorities for 2010. The Guidelines start with the need for the budgetary policy to be balanced between the goals for stimulating the economy and preserving macroeconomic stability. A recommendation addressed to the municipalities was also included. They were recommended to avoid structural deficits in their forecasts for 2010-2012 by optimising and limiting expenditures for local activities to the limits of the expected real revenues from own revenues and transfer from the central budget and other budgetary or extra-budgetary accounts and funds. There was no such recommendation addressed to the municipalities in the Guidelines for earlier years. The Guidelines from August 2010 make a less visible mentioning of the crisis but repeat the recommendation to the municipalities.

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The following year, the 2011 Decision on the 2012 budgetary procedure<sup>105</sup> and the 2011 Guidelines had even greater emphasis on the crisis and the focus was, naturally, more on the Euro-Crisis. The 21 January 2011 Decision, starts with listing the rules that were to be followed in the procedure. One of these rules states that, with reference to Council Decision 2010/442,<sup>106</sup> the fiscal policy is to be in accordance with the recommendations of the European Council for adopting measures to terminate the existing at the time excessive budgetary deficit in the determined temporal framework. As mentioned in the answer to Question VII.8, this Decision also referred to the European Semester. In particular, the aligning of the procedure to the European Semester was also one of the rules to be followed. This transpired also in the fact that with the 2011 Decision the budgetary procedure was divided in two stages, while before there was only a schedule of the procedure. However, this division did not seem to introduce any specific consequences as such, other than operational clarity and convenience.

In the actual elaboration of the procedure there are two references made with Euro crisis relevance and are connected to the European Semester. First, the Decision states that the TBFs for 2012-2014 by policies and programmes (which were to be prepared by 28 February 2011 by following the Guidelines of the Minister of Finance) are to be in accordance with the bottlenecks identified by the Commission in Bulgaria's National Reform Programme (NRP).<sup>107</sup> Second, by 2 September 2011, the Ministry of Finance prepares the draft LSB for 2012 on the basis of *inter alia* the guidelines and recommendations of Commission towards the budgetary policies for 2012.<sup>108</sup> Here a reference is made again to the answer to Question VII.8 and figure contained therein with respect to the alignment of the *de facto* alignment of the budgetary process to the European Semester which was not mandated as such by law.

The 2011 Guidelines of the Minister of Finance for the preparation of the TBFs, as in the Guidelines from the previous two years, a recommendation was made to the municipalities not to allow a structural deficit.<sup>109</sup> In the section on the budgetary forecast for local activities of the municipalities for 2012-2014, two references were made to the financial and economic crisis with which increased caution was recommended when preparing the revenue and expenditure parts of the forecasts.<sup>110</sup>

The 2012 instruments dealing with the 2013 budget also followed suit. The 2012 Decision<sup>111</sup> on the budgetary procedure for the 2013 budget contains increased focus on the Euro crisis in its first part, where the procedural rules are listed. First, it states that the bases for the developing of the TBFs and expenditure limits include the Council Recommendations of 12 July 2011 concerning the NRP of Bulgaria (2011-2015) and the Opinion of the Council on

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<sup>105</sup> Council of Ministers, Decision № 40 for the Budgetary Procedure for 2012 of 21 January 2011.

<sup>106</sup> Council Decision (EU) 2010/422 on the existence of an excessive deficit in Bulgaria [2010] OJ L199/26.

<sup>107</sup> Council of Ministers, Decision № 40, *supra*, n 105.

<sup>108</sup> *Ibid.*

<sup>109</sup> Guidelines for the preparation of the budgetary forecasts for the period 2012-2014, of 4 February 2011, 7.

<sup>110</sup> *Ibid.*, 16-17.

<sup>111</sup> Council of Ministers, Decision № 41 for the Budgetary Procedure for 2013 of 20 January 2012.

the Convergence Programme (CP) of Bulgaria (2011-2014).<sup>112</sup> Second, the Decision states that the bases for the development of the draft LSB include (1) the above mentioned Council Recommendations and Opinion, with specific reference to the Country Specific Recommendations (CSR) on the preventative arm of the Stability and Growth Pact (SGP), recommendations on the employment policies and structural reforms; and (2) guidelines of the Commission on the development and revision of the NRP and the CP in accordance with the timeline of the European Semester in 2012. Third, the Decision states that the fiscal policy is to be in accordance with (1) the 2010 Council Decision and Recommendation concerning the excessive deficit of Bulgaria;<sup>113</sup> (2) the Commission assessment of the actions addressing the excessive deficit of Bulgaria;<sup>114</sup> and (3) the Economic and Financial Affairs Council (ECOFIN) conclusions of 15 February 2011 on the assessment of the actions addressing the excessive deficit of Bulgaria. Fourth, the Decision again stated that the budgetary procedure is to be aligned with the European Semester timeline.

In the part of the 2012 Decision on the procedural timeline, it is stated that by 16 July 2012 the Ministry of Finance (1) considers the Commission Recommendations that are approved by the Council concerning the NRP and the CP of Bulgaria for 2012 and (2), if necessary, develops additional measures and mechanisms.<sup>115</sup> These measures must (1) remove inconsistencies between the Council's Recommendations, on the one hand, and the NRP and the CP, on the other; and (2) reflect the Council's CSR that are connected to the SGP's preventative arm, the recommendations on the employment policies and the structural reforms, as well as the recommendations on the macroeconomic imbalances. These, among other things, are to be taken into consideration by the Ministry of Finance when developing the draft LSB.<sup>116</sup>

In the 2012 Guidelines<sup>117</sup> one can find the same Euro crisis references and recommendation to the municipalities as in the 2011 Guidelines. The new addition in 2012 was a reference to the above mentioned Council Recommendations and Opinion as one of the bases for the development of the TBFs.

### *II.2.2 Post-LPF adoption*

The new LPF was adopted on 31 January 2013 and entered into force on 1 January 2014. However, certain parts of it were applicable to the formation of the budget for 2014 which was being done during 2013. This included the budgetary procedure for drafting the budgets.

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<sup>112</sup> Council Recommendation on the National Reform Programme 2011 of Bulgaria and delivering a Council Opinion on the updated convergence programme of Bulgaria, 2011-2014 [2011] OJ C 209/5.

<sup>113</sup> Council Decision (EU) 2010/422, *supra*, n 106; Council Recommendation 11307/10 to Bulgaria with a view to bringing an end to the situation of an excessive government deficit.

<sup>114</sup> Commission, Current state of the excessive deficit procedure in the Member States and assessment of the action taken by Cyprus, Finland, Bulgaria and Denmark in response to the Council Recommendations of 13 July 2010 with a view to bringing an end to the situation of excessive government deficit, COM(2011) 22 final, Brussels, 27 January 2011.

<sup>115</sup> Council of Ministers, Decision № 41, *supra*, n 111.

<sup>116</sup> *Ibid.*.

<sup>117</sup> Guidelines for the preparation of the budgetary forecasts for the period 2013-2015, of 30 January 2012.

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This is why it can be said that the second stage of the change in the budgetary process starts with the adoption of the LPF. The LPF is a new law which repealed and replaced the LPSB as well as the Law on the Budgets of the Municipalities. It also introduced amendments in about sixty other Laws. The LPF implemented most of the Six-Pack and the Fiscal Compact and included the budgetary rules that were included in the last amendment of the LPSB.

When the draft LPF was being presented in the Committee on Legal Affairs on 24 October 2012 by the Deputy Minister of Finance and the President of the Court of Auditors, it was stated that a big part of the LPF is restating to a great extent the two repealed laws and is effectively codifying established budgetary practices ulterior to the LPSB.<sup>118</sup> The LPF also synchronises the use of terms in the Bulgarian legal system when it comes to the management of public finances. As such the new aspects of the Law are not that many but they are just as crucial. In particular, next to the implementation of the Euro-crisis measures, the LPF puts in one framework any and all entities that directly influence the State deficit in accordance with the Eurostat rules and imposes a system of unified fiscal principles on these entities.

Accordingly, with respect to the budgetary procedure, the change that the LPF introduced is mainly a codification of the main procedural practices hitherto. Those were for the most part the ones already discussed *supra* in relation to the European Semester. The annual Decisions on the budgetary procedure, however, remained and continued to set out the procedure in full detail. The Decisions on the budgetary procedure also preserved their main structure of setting out rules in the first part and the actual procedure in the second part. The 2013 Decision on the 2014 budgetary procedure was adopted on 24 January 2013 (few days before the LPF entered into force) but it is better to be considered here as the procedure ended up being regulated by the LPF.

The 2013 Decision<sup>119</sup> contains four Euro crisis-related rules in its first part. First, it states that the medium-term budgetary forecast for 2014-2016 is to be prepared by the Ministry of Finance on the basis of *inter alia* the Council Recommendation concerning the 2012 Update of Bulgaria's NRP and the Council's Opinion on the Bulgaria's CP (2012-2015).<sup>120</sup> Second, with respect to the fiscal policy, the Decision no longer makes references to the excessive deficit procedure but instead makes reference to Directive 2011/85 and Regulation 1466/97. Third, the 2013 Decision, as in the previous Decisions, states that the budgetary procedure is to be aligned with the European Semester timeline. In its elaboration on the procedure and with respect to the Euro crisis the Decision mirrors its 2012 version with the only difference in putting later dates.<sup>121</sup>

Fourth, the Decision states that the preparation of the draft LSB and the medium-term

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<sup>118</sup> Committee on Legal Affairs, Protocol № 147 of 24 October 2012.

<sup>119</sup> Council of Ministers, Decision № 48 for the Budgetary Procedure for 2014 of 24 January 2013.

<sup>120</sup> Council Recommendation on the National Reform Programme 2012 of Bulgaria and delivering a Council opinion on the Convergence Programme of Bulgaria, 2012-15 [2012] OJ C 219/9.

<sup>121</sup> Council of Ministers, Decision № 48, *supra*, n 119.

budgetary forecast are to be based on *inter alia* (1) the Council Recommendation on the NRP; (2) the Council Opinion on the CP (including the specific recommendations in the context of the MEIP); as well as (3) the Guidelines of the Commission on the development and revision of the NRP and the CP in accordance with the timeline of the European Semester for 2013. With respect to the medium-term budgetary forecast, a further clarification was made: it should reflect the fiscal effects of the application of the measures and mechanisms that were designed to (1) remove inconsistencies between the Council Recommendations, on the one hand, and the NRP and the CP, on the other; and (2) reflect the CSR of the Council that are connected to the preventative arm of the SGP, the recommendations on the employment policies and the structural reforms, as well as the recommendations related to the preventative part of the MEIP.

The 2013 Guidelines<sup>122</sup> for the development of the budgetary forecasts for 2014-2016 also mirrored its previous versions with respect to the Euro crisis. However, there was one new development. In Annex № 2d the Primary authorising officers are supposed to fill out a form in which they have to state the resources relating to financing the priorities and measures for (1) reaching the goals in the NRP, (2) realisation of measures in response to the Country Specific Recommendations of the Council of 10 July 2012, (3) as well as other measures implementing the seven leading initiatives in Europe 2020, the Euro-Plus Pact and the Annual Growth Survey for 2013.

The 2014 Decision<sup>123</sup> on the budgetary procedure for the 2015 budget, with respect to the Euro-crisis measures, mirrors almost completely the 2013 Decision. The only difference is in the part listing the rules of the procedure where it is stated that the fiscal policy is developed in accordance with the fiscal rules and limitations in the LPF without further reference to Euro-crisis measures. In the 2014 Guidelines<sup>124</sup> the Ministry of Finance has disposed of the innovation from the previous year introduced with Annex № 2d where the various authorising officers had to effectively identify financial resources for the Euro-crisis measures. It is not clear what the reason for the change was. For the rest, with respect to the Euro crisis, the Guidelines mirror the previous 2013 version.

The 2015 Decision<sup>125</sup> on the budgetary procedure for the 2016 budget is almost identical to its predecessor. Three of the changes made are of interest here. First, it is notable that one of the rules of the budgetary procedure that has been present in the Decisions for the previous two budgets is removed. This rule stated that the medium-term budgetary forecast is developed on the basis of *inter alia* “evaluation of the direct effect of the planned policies on the long-term sustainability of the public finances”.<sup>126</sup> Second, the lists of bases on which the LSB is to be drafted and the medium-term budgetary forecast to be updated was increased to include the approved by the Council of Ministers programmes for structural and functional

<sup>122</sup> Guidelines for the preparation of the budgetary forecasts for the period 2014-2016, of 1 February 2013.

<sup>123</sup> Council of Ministers Decision № 57 for the Budgetary Procedure for 2015 of 4 February 2014.

<sup>124</sup> Guidelines for the preparation of the budgetary forecasts for the period 2015-2017, of 10 February 2014.

<sup>125</sup> Council of Ministers Decision № 62 for the Budgetary Procedure for 2016 of 30 January 2015.

<sup>126</sup> Council of Ministers Decision № 57, *supra*, n 123.

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reforms in the respective sectors.<sup>127</sup> Third, the part dealing with updating the medium-term budgetary forecast for 2016-2018 is missing the clarification introduced in the 2013 Decision (discussed above) that the medium-term budgetary forecast should also reflect the fiscal effects of certain measures and mechanisms adopted in light of the Council's Recommendations.

In the 2015 Guidelines<sup>128</sup> there is scarce mentioning of the Euro-crisis measures. The only relevant one is that the primary authorising officers must develop their medium-term budgetary forecasts on the basis of *inter alia* the Council Recommendation of 8 July 2014 on the NRP and the Council Opinion on CP of Bulgaria (2014-2017). The directions towards the municipalities not to plan expenditures unless there are secured revenues have remained in the 2015 Guidelines as well.

## INSTITUTIONAL CHANGE

### II.3

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

No institutional changes have been brought about by the changes in the way the budget is being made. The Fiscal Council has not yet been put in place and once it is, it will be the only change as a result of the legislative changes thus far.<sup>129</sup> The competences of the National Assembly, the Government or the judiciary did not change as a result of the legislative changes in any critical way. However, during the discussions of the LPF, some important developments have been identified with respect to competences. During the discussions in the Legal Committee its President – Iskra Fidosova (GERB) – questioned the actual extent of decentralisation, which was advocated to have been achieved in the (then) draft law. She considered that some of the independence of various organs has been taken away and given to the Ministry of Finance.

The Deputy Finance Minister – Vladislav Goranov – explained that the two are not mutually exclusive. The decentralisation that was being achieved with the draft law was with respect to the responsibility of the various organs that are participating in the State budget with their own budgets. This responsibility was also the underlying reason for the limited centralisation/loss of independence. The LPF includes provisions regulating the formation of the budget of *inter alia* certain constitutionally defined bodies by prescribing that they should observe certain rules and procedures with the aim to have a balanced budget. Such organs/bodies, for example, are the municipalities. Mr Goranov stated that the idea was not to interfere with the workings of those bodies but to give the Government a toolset for keeping under control the public finances as it was obliged to do under EU law. In particular,

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<sup>127</sup> Council of Ministers Decision № 62, *supra*, n 125..

<sup>128</sup> Guidelines for the preparation of the budgetary forecasts for the period 2016-2018, of 11 February 2015.

<sup>129</sup> See the answer to Question VII.2.

he stressed that in the current (at that time) framework, there was a mismatch between what was considered as State budget at the national level and what was being recorded as public finances at the EU level. Consequently, the balance of the budget that was voted upon in the National Assembly was different from what the European Commission puts down in its records. Therefore, the draft law was simply aligning the things considered at the national with those at the EU level and for that a limited level centralisation was needed.

Mr Goranov also mentioned that, in his opinion, with respect to the competences of the Finance Minister, they have actually been decreased with the new law. This was so because under the LPSB the Finance Minister could have unilaterally changed aspects of the budget after its adoption, while with the LPF for such changes the Minister needs an approval by the Government in the Council of Ministers. Such approval, according to Mr Goranov, requires a report that is public, which increases the transparency and hinders arbitrary changes.

## CHANGE OF TIME-LINE

### II.4

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

The timeline of the budgetary cycle has changed in terms of complexity due to the inclusion of the European Semester into it (see the figure in the answer to Question VII.8). The LPF to a large extent incorporated the temporal aspects of the practices that resulted from the incorporation of the European Semester.

## MISCELLANEOUS

### II.5

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

No other relevant information.

### III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

#### NATURE NATIONAL INSTRUMENTS

##### III.1

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

The legal instruments adopted in Bulgaria with the view to implement the Euro-crisis law had the character of ordinary laws (LPSB, LPF, etc.) and, to a limited extent, secondary normative acts (the annual Decisions of the Council of Ministers on the budgetary procedure).<sup>130</sup> Due to a possible confusion as to what constitutes an ‘ordinary law’ for different legal systems, the author considers that an explanation on the types of legal instruments used in Bulgaria is necessary.

Within the Bulgarian legal system there are no ‘organic laws’, as there are in Spain and Portugal, for example.<sup>131</sup> The only kind of norms that occupy a position which is between the Constitution and the ordinary laws are international norms.<sup>132</sup> However, the CRB does make, exceptionally, a distinction between two specific laws and the rest of the ordinary laws.<sup>133</sup> Their specialty is expressed in the different procedure that applies for them. One of these two is the annual LSB. Its distinguishing procedural feature lies in the right of initiative. Under Article 87 CRB, it is stated that the legislative initiative lies within the Council of Ministers as well as any member of the National Assembly. However, the same provision limits the right for such initiative only to the Council of Ministers with respect to the LSB. No other procedural differences apply. The other law with specific procedural requirements is the constitutional amendment (see the answer of the next Question). With respect to the international norms (treaties) two other special cases can be identified. These concern the required majority for the ratification of a specific type of international agreements. The first deals with a ratification of an international agreement allowing foreigners and/or foreign legal persons to acquire property rights over pieces of land.<sup>134</sup> The second is the ratification

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<sup>130</sup> See the answer of the next question with respect to the issue of constitutional amendments.

<sup>131</sup> Е Друмева, *Конституционно право* (4то изд, Сиела, София 2013) 378 [E Drumeva, *Constitutional Law 4th edition*]. E Drumeva, *Constitutional Law 4th edition*.

<sup>132</sup> *Ibid.*, 152. The (hierarchical) relationship between the CRB and EU law from the perspective of Bulgarian Constitutional law is not going to be discussed here as it goes beyond the scope of the present question. Suffice it to say that a former judge at the BCC, in her most recent writings, does not give a straight answer to this question. She starts by saying that it is a very charged question and after a short discussion concludes that “the relationship between EU law and national constitutional law is one of constant dynamic, interplay and enrichment where the latter is being “Europeanised” and the former is being enriched with constitutional characteristics.” translation by the author, *Ibid.*, 181.

<sup>133</sup> *Ibid.*, 181.

<sup>134</sup> Constitution of the Republic of Bulgaria, promulgated SG 56 of 13 July 1991, entered into force 13 July 1991, as amended SG 85 of 26 September 2003, SG 18 of 25 February 2005, SG 27 of 31 March 2006, SG 78 of 26 September 2006 – Decision No 7 by the Bulgarian Constitutional Court of 2006, SG 12 of 6 February 2007, art 22(1).

of a treaty conferring powers to the EU.<sup>135</sup>

The Law on Normative Acts (LNA)<sup>136</sup> elaborates further on the types of normative acts that can exist in the Bulgarian legal system. It puts at equal footing the Law and the Code<sup>137</sup> without further distinguishing between other types of laws, such as organic. The LNA then continues to identify various types of secondary (to the Law and the Code) normative acts. Accordingly, all Laws and Codes in the Bulgarian legal system are of equal legal force. The theoretical divisions of the different types of laws (such as formal or material, general or special, organic or ordinary, etc.) is, however, sometimes present in the vocabulary of the BCC, albeit without introducing a hierarchy between them.<sup>138</sup> The BCC refers to two types of non-ordinary laws that are present in the theory – organic (*органични*) and, for lack of a better translation, constitutive (*устройствени*). To the best of this author’s knowledge the general constitutional law discourse in other languages refers to organic laws as comprising both of these two types of laws. The specifics of the latter are that such laws regulate the activity of the State organs. One example of such constitutive law is the LPF, which regulates the activity of the State organs in the process of drafting their and the State budgets. This mixture between the use of academic language and official documents, however, may create confusion. For example, the CP of Bulgaria for 2013-2016<sup>139</sup> refers to LPF as a constitutive (*устройствен*) law and the Commission in its assessment of the NRP and CP of Bulgaria for 2012<sup>140</sup> refers to the LPSB (the pre-LPF law) as Organic. Considering the explanations above, this qualification of the law being Organic does not mean that the law is of higher standing with relation to other laws or that it cannot be amended by a simple majority or that it is entrenched in any other specific way.

## 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?

The CRB was neither amended in response to the Euro crisis nor in relation to Euro-crisis law. However, an amendment of the CRB was proposed in 2011 but it ultimately failed. Before looking at what happened with the proposed amendment, it is useful to provide a short overview of the process of amending the CRB.

#### *III.3.1 The procedure for amending the Constitution*

The rules for amending the CRB or adopting a new Constitution are set out in Chapter IX of the CRB. The regime for amending the CRB can be divided in two – the general and the

<sup>135</sup> *Ibid.*, art 85(2).

<sup>136</sup> Law on Normative Acts, SG 27 of 3 April 1973, as last amended SG 46 of 12 June 2007.

<sup>137</sup> *Ibid.*, art 4.

<sup>138</sup> Decision № 8 of 2012 in Case № 8 16 of 2011, SG 53 of 13 July 2012.

<sup>139</sup> CP of Bulgaria for 2013-2016, 63.

<sup>140</sup> Commission Staff Working Document, Assessment of the 2012 national reform programme and convergence programme for Bulgaria, SWD(2012) 302 final, 11.

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special regime.<sup>141</sup> The general (default) regime is that the National Assembly has the power to amend any and all constitutional provisions with the exception of the provisions that can be amended only by the Grand National Assembly (GNA).<sup>142</sup> The special (exceptional) regime requires new elections for the GNA which is to adopt the amendments for which it was elected (its mandate). This mandate can, most exceptionally, include the adoption of a new Constitution. Accordingly, the GNA is to be convened only in specific situations when the changes in the constitutional order are of particular significance for the State and the society,<sup>143</sup> which are listed in Article 158 CRB. These situations are (1) adopting a new Constitution; (2) resolving on territorial changes; (3) on changes in the form of state structure or form of government; (4) on any amendment of the direct applicability of the CRB, supremacy of international law, on the irrevocability of fundamental rights, some of which cannot be limited even following a proclamation of war, martial law or a state of emergency; and (5) on any amendments to the rules on constitutional amendment.<sup>144</sup> The adoption of an amendment/new Constitution by the GNA requires two thirds majority (out of 400 members<sup>145</sup>) on three ballots in three different days.<sup>146</sup>

Since the amendment that is the subject of this answer did not fall within the GNA competences, the discussion will focus only on the specifics of the amendment procedure by the National Assembly. The initiative for introducing a draft law for the amendment of the CRB belongs to the President or at least  $\frac{1}{4}$  (that is, 60) of the national representatives.<sup>147</sup> Such a draft law must be debated at the National Assembly “not earlier than one month and not later than three months from the date on which it is introduced”.<sup>148</sup> As with any law, this draft law is also accompanied by explanations for it. When it is submitted to the National Assembly, the draft law is not allocated by the President of the National Assembly to one of the standing Committees. Instead a special *ad hoc* constitutional Committee is created with a Decision of the National Assembly, which acts as a leading Committee. The National Assembly, while not constitutionally obliged, adopts a Decision with rules of procedure for the Committee, which are drafted by the Committee itself.<sup>149</sup> These rules are, naturally, to a great extent restating the relevant constitutional provisions.<sup>150</sup>

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<sup>141</sup> E Drumeva, *Constitutional Law 4th edition, supra*, n 131, 147.

<sup>142</sup> Constitution of the Republic of Bulgaria, *supra*, n 134, art. 153.

<sup>143</sup> E Drumeva, *Constitutional Law 4th edition, supra*, n 131, 148.

<sup>144</sup> See E Tanchev and J Peteva, ‘The Impact of EU Accession on the Legal Orders of Bulgaria’ in A Kellerman and others (ed) *The impact of EU accession on the legal orders of new EU member states and (pre-) candidate countries: hopes and fears* (Final Conference MATRA Multi Country Project, TMC Asser Press, The Hague 2006) 41.

<sup>145</sup> Constitution of the Republic of Bulgaria, *supra*, n 134, art. 157.

<sup>146</sup> *Ibid.*, art 161.

<sup>147</sup> *Ibid.*, art 154(1).

<sup>148</sup> *Ibid.*, art 154(2).

<sup>149</sup> See National Assembly, Decision of 25 June 2003, SG 68 of 1 August 2003 (the National Assembly did not adopt a new Decision for the second amendment of the CRB but applied the procedure from its first Decision); National Assembly, Decision of 25 January 2006, SG 11 of 3 February 2006; National Assembly, Decision of 25 November 2006, SG 88 of 31 November 2006.

<sup>150</sup> Only a few additional practicalities were added such as speaking times and time periods for submitting proposals for editing the draft law after its first reading adoption.

The draft law requires three different readings in three different days and the required majority is  $\frac{3}{4}$  (that is, 180) of the national representatives. If  $\frac{3}{4}$  majority is not gathered but more than  $\frac{2}{3}$  (that is, 160) is, the draft law can be reintroduced. This must happen not earlier than two months and not later than five months after the  $\frac{3}{4}$  majority was not gathered. In such a reintroduction a  $\frac{2}{3}$  majority will be considered enough for adoption.<sup>151</sup> This rule of scaling-down majority applies to all three readings. At the first reading the draft law is discussed and voted upon in general and in its totality. The national representatives then have fourteen days (as per Article 80(4) of the Organisational Rules of the National Assembly) to submit written proposals with respect to the adopted at the first reading draft law. These proposals must not go beyond the scope or against the principles of the proposed constitutional amendment. The constitutional Committee then prepares a report including the draft law, the submitted proposals and the Committee's opinion on them. At the second reading the draft law is discussed and voted upon provision by provision. Following the second reading proposals for amendments of the provisions cannot be made and the Committee may make only editorial changes. At the third reading the draft law is voted upon *en bloque*. Finally, the adopted amendment is signed and promulgated by the President of the National Assembly within seven days of its adoption.<sup>152</sup> As such, the President of the Republic is exceptionally excluded from the final stage of the adoption of the constitutional amendment. Having provided an overview of the constitutional framework for amending the CRB, it is now pertinent to examine what happened with the proposed amendment in 2011.

### *III.3.2 The proposed amendment of the Constitution*

The first official record of the idea for constitutional amendment with respect to the public finances can be found in the verbatim record of the meeting of the Council of Ministers of 16 February 2011.<sup>153</sup> There, the Minister of the Finances – Simeon Djankov, in a briefing of the results of the ECOFIN meeting that took place the day before, outlined his idea for a Bulgarian Pact for Financial Stability. In his outline, the Minister stated that this idea included a constitutional amendment which was modelled after the German one.<sup>154</sup> The Minister stated that the envisioned measures will be even stricter than the German ones in order to show that Bulgaria and its current Government have the strictest financial discipline in the EU. The three main elements of the Pact were: (1) limit of 3% for the budgetary deficit; (2) the State's redistribution role to be maximum 37%; and (3) a requirement of  $\frac{2}{3}$  majority at the National Assembly for any future increase of taxes. The Prime Minister, in the concluding remarks of the meeting expressed his strong support for the initiative of the Finance Minister.

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<sup>151</sup> Constitution of the Republic of Bulgaria, *supra*, n 134, art 155.

<sup>152</sup> *Ibid.*, art 156.

<sup>153</sup> Council of Ministers, Stenographic record of the meeting on 16 February 2011.

<sup>154</sup> The Finance Minister also stated that he would present the idea for the Pact to the Council of Ministers in further detail in the next several days but no public record of this has been found. It does not become clear from the short introduction whether the initial idea for the Pact included only a constitutional amendment or also the adoption of an ordinary law.

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Eventually, the actual draft law for amending the CRB contained four changes. It was proposed that a new paragraph was included in (1) Article 4 CRB which would read “The Republic of Bulgaria conducts predictable, consistent and balanced fiscal policy”; and (2) Article 81 CRB which would read “Laws providing for new types of taxes on the incomes or the profits or amending the tax rates of the existing taxes on the incomes or the profits shall be adopted with  $\frac{2}{3}$  majority of all national representatives”. With respect to Article 87(2) CRB, which concerns the right of initiative of the Council of Ministers with respect to the LSB, two amendments were proposed. First, the drafting of the LSB, by the Council of Ministers, must be done “in compliance with the allowable quantities of the budgetary balance that are determined by law”. Second, a new subparagraph was to be added which would read “Laws amending the part of the Law under paragraph 2 dealing with the allowable quantities of the budgetary balance shall be adopted with a  $\frac{2}{3}$  majority of all national representatives”. The miscellaneous provision envisioned that the constitutional amendment enters into force on 1 January 2012. The explanations to the draft law further elaborate on the proposed amendments.

With respect to the amendment of Article 4 CRB, the explanations referred to the role of the fiscal policy throughout the years since the changes in 1991. It was noted that the fiscal policy was often abused for achieving political ends without long-term planning and in disregard of the capabilities of the budget. Then, with the economic crisis of 1996<sup>155</sup> the necessity for conducting sound fiscal policy became obvious. The fiscal policy that was consequently formed throughout the beginning of the new century allowed for a significant development in terms of long-term macroeconomic stability and economic growth. The global economic crisis that consequently took place led to insecurity and stalled the economic growth. According to the explanations, there were good prospects for the Bulgarian economy to recover from the crisis and grow by using sound fiscal policy, on which both the Government and the opposition must responsibly unite.

With respect to the amendment of Article 81 CRB, the *leitmotif* of the explanations was the necessity for predictable and balanced taxation conditions. Such taxation conditions were seen as necessary in order to reduce the insecurity of investors and, consequently, to attract more domestic as well as foreign investments. According to the explanations, the policy with respect to taxation – the progressive decrease of the corporate tax since 1993, as well as the introduction of the flat tax rate for natural persons – has benefitted the economy greatly through an increased level of investments and a decrease in the grey economy.

With respect to the amendment of Article 87 CRB, the explanations stated that they would assist in the endeavour to maintain balanced budget in the long-term. This was going to happen through the introduction in a law of a 2% GDP cap on the budget deficit. This 2% cap will be part of the allowable quantities of the budgetary balance. While this cap is to be changed with a  $\frac{2}{3}$  majority of all national representatives, the explanations do not state the majority needed for introducing it, implying a simple majority. The 1% difference (from the

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<sup>155</sup> See the answer to Question III.3.

3% required at the EU level) is explained as a buffer for securing the compliance with the SGP and avoiding political manipulations.

Finally, with respect to the date of entry into force, no explanation was given but it can be found elsewhere. In the constitutional Committee meeting on 3 June 2011 (see *infra*), Lyutvi Mestan (DPS), stated that the initial idea (before the draft was proposed) for the constitutional amendment was that it enters into force in the beginning of 2013 (while the mandate of the GERB Government was, normally, to expire in mid-2013). Therefore, he said that as a matter of principle from his party a concern was expressed during the initial consultations that it would not be right for such important constitutional amendments to be addressed to the next Government and National Assembly. Instead, the right course of action was for the Government proposing such amendments to be the first to apply them. Mr Mestan guessed that this concern weighed-in on the change in the proposed date for entry into force.

### *III.3.3 The discussions on the proposed amendment of the Constitution*

The proposal for the amendment of the CRB was officially submitted to the National Assembly on 26 May 2011 by 130 national representatives, the vast majority of which were from GERB.<sup>156</sup> However, as it appears from the debates in the National Assembly and the verbatim records of the Council of Ministers' meeting discussed above, the unofficial initiator of the proposal was the Finance Minister. The National Assembly adopted a Decision on 1 June 2011 for the formation of the *ad hoc* Committee for discussing the draft law.<sup>157</sup> According to point 3 of the Decision, the division of the members of the Committee by parties was: 9 for GERB, 3 for Coalition for Bulgaria, 3 for DPS, 2 for ATAKA, 1 for the Blue Coalition and 1 for an independent national representative. On 3 June the Committee convened and agreed on a draft Decision on the rules of procedure, which was adopted by the National Assembly on 8 June.<sup>158</sup> While these Decisions were just formalities, the verbatim records of the National Assembly and the Committee show that the controversies started early on.

On 1 June 2011, in the context of adopting the Decision for the formation of the *ad hoc* constitutional Committee, several comments were made with respect to the substance of the proposed constitutional amendment. The members of Coalition for Bulgaria that joined the debates were outspoken in their criticisms. The discussion will focus on two of them. First, Luben Kornezov started by saying that there is no Pact for Financial Stability and that with the proposed draft law there is destabilisation of the constitutionalism and of the CRB. He added that the CRB is not a cookbook, allowing for experiments and that the proposed Committee is redundant and that it will not give birth to anything. Second, Georgi Pirinski made two critiques. According to him, the proposed constitutional amendments did not fall

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<sup>156</sup> The rest of the national representatives were independents which were affiliated with RZS (10), DPS (2), ATAKA (1) and the Blue Coalition (1).

<sup>157</sup> National Assembly, Decision of 1 June 2011, SG 43 of 7 June 2011.

<sup>158</sup> National Assembly, Decision of 8 June 2011, SG 45 of 14 June 2011.

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within the scope of issues that are to be regulated by a Constitution. Instead, they were issues of financial and tax law as well as issues of budgetary procedure. The other critique was that due to certain alleged vagueness and ambiguities the draft Decision was unsuitable *ab initio* and should not be adopted. Another comment on the constitutional amendment came from Stanislav Stanilov (ATAKA). While saying in the beginning of his statement that ATAKA will not *a priori* discuss whether the Constitution needs an amendment or not, he did allude to such a position. He said that it was a point for another discussion whether the so-called Pact for Stability can be endured by the spirit of the CRB, which precludes excessive concretisation.

On 3 June 2011 when the Committee convened for the first time to discuss its rule of procedure a crucial point was discussed – the envisioned time-line of the procedure. Lyutvi Mestan (DPS) asked the President of the Committee, Iskra Fidosova (GERB; also one of the national representatives introducing the amendment) when is the amendment procedure planned to be finalised. Iskra Fidosova answered that it is planned that, considering the periods laid down in the Constitution, by the end of the session in the end of July (before the summer recess) the whole procedure could be completed with all three readings. The idea was that the Committee would convene exactly, or as close as possible to, one month after the date of the introduction of the proposed amendment (26 May). This meant for the Committee to meet on 27 June the earliest. In response, Mr Mestan clarified that this is a timeline applicable only in the case of gathering  $\frac{3}{4}$  majority and he implicitly asked for the plan in the case that such majority is not gathered and the scaling-down majority rule is applied. Iskra Fidosova answered that it is hoped that this does not happen but if does, the procedure would continue after the summer recess, in September or later, during the elections.<sup>159</sup> He responded that, considering the greater probability of applying the scaling-down majority rule,<sup>160</sup> the second and third reading would go right in the midst of the elections campaign. In that regard, Mr Mestan expressed concerns over the appropriateness of the highly politicised environment during elections for debating constitutional amendments. He suggested that the proposal would have a greater chance of success if it was not put for discussion during the elections when it could become a victim of political controversies. Ms Fidosova expressed her hope that it will not get to this and that the procedure could be completed by the end of July.

On 8 June 2011, during the discussions on the adoption of the Decision for the Committee's rules of procedure, Luben Kornezov (Coalition for Bulgaria) was the only one to make a statement, again, criticising the substance of the proposed constitutional amendment. He said that while Coalition for Bulgaria says 'yes' to the financial stability, the stability of the financial and tax laws and keeping the tax rates low, it says 'no' to keeping the Constitution hostage to the populism during the elections period. He stressed his opinion, without further

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<sup>159</sup> The elections referred to here are the 2011 presidential and local elections (see the answer to Question I.1) and this is what Mr Mestan was alluding to.

<sup>160</sup> Mr Mestan seems to have been referring to the level of political support for the constitutional amendment, which has not been very high, as it transpires from the statements of the members of Coalition for Bulgaria on 1 June 2011.

elaboration, that the proposed amendment is harmful for the financial stability.

While the one month period prescribed by the Constitution was running, on 15 June 2011, in the context of the debates on the amendment of the LPSB, some comments were also made with respect to the constitutional amendment. Pavel Shopov (ATAKA) stated that the proposed LPSB amendment seems to be a consequence of the shaky political support for the constitutional amendment, that is – to impose limitations with a simple majority instead of a qualified one. He also stated that GERB was relying on DPS for support on the constitutional amendments but this support does not seem to be unconditional and will be a political trade-off. Mr Shopov reiterated that the proposed constitutional amendments seem to be losing ground and it will probably not get to adopting them.

Dimitar Gorov and Mihail Mikov (Coalition for Bulgaria) also made similar comments with respect to the proposed constitutional amendment. Both of them expressed the opinion that the LPSB amendments were being proposed due to the diminishing political support for the constitutional amendments. Qnaki Stoilov (Coalition for Bulgaria), in his less critical comments on the discussed LPSB amendments, stated that the subject matter of fiscal and budgetary discipline must not be elevated to the constitutional level. It must not reach the CRB because, according to him, this would impose undue limitation on the National Assembly and the society in reacting to changing circumstances.

On 28 June 2011 the constitutional Committee convened for the first reading of the draft law for the amendment of the CRB. The Report of the meeting contains a short restatement of the explanations to the draft law for the constitutional amendments as well as a summary of the statements made by some of the Committee members and the external participants.<sup>161</sup> However, after considering the verbatim record<sup>162</sup> of the meeting it becomes clear that some important points were not mentioned in the Report. Therefore, building on the Report, an expanded summary of the statements is provided here.

The meeting started with a presentation of the proposed constitutional amendments, by one of the national representatives that introduced the proposal, which restated the explanations to the draft law. Then the Finance Minister made a short statement in which he stressed on a few points. First, he said that the idea for this Pact for Financial Stability is not completely new and has been present in the general public discourse for some years but has gathered importance with the crisis. Second, he said that at the EU level it had often been discussed that such a Pact was needed EU-wide and proposals in that regard had surfaced. Such an EU-wide Pact was needed to prevent situations such as the ones in Ireland, Greece, Portugal, etc. Third, the Bulgarian Pact, part of which was the proposed constitutional amendment, was going to bring greater economic development, according to the Minister. In his view the Pact is an opportunity to make Bulgaria a richer State.

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<sup>161</sup> Temporary Committee for Discussing the Draft Law for Amending the Constitution, Report of 28 June 2011.

<sup>162</sup> Temporary Committee for Discussing the Draft Law for Amending the Constitution, Protocol № 2 of 28 June 2011.

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Qnaki Stoilov (Coalition for Bulgaria), as in his previous comments relating to the constitutional amendments, was very critical and based his critiques on several points. First, he considered that the ability of Bulgaria to implement a “catching-up” economic policy was considerably limited by the proposed amendments. Second, Mr Stoilov said that the proposed amendments would not only fail to lift the Bulgarians out of poverty and solve the social inequality but would actually worsen the situation. Third, Mr Stoilov criticised the treatment of fiscal and budgetary rules as a value in and of themselves. They were only instruments for the achievement of certain social goals. According to him, budgetary and fiscal rules cannot be compared to the fundamental values inscribed in the Constitution - freedom, peace, humanism, equality, justice and tolerance. He even said that, if the proposal was to be eventually adopted, the preamble of the CRB was also to be changed from Bulgaria being a social State to a State with liberal economic policy. Fourth, Mr Stoilov also saw the proposed amendments as contradicting the principle of democracy. According to him, the *raison d'être* of Constitutions and the democratic election of national representatives is to appoint representatives that will determine the taxes and the allocation of the State resources. He saw this as the main reason for the birth of the contemporary democracy. Mr Stoilov saw this fundamental principle of the democratic governance repealed by the proposed qualified majority rules. In his view, the national representatives that are supported by the majority of the population for a certain period of time would be precluded from conducting independent financial policy. Accordingly, Mr Stoilov called for these proposals to be rejected because they contradicted the principles of democratic governance.

Fifth, Mr Stoilov stated that, while some States are introducing such fiscal and budgetary rules, even in their Constitutions, others are considering to distinguish between, on the one hand, expenses for investment purposes with the aim to solve basic social problems and, on the other hand, expenses that are lost in the upkeep of the State and other things that are not of concern for the society at large. Sixth, Mr Stoilov considered that wider public discussion, which would include even the political parties that will participate in the upcoming elections even though they are not represented in the National Assembly, was to be made. In his view, only after obtaining such wider support the proposed amendments would have the necessary legitimacy. Finally, Mr Stoilov said that it was not clearly explained how was the tax base to be calculated. According to him, the proposed amendment dealt with the tax rates and not the tax bases. Such discrepancy could lead to different results and was seen as counterproductive even for the goals of the ones proposing the amendments.

The next to take the word was Ognian Stoichkov (ATAKA) who also criticised the draft law under discussion. According to him, it did not only propose to elevate certain norms (referring to the taxation provisions) to the constitutional level but also to put a qualified majority on it. This was seen as favouring certain norms over others. Mr Stoichkov stated that he could not accept that the taxation issues deserve to be favoured in such a way. In his view other norms were much more deserving, such as the educational ones or the ones setting out the State monopoly over the railway services etc. However, the drafters of the

CRB provided for a qualified majority for a very few fundamental questions and this choice should be respected and not disrupted as proposed in the draft law. Another point Mr Stoichkov made was that the current flat tax rate was itself problematic due to its social implications. In that regard, he said that he could not support a flat tax rate which was once adopted with a simple majority of the present and voting (which according to him was 77 votes) to be entrenched in such a way to require 160 votes to be changed. Mr Stoichkov found this illogical and held that it should only happen after gathering wider public consensus. According to Mr Stoichkov, the only thing that was to be commended was the provision stating the Bulgaria shall conduct consistent and balanced fiscal policy. However, he noted that this was only a good intention with questionable legal significance. Finally, Mr Stoichkov stated that the scope of proposed taxation provision was not clear and that its compatibility with the established case law of the BCC was questionable. However, he did not elaborate in further detail on this point.

Aliosman Imamov (DPS) was the first to express support for the idea behind the proposed amendments – to have the long-term durability of the fiscal stability guaranteed. However, Mr Imamov started by making a procedural proposal. He said that discussing such important issues is not well placed right before elections. Therefore, Mr Imamov proposed that the Committee halts its work on the draft law, together with the discussions on it until after the elections. After making this proposal, Mr Imamov made several substantive comments on the proposed constitutional amendment.

First, Mr Imamov pointed out to certain discrepancies between the budgetary rules proposed in the constitutional amendment and in the amendment of the LPSB and he expressed an expectation that they are clarified. Second, he echoed the concern expressed by Mr Stoilov with regard to the tax base and tax rate discrepancy. Third, Mr Imamov also noted the absence of a provision introducing an exception for *force majeure* situations. He stated that such text was present in the earlier versions of the draft law. Then Mr Imamov concluded by noting the absence of detailed analysis and evidence supporting the proposed amendments with respect to (1) the “freezing points” of 2% and 40%; (2) the impact on the economic growth during the crisis; and (3) the impact on the income of the population.

Rumen Ovcharov (Coalition for Bulgaria) expressed heavy criticisms towards the draft law. He started by joining Mr Stoilov on the point that fiscal and budgetary rules cannot be treated as a value in and of themselves. Then Mr Ovcharov made a very important point about the consequences of a possible breach of the budgetary rules if they obtain a constitutional status. What was going to be the responsibility for the Government or the Finance Minister if the numerical quantities are not observed? According to Mr Ovcharov these were simply pointless good intentions serving as a political tool before the elections. The other main point that he made was that the flat tax rate was a temporary tool used by smaller economies to catch-up in their development. Being a temporary tool it has no business being constitutionally entrenched.

Ekaterina Mihailova (the Blue Coalition) expressed conditional support for the draft law. She

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expressed support with respect to defining the budgetary balance. However, she expressed strong discontent with the proposed qualified majority with respect to taxation. She saw this proposal as an example of bad governance due to the limitations it imposed on the freedom of any Government to conduct its policies. According to Ms Mihailova, taxation is a fundamental governance tool without which a ruling majority is dependent on the opposition to conduct its policies. Ms Mihailova stated that if this provision was removed the draft law may enjoy the support of the Blue Coalition as well.

Then, the word was given to the governor of the BNB – Ivan Iskrov. At the very beginning of his statement Mr Iskrov made two preliminary points. First, his statement was to be considered as made by the representative of an expert institution, as the BNB does not have an obligation to present an official statement but has always shown willingness to join discussions on macroeconomic governance when invited to. Second, his statement was not going to deal with whether the discussed rules must be the subject of constitutional or ordinary law regulation. He was only going to discuss the substance of the proposed rules. He started by discussing the balanced budget rules. Interestingly, Mr Iskrov was the only one to put a considerable emphasis on the role of EU law with respect to these rules. He even said that the Bulgarian rules were to be discussed only in the context of EU law and, in particular, the Euro-Plus Pact and the Six Pack that was in the process of creation at that time. Mr Iskrov drew the attention to two other points that were missing from the draft law but should be included: (1) an obligation to accumulate budgetary reserves in times of economic growth and (2) an exception for *force majeure* situations. With respect to the taxation issues Mr Iskrov only stated that the “catching-up” economies need low flat rate taxes and that Bulgaria had no interest in the harmonisation of the tax base which was being called for at the EU level.

Following these statements the President of the Committee put the procedural proposal of Mr Imamov to vote. The result of the voting was 4 ‘for’, 9 ‘against’ and 3 ‘abstaining’ and the proposal was not adopted. In response, Mr Imamov stated on behalf of DPS that it will not participate in the discussions and the voting of the proposed constitutional amendment until after the elections.

In the end, the word was given to Tsvetan Simeonov – the President of the Bulgarian Chamber of Commerce and Industry, who was an external participant in the meeting. Mr Simeonov expressed support for the draft law and even said that it would have been better if stricter rules were introduced. In particular, he referred to a 35% redistribution role of the State and as much as possible balanced budget – that is, lack of deficits, if possible. He also said that the proposed amendments should have been implemented years ago, when the flat tax rate was introduced. According to Mr Simeonov, it was important that these changes were included in the CRB because this was going to ensure higher observance of the rules. He also stated that the qualified majority was necessary in order to provide stability to the business. With respect to the points on wider public discussion and support, he suggested that the discussion has been wide enough, referring to the support for these proposed amendments given by companies comprising more than half of the GDP and more than 70%

of the external trade of Bulgaria.

After Mr Simeonov's comments the draft law for the amendment of the CRB was put to a vote. The result of the voting was 10 'for', 3 'against' and 1 'abstaining' with which the Committee proposed to the National Assembly to adopt the draft law at first reading. The draft law got to its first reading in the plenary of the National Assembly as late as 28 July 2011 – that is, much later than initially anticipated in the first Committee meeting. The following (procedural) background and contextual recollection is crucial for understanding the first reading discussions.

Article 154(2) CRB obliges the National Assembly to discuss a draft law for a constitutional amendment within a certain period following the introduction of the proposal. However, interestingly, the plain wording of the provision does not necessarily imply an obligation for the draft law to be voted upon, although one could say it is logical. Second, the Constitution does not expressly provide for the procedure to be followed if an ordinary law or a constitutional amendment is rejected during its first reading, other than the scaling-down majority rule. That is, it does not state whether a rejected proposal can be reintroduced immediately after its rejection and whether it can be reintroduced without any changes made to it. Article 79 of the Rules of the National Assembly state that

“A draft law which is rejected when it is voted upon for the first time can be reintroduced only after substantial changes in its main points which shall be reflected in its explanations and it may not be reintroduced earlier than three months following its rejection”.

The Rules do not differentiate between draft laws for ordinary laws or constitutional amendments. Assuming the constitutionality of this provision with respect to proposals for constitutional amendments, this provision means that if a draft law for a constitutional amendment is rejected during its first vote it can only be introduced after substantive changes are made to it and not earlier than three months following the rejection. Rejection is not defined but it is logical to refer to situations where the required majority is not achieved during the voting itself, that is, when a voting is actually carried out. Conversely, a draft law is not going to be rejected if it never gets to a vote. Accordingly, there is a constitutional obligation to discuss a proposal for a constitutional amendment but not, necessarily, to put it to vote and without the proposal being voted upon, even if it never gets adopted, it is not considered rejected and does not need to be substantially changed in order to be reintroduced. While this clarification seems purely abstract and theoretical, it is the procedural framework within which the proposed in 2011 constitutional amendment perished.

The substantive discussion on 28 July 2011 was preceded by several procedural proposals.<sup>163</sup> These procedural proposals turned into a sort of procedural battle between the representatives of GERB and Coalition for Bulgaria. The battle was for whether the debate should be done on this very day and time or postponed. The day was the last plenary day for

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<sup>163</sup> National Assembly, Stenographic record of the 261<sup>st</sup> meeting, 28 July 2011.

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legislative activities before the summer recess. The next day was the last day before the summer recess of the National Assembly but it was dedicated to parliamentary control, which does not usually include legislative activity. The time was in the early afternoon just before 14:00, which is usually the end of the plenary sessions according to the Rules of the National Assembly. The attendance of the national representatives was below 50%.

First, Menda Stojnova (GERB) made a procedural proposal for extending the working time until the conclusion of the discussions on the proposal. Ivan Kostov (the Blue Coalition) criticised this by saying that debates for the amendment of the CRB must be done in normal working time and that this was disrespectful towards the idea of national representation. He also said that a possible explanation for such a move can be that the debate is considered lost beforehand and it was being done only for the record. The procedural proposal was voted and passed with 83 'for' and 24 'against'.<sup>164</sup>

Second, Georgi Pirinski (Coalition for Bulgaria) made a procedural proposal for the debate to be postponed until after the summer recess so that it can be properly discussed. He said that this was an irresponsible approach, especially in light of the fact that two of the most important aspects of the State were to be discussed – the financial stability and the Constitution. Before putting the proposal to a vote the President of the National Assembly referred to Article 154(2) CRB which requires the proposal to be discussed no later than three months after the introduction of the proposed constitutional amendments. If the discussion was postponed until after the recess (which was 28 August 2011 the earliest) this would have been after the three-month period, as the amendments were introduced on 26 May 2011. Thus, the discussion could not have been postponed. Then the procedural proposal was nevertheless put to a vote and failed with 27 'for', 80 'against' and 5 'abstaining'.<sup>165</sup>

Third, Maya Manolova (Coalition for Bulgaria) made a procedural request for re-voting of Mr Pirinski's proposal. She said that, looking at the number of present representatives, it was mathematically impossible to get the draft law passed on first reading with the required 160 votes in favour. She said that what was being done was disrespectful to the CRB. Ironically, Ms Manolova said that not observing the constitutionally prescribed period does not lead to any fatal consequences and requested the debate to be postponed until after the summer recess. The procedural proposal was re-voted and failed again with 23 'for', 75 'against' and 1 'abstaining'.<sup>166</sup>

Fourth, Georgi Bozhinov (Coalition for Bulgaria) made yet another procedural proposal to postpone the discussion but for the following day and to put it as a first point in the agenda. He also reiterated the point on the low attendance of national representatives. Mr Bozhinov

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<sup>164</sup> In favour – GERB (81), the Blue Coalition (1), ATAKA (1); against Coalition for Bulgaria (14), DPS (1), the Blue Coalition (8) and ATAKA (1).

<sup>165</sup> In favour – GERB (2), Coalition for Bulgaria (14), the Blue Coalition (9), DPS (1) and ATAKA (1); against GERB (79) and Coalition for Bulgaria (1); abstaining GERB (3), ATAKA (2).

<sup>166</sup> In favour – Coalition for Bulgaria (13), the Blue Coalition (6), DPS (1) and ATAKA (3); against GERB (75); abstaining GERB (1).

stated that this was a purely formalistic attitude trying to push forward the debates only for the record. This proposal was voted and failed with 24 ‘for’, 60 ‘against’ and 5 ‘abstaining’.<sup>167</sup> Following these procedural proposals, the President of the constitutional Committee presented the Committee’s Report after which the proposal was presented by one of the national representatives that introduced the proposal. During these two presentations nothing new was added to what has already been discussed above. Consequently, the substantive discussion of the proposed constitutional amendment started.

Aliosman Imamov (DPS) repeated his position from the meeting of the constitutional Committee. He stated that while his political party was supportive of the idea to guarantee the long-term durability of the fiscal stability, it was not going to participate in the discussions and the voting. According to Mr Imamov, this decision was taken in response to the unwillingness of the majority to create more favourable conditions for discussing the proposal, which DPS thought to arise after the upcoming elections.

Pavel Shopov (ATAKA) started by making a preliminary comment on the way the proposed constitutional amendments were to be discussed. He said that it was an absurd to deal with the CRB in such a way. In his opinion, Article 154(2) CRB did not preclude a discussion on the amendment after the recess. He suggested that if a different approach was taken, it was not impossible for the proposed amendments to pass, albeit amended. However, he continued, with the approach taken, it was clear that the proposal was going to fail. Mr Shopov concluded his preliminary remarks by suggesting that what was being done was intentionally aiming at putting the end to the proposed constitutional amendment. In his substantive comments, Mr Shopov focused on several points. First, he said that the proposed amendments were going to give Bulgaria a neoliberal character, in contradiction with the preamble of the CRB, saying that Bulgaria was a social State. Second, he said that legally and systematically the proposed amendments must not be placed in the CRB because they are supposed to be regulated by other types of normative acts, such as laws or other secondary normative acts. Third, Mr Shopov saw the proposed amendments as problematic because they were going to entrench the flat tax rate, which was adopted with a very small majority and clearly representing neoliberal politics, which Bulgaria must abandon. Fourth, the qualified majority that was proposed with respect to taxation was seen as wrong because in this way the strongest lever for influencing and changing the public relations – the taxation – was being removed from the toolset of all future Governments. Adopting the proposed amendments would have meant, according to Mr Shopov, predetermining the actions of all future Finance Ministers, who will not be able to implement the policies for which they were chosen.

Martin Dimitrov (the Blue Coalition) expressed support for the idea that the proposed amendments represent – an idea that, according to Mr Dimitrov, has been applied and have shown fruitful results in other States. He admitted that some of the jurists in the Coalition

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<sup>167</sup> In favour – GERB (1), Coalition for Bulgaria (11), the Blue Coalition (9), DPS (1) and ATAKA (2); against GERB (60); abstaining GERB (5).

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doubted with good reasons the inclusion of the taxation rules in the Constitution. However, Mr Dimitrov said that, in his opinion, that the flat tax rate must be protected. He said that there was always a risk of somebody like Jean Videnov to reappear (the Prime Minister during the 1996 crisis discussed *infra*) and such risk had to be controlled as much as possible. Mr Dimitrov invited the Finance Minister and GERB to continue looking for consensus and not to proceed to a vote, which was clearly going to be lost. He said that this is a topic for which national consensus was needed and it was lacking at that moment. According to Mr Dimitrov, consensus could be reached with reasonable proposals and conversations.

The following three statements were made by national representatives from GERB and the Finance Minister, all in support of the proposed amendments. As they largely restated points that have already been discussed, only a short overview of their statements will be provided here. Dimitar Glavchev (GERB) focused on the notion of trust. He saw the constitutional amendments as addressing the problem of the ‘deficit’ of security and trust and as providing a guarantee that future election results will not undermine the financial stability of the State. Next, the Finance Minister made a rather short statement in which he focused on two points. First, he emphasised that the recent changes in the LPSB, which were corresponding to the constitutional amendments, led to an improved credit rating by Moody’s. Second, the Finance Minister said that it was time for the next step – to impose a qualified majority for the taxation in order to ensure sound fiscal policies in the future. According to him, this was going to lead to more effective and disciplined allocation of taxpayers’ money.

Krasimir Tsipov (GERB) continued the discussion. In his opinion, the proposed constitutional amendments were a logical consequence of the pre-existing goals set by the Government. According to him, these goals included four priorities: (1) maintaining the fiscal and financial stability of the State; (2) good management of the sovereign debt; (3) maintaining the low level of the taxes and increasing the effectiveness of the revenue administrations; and (4) maintaining the stability of the currency board. Mr Tsipov suggested that all of the measures the Government took in that regard - for increasing the stability of the public finances, as well as the Government’s policies for increasing the competitiveness of the economy – were addressing the goals of the Euro-Plus Pact. According to Mr Tsipov, these measures and policies led to the widely debated Bulgarian Pact for Financial Stability, which included the proposed constitutional amendments. Mr Tsipov concluded by calling upon the other national representatives to support the proposed amendments in order to ensure the long-term maintenance of a balanced budget and observance of a strict fiscal discipline.

Luben Kornezov (Coalition for Bulgaria) made a short statement, in which he said that, as a sign of protest to the timing of the discussion, Coalition for Bulgaria was not going to participate in the discussions. Following this statement, the discussion turned towards its end, filled with polemics and interruptions of the speakers. Iskra Fidosova (GERB) started her statement by criticising the abstentions from the debates. She said that there was an obligation to make the debate in the prescribed period and she pointed to the fact that nobody

objected to having the discussion on that day when it was being included in the agenda. In her substantive comments, Ms Fidosova stated that adopting the proposed amendments would signal stability and consistency in the fiscal and financial policies of Bulgaria towards the investors and the Bulgarian citizens. Ms Fidosova also saw the amendments as contributing towards limiting public spending, in accordance with the TFEU. Ms Fidosova repeated what was said earlier with respect to the guarantee that the proposed amendments represented. She said that these amendments, before they were even formally introduced, had been widely discussed for four months. There were discussions with all of the political parties in the National Assembly as well as with interested organisations such as the Chamber of Commerce and the BNB. While Ms Fidosova admitted that more conversations and debates were needed, she asked the national representatives to support the proposed amendments.

Then an exchange between Georgi Bozhinov (Coalition for Bulgaria) and Iskra Fidosova took place again on the point of the obvious lack of support and the formalistic attitude towards the discussions. Following these exchanges the debates were closed and a procedural request was made by Ms Fidosova for checking whether there was quorum. This request was objected to by Qnaki Stoilov (Coalition for Bulgaria). The check was nevertheless made and with only 106 national representatives there was no quorum and the constitutional amendment did not proceed to a vote and the session was concluded for the day.

The procedural battle continued on 29 July 2011.<sup>168</sup> In the very beginning of the session, Maya Manolova (Coalition for Bulgaria) made a procedural proposal for carrying a vote on the draft law for the constitutional amendment. It was argued that since there was quorum it was to be voted upon, also in accordance with Article 154 CRB. The President of the National Assembly – Tsetska Tsacheva (GERB), said that she cannot put the procedural proposal to a vote because the agenda included only parliamentary control for that day and no legislative activities were foreseen. Georgi Pirinski (Coalition for Bulgaria) stated that while this was not part of the agenda it was within the powers of the President of the National Assembly, as it has been done before, to propose a legislative vote to be included in the agenda. Ms Tsacheva agreed that she has such power but also said that it was discretionary. The procedure for this constitutional amendment stopped there and was never continued nor restarted. Nevertheless, the *ad hoc* constitutional Committee was not dissolved and occasional references to amending the Constitution were still made until the Government resigned in the spring of 2013.

On 14 December 2011 two references to an eventual Constitutional amendment were made. The first reference was made in the context of a request for including in the weekly agenda a hearing of the Prime Minister concerning Bulgaria's position on resolving the Euro crisis. This request did not succeed due to the negative vote of the majority, much to the dislike of certain national representatives, including some from DPS. In his response to the failed vote,

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<sup>168</sup> National Assembly, Stenographic record of the 262<sup>nd</sup> meeting, 29 July 2011.

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Hristo Biserov (DPS) stated that such rejections of hearing requests had been happening for three weeks and that this was damaging the relationship between the political parties. In that regard, Mr Biserov asked how the majority was going to dare inviting DPS and others to talks over possible constitutional amendments if it was acting in such a way. A little later, during a statement on the conclusions of the European Council meeting on 9 December, the Foreign Affairs Minister stated that Bulgaria had included the ‘golden rule’ in the LPSB and that the Government was working towards introducing it in the CRB as well. On 13 January 2012, in the context of the early discussions on the Fiscal Compact, the Prime Minister echoed the statement of the Foreign Affairs Minister. The Prime Minister stated that, while the fiscal rules on the budgetary deficit were already included in the LPSB, the Government was working towards introducing constitutional provisions limiting the increase of the taxes.

On 25 January 2012, in the context of the discussion in the European Affairs Committee on a Decision of the National Assembly on the participation of Bulgaria in the negotiations of the Fiscal Compact, a question was asked by Aliosman Imamov (DPS). The question concerned the faith of the provisions of the Bulgarian version of a fiscal pact, which included a proposal for constitutional amendments. Their faith was questioned because, under the Fiscal Compact, they were not required. In his answer, the Finance Minister stated that the process with respect to the proposed constitutional provisions was intentionally slowed down in order to see the final version of the Fiscal Compact and to decide whether the proposal need to be changed. Two days later, during the discussions of the Decision in the plenary hall of the National Assembly, two other references were made. First, Aliosman Imamov emphasised again the wider scope of the Bulgarian Pact for Financial Stability, compared to the Fiscal Compact, and asked why were the additional (constitutional) rules needed? Second, Plamen Oresharski (Coalition for Bulgaria) noted that the debate at the EU level with respect to fiscal rules developed in a different direction from what had been proposed in 2011 with the constitutional amendments. Mr Oresharski stated that Bulgaria should not have tried to be far ahead of the European leaders because that proved to have been counterproductive. According to Mr Oresharski, it was better that the constitutional amendment failed because a new one would have had to be done, considering the Fiscal Compact. The Finance Minister did not respond to these comments. No other discussions on the constitutional amendment were found.

## 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 CRB does not contain such rules on balanced budget or independent budgetary councils. However, it is interesting to mention at this point that there has been a sort of a constitutional

convention created with respect to budgetary discipline through the practice of all Governments since the 1996 economic crisis in Bulgaria. This crisis can hardly be described in a sentence and certainly not by this author. However, in order to provide a certain idea of the crisis to the reader two purely indicative quotes from the literature can be placed here.

“The major reason for the adoption of the [Currency Board Arrangement] in Bulgaria was the severe financial destabilisation during the second half of 1996, which culminated in a hyper-inflationary shock at the beginning of 1997. The lead for this was given in early 1996. Expectations of the population for a sharp depreciation of the national currency were present because of the heavy foreign debt servicing obligations which were due in 1996. Meanwhile, the diminishing hard currency reserves of the state prevented the Bulgarian National Bank (BNB) from intervening in the foreign exchange market in support of the national currency (the lev). Soon, confidence in the reliability of the national banking system strongly deteriorated, causing increased demand for hard currency. The population was struck by panic and rushed to the banks, at first to get back lev deposits and turn them straight away into hard currency and, later on, to withdraw hard currency deposits as well in order to lock them up in safe deposit boxes.”<sup>169</sup>

“The uniqueness of the Bulgarian case lies mainly in the combination of several serious problems that accelerated the crisis and amplified its magnitude. In fact, it was a combination of a fiscal crisis, a banking crisis and a currency crisis, and each of these three problems was so acute that it might have given birth to a major crisis on its own.”<sup>170</sup>

In order to facilitate further inquiries on this topic this author would direct the reader to a certain collection of contributions which can serve as a basis for further in-depth research.<sup>171</sup> The causes and effects of the 1996 crisis have been, and to a certain extent still are, subject of a great deal of controversy in Bulgaria. The collection proposed is purely indicative and does not imply that this author agrees or disagrees with these writings.

In the verbatim records of the National Assembly, during discussions on budgetary discipline, references have been made to a *political consensus* in Bulgaria, created since 1996.<sup>172</sup> However, it is not clear what are the scope and the deterrence of this political consensus. It is not contained in a legal document (but it probably would have been if the proposed constitutional amendment was adopted). The fact that the proposed constitutional amendment failed due to a lack of broad consensus leads to at least two conclusions. Either the constitutional amendment did not really manage to capture this *political consensus* or it did manage to capture it but the political forces subscribing to it did not necessarily see the constitutional entrenchment as its correct status. The truth probably lies somewhere in

<sup>169</sup> S Stefanov, ‘Implications of the Currency Board in Bulgaria’ (1999) 2 SEER 139.

<sup>170</sup> R Dobrinsky, ‘The transition crisis in Bulgaria’ (2000) 24 CJE 581, 600.

<sup>171</sup> S Clifford and JR Poirot, ‘Did the Currency Board Resolve Bulgaria's Financial Crisis of 1996-97?’ (2003) 26 JPKE 27; M Berlemann, K Hristov and N Nenovsky, ‘Lending of Last Resort, Moral Hazard and Twin Crises: Lessons from the Bulgarian Financial Crisis 1996/1997’ (William Davidson Working Paper Number 464, May 2002); Centre for Co-operation with Non-members, *OECD Economic Surveys 1998-1999: Bulgaria* (OECD, Paris 1999); П Игнатиев, ‘Банковата криза в България през 1996-1997г.’ (2003) Икономическа мисъл 66 [P Ignatiev, ‘The banking crisis in Bulgaria in 1996-1997’ (2003) Economic Thought 66]; P Kovatchevska, ‘The Banking and Currency Crises in Bulgaria: 1996-1997’ (Center for Social and Economic Research, Studies & Analyses Number 204, 2000).

<sup>172</sup> See the verbatim records of 4 May 2013 discussed in Question VI.1 and the explanations to the draft law for constitutional amendments.

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between, considering the answer to Question III.2. Coming back to the essence of this Report, from a legal point of view, considering that the amendment failed and that the BCC has never suggested that constitutional conventions are a source of constitutional law in Bulgaria, the *political consensus* strictly speaking has no legal force.

## PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

Due to the failure of the proposal for a constitutional amendment this question is not relevant to the situation in Bulgaria.

## RELATIONSHIP WITH EU LAW

III.5

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

Due to the failure of the proposal for a constitutional amendment this question is not relevant to the situation in Bulgaria.

## ORGANIC LAW

III.6

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

No. However, keep in mind the answer to Question III.1.

## 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?

As explained in the answer to Question III.2, the proposal for a constitutional amendment failed in 2011. However, as it has been mentioned through this report, the amendment of the LPSB in 2011 was envisaged to be adopted in conjunction with the proposed amendment of the CRB.<sup>173</sup> The two legislative initiatives were part of the Bulgarian Pact for Financial Stability. The Pact was put on the wider political agenda by the Finance Minister in the beginning of 2011 and only partially succeeded. Due to the change in the discourse at the EU level with respect to the Euro-crisis measures and the lack of political consensus at the national level, the proposed constitutional amendments were not formally reintroduced after

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<sup>173</sup> E.g. National Assembly, Stenographic records of the 242<sup>nd</sup> meeting, 15 June 2011.

their controversial end in a procedural maze. The adoption of the LPF includes the LPSB amendments and it has been seen as a natural continuation of the Pact for Financial Stability.<sup>174</sup>

## 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 implementation of the Euro-crisis measures, in terms of appropriate legal framework, has not been a point of much discussion. The relevant measures have been seen as implementing the Euro-crisis law and not constitutional law, considering also the failure of the proposed constitutional amendment. The only point of controversy found was with respect to the Euro-Plus Pact. The discussions on the point of the origin of the Government actions that fell within the scope of the Euro-Plus Pact were found to be only in the parliamentary debates (see the answer to Question VI.2) and not in the general public debate.

The problem with the Euro-Plus Pact in Bulgaria originates in the lack of transparency that surrounded it and the controversy about its legal/political character. The Government only mentioned that it will join the Pact in the morning before the Council meeting in Brussels. The Government also did not state clearly what commitments (even if only political) it made under this Pact. The Government stated that the Pact was an important political act that was crucial for (1) managing the Euro crisis and (2) Bulgaria's role at the EU level. It also said that it did not commit to adopting any measures that it had not planned to adopt anyway. Thus, according to the Government, all of the unpopular measures such as the increase of the retirement age were measures in pursuance of its own policies and not measures required from Brussels. However, the opposition, formed mainly by leftists, insisted that the unpopular measures were adopted in order to fulfil secretive commitments. This was seen as problematic because, in the opinion of the leftists, the state of the Bulgarian economy at that time did not call for such restrictive measures. Thus, the main discussions on the point of implementing Euro-crisis measures focused on whether the measures in the scope of the Euro-Plus Pact were genuinely necessary in Bulgaria and whether they were the consequence of Government's commitments made in non-transparent ways.

## MISCELLANEOUS

### III.9

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

No other relevant information.

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<sup>174</sup> See the verbatim records of the Committee on Legal Affairs on 24 October 2012, *supra*, n 118.

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

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

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

*([http://www.efsf.europa.eu/attachments/20111019\\_efsf\\_framework\\_agreement\\_en.pdf](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 BULGARIA 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 information is not publicly available. Furthermore, no debates relating to this question were found in the verbatim records of the Bulgarian National Assembly.

## 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 BULGARIA AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

Bulgaria is still not a Eurozone Member State and as such this question is not applicable to it.

## GUARANTEES

#### IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN BULGARIA? 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 to Bulgaria as Bulgaria was not obliged to issue such Guarantees.

### ACTIVATION PROBLEMS

#### IV.4

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

Not applicable to Bulgaria.

### CASE LAW

#### IV.5

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

The EFSF has not been litigated at the BCC.

### 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 to Bulgaria.

### IMPLEMENTING PROBLEMS

#### IV.7

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

Not applicable to Bulgaria.

### BILATERAL SUPPORT

#### IV.8

IN CASE BULGARIA 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?

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No, Bulgaria did not participate in the provision of funding on a bilateral basis to other EU Member States.

## MISCELLANEOUS

IV.9

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

Not other relevant information.

## 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 BULGARIA ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

No political or legal difficulties were found during the research on the Bulgarian. The position of the Government during the negotiations was not made publicly available and, consequently, there were no debates at the National Assembly on the negotiating position of Bulgaria. The Decision of the European Council on 25 March 2011 was taken during the 24-25 March meeting when the Euro-Plus Pact was adopted. As it will be seen below, the Prime Minister only appeared in the National Assembly in the morning of 24 March 2011, right before his flight to Brussels, to state that Bulgaria will approve the Euro-Plus Pact but did not discuss the question of the amendment of Article 136 TFEU.

An official position of the Government, albeit post-negotiations, can be distilled from the explanations to the Decision of the Council of Ministers with which the Council of Ministers proposed to the National Assembly to ratify the European Council Decision on the amendment of Article 136 TFEU.<sup>175</sup> These explanations state that with the amendment of Article 136 TFEU it would be possible for the Eurozone Member States to establish a stability mechanism which can be used when needed to guarantee the stability of the Eurozone as a whole. It was also pointed out that the amendment of Article 136 TFEU is part of the measures taken for managing the Euro crisis. In that context, some of the paragraphs read:

“Bulgaria notes the importance of the single currency for the European political and economic project and the significance of the commitment made by all Member States in support of the stability of the Eurozone.

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<sup>175</sup> Council of Ministers, Decision № 497 of 15 June 2012 for a proposal to the National Assembly to ratify the Decision of the European Council of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro.

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Bulgaria supports the strengthening of the economic governance in the Eurozone with aim of managing the current debt crisis and creating sustainable solutions for avoiding such crises in the future. Considering the high level of integration of the European economies and their interconnectedness, the stability of the Eurozone is a question of primary importance for our State.

[...]

Bulgaria notes that the European Stability Mechanism will provide the necessary means of action in situations threatening the financial stability of the Eurozone as a whole as well as assist in preserving the economic and financial stability of the Union itself.”<sup>176</sup>

These paragraphs can be seen as an expression of the position of Bulgaria towards the perceived role of the amendment of Article 136 TFEU.

## APPROVAL

### V.2

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

#### *V.2.1 The ratification process in Bulgaria*

In order to contextualise this answer, an overview of the ratification procedure for international treaties in Bulgaria needs to be provided. This overview will include all actors that can be involved in it, even though not all of them were actually involved in the ratification process of the amendment of Article 136 TFEU.

According to the CRB, international agreements that are ratified in accordance with the constitutionally established procedure, promulgated and have come into force with respect to Bulgaria, form part of the domestic legislation of Bulgaria.<sup>177</sup> These international agreements enjoy primacy over the national law norms which contradict them.<sup>178</sup> The constitutionally established procedure is dispersed across several Articles, each of which deals with one of the actors. These Articles are supplemented by a law, where the CRB so requires.

To start with, the international agreements to which Bulgaria is a party are, procedurally, divided in two types – the ones that require ratification and the ones that do not. The international agreements which require ratification fall within the exclusive competence of the National Assembly provided in Article 85 CRB to ratify or denounce international instruments. Article 85(1) lists exhaustively nine situations in which the National Assembly must exercise its ratification powers.<sup>179</sup> Those situations are when the international

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<sup>176</sup> Translation by the author.

<sup>177</sup> Constitution of the Republic of Bulgaria, *supra*, n 134, art 5(4).

<sup>178</sup> *Ibid.*

<sup>179</sup> However, the BCC has ruled that there is nothing prohibiting the National Assembly to decide to ratify another international agreement which does not fall in the listed categories. In the words of the BCC, this stems from the general competence of the National Assembly to adopt laws with the only limitation that they do not contradict the Constitution. The BCC found that there was no limitation posed by the Constitution to the power

instruments:

- “1. are of a political or military nature;
2. concern the Republic of Bulgaria's participation in international organizations;
3. envisage corrections to the borders of the Republic of Bulgaria;
4. contain obligations for the treasury;
5. envisage the state's participation in international arbitration or legal proceedings;
6. concern fundamental human rights;
7. affect the action of the law or require new legislation in order to be enforced;
8. expressly require ratification;
9. (new, SG 18/05) confer to the European Union powers ensuing from this Constitution.”<sup>180</sup>

A special provision in Article 85(2) is dedicated to the last situation dealing with conferral of powers to the EU. In particular, it states that the ratification of such international treaty is to be adopted by a two-thirds majority of all members of the National Assembly. Article 85(3) states that international agreements ratified by the National Assembly are to be amended or denounced only by the procedures provided therein or in compliance with universally accepted norms of international law. Finally, Article 85(4) states that where an amendment to the Constitution is required by a conclusion of an international agreement such amendment must precede that conclusion. However, there is one caveat to the exclusive competence of the National Assembly, which relates to the power of the Grand National Assembly (GNA)<sup>181</sup> to “resolve on any changes in the territory of the Republic of Bulgaria and ratify any international instrument envisaging such a change”<sup>182</sup> How this relates to Article 85(1)(3) CRB is not going to be discussed here.

The Law on International Agreements<sup>183</sup> (the LIA) further elaborates on the ratification procedure. Article 14 LIA exhaustively lists the different ways in which Bulgaria may express its will to be bound by international agreements. This can happen through ratification, affirmation, acceptance, accession, signing without the need for further ratification or affirmation, and through exchange of the instruments that comprise the international agreement. Where international agreements require ratification in accordance with the CRB, the Council of Ministers proposes to the National Assembly to ratify the international agreement through law.<sup>184</sup>

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of the National Assembly in that regard. However, and strangely enough, the BCC did not discuss the special nature of the ratification laws and their relationship to the binding international commitments of Bulgaria. For example, what would be the legal consequence when an international agreement concluded by Bulgaria which requires only a signature to create binding legal obligations and does not fall within the listed categories is nevertheless subjected to a ratification vote by the National Assembly and the ratification fails? See Decision № 9 of 1999 in Case № 8 of 1999, SG 57 of 25 June 1999.

<sup>180</sup> Constitution of the Republic of Bulgaria, *supra*, n 134, art 85(1).

<sup>181</sup> The GNA is a Bulgarian constitutional organ with specific powers in the area of constitutional amendments and the adoption of new Constitutions. The requirement for convening a GNA is an element of extreme rigidity in the Constitution. In the history of Bulgaria only seven GNAs have been convened and every time this has been done at a turning point in the Bulgarian history. The last time a GNA was convened was in 1991. On the question whether the constitutional amendments relating to the membership of Bulgaria in the EU required a GNA to be convened the BCC answered in the negative.

<sup>182</sup> Constitution of the Republic of Bulgaria, *supra*, n 134, art 158(2).

<sup>183</sup> Law on International Agreements, SG 97 of 13 November 2001.

<sup>184</sup> *Ibid.* art 15(1).

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Since the ratification happens through the adoption of a law by the National Assembly, the constitutional provisions relating to the procedure of adoption of laws is also applicable *mutatis mutandis*. According to Article 88 CRB, laws have to undergo two readings and be voted upon twice. However, exceptionally, the National Assembly may decide to conjoin the two voting procedures during a single session. The details for this exception are further elaborated in the Rules for the Organisation and the Activity of the National Assembly (the Rules).<sup>185</sup>

However, before going into the voting procedures in the Rules, it is useful to take a look at the provisions governing the introduction of the draft laws in the National Assembly. In the current version of the Rules, Article 73(1) states that draft laws and their explanations are deposited to the President of the National Assembly. The explanations must include the expected consequences from the application of the proposed law.<sup>186</sup> Where the draft laws relate to the membership of Bulgaria in the EU, the explanations must also point to the part of EU law requiring the legislation in question.<sup>187</sup> The allocation of the draft laws to the permanent Committees is done by the President of the National Assembly.<sup>188</sup> The President of the National Assembly also determines the leading Committee for each draft law.<sup>189</sup> The leading Committee is leading in the sense that it has an increased role in the procedural management of a particular law during the procedure for its adoption as well as after its adoption.<sup>190</sup>

Now, turning to the voting, Article 77(2) of the Rules states that the National Assembly can exceptionally decide to conjoin both voting procedures in one session.<sup>191</sup> However, it continues, this rule is to be applied only when during the debate no proposals for amending the draft law have been put forward. No special voting rules apply for the decision to conjoin the voting procedures. With respect to the ratification process, Article 84 of the Rules is also worth mentioning. It is the only one dealing with ratification of international agreements. It states that in the case of draft laws for the ratification of international agreements, the text of the international agreement itself cannot be modified. Furthermore, reservations to multilateral agreements can be made only insofar as the agreements in question allow for reservations to be made. When Articles 77(2) and 84 of the Rules are read together it appears

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<sup>185</sup> Rules for the Organisation and the Activity of the National Assembly, SG 97 of 25 November 2014, as amended SG 13 of 17 February 2015.

<sup>186</sup> *Ibid.* art 73(2).

<sup>187</sup> *Ibid.* art 73(3).

<sup>188</sup> *Ibid.* art 74(1).

<sup>189</sup> *Ibid.* art 74(2).

<sup>190</sup> This increased role is set out in a number of provisions in the Rules for the Organisation and the Activity of the National Assembly. For example, during the draft stages of a law, the leading Committee has increased reporting responsibility at the different procedural steps (arts 34, 41 and 74-81), while after the adoption of the law the leading Committee can adopt a position in a case before the BCC where a law it has managed is being challenged (art 90(1)) and also representatives when the President vetoes a law the Committee has the obligation to report the veto and its explanations to the national representatives (art 83(1)).

<sup>191</sup> The use of this procedure for ratification of international agreements has been challenged before the BCC in Decision № 9 of 1999, *supra*, n 179. The BCC held that the use of this exception is a prerogative of the National Assembly and that it is not for the BCC to look into the reasons why the National Assembly decided to rely on the exception.

why international agreements are prone to be ratified within one session. The final touch on the ratification law is its promulgation in the SG by the President on the basis of Article 98(4) CRB, as is the procedure for laws in general. This promulgation is not, however, a defining point for the international agreement to become binding on Bulgaria. As such, the President cannot interfere with the will of the National Assembly to be bound at the point of promulgation.

The international agreements which do not require ratification have a less straightforward procedure to follow. According to Article 106 CRB, the Council of Ministers shall *inter alia* “affirm or denounce international treaties when authorized to do so by law”. However, Article 98 CRB states that the President of the Republic shall *inter alia* “conclude international treaties in the circumstances established by the law”. This division is an expression of the underlying principle of separation of powers and checks and balances in the CRB, which prevent the domination over the State functions by the political interests of the majority of the day.<sup>192</sup> Again, the LIA provides further clarifications on the procedure and the actors involved in it. According to Article 9 LIA, international agreements can be concluded by the President and the Council of Ministers. In the case of the President, the conclusion happens after concordance with the Council of Ministers, depending on the importance and the subject of the international agreement or in accordance with the agreement reached between States on the status of the State authorities that will sign the international agreement in question.<sup>193</sup> In the other case, the conclusion of an international agreement is done by the Council of Ministers taking into consideration the subject matter of the agreement and its provisions.<sup>194</sup> Accordingly, while the competence to conclude the agreements is shared, the Council of Ministers seems to have the leading role. This leading role is subject to the competences of the two institutions as provided by the CRB.

The leading role of the Council of Ministers is further exemplified by three other provisions in the LIA. First, in Article 15(2) it is stated that when the CRB does not require for an international agreement to be ratified, the Council of Ministers affirms it. Secondly, in Article 17 it is stated that when an international agreement is meant to binding after a signature or accession without being followed by a ratification or affirmation the consent is given by the Council of Ministers and it is to be included in the decision for approving the agreement. Thirdly, in Article 18 it is stated that when an international agreement becomes binding on account of the exchange of instruments comprising this agreement the exchange is executed by the Minister of Foreign Affairs on the basis of a decision by the Council of Ministers.

Irrespective of whether an international agreement requires ratification or not, all international agreements may be subject to constitutional scrutiny before the BCC. The constitutional judicial review can be *ex ante* as well as *ex post* the ratification/conclusion of the international agreement. However, this is not readily evident when one looks at the CRB.

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<sup>192</sup> Decision № 11 of 2011 in Case № 8 of 2011, SG 95 of 2 December 2011.

<sup>193</sup> Law on International Agreements, *supra*, n 183, art 9(1).

<sup>194</sup> *Ibid.* art 9(2).

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This is because in Article 149(1)(4) CRB it is stated that the BCC has the power to rule on *inter alia* “the compatibility between the Constitution and the international instruments concluded by the Republic of Bulgaria *prior* to their ratification” (Emphasis added). The explanation for the *ex post* powers of the BCC is to be found in Decision 9 of 1999.<sup>195</sup> In this Decision the BCC stated that the duly ratified and promulgated international agreements “can acquire the status and force of laws” and “[as with] all the laws in the state, these ratified international treaties should be subject to constitutional control under Article 149(1)(2) of the Constitution”.<sup>196</sup> Accordingly, the BCC based its power of *ex post* constitutional review of international agreements on Article 149(1)(2) CRB which sets out the power to rule on the constitutionality of laws and other acts passed by the National Assembly. In the view of the BCC, the power in Article 149(1)(4) CRB to review the constitutionality *ex ante* does not preclude the power of *ex post* review. To the contrary, the former supplements the latter. The BCC continued by saying that

“the ratification act incorporates the international agreement and together they must be considered as one complete act which can be challenged for unconstitutionality in its entirety. In that respect it is rightfully maintained that the eventual unconstitutionality of the international agreement makes its act of ratification also unconstitutional”.<sup>197</sup>

Finally, it is worth observing the position of the Bulgarian nationals in the framework of the ratification process. There are generally two ways in which the people of a given State could directly participate in a ratification process. These are to (1) initiate proceedings before a Constitutional Court or (2) to initiate and/or vote in a referendum. In Bulgaria only the second possibility is available as the right to initiate proceedings before the BCC is still limited to public institutions.

With regard to referendums, the CRB states very little. Article 42(2) CRB provides that the organisation and procedure for holding elections and referendums shall be established by law. The law dealing with referendums regulates also other rights to participate in the governance of the State and the regions such as the citizen’s initiative.<sup>198</sup> However, only the part dealing with referendums is relevant for the present discussion. In Article 9(4) of that law it is stated that referendums which concern issues regulated by international agreements that Bulgaria has concluded can be convened only before the ratification of such agreements. Unfortunately, this law addresses neither the situations where an international agreement does not require ratification, nor the question whether the initiation of collection of signatures or other procedures that can lead to convening a referendum has a freezing effect

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<sup>195</sup> Decision № 9 of 1999, *supra*, n 179.

<sup>196</sup> Translation by E Tanchev and J Peteva, ‘The Impact of EU Accession on the Legal Orders of Bulgaria’ in A Kellerman and others (ed) *The impact of EU accession on the legal orders of new EU member states and (pre-) candidate countries: hopes and fears* (Final Conference Matra Multi Country Project, TMC Asser Press, The Hague 2006) 36-37. Of course, this does not go to say that international agreements have the legal value of statutes. They stand higher than statutes in the hierarchy of norms but lower than the Constitution.

<sup>197</sup> Translation by the author. Decision № 9 of 1999, *supra*, n 179.

<sup>198</sup> Law for direct participation of the citizens in the State power and the regional self-governance, SG 44 of 12 June 2009, as amended SG 100 of 21 December 2010, SG 9 of 28 January 2011, SG 42 of 5 June 2012, SG 20 of 28 February 2013, SG 66 of 26 July 2013, SG 19 of 5 March 2014.

on the ratification procedure.

The question of who can initiate a referendum is answered in Article 10 of that law. Proposals to the National Assembly for a referendum can be made by the Council of Ministers, the President, at least one-fifth of the national representatives, at least one-fifth of the municipal councils in Bulgaria, or by an initiative committee of citizens with voting rights, which has collected at least 200 000 signatures of citizens with voting rights. No special voting rules apply for the decision of the National Assembly to accept or not a proposal. The National Assembly is only obliged to adopt a decision for convening a referendum where the initiative committee has collected at least 500 000 signatures.

### *V.2.2 The ratification of the amendment of Article 136 TFEU*

Having explained the constitutionally established procedure for ratification or otherwise acceptance of international agreements by Bulgaria, it is now pertinent to turn to the specific case of the amendment of Article 136 TFEU. The amendment was subject to ratification and as such (since it did not relate to changes in the territory of Bulgaria), on the one side, the relevant institution involved was the National Assembly. On the other side, it was the Council of Ministers and not the President that concluded the agreement. Furthermore, the ratification did neither include recourse to the BCC nor a referendum.

On 25 March 2011 the Prime Minister – Boyko Borissov – supported the Decision of the European Council for amending Article 136 TFEU.<sup>199</sup> More than a year later, on 15 June 2012, the Council of Ministers adopted a Decision with which it approved the European Council Decision and proposed to the National Assembly to ratify it.<sup>200</sup> The constitutional basis for the proposed ratification was Article 85(3) CRB. As explained *supra* this Article states that Treaties ratified by the National Assembly are to be amended or denounced only by the procedures provided therein or in compliance with universally accepted norms of international law. As such the ratification of the Decision was seen as, in constitutional terms, for exactly what it was – an amendment of an international agreement though the procedure provided therein. It was not viewed as a new international agreement on its own. Furthermore, it was also not viewed as an international agreement conferring powers stemming from the Constitution to the EU which requires a two-thirds majority in the National Assembly under Article 85(2) CRB.<sup>201</sup>

In the National Assembly, the draft ratification law was discussed in the Committee on Budget and Finance, on External Policy and Defence and on European Affairs and Oversight of the European Funds of which the latter was the leading one. All three Committees in their reports proposed to the National Assembly to ratify the European Council Decision on the

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<sup>199</sup> European Council Decision 2011/199 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro [2011] OJ L 91/1.

<sup>200</sup> Council of Ministers, Decision № 497, *supra*, n 175.

<sup>201</sup> This was expressly underlined in the explanations attached to Council of Ministers Decision № 497 and later on reiterated in the reports of three Committees which considered the draft law.

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basis of Article 85(3) CRB. In its plenary session on 13 July 2012, the National Assembly approved the proposed draft law and ratified the European Council Decision on the proposed legal basis. The result of the first vote was 89 ‘for’, 2 ‘against’ and 16 ‘abstaining’.<sup>202</sup> As there were no amendments proposed to the draft law, the National Assembly, on the basis of Article 70(2) of the then applicable version of the Rules,<sup>203</sup> conjoined the two voting procedures within the same session. The result of the second vote was 84 ‘for’, 2 ‘against’ and 14 ‘abstaining’.<sup>204</sup> The law ratifying the European Council Decision was promulgated in the SG<sup>205</sup> by the President on the basis of Article 98(4) CRB on 23 July 2012.<sup>206</sup>

## RATIFICATION DIFFICULTIES

### V.3

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

The ratification of the amendment of Article 136 TFEU went through the whole process without problems or controversies in either of the institutions involved. It went so smooth that after the draft law was presented in the plenary session of the National Assembly no national representatives joined the discussion and the draft law went straight to voting. As explained *supra*, even the two voting procedures were conjoined in one session. However, in the opinion of the author, it is still interesting and worth looking at the explanations to the draft law provided by the Council of Ministers, the reports of the three Committees that considered the draft law as well as what was said in the National Assembly when the draft law was presented.

In the explanations attached to Decision № 497 of the Council of Ministers, it is stated that Bulgaria recognises the importance of the single currency for political and economic European project as well as the importance of the commitment made by all Member States for stability in the Eurozone. It is also stated that that Bulgaria supports the increase in economic governance in the Eurozone, which is meant to manage the debt crisis and to create stable solutions for avoiding the repetition of such crisis. For Bulgaria, the stability of the Eurozone is an issue of primary importance, considering the high level of integration and interconnectedness of the economies within the EU. The ratification of the amendment of Article 136 TFEU is seen in the explanations as an expression of support for the strategy of the EU for overcoming the debt crisis, which includes the European Stability Mechanism (ESM) and stabilizing the Eurozone. On the basis of these explanations the Committees

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<sup>202</sup> In favour – GERB (74), Coalition for Bulgaria (4), the Blue Coalition (4), ATAKA (2) and independents (5); against independents (2); abstaining Coalition for Bulgaria (6) and DPS (10).

<sup>203</sup> Rules for the Organisation and the Activity of the National Assembly, SG 58 of 27 July 2009, as amended, SG 60 of 30 July 2009, SG 98 of 11 December 2009, SG 100 of 15 December 2009, SG 43 of 8 June 2010.

<sup>204</sup> In favour – GERB (72), Coalition for Bulgaria (3), the Blue Coalition (3), ATAKA (2) and independents (4); against independents (2); abstaining Coalition for Bulgaria (5) and DPS (9).

<sup>205</sup> Law for the ratification of the Decision of the European Council of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, SG 57 of 27 July 2012.

<sup>206</sup> Presidential Decree № 283 of 23 July 2012, SG 57 of 27 July 2012.

considered the ratification proposal.

The first report was adopted by the Committee on Budget and Finance on 28 June 2012.<sup>207</sup> The draft law was presented by the Director General for European Affairs in the Ministry of Foreign Affairs. The report largely reiterated the explanations to the draft law without adding anything new. The verbatim record of the meeting shows that only question asked was from Plamen Oresharski (Coalition for Bulgaria).<sup>208</sup> The question was why the amendment is being considered when Bulgaria is not a Eurozone Member State? In the answer of the presenter it was underlined that the amendment of Article 136 TFEU, while connected to the ESM, does not entail that Bulgaria is getting involved in the latter by ratifying the former. The amendment procedure in the Lisbon Treaty requires the approval of all Member States, including Bulgaria, and Bulgaria supports it because it is needed to pave the way for the ESM Treaty,<sup>209</sup> which concerns the Eurozone Member States only. After the question was answered, the draft law was voted upon and the results were 13 ‘for’, 1 ‘against’ and 6 ‘abstaining’. No explanations of the negative or abstaining votes were provided.

The other two reports were adopted on 4 July 2012 in a joint session. The draft law was presented by the Deputy Minister of Foreign Affairs. As the report was adopted in a joint session the verbatim record of the two Committee meetings is the same. As such it is better to consider the results of the work of the two Committees together. The report of the Committee on External Policy and Defence<sup>210</sup> reiterated almost word by word the explanations of the draft law and then concluded by saying that the draft law does not contradict the principles of the foreign policy of Bulgaria. The report of the leading Committee on European Affairs and Oversight of the European Funds<sup>211</sup> also restated to a great extent the draft law explanations. Two other things were also mentioned. First, it was pointed out that the Bulgarian currency – the Lev – is fixed to the Euro and that the stability of the Euro and its resistance towards future negative influences is of great importance for the Bulgarian economy and finances. Secondly, the report concluded that the proposed ratification law corresponds to the obligations of Bulgaria flowing from its full membership in the EU.

The verbatim record, however, is more insightful. While there were no questions posed after the draft law was presented, one of the Committee members made an explanatory statement on why he was going to vote against the ratification. The author considers that a translated quotation in full of this statement is needed in order to avoid any confusion as to what was said. The Committee member stated that:

“Political party ‘ATAKA’ will vote against this ratification. I will state our motives. We are

<sup>207</sup> Committee on Budget and Finance Report of 28 June 2012.

<sup>208</sup> Committee on Budget and Finance, Protocol № 18 of 28 June 2012.

<sup>209</sup> However, as it became known from the judgment of the Court of Justice of the European Union in the *Pringle* case the amendment was actually declaratory and not constitutive of the powers of the Member States to adopt the ESM Treaty. Case C-370/12 *Thomas Pringle v Government of Ireland, Ireland and The Attorney General* [2012] ECR I-00000.

<sup>210</sup> Report of the Committee on External Policy and Defence of 4 July 2012.

<sup>211</sup> Report of the Committee on European Affairs and Oversight of the European Funds of 4 July 2012.

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consistent in our position. The reason to vote against the ratification is that in this way with the accession of Bulgaria to the Fiscal Pact (sic!) the sovereignty of Bulgaria is violated – the National Assembly and the Government appear redundant. Besides, lately the Chancellor Merkel as well as the President Hollande and David Cameron stated clearly that the Fiscal Pact is not the panacea which will solve the debt crisis. This is our conclusion. We are led by the idea that Bulgaria must have the possibility for self-development and not to join the scheme of Europe on different speeds – two or three or more. We are against a budget deficit being fixed at 3% from the GDP and a sovereign debt not going higher than 60%. In this way we consider that this decision does not correspond to our demands to have immediate quick increase of the income of the population. These are our motives in short; we will present them in further detail in the plenary hall.”<sup>212</sup>

The President of the Committee, before she put the proposal to a vote, responded to this statement with a clarification. She suggested to the Committee members while preparing for the plenary hall to keep in mind that what was being considered was an amendment to the TFEU and not the Fiscal Pact. Furthermore, she pointed out that through this ratification Bulgaria gives its support for the collective effort to stabilise the Euro and overcome the debt crisis and that the amendment was ratified by 19 Member States already, at that time. Following these exchanges the draft law was voted upon and the results were 9 ‘for’, 0 ‘against’ and 2 ‘abstaining’. The voting results in the Committee on External Policy and Defence were 9 ‘for’, 1 ‘against’ and 3 ‘abstaining’. No explanations of the abstaining votes in the two Committees were provided.

These reports were read in the National Assembly when the draft law was presented in plenary. The Minister of Foreign Affairs Nikolay Mladenov presented the law with a comprehensive statement.<sup>213</sup> In his statement the Minister started by noting the legal stability that the amendment to Article 136 TFEU provided to the ESM Treaty which is one of the two most fundamental instruments (the other being the Fiscal Pact) for dealing with the Euro crisis. The Minister also pointed out that the two very important questions of (1) competence extension of the EU and (2) the financial obligations of Bulgaria are both answered in the negative. Having said that the Minister highlighted that Bulgaria has a great interest in the stability of the Euro and will, to the maximum extent, follow closely all developments in that regard.

Then, the Minister turned to a few issues not directly related to the ratification. Firstly, the national representatives were urged to follow the discussions for the future of the Economic and Monetary Union (EMU), such as the ones on the banking union, bank supervision and deposit guarantees within the Eurozone. Secondly, the Minister stated that in the beginning of the negotiations on these proposals Bulgaria took the constructive position that there must be clear rules which include all 27(now 28) Member States in the discussion for the future of the EMU. The position was against mechanisms which would permanently exclude some Member States from the decision-making process. Thirdly, the Minister stated that, while the discussions how to solve the Euro crisis will continue on, Bulgaria must be attentive to the,

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<sup>212</sup> Translation by the author.

<sup>213</sup> National Assembly, Stenographic records of the 375<sup>th</sup> meeting, 13 July 2012.

crucial for it, question of how the proposals from the Member States or the Commission will contribute to the stability of the internal market. It was in the interest of Bulgaria that the internal market was not only stabilised but also extended to new areas, particularly, the single market of digital services. The reason for the Minister to go beyond the scope of the draft law was explained to be that when the ratification decision is being made there should be a clear understanding of the broader picture within which it stands. After this introduction the draft law was voted and adopted, as explained in the answer to Question V.2. It should be noted that the promise of ATAKA's national representative in the Committee on External Policy and Defence to further explain the party's motives for voting against was not kept and no explanations of the negative or abstaining votes was provided.

## CASE LAW

V.4

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

The amendment of Article 136 TFEU has not been litigated at the BCC.

## MISCELLANEOUS

V.5

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

No other relevant information.

## VI EURO-PLUS-PACT

*On March 11, 2011 the Heads of State or Government of the Eurozone endorsed the Pact for the Euro. At the 24/25 March 2011 European Council, the same Heads of State or Government agreed on the Euro Plus Pact and were joined – hence the ‘Plus’ - by six others: Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (leaving only the UK, Czech Republic, Sweden and Hungary out).*

*The objective of the pact is to foster competitiveness, foster employment, contribute to the sustainability of public finances and reinforce financial stability. In the Euro-Plus-Pact the Heads of State or Government have entered into commitments on a number of policy areas, in which member states are competent.*

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

### NEGOTIATION

#### VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID BULGARIA 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.

From the little available information on the negotiations, it appears that the difficulties encountered during the negotiations at the EU level were mainly related to preserving the right of the Member States to independently conduct their tax policies. The position of the Government on the Euro-Plus Pact was never presented in a consolidated fashion and one needs to look at the different debates in order to extract parts of it. The position can be summarised in the following way. The Government supported the Pact as part of the measures designed to manage the Euro crisis and was keen for the Pact to include non-Eurozone Member States, in order to be able to participate in the creation of the solutions. However, an important cornerstone of the Bulgarian position was the abovementioned difficulty that issues of common taxation must be left out of the Pact. The Government supported the predominance of the measures in the Pact because they overlapped to a great extent with the measures the Government wanted to take anyway.

There are several main points of discussion that transpire from the numerous occasions that the Euro-Plus Pact was discussed at the National Assembly. While all of them are discussed in detail below a short summary is in order. A major point that was discussed was Bulgaria's participation in the EU integration, generally. The Pact was presented as an important political opportunity and a gateway for Bulgaria to strengthen its role in the integration process. In that regard, a certain part of the discussion dealt with the issue of a two-speed Europe, which Bulgaria wanted to prevent or, failing that, not to be left in the 'second speed Europe'. A more specific, but equally important, part of the integration-related debate was the point on Bulgaria's Eurozone membership. In that regard, the debate focused on how the Pact would or should relate politically as well as legally to that membership. Another major

point that appeared in the debates was taxation. Constantly, during the debates, the national representatives expressed concerns about a possible effect of the Pact on the sovereign power of the National Assembly to set the taxes within Bulgaria. The Government, in turn, repeatedly assured the national representatives that this fundamental interest of Bulgaria was protected. The third major point of discussion was focused on the prudence of the decision to limit, even if only politically, the freedom of manoeuvre of Bulgaria. The main question in that regard was why Bulgaria should be too strict in its policies when its economy needs to grow bigger and faster and this necessarily involves at some point greater spending.

The fourth major point was the political/legal nature as well as content of the commitments Bulgaria made under the Pact. On the nature of the commitments, the Government repeated time and again that the Pact was a political act containing political commitments and that the Government did not bound Bulgaria for which the approval of the National Assembly is required. On the content of the commitments, there was a great deal of controversy. The Government held that its actions in the scope of the Pact were stemming from its own policy and were not required by the Pact. However, the opposition insisted on its view that the Government's actions such as increasing the retirement age were adopted in order to fulfil commitments the Government made at the EU level, that were hidden from the public. The fifth major point of discussion, relating to the previous one, was on the issue of transparency. On various occasions, national representatives from the opposition criticised the Government for the lack of transparency during the negotiation of the Pact and for the actual commitments made. Keeping this general overview in mind, it is now necessary to consider the Euro-Plus Pact discussions in detail.

The Euro-Plus Pact created a lot of controversies ever since the first time it was mentioned in the plenary hall of the National Assembly. This happened on 24 March 2011 when the Prime Minister Boyko Borissov introduced the Pact, shortly before he flew to Brussels to attend the European Council meeting adopting it. Following this statement, the Euro-Plus Pact was discussed several times. An overview of all of the discussions is needed to better understand and contextualise the debates relating to the Euro-Plus Pact.

The discussion on 24 March 2011,<sup>214</sup> as already indicated, was the first mentioning of the Euro-Plus Pact at the National Assembly, right before the European Council meeting. The Prime Minister started with an explanation of when is the Council of Ministers obliged to inform the National Assembly of its actions at the EU level. In sum, he said that there is no such legal obligation when it comes to the actions of the European Council, as it does not adopt legislative acts. However, the Prime Minister stated that he will explain the position which he will present at the European Council with respect to the Euro-Plus Pact. As such this is the only publicly available record of anything close to a negotiation position of the Government for the Euro-Plus Pact before its adoption.

The statement of the Prime Minister covered four main points. The first point was the significance of the Euro-Plus Pact as a key process of integration within the EU framework.

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<sup>214</sup> National Assembly, Stenographic records of the 212<sup>th</sup> meeting, 24 March 2011.

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The Euro-Plus Pact was seen as the way in which Bulgaria can become “an active participant in the European community and in the European economic family”. The support of Bulgaria for the Pact was seen as crucial in order to avoid the dangerous consequences of a two-speed Europe and of being left outside the general integration processes in the EU. The political support was seen as securing a place for Bulgaria on the table for discussions and as making Bulgaria part of the decision-making for the completion of the internal market and the future economic policies in Europe.

The second point was related to a great extent to the first one in that it dealt with a specific area of integration in which Bulgaria did not want to be left behind – the Eurozone. In particular, the view of the Prime Minister was that expressing support for the Euro-Plus Pact was an important stepping stone in view of Bulgaria’s desire for future participation in the Eurozone. The support for the Pact was said to be an opportunity “which will make the possibility for the future membership in the Eurozone a real one”.

The last two points concerned the non-politically-opportunistic reasons for supporting the Pact. In the view of the Prime Minister, in terms of interests, the “political declaration”, as he called it, will not be controversial for Bulgaria because the things that are expected to be included are either in part already achieved by Bulgaria or, with respect to the other part, the views of Bulgaria and the other Member States on how to proceed are similar. On the already achieved points, reference was made to the fact that Bulgaria was among the States with the lowest debts within the EU. On the similar views, the Prime Minister referred to the proposals that Bulgaria was going to make in the negotiations of the Euro-Plus Pact. In that regard, the Prime Minister stated that the Government has prepared a National Plan for Financial Stability in the context of its governance strategy. Part of the measures envisioned in this Plan was going to be proposed at the European Council meeting. The Prime Minister referred to eight general measures: (1) increase in the competition and limiting of the influence of monopolised structures; (2) modernisation of the education and science systems; (3) increase in innovations; (4) improvements in the regulatory framework and in the business environment; (5) a reform in the labour market;<sup>215</sup> (6) realisation of a pension reform;<sup>216</sup> (7) improvement of the fiscal frameworks; and (8) better and more transparent governance of the financial sector.

The fourth and last point in the statement of the Prime Minister dealt with the basic interest of Bulgaria in the negotiations. This basic interest is the independence in the area of tax policy. The low levels of taxation in Bulgaria are seen as the main competitive advantage of Bulgaria. The Prime Minister reassured the national representatives that the national interests of Bulgaria will be defended strongly and direct or indirect increase in taxation will not be allowed.

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<sup>215</sup> According to the Prime Minister, this reform was to be aimed at the introduction of the flexibility principle combined with security and maintenance of law taxes on labour to stimulate the employment.

<sup>216</sup> According to the Prime Minister, this reform was to be aimed at limiting the schemes for early retirement and at determining the age of retirement in accordance with the life expectancy

The statement of the Prime Minister attracted the comments of only one national representative who pointed out that even if the Euro-Plus Pact was a political declaration the other points on the agenda of the European Council such as the amendment of Article 136 TFEU and the Six-Pack are of a different character. Thus, it was pointed out that according to Article 105(4) CRB<sup>217</sup> the Prime Minister was obliged to inform the National Assembly of the results (sic!) of the European Council meeting. This last-moment briefing of the National Assembly on the Euro-Plus Pact became a main critique later-on against the Government with respect to its involvement in the Euro-crisis measures.

A few days later, on 30 March 2011, in the joint session of the Committees on European Affairs and Oversight of the European Funds and on Budget and Finance, the Euro-Plus Pact was discussed in the context of the discussion on the position of Bulgaria on the Six-Pack.<sup>218</sup> On the Euro-Plus Pact, the Deputy Minister for Finances gave a short overview and highlighted the main reasons for Bulgaria to participate in the Euro-Plus Pact. According to her, the main goals of the Pact overlap with the goals of the Government – increased competitiveness, employment, stability of the public finances and strengthening of the fiscal stability. It was also considered that the Pact was going to be an additional incentive for the economic reforms in Bulgaria – free competition and limiting the monopolies, more innovations, improved education and science, regulatory framework, reforms of the labour market and the pension reform. There were several questions asked on the Pact in the meeting. Those were (1) what would be the relationship between the Euro-Plus Pact and the SGP to the extent that there is no complete overlap of the Member States; (2) what would be the relationship between the Euro-Plus Pact and the Stability Fund; (3) is a common corporate taxation going to be adopted with the Pact; (4) was there going to be enforcement mechanism for the rules in the Pact; (5) how was the decision made to join the Pact? With respect to the last question, a critique was made by a representative from the Blue Coalition that such a solid and sovereignty-limiting instrument<sup>219</sup> was accepted without the prior agreement of the National Assembly, without debates in the plenary hall and without open consultations.

In her answers the Deputy Minister started by saying that the Euro-Plus Pact was a political commitment which does not contain specific commitments prescribing a particular course of action or financial commitments and that the ESM was a completely different document and the two were not connected. The explanations with respect to the ESM are included in the answer to Question VIII.2. As regards the taxation question, the answer was that, indeed, in the beginning there was such a provision on common taxation. However, at the moment of talking, the text was referring to coordination of tax policies which was completely different. The Deputy Minister continued by saying that it was against the interest of Bulgaria to support external models which would force it to increase its taxes and that Bulgaria had

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<sup>217</sup> The provisions states that:

“(4) When participating in the drafting and adoption of European Union instruments, the Council of Ministers shall inform the National Assembly in advance, and shall give detailed account for its actions.”

<sup>218</sup> National Assembly, Stenographic records of the 240<sup>th</sup> meeting, 30 March 2011.

<sup>219</sup> The concerns over the limitations on the sovereignty were not elaborated further.

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made this clear. At that time the question of harmonising tax rates was not even being discussed. With respect to the enforcement mechanisms, such were not included in the Pact as it was a political commitment and the enforcement was to be dealt with in the Six-Pack.

The main discussion of the Euro-Plus Pact was on 4 May 2011<sup>220</sup> where all parties joined the debates. The Prime Minister started the discussion by reintroducing the Pact and giving more explanations about it as well as more details on the reasons for supporting it. He heavily emphasised that it was a political act which Bulgaria needed to support in order not to jeopardise its European development. After briefly explaining the history of the Pact, the Prime Minister clarified the concrete consequences stemming from it with respect to Bulgaria.

The Prime Minister focused on six main points. On the first point, with respect to the obligations of Bulgaria flowing from the Pact, the Prime Minister stated that it should be clear that what was at hand was a set of measures which Bulgaria had to adopt anyway in order to break away from the bottom of the competitiveness and innovativeness charts in Europe and join the Eurozone. This meant promoting competitiveness and employment opportunities and increasing the stability of the public finances and strengthening the financial stability in general.

The next three points related to salary increases and labour productivity and will be considered together. On the second point, with respect to the obligation to stop wage indexation – the Prime Minister stated that there was no such formulation in the Pact. According to the Prime Minister, this option was abandoned in the first drafts of the Pact. The final version left much more room for interpretation and expressly stated that any reconsideration of the salary-setting arrangements must respect the national traditions of social dialogue and collective bargaining. On the third point, with respect to the requirement that salaries should not be increased at a higher rate than the increase in productivity – in the words of the Prime Minister, such requirement was also lacking. According to the Prime Minister, due to the low salaries in Bulgaria, the rate of increasing the salaries was to be higher than the one of the increase in productivity for the years to come. However, he continued, the difference in the rates should not be too big as this would lead to the ‘Greek scenario’ and was contrary to the Eurozone ambitions of Bulgaria. On the fourth point, with respect to the labour productivity, the Prime Minister explained that notwithstanding the low labour productivity in Bulgaria, at that time Bulgaria was not facing big problems due to the low current-account and trade balance deficits. This meant that the Euro-Plus Pact did not preclude increases in the salaries. What it did, however, was to prevent such increases from happening in an arbitrary way – that is, being paid more than the value of the actual work done.

On the fifth point, with respect to the concerns that Bulgaria will be obliged to increase the retirement age, the Prime Minister stated that this was a possibility but not a mandatory

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<sup>220</sup> National Assembly, Stenographic records of the 225<sup>th</sup> meeting, 4 May 2011.

requirement of the Pact. Irrespective of the Euro-Plus Pact, the increase of the retirement age was a possible response by the Government in the case of a lack of funds to support the pension scheme.

On the sixth and final point, with respect to the tax policy, the Prime Minister repeated to the national representatives that the text of the Pact stated “Direct taxation remains a national competence”.<sup>221</sup> He reassured the national representatives that the tax policy of Bulgaria will be decided by Bulgaria alone. The Prime Minister concluded by stating that clear principles that are backed by legislative measures are needed to deal with the crisis and prevent its reoccurrence. The introduction of such measures was suggested by the Government even before the decision to join the Pact and it was, thus, not provoked by the Pact. The floor was consequently open for statements and questions by the national representatives.

Ivan Kostov (the Blue Coalition) expressed a position evolving around the relationship between the Euro-Plus Pact and the future membership of Bulgaria in the Eurozone. In particular, he asked whether the political support for the Pact on behalf of Bulgaria was tied to an assurance that it will be invited to join the Exchange Rate Mechanism (ERMII). According to Mr Kostov, the Blue Coalition insisted for a policy that will lead to the membership of Bulgaria in the Eurozone and not for a policy that burdens Bulgaria with extra criteria which are not a necessary precondition for joining the ERMII.

Plamen Oresharski (Coalition for Bulgaria) focused on the perception that the Euro-Plus Pact was tailored to address to a great extent the issues of the old and developed economies and to a much lesser extent the issues concerning the newly-formed market economies in the new Member States. Mr Oresharski referred to four issues to show how the new market economies were at a disadvantage. Those were: (1) the mechanism for common corporate tax base, (2) limitations in whatever form on the salaries, (3) the significance of the current-account and trade balance deficit indicators and (4) the system of contributions to the ESM. According to Mr Oresharski, the first three issues have different significance for the developed economies and for the new market economies. In the case of the latter, in his opinion, more discretion and freedom should be given in order to reach the level of development of the latter. The fourth issue related to the question whether the relative future share of Bulgaria in the ESM would be disproportionate, considering the low debt of Bulgaria, and, thus, force Bulgaria to indirectly finance the debts of other Member States

Aliosman Imamov (DPS) expressed support for the place of Bulgaria in the Euro-Plus Pact. However, this support was coupled with a number of concerns as well. The first and main concern was, as with Mr Kostov, the membership in the Eurozone. The position that was expressed was that the participation of Bulgaria in the Pact must in every possible way be connected with or otherwise subjected to guarantees for joining the EMRII. The other concerns were put forward in the form of questions. In particular, what would be the advantages and disadvantages for Bulgaria flowing from the Pact, before and after the

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<sup>221</sup> European Council 24/25 March 2011, Conclusions, EUCO 10/1/11 REV 1, 20 April 2011, Annex I, The Euro Plus Pact Stronger Economic Policy Coordination for Competitiveness and Convergence 13, 20.

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eventual membership in the Eurozone; what would be the impact on the changes in the salaries in Bulgaria; to what extent would the economic growth be impacted by the Pact; what are the advantages and disadvantages for Bulgaria that are stemming from the attempts for partial regulation of the corporate tax bases? Finally, Mr Imamov concluded by focusing the attention to the new, at that time, developments increasingly regulating financial aspects, such as the European Semester, which, according to him, are purely national issues. As such Mr Imamov, indirectly, raised certain subsidiarity concerns but without elaborating further on them.

Pavel Shopov (ATAKA) expressed unequivocal and unreserved support for the participation of Bulgaria in the Euro-Plus Pact. The support was based on three points. First, the Pact was seen, with respect to other States that speculated and created the crisis, as a guarantee that such crisis will not repeat. Second, the Pact did not entail that Bulgaria was going to pay for the debts of the other States. Third, it was high time that Bulgaria left the currency board and the Pact was seen as helping in that regard.

Menda Stoqnova (GERB) expressed full support for the participation of Bulgaria in the Euro-Plus Pact. She stated that the questions that were already asked dealt with details relating to EU measures that are on the agenda of the Committee on European Affairs and Oversight of the European Funds, such as the Directive on the common tax base. In her opinion the issue at hand was whether Bulgaria wants to be part of the European family and be member of the Eurozone. Since the answer to this is in the positive, Bulgaria's place is in the Pact in order to participate in the discussions relating to the new policies and the texts of the new legislative initiatives. The position of GERB was, therefore, one of supporting the participation of Bulgaria in the Pact because of the desire to be true Europeans.

Then the Prime Minister gave a few short answers before leaving the floor to the Ministers to elaborate in further details on the questions and comments that were made. Firstly, with respect to the Eurozone, the Prime Minister stated that the desire to join it has not wavered and that the participation in the Pact was necessary in that respect. This participation was also needed in order to know first-hand what are the developments in Europe and not to learn about them from the media. Secondly, with respect to the tax policy, he referred to the 'battle' that the Finance Minister fought for two months, side by side with his Slovak colleague, to have the mentioning that the tax policy was a national competence. Finally, the Prime Minister concluded with the created understanding that no obligations for making financial contributions flow from the Pact.

Next, the Minister of Finances, Simeon Djankov, took the stand and addressed four questions. First, with respect to the issue whether participation in the Euro-Plus Pact was negotiated as a precondition to entering the ERMII, the answer of the Minister was – no. This was not considered appropriate by the Government as a condition at that point. It was considered that Bulgaria had to show to its partners that it had done its job of keeping low deficits and debt and then the political decision to enter the ERMII was to be made. Second, and connected to the first point, with respect to the current-account deficits, the Minister

stated that Bulgaria has shown that it can balance its deficits during the crisis. As such the current-account deficits were not posing a problem for Bulgaria to join ERMII. However, the outstanding issue in that regard was how to make sure that the future Governments was going to be strict and follow this discipline? The answer to this challenge the Minister referred to Bulgaria's own initiative to adopt its own financial stability pact which would include various measures including amendment in the Constitution (see the answer to Question III.2). Only after reaching this goal the Minister thought it appropriate to call on the other Member States to act in the direction of Bulgaria entering ERMII.

Third, with respect to tax base, the Minister made references to earlier drafts of the Pact. In particular, he reminded the national representatives that in the first draft it was spoken of common tax rates. The Minister and his Slovak colleague completely rejected this. Minister Djankov said that the only way he could have supported this was if the Bulgarian tax rate was adopted as the EU level. Then, the negotiations turned to a common tax base which was the object of heated discussions and abandoned in the end with the result that the Pact expressly reserves the tax policy to the Member States' competences. Fourth, with respect to the contributions to the ESM, the Minister restated to a great extent what was said in the joint session of the two Committees on 30 March (further discussed in Question VIII.2).

Finally, the Minister of Foreign Affairs, Nikolay Mladenov, completed the debate with a few comments. First, the Minister reminded that the opening of the Pact for non-Eurozone Member States was done after States, such as Bulgaria, insisted on it. This was done because a two-speed Europe should be avoided as much as possible and Bulgaria should not be a reason for a two-speed Europe. Second, the attention was focused on the issue of the rate with which salaries are increased. The Minister referred to the aftermaths of Bulgaria's 1996 economic crisis and stated that it would not be serious to maintain in the National Assembly that salaries should grow faster than the labour productivity. He referred Hungary's decision to do exactly this some years ago and that the Hungarian economy was still trying to recover from it. Then, the Minister quoted a statement of the Prime Minister during the European Council meeting in March saying that Bulgaria will participate in the coordination of policies only insofar as it does not slow down its economic growth. Finally, the Foreign Affairs Minister commented on the preparation of Bulgaria to join the Eurozone and stated that the participation in the Euro-Plus Pact was an important step in that regard. Although the participation was not a formal (legal) requirement to enter ERMII, and consequently the Eurozone, it was practically a mandatory requirement. With this the central debate on the Euro-Plus Pact was concluded.

The discussion on 20 May 2011<sup>222</sup> was in the form of questions from Georgi Pirinski (Coalition for Bulgaria) to the Foreign Affairs Minister, which were based on the position of Bulgaria at the European Council meeting on 24 and 25 March 2011. The discussions relating to the Euro-Plus Pact following this one, referred to the Pact only in the context of debates on different points. Mr Pirinski's questions dealt with (1) the lack of debate in the

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<sup>222</sup> National Assembly, Stenographic records of the 232<sup>nd</sup> meeting, 20 May 2011.

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National Assembly before the Prime Minister announced that Bulgaria will join the Euro-Plus Pact, (2) the argument that joining the Pact was in order to prevent a two-speed Europe, (3) the relationship between the Pact and the membership in the Eurozone.

In particular, on the first question, Mr Pirinski criticised the last-minute approach of the Government in informing the National Assembly. He stated that Bulgaria's position at the European Council meeting would have been stronger and more comprehensive if the National Assembly was consulted earlier-on and a clear mandate was given for the negotiations of the Euro-Plus Pact. Even more, the critique was that by proceeding this way the Government, instead of looking for the support of the National Assembly, was creating unnecessary division and politicisation. On the second question Mr Pirinski emphasised that a two-speed Europe is not only about willingness to participate but also about ability to participate. The differences between the stronger and the weaker economies created the two-speed Europe in that case. Mr Pirinski also pointed to the divergence in the statements of the Prime Minister and the Finance Minister on 4 May 2011 when it came down to the rate of salary increases. On the third question, Mr Pirinski pointed once again to the fact that Bulgaria was not a Member States with irresponsible budget. According to him, Bulgaria's conservative budgetary policy was a capital that the society accumulated with great sacrifices. Mr Pirinski saw it natural to respond to the invitation to participate in the Pact by requesting commitments for entering into the ERMII, where, in his opinion, it was not about meeting the Maastricht criteria but about making a political decision.

On the first question the Minister disagreed that the Government was confrontational towards the National Assembly. He reminded that the Prime Minister went to the National Assembly right after the decision was made to participate in the political declaration called the Euro-Plus Pact. It was emphasised that the Pact was a political declaration and not an international agreement in need of ratification. Thus, the Government fully observed its legal obligations.<sup>223</sup> The Minister stated that when the Pact was initially reviewed, three options were considered with respect to the participation in it. The first one was not joining, but since the Pact was going to be mandatory to Eurozone Member States and Bulgaria wanted to join the Eurozone, this option was not considered viable. The second one was to join the Pact at a later stage but it was also considered not viable because it would have prevented Bulgaria from expressing and protecting its positions at the crucial discussions that were to be made in that circle. Thus, the last option was accepted, which was joining from the very beginning and protecting the Bulgarian interests from the onset.

On the second question, the Minister agreed that there are different ways in which a two-speed Europe could be formed. One of them is when States, such as Bulgaria, decline to participate in initiatives aimed at further integration. This was considered as a mistake and against the Bulgarian interests. The Minister also said that the existence of richer and poorer States was a reality with which Bulgaria has to deal and not to ignore and that the poorer

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<sup>223</sup> It should be pointed out here that obviously the Minister and the national representative were talking about consulting the National Assembly from different points of view, the division being politico-legal.

States have different tools to deal with this problem. The main tool for Bulgaria is the low tax rate and it was vigorously fought over at the European level.

On the third question, the Minister answered that he is convinced that Bulgaria should not attempt making political trade-offs in areas where there are clear criteria that are set out in the Treaties and that must be fulfilled. In the case of joining the ERMII, the Minister stated, the criteria were clear and the Ministry of Finance and the whole Government was working for their fulfilment.

The discussion on 15 June 2011<sup>224</sup> was in the context of the debates on the amendments of the LPSB.<sup>225</sup> The proposed amendments were mainly including rules for 2% deficit and limiting the State's redistribution role at a level of up to 40% of the GDP. Interestingly, while Bulgaria's Euro-Plus Pact commitments, according to the Commission included the strengthening of the domestic fiscal framework by adopting a Financial Stability Pact including binding numerical fiscal rules,<sup>226</sup> the explanations to the LPSB amendments did not make reference to the Pact. Instead, reference was made to the SGP, which is something different. Nevertheless, some of the national representatives connected the proposed amendments with the Pact in their comments without elaborating on this connection.

Mihail Mikov (Coalition for Bulgaria) heavily criticised the proposed amendments and referred to the Euro-Plus Pact by questioning its legal/political nature. According to him, if the LPSB amendments under consideration were in the context of the Euro-Plus Pact, what exactly were the commitments made – purely political or maybe the Prime Minister lied to the National Assembly. He asked whether they were commitments relating to changes in the legislation; to what extent are they binding on Bulgaria, while it is not within the Eurozone; and what are the possibilities that these changes in the LPSB will benefit Bulgaria with respect to its relationship with its European partners?

Martin Dimitrov (the Blue Coalition) started by referring to proposed amendments to the LPSB, that he and other national representatives had initiated in September 2010, which also called for stricter budgetary discipline. While supporting the amendments that were tabled, Mr Dimitrov expressed concerns with respect to the Euro-Plus Pact and even called for adopting a formal position on the Pact, which did not happen eventually. Substantively, the critiques related to the allegations that, through the Pact, the EU was determining the taxation in Bulgaria and the level of the salaries in Bulgaria; that the Pact required Bulgaria to give €3 billion in guarantees and €6 more billion in potential loans – that is to pay for bankrupting States, which even have a higher level of average wages. The Finance Minister, however, did not respond to the statements of these two national representatives.

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<sup>224</sup> National Assembly, Stenographic records of the 242<sup>nd</sup> meeting, 15 June 2011.

<sup>225</sup> These amendments will be discussed in further detail in various answers *infra*. Only the statements of the national representatives relating specifically to the Euro-Plus Pact will be considered here.

<sup>226</sup> Commission Staff Working Paper, Assessment of the 2011 national reform programme and convergence programme for Bulgaria, SEC(2011) 711 final, 7.

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The discussion on 22 July 2011<sup>227</sup> was in the context of the debates on the adoption of a Decision of the National Assembly. There were actually two draft Decisions proposed – one by the majority and one by the minority. Naturally, the one of the majority was eventually adopted. Nevertheless, it is worth looking at the debates that the proposals spurred. The draft Decisions were to a great extent a reaction to the Commission's Recommendation to Bulgaria of 7 June 2011.<sup>228</sup> Kornelia Ninova (Coalition for Bulgaria) presented the draft Decision of the minority. In her presentation she pointed out all negative observations of the Commission and blamed them on the policies of GERB. More specifically, for the Euro-Plus Pact, Ms Ninova highlighted the part of the Commission Recommendation stating that some of Bulgaria's commitments under the Pact included the suspension of pension indexations and salary increases, the eventual increase of taxes and the retirement age. Sergei Stanishev (Coalition for Bulgaria) made the same comments on the Pact. While the debate was quite long on the draft Decisions, very little was said constructively. It is worth noting with respect to transparency that Ms Ninova and Mr Stanishev said that it was through the Recommendation that the National Assembly learned what the Bulgarian commitments under the Pact were.

The discussion on 28 July 2011<sup>229</sup> was in the context of the debates on the amendment of the CRB (see the answer to Question III.2). The Euro-Plus Pact received a brief but crucial mentioning. It was stated by a national representative of the majority that the measures of the Government to *inter alia* increase the stability of the public finances address the aims of the Euro-Plus Pact. Part of these measures is the Bulgarian Pact for Financial Stability which includes the proposed amendment to the Constitution.<sup>230</sup> As such, although in the explanations to the proposed constitutional amendment the Euro-Plus Pact was not mentioned but only the SGP was (as in the case of the LPSB amendment), the proposed amendment was to be seen as implementing the Euro-Plus Pact as well. During the debates, a reference was also made to the opinion of the governor of the BNB that was expressed in the constitutional Committee. According to him, the inclusion of the new budgetary rules was mandated by the Euro-Plus Pact and EU law in general. Furthermore, while he did not comment on whether the rules must be constitutionally entrenched or included in ordinary laws, according to him, the former option did not contradict the Euro-Plus Pact because the Pact gave freedom to the Member States as to the type of instruments used when implementing it.

The discussion on 14 December 2011<sup>231</sup> was in the context of the introduction by the Foreign Affairs Minister of the results of the meeting of the European Council on 9 December 2011, which discussed new measures for dealing with the Euro crisis. In particular, the focus was

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<sup>227</sup> National Assembly, Stenographic records of the 259<sup>th</sup> meeting, 22 July 2011.

<sup>228</sup> Commission Recommendation for a Council Recommendation on the National Reform Programme 2011 of Bulgaria and delivering a Council opinion on the updated Convergence Programme of Bulgaria, 2011-2014, SEC(2011) 818 final, Brussels, 7 June 2011.

<sup>229</sup> National Assembly, Stenographic records of the 261<sup>st</sup> meeting, 28 July 2011.

<sup>230</sup> See the answers to Questions III.2 and III.7.

<sup>231</sup> National Assembly, Stenographic records of the 297<sup>th</sup> meeting, 14 December 2011.

on the decision that was taken to conclude, what would become known as, the “Fiscal Compact” in the beginning of 2012 as an international agreement and not as an act within the EU framework due to the UK’s veto. Here again it was emphasised that in all EU discussions Bulgaria underlines the importance to have the right to follow its own tax policy guaranteed, as it was highlighted in the Euro-Plus Pact. This discussion of the 9 December meeting again sparked the debate on the Pact but new arguments were lacking.

The criticisms relating to the Euro-Plus Pact were delivered by Meglena Plugchieva (Coalition for Bulgaria). She focused on the issues of transparency and Bulgaria’s commitments under the Pact. On the issue of transparency, she argued that the Government had to consult with the National Assembly before the 9 December meeting. In her view, this lack of debates before the 9 December meeting contradicted not only the national Parliaments’ rights under the Lisbon Treaty but also the CRB.<sup>232</sup> In that regard, she also referred to the way the Euro-Plus Pact was presented earlier that same year, right before the Pact was agreed upon in Brussels. Ms Plugchieva said that no one in the National Assembly understood, at the time, what was that Pact all about and, months later, one had to consult the European Council’s website to understand the commitments. She expressed the concern that this was repeating. Then, Ms Plugchieva turned to the commitments. Firstly, she referred to the pension reform and the increase of the retirement age. In her words this was done just a few weeks before exactly because Bulgaria had to ‘report’ on its commitments at the EU level.<sup>233</sup> Secondly, Ms Plugchieva, again, opened the question of corporate taxation and said that the Euro-Plus Member States had to ‘report’ in the following year (2012) on unification or common base for a common tax policy in terms of increase of the corporate taxes, as required by the Pact.

The Foreign Affairs Minister responded that the criticisms were unfounded. In particular, as regards the transparency criticisms, the Minister underlined that the process was just beginning and that a decision, for which the National Assembly was not consulted, had not been made. According to him, the legal framework was unclear and if Protocols 13 and 14 to Lisbon Treaty were to be amended ratification would not have been needed. He called for understanding and patience and said that when there was more clarity the National Assembly was going to be informed. As regards the issue of taxation he repeated once again that nothing in the Euro-Plus Pact obliged the Member States that had agreed to it to harmonise their corporate taxes. For the first time, however, the determination of the taxes in Bulgaria by the National Assembly was referred to as an issue of sovereignty which the Government was not going to transfer.

The discussion on 10 February 2012<sup>234</sup> was in the context of questions by national representatives on the Statement of the Members of the European Council of 30 January

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<sup>232</sup> However, it is to be noted that no specific provisions were cited and the argument was rather political than legal.

<sup>233</sup> The reference, while not explicit, was mainly to the amendment of Art 68 of the Code for Social Security through the Law for the Budget for the State Social Security for 2012, SG 100 of 20 December 2011.

<sup>234</sup> National Assembly, Stenographic records of the 315<sup>th</sup> meeting, 10 February 2012.

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2012 and, in particular, the point stating that the Member States call for “progress in structured discussions on the coordination of tax policy issues and the prevention of harmful tax practices in the context of the Euro Plus Pact”.<sup>235</sup> Naturally, once again, the question of taxation was raised. First, the Prime Minister referred to the wording of the Pact which keeps the tax policy within the national competences. Second, he referred to the Decision of the National Assembly on Bulgaria’s participation in the Fiscal Compact,<sup>236</sup> which prohibited Bulgaria to make commitments for the harmonisation of tax policies. The Prime Minister reassured the national representatives that he clearly stated at the European Council meeting that Bulgaria shall not sign an agreement containing such commitments. This was the last time the Euro-Plus Pact was referred to somewhat more substantively before its place was taken by the Fiscal Compact and the new debates concerning its adoption and implementation. No other discussions were found in which the Pact was more than just mentioned.

## MISCELLANEOUS

### VI.2

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

The rules and practices of the budgetary process were slightly amended in 2011 (proposed on 26 May and adopted on 30 June). This amendment effectively included a budgetary discipline rule of 2% structural deficit and limiting the State’s redistribution role at a level of up to 40% of the GDP as well as the inclusion of a budgetary forecast for three years ahead in the LPSB (see the answer to Question VI.1). During that time there was also a pending proposal for an amendment of the CRB which is further explained in Question III.2. However, these changes were not made in the context of the Euro-Plus Pact, at least not explicitly.

It is not easy to find what measures specifically have been adopted in reaction to the Euro-Plus Pact because of the lower level of transparency surrounding them, which was most probably due to the highly politicised nature of those measures. In any event there are several measures that can be identified by consulting Bulgaria’s NRPs and the debates in the National Assembly.

According to Meglena Plugchieva (Coalition for Bulgaria), in her statement on 14 December 2011 in the National Assembly, the increase in the retirement age that was done a few weeks earlier was one of the Euro-Plus Pact commitments that the Government was hiding. According to her, the change was made because the Bulgarian delegation ‘was supposed to report’ on its fulfilment of the Euro-Plus Pact commitments. The reform, to which Ms Plugchieva was referring, was the amendment of certain provisions in the Social Security

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<sup>235</sup> Statement of the Members of the European Council, *Towards growth-friendly consolidation and job-friendly growth* of 30 January 2012, 4.

<sup>236</sup> National Assembly, Decision for the Participation of the Republic of Bulgaria in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, SG 10 of 3 February 2012.

Code that were contained in the final and transitional provisions of the Law on the Budget for the Social Security for 2012.<sup>237</sup> The amended Article 68 of the Social Security Code provides that from 31 December 2011 onwards the retirement age will increase with four months every year until the age becomes 67 (used to be 65). In the explanations to the draft Law, with respect to the increase of the retirement age, there is no mentioning of the Euro-Plus Pact. There is only a reference to a Decision of the Council of Ministers adopting a Report on the results and the required improvements in response to the Council Recommendations from 2011.<sup>238</sup>

The amendment of the Social Security Code even attracted the veto of the President but it was overcome in the National Assembly. The increase in the retirement age was one of the four reasons the President pointed out for vetoing the Law. In his opinion, by doing this the State was being unpredictable and inconsistent in the determination of the rules in its social policy. In that regard the President referred to an agreement reached just a year ago on the pension reform which was being violated with these changes. However, in the reasons of the President, there was no mentioning of the EU and/or the Euro-crisis measures as being the ones to be blamed. Accordingly, while there were criticisms in the National Assembly that these measures were adopted in reaction to the Euro-Plus Pact, they were never officially earmarked as such.

The only earmarked measures as such were found in the NRP of Bulgaria and, more specifically, its 2012 and 2013 Updates. In the 2012 Update it is stated that the “implementation of the measures set in the NRP also delivers on the country’s commitments under the Euro + Pact for fostering competitiveness, employment and public finance sustainability”.<sup>239</sup> However, specific measures were barely identified.

As regards competitiveness, the Report states that this Euro-Plus Pact commitment is being achieved through “the implementation of the measures under national target 2 for investments in R&D and national target 4 for education, as well as the measures for improving the business environment (GF 3)”. On this point in the Report a more specific explanation can be found. Under the heading Building and Improving the Scientific Research and Innovation Infrastructure one of the points is:

“Two grant procedures for building and expanding the innovative infrastructure and fulfilling the country’s commitments under Euro+ Pact are underway – they are currently at the stage of evaluation of project proposals (as defined in NRP 2011–2015) – the procedure Establishing New and Strengthening the Existing Technology Transfer Offices in the amount of EUR 5 million, and Procedure Establishing New and Strengthening the Existing Technological Centres

<sup>237</sup> Law on the Budget for the Social Security for 2012, SG 100 of 20 December 2011.

<sup>238</sup> Council of Ministers, Decision № 605 for Approval of Report concerning the achieved results and the necessary follow-up actions in response to the Recommendations of the Council of the European Union concerning the National Reform Programme of the Republic of Bulgaria (2011-2015) and the Opinion of the Council of the European Union concerning the Convergence Programme of the Republic of Bulgaria (2011-2014) of 5 August 2011.

<sup>239</sup> Europe 2020: National Reform Programme, 2012 Update (Sofia, April 2012) 7.

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in the amount of EUR 20 million”.<sup>240</sup>

As regards employment, the Report states that this Euro-Plus Pact commitment is being achieved through “the implementation of the measures under national target 1 for employment and national target 4 for education”. However, by looking at the explanatory text to the measures again no specific measure appears. It is only stated that the “programmes and measures implemented in these areas will also contribute to delivering on the commitments undertaken under the Euro+ Pact and strengthen the operation of the factor to sustainable economic growth “Ensuring better and more efficient utilisation of the economy’s labour potential””.<sup>241</sup> The areas the quote is referring to are “unemployment and the social consequences of the crisis with a special focus on youth unemployment and long-term unemployment”.<sup>242</sup>

As regard strengthening fiscal consolidation, the Report states that this Euro-Plus Pact commitment is being achieved through actions included in the CP. In the CP of Bulgaria for 2011-2015, (the only CP where the Euro-Plus Pact was mentioned) it was just stated that the policies presented therein for “further enhancing the sustainability of public finances, as well as the policies for promoting the competitiveness of the economy” also address the Pact’s objectives.<sup>243</sup> Again, no further identification of measures was made.

In the 2013 Update only one measure was identified that was meant to implement Bulgaria’s commitments under the Euro-Plus Pact. This was a draft for a Law on Innovations, under national target 2.<sup>244</sup> According to the explanation in the Update, the law envisages to set up “an Innovations Agency the chief task of which would be to provide advice to businesses on developing their innovation activities and administer public funds in the capacity of second-level spender of budget appropriations. Grant financing will be provided on a competitive basis under national and international programmes”.<sup>245</sup> However, as it was pointed out in the Update, the early parliamentary elections in 2013 may delay the adoption of the Law<sup>246</sup> and they did to the extent that the draft Law is still not properly submitted to the National Assembly for consideration. That is, the only measure that was openly promoted as an implementation of the Euro-Plus Pact is yet to be adopted. There was no mentioning of the Euro-Plus Pact in the 2014 Update and it is unlikely that there will be a mentioning of it in the future Updates either.

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<sup>240</sup> *Ibid.*, 41.

<sup>241</sup> *Ibid.*, 61.

<sup>242</sup> *Ibid.*

<sup>243</sup> Convergence Programme of the Republic of Bulgaria: (2011–2014), (Sofia April 2011), 7.

<sup>244</sup> Europe 2020: National Reform Programme, 2013 Update (Sofia, April 2013), 24.

<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*, 70.

## 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 BULGARIA ADOPT IN THE NEGOTIATION OF THE 'SIX-PACK', IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE 'SIX-PACK' FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The difficulties encountered during the negotiations at the EU level were mainly related to the topics of the set-up of the Alert Mechanism and publicising Commission's analysis before it was voted upon in the Council. The position of the Government has been generally supportive of the Six Pack. However, the Government was insisting on the rules being drafted in a way that accommodates the differences in the economic development of the richer and the poorer Member States. Furthermore, the Government generally sought an increased role for the Member States at the expense of the Commission. The Six Pack was not discussed by the National Assembly in a plenary session but only a few times in a Committee setting. Generally, the Committees did not express views conflicting with the position of the Government and did not consider the Six Pack to be problematic for the budgetary sovereignty of Bulgaria. The Six Pack was rather seen as providing useful rules for reflection during the formation of the budget.

Compared to the Euro-Plus Pact, the discussion and the transparency in general surrounding the negotiation position of Bulgaria on the Six-Pack were much better and more straightforward. The first public record of the negotiation position can be found in the Decision of the Council of Ministers of 17 January 2011.<sup>247</sup> The position that was outlined there was that Bulgaria supports the strict observance of the SGP criteria as well as the ambition to apply the Pact with the view of securing the continuous and coordinated recovery of the stable and sustainable growth in the EU. While Bulgaria supported four out

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<sup>247</sup> Council of Ministers, Decision № 24 for adopting an Annual Programme for Participation of the Republic of Bulgaria in the Decision-Making Process of the European Union (2011) of 17 January 2011, 9-10.

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of the six instruments proposed by the Commission, it expressed considerable reservations and did not support the current (at the time) versions of two of the proposals. These two were, first, the Regulation on the prevention and correction of macroeconomic imbalances (COD/2010/0281) and, second, the Regulation on enforcement measures to correct excessive macroeconomic imbalances in the Eurozone (COD/2010/0279). The reasons for rejecting these two instruments and supporting the other four were further elaborated in the framework position that the Council of Ministers presented to the National Assembly on 18 March 2011.<sup>248</sup>

On the proposal of (today) Regulation 1177/2011, the position of Bulgaria was that it supported the changes, especially, with respect to the increased weight given to the debt criterion. It was considered that “the introduction of additional fiscal discipline rules was needed in order to stick to the Medium-term Budgetary Objectives (MTO) and the reduction of the “moral hazard” in case of the creation of a permanent European Stability Mechanism”.

On the proposal of (today) Regulation 1175/2011, Bulgaria’s position was generally supportive of the changes while having some remarks, which were presented in a special non-paper.<sup>249</sup> First, Bulgaria was supportive of the initial proposal of the Commission that “next to the trajectory for adopting the structural deficit to the MTO an account is to be made of the expenditure developments net of the discretionary expenditures”. In that regard, Bulgaria made a proposal for the evaluation of the expenditure developments to be made in consideration of the trajectory of these developments. The support for this initial negotiating proposal was in response to the developments in the negotiations, which deviated from it.<sup>250</sup> The framework position pointed to a wide consensus on this Regulation with the exception of France’s proposal for three-year transitional period and Italy’s numerous reservations and insistence of inclusion private debt in the evaluation of a Member State’s debt which was in turn opposed by the other Member States, especially by the Netherlands. Second, a potential problem was identified by Bulgaria with “providing certain flexibility to the States for increasing the expenditures above the determined medium-term growth rate if the excess over the recommended growth is compensated with discretionary measures for the increase of the revenue”.<sup>251</sup> Third, Bulgaria considered that “the evaluation of the deviations of the real exchange rate and excessive fluctuations of the nominal currency rate (Article10) for the States outside of the Eurozone should be made on the base of the deviation of the currency rates from the medium-term/long-term trend”.

On the proposal of (today) Directive 2011/85, Bulgaria’s position was in principle

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<sup>248</sup> Council of Ministers, Framework Position on legislative proposals of the European Commission concerning the strengthening of the Stability and Growth Pact and improving the coordination of economic policies. The framework position is on file with the author. The translations provided are of the author.

<sup>249</sup> Special non-papers are types of documents used during negotiations expressing the opinions and proposals of the delegations. The special non-paper was referred to in the framework position (*Ibid*) but it is not available to the author.

<sup>250</sup> See the discussion on 9 February 2011 in the meeting of the Committee on European Affairs *infra*.

<sup>251</sup> These fears/concerns can be linked to the economic crisis in Bulgaria in 1996. See the answer to Question III.3.

supportive. However, it was considered that certain aspects, mainly in Chapter III, Forecasts, were in need of further clarification. In particular, in that Chapter “the leading role of the national authorities in the preparation of realistic macroeconomic and budgetary forecast was to be underlined as they have greater resources and expertise with respect to the economic processes unfolding within the State concerned”.

On the proposal of (today) Regulation 1173/2011, the position of Bulgaria was that it supports the effective enforcement of budgetary surveillance in the Eurozone. Although the provisions relate only to the Eurozone Member States, they are important for Bulgaria as it has the obligation to join the Eurozone.

On the proposal of (today) Regulation 1176/2011 the position of Bulgaria was that it did not support the proposal. The main concern was the application of the proposed Alert Mechanism. It was considered that the set of indicators on which the mechanism was based was overly simplistic and could have often given misleading signals for the condition of a given economy. Another issue was the publication of the indicators and their thresholds, irrespective of the degree of convergence of the particular Member State. The mechanism was seen to be putting every State under the threat to be inappropriately identified as a State with macroeconomic imbalances, which would cost greatly to that State. Bulgaria had several proposals in that respect.

First, Bulgaria proposed that the detailed and in-depth analysis should become the first phase of the monitoring and assessment of the risks of macroeconomic imbalances. It was considered that this analysis was to be done by the Commission together with the national authorities. This was supported by most of the new Member States as well as Germany, France and Spain but was opposed by the Netherlands, Italy and Finland and to a certain extent Greece. Second, Bulgaria considered that the arguments of the State concerned should be objectively presented in the Commission report. Third, as this report would contain sensitive information for the State concerned it was not to be made public without the consent of the State in question. On this point Bulgaria was strongly supported by Romania and to a certain extent by Belgium. However, a strong opposition was presented by the Commission and the big Member States. Fourth, in the prevention phase, the recommendations of the Council should not require a change in the applied general framework of macroeconomic policy – the supervisory framework, the monetary policy framework or the tax policy. With respect to the third phase – the adoption of correction measures – Bulgaria did not have objections as such. However, it considered that even in that phase the Council recommendations should not require a change in the general framework of macroeconomic policy that is applied in the particular State. The aim of the proposals and the objections on this Regulation was said to be the prevention of creating unfounded tensions in the markets. It was also pointed out that it was important for Bulgaria to have the characteristics of the catching-up States taken into account during the evaluation of the macroeconomic balances in view of the dynamics in their economic processes and the continuous restructuring of their economies.

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On the proposal of (today) Regulation 1174/2011 the position of Bulgaria was that the discussion on the adoption of a Regulation for almost automatic imposition of fines should come after reaching a consensus on the identification and the prevention of the macroeconomic imbalances. The main concern was connected to the base for the imposition of the fines. In particular, it was seen as problematic that the base was a newly-created mechanism for assessing macroeconomic imbalances with vague scope of the eventual recommendations for corrective actions. Another thing that was part of the position of the Government, which appeared in a discussion in one of the National Assembly Committees, was related to the Cohesion Fund.<sup>252</sup> In particular, the Finance Ministry official stated that Bulgaria's position was to include the principle of equal treatment in the imposition of sanctions with respect to the Cohesion Fund. According to the version of the relevant Regulation at that time, it was provided that sanctions will be imposed only from the Fund. That meant that the Member States that were not beneficiaries of the Fund were not going to be subjected to such a sanction, irrespective of their SGP compliance. On this position, most of the new Member States supported Bulgaria.

The hitherto discussed framework position clearly took under consideration the view of the Committee on European Affairs and Oversight of the European Funds when, a month and a half earlier, on 9 February 2011, the Committee answered the questions of the European Parliament Special Committee on the Financial, Economic and Social Crisis (CRIS).<sup>253</sup> In that questionnaire Question 5 concerned the economic governance in general and the Six-Pack in particular. It should be noted that taking into account the Committee's views in the framework position was not very problematic for the Government because these views strongly resonated the Government's initial position of 17 January.

The Committee criticised the proposal to automatically make public the results of the Alert Mechanism and the accompanying economic analysis and called for the Alert Mechanism to be an inseparable part of the In-depth review. It also focused on the table with indicators and considered that it should be drafted by the Council and not by the Commission. This point was supported mainly by the new Member States and Denmark and was opposed by the old Member States, in particular Germany, France, the Netherlands and Portugal. The Committee considered that there should be differentiation on the critical thresholds of the indicators between Eurozone and non-Eurozone Member States as well as between developed and catching-up economies. According to the framework position, this differentiation was supported by the Slovak Republic and Latvia. The Committee's formulation of its twofold critique, concerning the base on which the fines were to be imposed, was included word by word in the framework position.

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<sup>252</sup> Committee on Economic Policy, Energy and Tourism, Protocol № 3 of 2 February 2011. One of the guests in the meeting Marinela Petrova (Director for Economic and Financial Policy in the Finance Ministry at the time) provided a short summary of the position of Bulgaria.

<sup>253</sup> Committee on European Affairs and Oversight of the European Funds, Report on Examining the Resolution of the European Parliament of 20 October 2010 on the financial, economic and social crisis: Recommendations concerning the measures and initiatives to be taken of 9 February 2011.

In the verbatim record of the meeting interesting points came up. There were questions on (1) why the Bulgarian position supports the criteria for the deficit and expenditure rules equally and is not arguing for the latter to be secondary and (2) why the debt rule is not put forward by Bulgaria? The answer was that this was, indeed, Bulgaria's initial position. However, the leading Member-States<sup>254</sup> took out completely the expenditure rule and included the MTO as the primary rule and the macroeconomic imbalances as the supporting rule, which was the worst option for Bulgaria. Thus, Bulgaria insisted for bringing back the initial proposal as a compromise solution. It was stated that indeed the debt rule would be the best case scenario for Bulgaria. However, it met vehement opposition by Italy.

The Government's framework position was later discussed at the National Assembly on 30 March 2011 in a joint session of the Committee on European Affairs and Oversight of the European Funds and on the Committee on Budget and Finance, without being further discussed in a plenary session. In its Report, the Committee on European Affairs referred to its proposals from its 9 February meeting and expressed its support in general for the proposed Six-Pack. Together with the Committee on Budget and Finance, it was considered that the principles of subsidiarity and proportionality were observed in the Six-Pack. With respect to budgetary sovereignty the two Committees considered that

“the proposed rules create an opportunity for a useful preliminary discussion between the European Institutions and the Member States before the latter decide on their national budgets without provoking concerns that the sovereignty in one of the most sensitive areas – the formation of the budget – is being taken away”.<sup>255</sup>

However, it was still highlighted that there must be differentiation between the different growth models in the Member States and the catching-up nature of the economies of the new Member States was to be carefully analysed and took under consideration in order to avoid the threat of a two-speed Europe. In its Report, the Committee on Budget and Finance summarised the already discussed framework position and did not provide new insights. In the verbatim record from the joint session there was not much of a debate on the framework position as such, which indicates an agreement between the National Assembly and the Government on Bulgaria's negotiating position. The voting on the Reports was as follows: for the Committee on the European Affairs 8 'for' and 3 'abstaining' and for the Budgetary Committee 13 'for' and 6 'abstaining'. No explanations of the abstaining votes were provided.

## **DIRECTIVE 2011/85/EU**

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

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<sup>254</sup> Reference to Germany and France was made in the framework position. It was also mentioned that Spain and Portugal were against Germany's proposal because it diluted the meaning of the Regulation.

<sup>255</sup> Translation by the author.

## IMPLEMENTATION

### VII.2

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

The need for transposition of Directive 2011/85 was identified as early as the time when the framework position on the Six-Pack was formed as it noted that the existing legislation in Bulgaria did not provide a basis for the provisions of the Directive. The Directive, or at least most of it, was transposed in the newly-adopted LPF. This is evident from the explanations to the draft law, the Reports of the Committees that considered the draft law as well as from certain provisions of the LPF itself.<sup>256</sup> The LPF also aimed at setting the foundations for the implementation of the Six-Pack Regulations.<sup>257</sup> In the LPF, explicit references were made to Directive 2011/85 twice – that the LPF was implementing the requirements of the Directive and that the implementation of Article 6 thereof on the Fiscal Council was going to be the subject of another law. In the verbatim record from the 14 November 2012 session of the Committee on Labour and Social Policy, while discussing the LPF, a question relating to the transposition of the Directive was asked: why the Fiscal Council, which is provided for in Article 6 of the Directive, was mentioned only once in the concluding provisions?<sup>258</sup> Furthermore, even if the Fiscal Council was going to be set up by another law, why the relationship between that organ and the other actors involved in the drafting and implementing of the budget was not further elaborated in the LPF? Unfortunately, these questions were not answered by the representative of the Government presenting the LPF.

## IMPLEMENTATION DIFFICULTIES

### VII.3

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

The transposition and implementation of the Directive in Bulgaria did not create political or legal difficulties in and of itself. The debates that arose with respect to the LPF neither comment on, nor criticise the implications of the Directive in terms of the sovereignty, the constitutional law or the budgetary process. This was even the case when the draft law was on a second reading and was voted provision by provision. This is to a certain extent because, as it was mentioned during the discussions in the different Committees, the draft law has been in the process of preparation for ten years and many of the changes are not predicated upon the Directive but are the process of the internal drafting. The Six-Pack, in a

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<sup>256</sup> Explanations to the draft LPF, 3; Committee on Regional Policy, Committee on Legal Affairs, Committee on Budget and Finance, Committee on Labour and Social Policy; LPF, *supra*, n 91, Additional Provisions, § 3 and Transitional and Concluding Provisions, §18.

<sup>257</sup> *Ibid.*

<sup>258</sup> Committee on Labour and Social Policy, Protocol of 14 November 2012.

way, served as a catalyser for the changes that were already prepared. However, keep in mind the considerable delay in setting-up the Fiscal Council, explained in the answer to Question VII.5.

## 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)?

According to Article 68 LPF, the macroeconomic forecasts are being prepared by the Minister of Finances. The first one is to be prepared until 25 March and the second until 25 September. The budgetary forecasts are being prepared in a decentralised manner, according to Article 69 LPF. In particular, they are drafted:

- “1. By the authorising officers on budgets of the budgetary organisations including the municipalities – by using indicators of the common budgetary classification;
2. By the primary authorising officers that apply programme-based budgetary format – by including also divisions according to policy areas and budgetary programmes;
3. By the primary authorising officer on the National Assembly budget – by including also divisions according to operational areas and budgetary programmes;
4. For the budget of the judiciary – by including also divisions according to the different organs of the judiciary;
5. For public higher education institutions and for the Bulgarian Academy of Sciences – through the respective primary authorising officer by also consolidating the forecast with respect to separate budgets using indicators of the common budgetary classification.”<sup>259</sup>

Within the LPF, there is no institution tasked with conducting an unbiased and comprehensive evaluation of the forecasts. The only provision coming anywhere close to this is Article 75, which states that:

- “1. When drafting the medium-term budgetary forecast and the State Budget, the Ministry of Finance compares its current macroeconomic forecast under Article 68 with the one of the European Commission and gives a justification in the case of significant differences.
2. The macroeconomic forecasts under Article 68 can be compared with the forecasts of other independent organisations.”<sup>260</sup>

However, since the Minister of Finance is very much involved in the drafting of the Budget, paragraph 1 does not really provide for independent and unbiased evaluation. As for paragraph 2, it simply provides for the possibility for the forecasts to be compared with the forecasts of other independent organisations, which also does not really correspond to Article 4(6) of the Directive. The answer to the following Question may shed some light in that regard.

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<sup>259</sup> Translation by the author.

<sup>260</sup> Translation by the author.

## FISCAL COUNCIL

### VII.5

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

Bulgaria did not have a Fiscal Council in place before Directive 2011/85. The LPF explicitly provides that within six months of the promulgation of the LPF the Council of Ministers must submit a proposal for the designation of an independent organ in accordance with Article 6 of the Directive.<sup>261</sup> On 25 November 2013 the Council of Ministers did submit to the National Assembly a draft Law for Fiscal Council. It was discussed in the Committees on European Affairs and Oversight of the European Funds and on Budget and Finance, where the latter was the leading one. The Reports of the two Committees went along similar lines and included an overview of the proposed Fiscal Council’s goals, operating principles, basic functions, composition and budgetary implications.<sup>262</sup>

The goals (Article 2) were: (1) the independent monitoring and analysis of the budgetary framework with the view to maintain sustainable public finances; (2) increasing the quality of the official macroeconomic and budgetary forecasts by carrying out an unbiased assessment based on objective criteria; and (3) increasing the transparency and the awareness of the society of the fiscal governance of the country. The operating principles (Article 3) were: (1) independence and publicity; (2) objectivity and transparency; and (3) equality of its members. The basic functions (Article 4) were mainly: (1) monitoring of the compliance with the numerical fiscal rules that are set out in the LPF; (2) adopting reasoned opinions and recommendations on the spring and autumn macroeconomic forecasts; (3) adopting reasoned opinions and recommendations on the medium-term budgetary forecast, the draft Law of the State Budget and its amendments, and on the draft Laws for the budgets of the State Social Security and the National Health Insurance Fund; (4) adopting reasoned opinions on the reports on the implementation of the State budget and the budgets of the State Social Security, the National Health Insurance Fund and other Social Security Funds that are administered by the National Insurance Institute. The proposed composition of the Council (Article 5) was of five members, appointed by the National Assembly with a mandate of six years. The budgetary implications provisions (Articles 13 and 14) provided that the Council’s activity and remuneration was to be covered by the budget of the National Assembly.

The Reports of the two Committees also referred to the Fiscal Compact and its requirement in Article 3(2) for independent institutions that are responsible at the national level for

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<sup>261</sup> LPF, *supra*, n 91, Transitional and Concluding Provisions, §18.

<sup>262</sup> Committee on Budget and Finance, Report of 12 December 2012; Committee on European Affairs and Oversight of the European Funds, Report of 4 December 2012.

monitoring the compliance with the rules set out in Article 3(1). A rather interesting network of cross-references can be observed at this point. First, in the Section on final and transitional provisions of the LPF it is stated that (as observed *supra*) the Council of Ministers was supposed to submit to the National Assembly a draft law for the determination of an independent organ in the sense of Article 6 of Directive 2011/85 and Article 23(3) LPF for automatic corrective mechanisms. In that Article 23(3) (which states that in certain cases automatic corrective mechanisms should be activated) there is a reference to Article 10 of Regulation 1466/97. As such one is given the understanding that, with the Law on the Fiscal Council, Article 6 of the Directive and Article 10 of the Regulation will be implemented. However, in the explanations to the draft Law for the Fiscal Council it appears that what was being implemented was Articles 4 and 6 of the Directive and part of Title III of the Fiscal Compact, in particular, one of the requirements in Article 3(2) thereof.<sup>263</sup>

With respect to the Articles of the Directive that were being implemented, the explanations to the draft Law seem more plausible than the provisions in the LPF. This also explains the incomplete answer to Question VII.4 with respect to Article 4(6) of the Directive. The issues discussed during the sessions of both Committees were relating only to the points of the necessary qualification of the eventual members (whether only economists or also jurists) and of the amount of the remuneration. The voting on the Reports was as follows: for the Committee on the European Affairs 13 ‘for’ and 2 ‘abstaining’ and for the Budgetary Committee 10 ‘for’ and no ‘negative’ or ‘abstaining’. No explanations of the abstaining votes were provided.

The first reading of the draft in the National Assembly was on 7 March 2014<sup>264</sup> and it was voted upon and adopted on 11 March 2014 first reading with 91 ‘for’ 11 ‘against’ and 30 ‘abstaining’.<sup>265</sup> It should be noted that there were literally no discussions during the first reading and the voting at the National Assembly. The Law was then read for a second time in the Committee on Budget and Finance on 3 April 2014. It was voted article by article and numerous minor amendments were made to the initial draft but none of them presented a critical deviation from what was previously discussed. As such the draft Law was just waiting to be adopted. Since then, however, no progress had been made as it appears from the file of the Law on the National Assembly’s web-site. Thus, Bulgaria is also in clear violation of its EU law obligation to fully transpose Directive 2011/85, which should have happened by 31 December 2013, according to Article 15(1) of the Directive.

This clear violation of EU law did not go unnoticed by the Commission and it initiated infringement proceedings against Bulgaria. At the moment the proceedings are at the stage of

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<sup>263</sup> The explanations also state that the draft Law is in the context of the Recommendation of the Council from 9 July 2013 which recommends *inter alia* that Bulgaria establishes “an independent institution to monitor fiscal policy and provide analysis and advice”. Council Recommendation on the National Reform Programme 2013 of Bulgaria and delivering a Council opinion on the Convergence Programme of Bulgaria, 2012-2016 [2013] OJ C 217/10.

<sup>264</sup> National Assembly, Stenographic records of the 99<sup>th</sup> meeting, 7 March 2014.

<sup>265</sup> In favour – GERB (3), Coalition for Bulgaria (59), DPS (25), ATAKA (3) and independents (1); against GERB (8), ATAKA (3); abstaining GERB (30).

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a letter of formal notice (№ 2014/0025). This has prompted action on the Bulgarian side and a draft Law for Fiscal Council and Corrective Mechanisms was resubmitted to the National Assembly on 9 February 2015. In the explanations to the draft law it is stated that it creates conditions for the suspension of the infringement proceedings.<sup>266</sup> This was also mentioned in the verbatim records from the meeting of the Council of Ministers on 4 February 2015, when the Decision approving the draft law was adopted. It was also noted by the Finance Minister that the failure to complete the procedure for the adoption of the Fiscal Council law by the previous Government (sic) was probably because it was worried that the creation of such a Council would have limited its freedom of action and its budgetary planning would not have been the same as the one it did in 2014.<sup>267</sup>

The draft law was discussed on 18 February 2015 in the Committees on European Affairs and Oversight of the European Funds and on Budget and Finance where the latter was the leading one. The Reports of the two Committees are quite short and restate what has already been said in a more succinct manner.<sup>268</sup> The verbatim records of the meetings of the two Committees are also lacking any new points of discussion. Both Committees adopted the draft law and the results of the voting were as follows: for the Committee on the European Affairs 9 ‘for’, 1 ‘against’ and 1 ‘abstaining’ and for the Budgetary Committee 14 ‘for’ and 1 ‘abstaining’. No explanations of the negative or abstaining votes were provided. The draft law went through its first reading in the plenary session of the National Assembly on 6 March 2015.<sup>269</sup> Only Slavcho Binev (Patriotic Front) commented on the proposal. First, he asked why it had to get to infringement proceedings for Bulgaria to adopt this law. Then, Mr Binev asked three questions on the substance of the proposed law: (1) how is the Council going to be supervised; (2) which organisations can assess the Council’s performance and ensure that it is fulfilling its duties; (3) why is the Council going to be assessed only once every three years if its members have a six year mandate? In Mr Binev’s opinion these point must be discussed if the law is to be effective. The draft law was then put to a vote and the result was 116 ‘for’ and 1 ‘abstaining’.<sup>270</sup> The draft law is now to undergo its second reading.

After comparing the old and the new draft laws, a significant difference appears. The new draft law, as its name indicates, has a broader scope and includes provisions on the corrective mechanisms in the sense of Article 23(3) LPF, which aim at correcting the occurrences of significant divergence from the MTO, in accordance with Regulation 1466/97. Its broader scope is also reflected by the fact that it explicitly states in its miscellaneous provision that it also implements requirements under Title III of the Fiscal Compact. Before looking at the whole new section with provisions on the corrective mechanisms, it is worth looking at the more substantive changes in the provisions that were borrowed from the old draft law, which

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<sup>266</sup> Explanations to the draft Law for Fiscal Council and Corrective Mechanisms, 2.

<sup>267</sup> Council of Ministers, Stenographic record of the meeting on 4 February 2015, Agenda point 10.

<sup>268</sup> Committee on European Affairs and Oversight of the European Funds, Report of 18 February 2015; Committee on Budget and Finance, Report of 18 February 2015.

<sup>269</sup> National Assembly, Stenographic records of the 48<sup>th</sup> meeting, 6 March 2015.

<sup>270</sup> In favour – GERB (58), BSP – left Bulgaria (17), DPS (5), Reformist Bloc (14), Patriotic Front (6), Bulgarian Democratic Center, ABV (7) and independents (2); abstaining BSP – left Bulgaria (1).

was used as a basis for the new one.

First, the new draft law starts with the inclusion of two general provisions. These provisions state that this law (Article 1) regulates the creation, the functions, the formation and the activity of the Fiscal Council as well as the adoption and implementation of automatic corrective mechanisms; and (Article 2) that this law aims to provide conditions for the observance of the fiscal rules laid down in the LPF. Second, in Article 6(1)(3) it is added that the Fiscal Council adopts reasoned opinions and recommendations on other strategic documents of the Government which are relevant for the observance of the numerical fiscal rules in the LPF. Third, Article 6(4) makes an important clarification for the powers of the Council. While in the old draft it was stated that the Council members have the power to request and receive information from the State authorities, new draft adds that these authorities have the obligation to provide such information in accordance with the respective laws regulating the particular type of information.

The, new, Chapter three, which deals with the automatic corrective mechanisms, contains seven Articles. Article 17 states that automatic corrective mechanisms are created (in the sense of Article 23(3) LPF) which aim at correcting the occurrences of significant divergence from the MTO in accordance with Regulation 1466/97. These mechanisms include the development, adoption and application of corrective plans. Article 18 states that a significant divergence can be identified by one or more of the following bodies: the European Commission in accordance with Article 6 of Regulation 1466/97, the Minister of Finance in the framework of the budgetary process and the Fiscal Council. Article 19 states that in case of a significant deviation from the MTO or from the measures for its achievement, the Finance Minister prepares and submits to the Council of Ministers for approval a corrective plan within two months from the identification of the deviation. In case the corrective plan envisions measures concerning the powers of the National Assembly, the Council of Ministers submits the plan to the National Assembly for adoption.

Article 20 lays down three elements comprising the corrective plan under Article 19. First, the plan must include the period for correction, which can extend up to two consecutive budgetary years following the years in which the significant deviation has been identified. Second, the plan must include an average annual improvement of the structural balance amounting to at least 0.5% GDP for the corrective period. Third, the plan must include the corrective revenue and expenditure measures. These measures must be described in detail with respect to their type, size and quantitative impact assessment on the subsectors in the “State Governance” Sector. Article 21 states that the measures in the corrective plan must lead to achieving the MTO within the originally set deadline (before the identification of the divergence). Under Article 22, the corrective plan must take note of the recommendations made to Bulgaria under Regulation 1466/97 for overcoming the significant deviation. Article 23 states that the implementation of the corrective plan may be temporarily suspended in the case of emergency in the sense of Article 24(3) of the LPF. Such suspension must not risk the sustainability of the public finances in the mid-term. Once the emergency circumstances are terminated the Finance Minister, if necessary, submits for approval an updated corrective

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plan to the Council of Ministers. Where applicable, in accordance with Article 19(2) the Council of Ministers submits this plan to the National Assembly for approval.

## **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 BULGARIA 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?

Other than the discussions during the negotiations of the six-pack in general, no political or legal difficulties were encountered after the Regulation was adopted (see the answer to Question VII.3 *mutatis mutandis*).

No references to the MEIP as such have been found in the LPF or any other normative acts that are related to the budgetary process. That is, none of the budgetary process rules found accommodate that procedure.

In its Report on the Alert Mechanism in 2012 the Commission considered Bulgaria as one of the Member States for which further in-depth analysis is warranted to closer examine certain issues.<sup>271</sup> This was the outcome also of the application of the Alert Mechanism for 2013, 2014 and 2015.<sup>272</sup>

The conclusion of the Commission with respect to the in-depth review on Bulgaria was that:

**“Bulgaria is experiencing macroeconomic imbalances, which are not excessive but need to be addressed.** In particular, the level of external indebtedness as well as certain macroeconomic developments related to corporate sector deleveraging and the adjustment process through labour markets deserve attention so as to reduce the risk of adverse effects on the functioning of the economy.

Possible policy responses should focus on reducing skills and regional labour market mismatches and on reviewing the minimum thresholds for social security contributions. Also, emphasis on boosting total factor productivity remains crucial given that the deleveraging of the corporate sector will probably dampen investment. As a small open catching-up economy with unfettered capital flows and a fixed exchange rate tends to be inherently volatile, macroeconomic policies and banking regulation in Bulgaria should focus on reducing the risks of repeating boom-cycles and on strengthening the risk absorption capacity of economic

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<sup>271</sup> Commission, Alert Mechanism Report 2012, COM(2012) 68 final, 14 February 2012, 19.

<sup>272</sup> Commission, Alert Mechanism Report 2013, COM(2012) 751 final, 28 November 2012, 20; Commission, Alert Mechanism Report 2014, COM(2013) 790 final, 13 November 2013, 3-4; Commission, Alert Mechanism Report 2015, COM(2014) 904 final, 28 November 2014, 3-4.

agents.”<sup>273</sup> (Original emphasis)

As it can be seen from the answer of the previous Question, Bulgaria did not manage to resolve the issues and has been subjected to an in-depth review for every consecutive year since.

The application of the Macroeconomic imbalances procedure in 2012 did not lead to any major policy changes in Bulgaria on its own. The 2012 Update of the NRP only mentions the fact that the Alert Mechanism resulted in an in-depth review for Bulgaria but no specific measures were outlined.<sup>274</sup> Furthermore, the measures addressing the CSR by the Council of 10 July 2012 included the ones relating the Macroeconomic Imbalances Procedure (MEIP). As such, unless they were earmarked it was impossible to identify them. In the 2013 Update only one such measure was earmarked. It was in response to an observation of the Commission in its 2013 in-depth report on Bulgaria.<sup>275</sup> The response was the setting up of an inter-institutional working group with the Ministry of Labour and Social Policy in January 2013 which included also representatives of the social partners. The aim of the working group was “to study the effect of the system of minimum social security thresholds on the employment”.<sup>276</sup>

In the 2014 Update only two measures were earmarked as addressing the MEIP for 2014. The first one was aimed at “the gradual decrease in the liabilities of the private sector”.<sup>277</sup> This measure consisted of a “[l]egal opportunity for rescheduling and deferral of tax liabilities and mandatory social security contributions at alleviated conditions for a longer period and in a greater amount”.<sup>278</sup> With this measure “liable persons facing temporary financial difficulties” can be provided with a chance to re-structure their liabilities. The second one was aimed at “reduction of intercompany indebtedness and improving liquidity of SMEs”.<sup>279</sup> This measure “provides individuals fulfilling certain conditions with the opportunity to use light regime for charging and paying the VAT owed on supplies, namely in cases of differed payment by their clients for performed supplies of goods and services”.<sup>280</sup>

## **REGULATION No 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS**

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:2011I213:EN:PDF>)

### **MTO PROCEDURE**

<sup>273</sup> Commission, In-Depth Review for Bulgaria, SWD(2012) 151 final, 30 May 2013, 3.

<sup>274</sup> Europe 2020: National Reform Programme, 2012 Update (Sofia, April 2012) 13.

<sup>275</sup> In-Depth Review for Bulgaria, *supra*, n 273.

<sup>276</sup> Europe 2020: National Reform Programme, 2013 Update (Sofia, April 2013) 18 and 55.

<sup>277</sup> Europe 2020: National Reform Programme, 2014 Update (Sofia, April 2014) 12.

<sup>278</sup> Law to amend and supplement the Tax and Social Insurance Procedure Code, promulgated, SG 109 of 2013.

<sup>279</sup> National Reform Programme, 2014, *supra*, n 277, 31.

<sup>280</sup> *Ibid.*

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### VII.7

WHAT CHANGES TO THE RULES ON THE BUDGETARY PROCESS ARE MADE TO ACCOMMODATE THE AMENDED MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) PROCEDURE?

The MTO is currently included in the LPF (see the answer to Question VII.10). Before this Law was adopted, there was no mentioning of a MTO in the LPSB. There were only a few references to a medium-term budgetary forecast, which was basically an assessment prepared by the Finance Ministry of the envisaged parameters of the consolidated fiscal programme for the following three years which is revised and approved annually. That medium-term budgetary forecast is much further elaborated upon in the LPF and it actually corresponds to the medium-term budgetary framework laid down in Article 2(e) of Directive 2011/85. As such the MTO is part of the medium-term budgetary forecast but the two are not the same. Accordingly, no changes to the rules on the budgetary process were identified which accommodate the amended MTO Procedure. See also the answer to Question VII.12.

## 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)?

On 21 January 2011 the Council of Ministers adopted the annual Decision on the budgetary procedure in which it is stated that “the budgetary procedure is made in accordance with the timeline for the implementation of the fundamental elements of the “European Semester” with the goal to achieve better coordination and governance of the economic policies in the European Union, strengthening of the economic governance and realisation of the fiscal monitoring of the macroeconomic imbalances”.<sup>281</sup>

On 15 April 2011 Bulgaria issued its CP for 2011-2014 and the Council of Ministers adopted Decision № 246 with which it adopted *inter alia* the budgetary forecast for 2012-2014.<sup>282</sup> In both instruments it is also stated that Bulgaria has integrated the European Semester into its budgetary procedure. In the budgetary forecast it is stated that with its adoption “Bulgaria starts the implementation of the commitments under the “European Semester” which aim at the EU level to realise early partners overview of the national budgets and preliminary coordination of policies”.<sup>283</sup> A figure depicting the European Semester’s implementation in the Bulgarian budgetary procedure is included in the budgetary forecast and reproduced in Bulgaria’s CP for 2011-2014 (p 59).

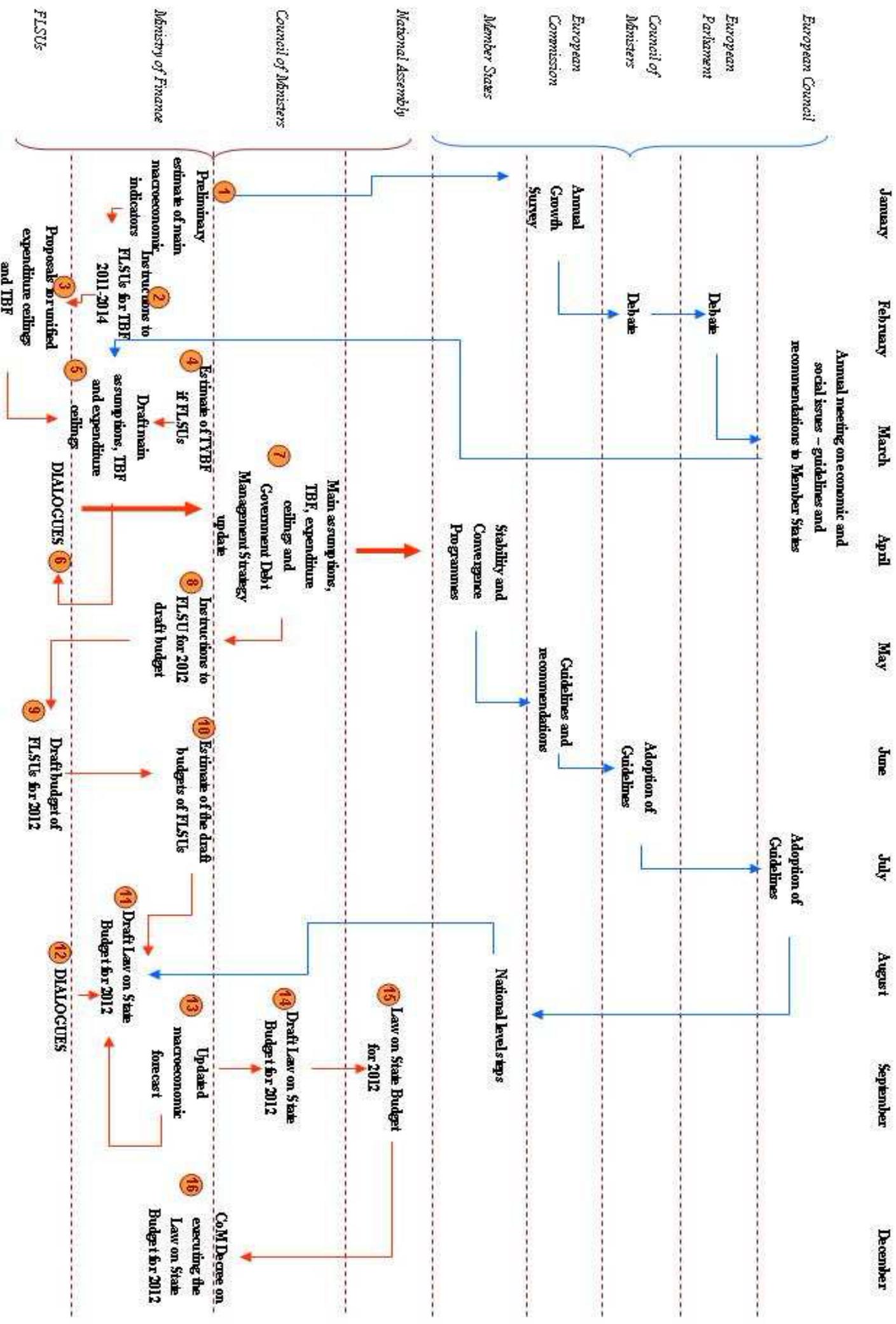
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<sup>281</sup> Council of Ministers, Decision № 40, *supra*, n 105, [1.5].

<sup>282</sup> CP 2011-2014; Council of Ministers Decision № 246 for Approving the Budgetary Forecast for the Period 2012-2014, Adopting the Expenditure Ceilings on the Primary Authorising Officers, without Municipalities, for the Period 2012-2014 and for Approval of the Update of the Strategy for the Management of the Sovereign Debt of 15 April 2011.

<sup>283</sup> Council of Ministers, Decision № 246, Annex I, 3.

# EUROPEAN SEMESTER – ORGANISATION AT EUROPEAN AND NATIONAL LEVEL



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According to the CP, FLSU stands for first-level spending units<sup>284</sup> and TBF stands for Three-year Budget Forecast.

Since then, the changes in the LPSB did not bring about changes relating to the European Semester but this happened with the adoption of the LPF. The European Semester was rarely mentioned during the discussions of the LPF. It was only in the Committee on European Affairs and Oversight of the European Funds that it was elaborated on a bit further. According to the Report of the Committee on European Affairs the budgetary procedure is synchronised with and aligned to the timeline and the procedures of the European Semester.<sup>285</sup> In particular, with the LPF the procedure was now divided in two stages.

The first stage concludes in mid-April with the adoption of the medium-term budgetary forecast and the revision of the Strategy for the management of the State debt by the Council of Ministers.<sup>286</sup> By 25 March the Minister of Finance also has to prepare the spring macroeconomic forecast and compares it with the one of the European Commission and gives a justification in the case of significant differences.<sup>287</sup>

In the second stage, Bulgaria's programme documents are being presented to the Commission and ECOFIN for approval and the CSR that are given to Bulgaria form part of the basis on which (1) the State Budget is being drafted<sup>288</sup> and (2) the medium-term budgetary forecasts is being revised<sup>289</sup>. The programme documents are also revised. This stage concludes on 31 October,<sup>290</sup> when the draft LSB is submitted to the National Assembly together with the revised medium-term budgetary forecast, which serves as the explanations to the draft Law.

## MTO DIFFICULTIES

### VII.9

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

Other than the discussions during the negotiations of the six-pack in general, no political or legal difficulties were encountered after the Regulation was adopted. See the answer to

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<sup>284</sup> In this Report the same are referred to as primary authorising officers because in the author's opinion it is a more suitable translation.

<sup>285</sup> Committee on European Affairs and Oversight of the European Funds, Report of 24 October 2012. This was also observed in the Convergence Programme of the Republic of Bulgaria: 2013-2016 (Ministry of Finance, Sofia, April 2013) 67.

<sup>286</sup> The LPF sets 20 April as a deadline for this. LPF, *supra*, n 91.

<sup>287</sup> *Ibid.* art 75.

<sup>288</sup> This is set out in the annual Decision of the Council of Ministers which describes in detail the budgetary procedure. This annual Decision is adopted on the basis of Article 67 LPF. The annual Decision for the 2015 SBL includes a statement that the procedure is in accordance with the deadlines for the application of the mechanisms and measures that are included in the main stages of the European Semester. Council of Ministers, Decision № 57 for the Budgetary Procedure for 2015 of 4 February 2014, 3.

<sup>289</sup> LPF, *supra*, n 91, art 79(1)(2).

<sup>290</sup> *Ibid.*, art 79(5)(4).

Question VII.3 *mutatis mutandis*.

## RESPECT MTO

VII.10

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

The LPF incorporates the amended Regulation 1466/97 and its provisions on the MTO are contained in Articles 23 and 24. Article 23 sets out the numerical quantities of the MTO in its first two paragraphs – structural deficit should remain below 0.5% of the GDP and can go up to 1% as long as the consolidated debt is below 40% of the GDB and the threat for the long-term stability of the public finances is low. Article 23(3) provides that in case of significant deviation from the MTO or from the measures for its achievement, automatic corrective mechanisms shall be activated as determined by the National Assembly, in accordance with Article 10 of Regulation 1466/97. The draft law on the Fiscal Council (see the answer to Question VII.5) elaborates further on the adoption and implementation of corrective mechanisms. Article 23(4) states that the MTO for the annual structural deficit is to be revised every three years and that it can be further revised in the event of the implementation of a structural reform with a major impact on the sustainability of public finances as provided in Article 2a of Regulation 1466/97. Article 24 states that:

“1. Failure to reach the medium-term budgetary objective for the structural deficit on annual basis is allowed under extraordinary circumstances and under the condition that the failure does not amount to threatening the sustainability of the public finances in accordance with Article 9 of Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies in the medium-term.

2. Temporary divergence from the medium-term budgetary objective for the structural deficit on annual basis is allowed during the implementation of major structural reforms with great impact on the fiscal sustainability under the condition that the maximum allowed deficit under the “State Governance” sector under Article 25(2) is not surpassed.

3. Extraordinary circumstances is an unusual event outside the control of the Council of Ministers which has a major impact on the financial position of the “State Governance” sector in accordance with Article 9 of Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies or a period of economic downturn above 3% in real terms.”<sup>291</sup>

## CURRENT MTO

VII.11

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

The current MTO of Bulgaria for a structural deficit is 1% according to the CP of Bulgaria for 2014-2017, which was adopted in April 2014.<sup>292</sup> It was expected that this MTO was going to be achieved in 2016. However, considering the revised medium-term budgetary

<sup>291</sup> Translation by the author.

<sup>292</sup> Convergence Programme of the Republic of Bulgaria: 2014-2017 (Ministry of Finance, Sofia, April 2014).

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forecast for 2015-2017, in its part discussing the MTO, it becomes clear it will not be possible to achieve this goal even by the end of the three-year period. The forecasts for the following years were 2.8 % for 2015, 2.2 % for 2016 and 1.7 % for 2017.<sup>293</sup> Having in mind the current banking crisis in Bulgaria (See the answer to Question I.1) it will take even longer to achieve the current MTO of Bulgaria.

## ADOPTION MTO

### VII.12

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

The LPF does not provide for procedural rules for the adoption of the MTO as such. As it was stated above the MTO is included in the medium-term budgetary forecast. As such the general rules applicable to the forecast apply to the MTO as well. According to Article 66(1) of the LPF, the Council of Ministers, through the Minister of Finance organises the drafting of the medium-term budgetary forecast and the draft LSB. Under Article 67(1), annually, until 31 January, the Council of Ministers acting on a proposal of the Minister of Finance adopts a budgetary procedure for the drafting of the forecast and the draft Law. This procedure sets out the stages, the deadlines, the allocation of responsibilities and requirements for the drafting of the forecast and the draft Law. However, the Decision on the budgetary procedure does not provide for separate rules on the adoption of the MTO. Accordingly, the MTO of Bulgaria is prepared by the Ministry of Finance and adopted by the Council of Ministers as part of the medium-term budgetary forecast.

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

Other than the discussions during the negotiations of the six-pack in general, no political or legal difficulties were encountered after the Regulation was adopted. See the answer to Question VII.3 *mutatis mutandis*.

With respect to the excessive deficit procedure, the LPF does not provide for changes in the rules on the budgetary process and does not make references to Regulation 1467/97 as such. However, the LPF does seem to implement Regulation 479/2009,<sup>294</sup> which is referred to on

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<sup>293</sup> Revised Medium-term Forecast for the Period 2015-2017 (Explanations to draft LSB for 2015).

<sup>294</sup> Regulation (EC) No 479/2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community [2009] OJ L145/1.

several occasions in the amending Regulation 1177/2011. The Law is implementing Regulation 479/2009 by mainly aligning its set of definitions in accordance with that Regulation. In particular, Regulation 479/2009 is mentioned eight times in total - once in Article 37, and seven times in the Section with final and transitional provisions. Six out of these seven are with respect to definitions<sup>295</sup> and the seventh is part of a small amendment to the Law on the Municipal Debt, which mirrors the Article 37 mentioning. In the relevant part, Article 37(1) of the LPF provides that the LSB, for any given year, shall set out the limit for an eventual new State debt that may be accrued by stating separately the total amounts under (a) the Law on the State Debt and (2) financial leasing and the other forms of debt in accordance with Regulation 479/2009.

## **REGULATION NO 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE**

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

### **SANCTIONS**

VII.14

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

No changes have been introduced as Bulgaria is not a Eurozone member yet.

### **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?

No changes have been introduced as Bulgaria is not a Eurozone member yet. According to the text of the LPF, its explanations and the explanations to the draft Law for the Fiscal Council, it is only the Fiscal Council that is yet to be set up. This also transpires from the above mentioned Council Recommendations to Bulgaria in 2013. Until Bulgaria joins the Eurozone no other changes in the rules on the budgetary process have been identified as required.

### **MISCELLANEOUS**

VII.16

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

No other relevant information.

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<sup>295</sup> The definitions are of (1) Debt of sub-sector “Local governance”; (2) Debt of sub-sector “Central governance”; (3) Debt of “Social Security Funds”; (4) “State debt”; (5) Consolidated debt of “State Governance” sector; (6) “Municipal debt”.

## 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 BULGARIA 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 ESM Treaty is one of the international law instruments dealing with the Euro crisis in which Bulgaria is not participating as it is not a Eurozone Member State. However, in light of the resolve of Bulgaria to join the Eurozone in the future, the Bulgarian Government decided to participate in the negotiations of the ESM Treaty. This was considered important as the rules contained therein would eventually be applicable to Bulgaria, once it joins the Eurozone.

The Minister for Finance (on 4 May 2011 in the National Assembly) and his Deputy (on 30 March 2011 in the joint session of the Committees on European Issues and Budget and Finance) highlighted that with its participation in the negotiations, Bulgaria managed to secure a smoother transition with respect to the ESM contributions, once it joins the Eurozone. What they were referring to was basically the temporary correction of the contribution key set out in Article 42 of the ESM Treaty. This temporary correction allows for a Member State joining the ESM that has GDP per capita at market prices in euro in the year immediately preceding its accession to the ESM that is less than 75 % of the EU's average GDP per capita at market prices to benefit from a temporary correction of the key which weights greatly on the gross national income. Furthermore, this temporary exception lasts for twelve years.

### RATIFICATION

#### VIII.2

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

Since Bulgaria participated only in the negotiations, the ESM Treaty was neither signed nor

ratified by Bulgaria.

## RATIFICATION DIFFICULTIES

### VIII.3

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

In light of the answer to the previous questions, this one is not applicable to Bulgaria.

## CASE LAW

### VIII.4

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

The ESM Treaty has not been litigated at the BCC.

## CAPITAL PAYMENT

### VIII.5

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

Not applicable to the Bulgarian National Assembly.

## 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 to Bulgaria.

## APPLICATION DIFFICULTIES

### VIII.7

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

Not applicable to Bulgaria.

## 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?

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Not applicable to Bulgaria.

## MISCELLANEOUS

VIII.9

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

No other relevant information.

## IX FISCAL COMPACT

*The Fiscal Compact (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) was signed on March 2, 2012. Negotiations on this Treaty began between 26 member states of the EU (all but the UK) after the 8/9 December 2011 European Council. 25 contracting parties eventually decided to sign the Treaty (not the Czech Republic). After ratification by the twelfth Eurozone member state (Finland) in December 2012, the Fiscal Compact entered into force on 1 January 2013. For several contracting parties the ratification is still on-going.*

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

### NEGOTIATION

#### IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID BULGARIA 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.

The difficulties encountered during the negotiations at the EU level were related to the topics of tax harmonisation and the participation of Bulgaria, as a non-Eurozone Member State observer, in the Euro Summits. The position of the Government was generally supportive of the Fiscal Compact as it has been generally with the other Euro-crisis measures. However, the support was not unequivocal. It was subject to retaining the competence to determine the taxes at the national level, that is – no tax harmonisation. Another important point for Bulgaria was the participation of the non-Eurozone Member States in the decision-making under the Fiscal Compact. The compliance with EU law and the inclusion of the EU institutions to the highest extent possible was yet another important point for the Government. Furthermore, the Government wanted to make sure that the Fiscal Compact will not involve financial obligations. Finally, a major part of the position of the Government was opting out of Title IV of the Fiscal Compact.

The main issues that were debated in the National Assembly overlapped to a great extent with the position of the Government. This overlap related to the issues of tax harmonisation, participation in Title IV and its added value, financial obligations stemming from the Fiscal Compact and Bulgaria's status of participation in the Euro Summit. An additional point of discussion that was not very prominent was on transparency and the level of consultation with and accountability to the National Assembly during the negotiation process.

The position of the Government, unlike in the case of the Euro-Plus Pact, was constructed with increased participation of the National Assembly. This can be explained with, first, the heavy criticisms on the exclusion of the National Assembly before Bulgaria joined the Pact and, second, the fact that the Fiscal Compact was going to take the form of an international agreement, which required a ratification. Nevertheless, the Government was still criticised for not consulting the National Assembly before the meeting on 9 December 2011 when the Eurozone Member States decided to adopt further measures through an international

## BULGARIA

agreement.<sup>296</sup> This criticism was to a certain extent related to the fact that, even though the Prime Minister explicitly stated at the European Council meeting that the decision on participation in the Compact will be taken only after consultations with the National Assembly, he expressed support for the new rules and measures that were discussed.<sup>297</sup>

The criticisms were expressed from representatives of the Blue Coalition, ATAKA and the Coalition for Bulgaria. The *leitmotif* was that if the National Assembly was consulted beforehand and it gave a clear mandate to the Government to discuss those issues, Bulgaria would have had a stronger position during the discussions. Ivan Kostov (the Blue Coalition) called upon the Government to present a framework position to the National Assembly stating its negotiation position. Otherwise, the Blue Coalition was going to propose a draft Decision which will set out the mandate. The Minister underlined that the process for discussions of the Compact was just beginning and that no decisions were taken for which the National Assembly had to be consulted.

At the 28 December 2011 meeting of the Council of Ministers, a Decision was taken with respect to the participation of Bulgaria in the negotiations.<sup>298</sup> According to this Decision the Council of Ministers (1) approved the expressed intention by the Prime Minister for Bulgaria to participate in the process of preparing a draft International Agreement for Stronger Economic Union after consultations with the National Assembly; (2) approved the draft for the International Agreement as basis for negotiations; and (3) proposed to the National Assembly to approve the participation of Bulgaria in the negotiations on the International Agreement on the basis of Article 86(1) CRB.<sup>299</sup> The verbatim record of the meeting sheds some more light on the Decision. The draft Decision was presented by the Foreign Affairs Minister. He referred to (and as such the Decision was referring to) the version of the draft Agreement that was communicated by the General Secretariat of the Council on 16 December 2011. The Minister also included a preliminary position of Bulgaria. The preliminary position was along two main lines. First, Bulgaria considered that there is a need to further elaborate on the powers and competences of the European Court of Justice (ECJ) under Article 8, Title III of the Agreement. Second, with respect to Title IV it was a priority to have guaranteed the right of the Member States to adopt independently their tax policies. Accordingly, it was going to be insisted that tax harmonisation was expressly excluded from the economic convergence. The Finance Minister added that in the draft agreement there was no mentioning of tax harmonisation which was due to express insistence of Bulgaria and of six other Member States.

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<sup>296</sup> National Assembly, Stenographic record of the 297<sup>th</sup> meeting, 14 December 2011.

<sup>297</sup> It appears from the verbatim record of the Council of Ministers' meeting on 7 December 2011 that Bulgaria's position on the point of economic policy was going to be ascertained at the European Council meeting itself, after being presented with an analysis of an intermediary report of President Van Rompuy and considering the proposals of France and Germany in the area of economic governance, strengthening of the fiscal control, harmonisation of the policies in the Eurozone framework and other elements.

<sup>298</sup> Council of Ministers, Decision № 964 on Approval of Draft International Agreement for Stronger Economic Union of 30 December 2011.

<sup>299</sup> *Ibid.*

The different draft versions of the Fiscal Compact have been discussed with the National Assembly on three occasions behind closed doors – 14 December 2011, 12 and 25 January 2012 but no results from these discussions are publicly available. During the negotiations of the Fiscal Compact, national representatives inquired on Bulgaria's position on two occasions. The first time, on 13 January 2012, the questions were addressed to the Prime Minister by Martin Dimitrov (the Blue Coalition). Those questions were (1) whether the increased economic coordination meant tax harmonisation; (2) whether guarantees were put in place for Bulgaria not to be bound to pay for the debts of the other Member States; (3) why the draft agreement included an entry-into-force clause which required only 12 ratifications, which was seen to lead to Europe on three speeds. The Prime Minister reiterated that tax harmonisation was never something to which Bulgaria would agree and that Bulgaria was not going to agree to contribute financially to solving the debt problems of richer Member States. No answer to the third question was identified in the statement. The second time, on 20 January 2012, the questions were addressed to the Finance Minister by Georgi Pirinski (Coalition for Bulgaria). Effectively, there was only one question expressing critiques for an alleged lack of consultation with the National Assembly. The point was why the Minister did not consult the National Assembly before sending his letter on 16 January 2012 to the other ECOFIN members in which he expressed position on *inter alia* Title IV. The answer of the Minister was that the letter was part of the negotiation process with the aim to identify supporters for strengthening the Bulgarian position, nothing else.

Finally, a draft Decision of the National Assembly was indeed proposed by three national representatives from GERB on 24 January 2012. On 25 January the draft Decision was considered by the Committee on European Affairs and Oversight of the European Funds, the Committee on External Policy and Defence and the Committee on Budget and Finance in a joint session.<sup>300</sup> The Report from the joint session approved the participation of Bulgaria in the Fiscal Compact.<sup>301</sup> The operative part of the approved draft Decision contained three cumulative conditions for the participation of Bulgaria in the Compact: (1) Bulgaria will apply the provisions of Title III after the National Assembly ratified the Fiscal Compact; (2) Bulgaria's participation in the Fiscal Compact does not amount to financial obligations and commitments for harmonisation of tax policies; (3) the Compact will be applied in full only after Bulgaria joins the Eurozone and the derogation under Article 5 of the Act of Accession of Bulgaria and Romania to the European Union is terminated.<sup>302</sup>

The verbatim record again gives further crucial insights.<sup>303</sup> When the draft Decision was presented, it was emphasised that the participation of Bulgaria in the Compact was a historical moment for Bulgaria and Europe. The working version at the time was the version

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<sup>300</sup> It is worth mentioning that on the very same day the Council of Ministers convened and adopted a Report concerning the approval of the position of the Republic of Bulgaria for participation in the European Council meeting on 30 January 2012, without waiting for the formal approval by the National Assembly of the Decision. The Report is not publicly available and the verbatim record of the meeting only states that the Report was adopted.

<sup>301</sup> Committee on European Affairs and Oversight of the European Funds, Report of 25 January 2012.

<sup>302</sup> The derogation in question is the one under Article 122 TEC, today Article 140 TFEU.

<sup>303</sup> Committee on European Affairs and Oversight of the European Funds, Protocol № 89 of 25 January 2012.

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of 19 January 2011. It was mentioned that during the few weeks preceding the Report there were several sessions behind closed doors of the Committees involved discussing the different versions. The Foreign Affairs Minister highlighted that the basic elements of the position of Bulgaria were already fulfilled during the negotiations of the Compact and were reflected in the 19 January working version. Thus, while the draft Decision was meant to set out Bulgaria's position and mandate in the negotiations of the Fiscal Compact, it becomes clear from the Minister's statement that the actual negotiation position of Bulgaria had already been formed beforehand.

This position can, to a certain extent, be distilled from the demands that the Foreign Affairs Minister discussed and held to be reflected in the text of the draft Agreement. Several of these demands were related to aligning the Fiscal Compact to EU law and, specifically, preserving the right to follow an independent tax policy and preserving the functioning of the internal market due to its importance for the Bulgarian economy. The other demands were (1) the inclusion of EU institutions, in particular the Commission and the European Parliament; (2) building a clear framework for decision-making within the Compact itself; (3) the exclusion of additional financial obligations for Bulgaria; (4) the inclusion of the possibility for non-Eurozone Member States to participate in the Compact; (5) the assurance that non-Eurozone Member States will be able to participate in meetings of the Eurozone group if new mechanisms were being created, which was rated as a key question for Bulgaria so that it is not excluded from the making of decisions which could influence the rest of the EU.

Then the Minister identified five issues which were still open and provided Bulgaria's position on some of them. The first issue was on Article 7 and the commitment to support the recommendations of the Commission for finding a violation of the deficit criterion in the framework of the excessive deficit procedure. The position of Bulgaria was in support of the inclusion of the debt criterion as a basis for an infringement procedure. The second issue was on Article 8 concerning the powers of the ECJ to rule on the transposition of the Balanced Budget Rule and the possibility of imposing a sanction of up to 0.1% GDP. The position of Bulgaria was in support of the imposition of sanctions by the ECJ. The third issue was whether there should be an explicit reference in the Compact to the Euro-Plus Pact. The position of Bulgaria was that there should not be any reference. The fourth issue was of the exact participation status (observer, active observer, etc.) of the non-Eurozone Member States and the President of the European Parliament. The fifth issue was on how many and which Member States need to ratify the Compact in order for it to enter into force. Bulgaria's position was not mentioned on the last two points.

Next, the Finance Minister joined the discussion with several updates from the ECOFIN meeting that took place during the preceding two days (23 and 24 January 2012). The Minister started by saying that the new, seventh, version of the draft agreement was expected the following day and that his comments are about what was to be seen in that new version. With respect to references to the Euro-Plus Pact and harmonisation of direct taxation – those were finally left out as Bulgaria had insisted. With respect to the participation of non-

Eurozone Member States, a provision was included saying that they would be invited to all such meetings. With respect to the active observer status of non-Eurozone Member States, Bulgaria strongly insisted on this and did not face opposition from the other Member States. With respect to Article 7, Bulgaria shared the position of Germany, Sweden, the Netherlands and Finland that automatic sanctions should be included which was countered by the position of France, Spain, Belgium, Portugal and Malta.

Consequently, the floor was opened for questions by the Committees' members. The substantive questions can be grouped as follows: (1) why Bulgaria was going to agree to Title III but not Title IV; (2) what was the idea and the added value of Title IV; (3) did the reference to the ESM in the preamble create financial obligations; (4) what was going to be the impact on the Bulgarian Fiscal Pact? The answers were given by the two Ministers and were the following.

The answer to the first group of questions was that, although the provisions of Title IV seemed general and harmless, for this exact same reason, they could be 'slippery'. It was unnecessary for Bulgaria to commit to things which could become burdensome in the future. On the second group, the answer was that the idea of Title IV was that it was building upon the so-called Six Pack. It was based on the possibility in the Lisbon Treaty for increased cooperation by allowing the Eurozone Member States to begin an increased cooperation in the coordination of their economic policies. However, the exact added value was not clear as the provisions in the Title IV were changed many times, including the deletion of the tax harmonisation rules. On the third group of questions, the answer was that the reference to the ESM in the preamble did not create financial obligations. On the last group of questions, the answer was that the Bulgarian Fiscal Pact was in part already adopted through the amendment of the LPSB. As regards the other part, which included an amendment to the Constitution, it was stated that the process for the amendment was intentionally slowed down in order to see the end result of the Fiscal Compact and to decide whether the proposed amendment would need to be changed.

After the answers, there were several exchanges with regard to minor changes in the wording of the draft Decision and it was consequently voted upon. The voting was as follows: for the Committee on the European Affairs 11 'for' and 5 'abstaining' for the External Policy Committee 12 'for' and 3 'abstaining' and for the Budgetary Committee 13 'for' and 6 'abstaining'. No explanations of the abstaining votes were provided.

The draft Decision was discussed and adopted in the plenary session of the National Assembly on 27 January 2012.<sup>304</sup> After the draft Decision was presented, the Foreign Affairs Minister focused on six points: (1) aligning the Compact to EU law has been a key issue in order to guarantee the rights as well as the obligations of the Member States and to preserve the community method in the areas of interest for Bulgaria; (2) it was important to preserve

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<sup>304</sup> National Assembly, Decision for the Participation of the Republic of Bulgaria in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union of 27 January 2012, SG 10 of 3 February 2012.

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the role of the existing institutions without allowing the creation of parallel structures in Europe and this was achieved to a large extent through the inclusion of the Commission and the European Parliament; (3) another key issue was reaching a consensus on the participation of non-Eurozone Member States which will conclude the Compact, such as Bulgaria, in the Euro Summit meetings; (4) the effective functioning of the internal market was guaranteed in the realisation of the increased cooperation; (5) provisions limiting the right to independently set the taxes were excluded; (6) the accession to the Compact was not going to imply financial commitments for Bulgaria. Then the floor was open for questions.

Ivan Kostov (the Blue Coalition) supported the Decision and the progress made during the negotiations. However, he suggested that Bulgaria should push further on two points. First, to dispose of the requirement for coordination of major reforms, that was included in Title IV. Mr Kostov suggested that the imposition of this requirement was redundant when talking about the observance of the rules for the stability of the Euro. Secondly, Bulgaria must become an observer at the Euro Summit. Martin Dimitrov (the Blue Coalition) made an interesting statement on the observance of the rules in the Compact. In particular, he suggested that the creation of an organ within the National Assembly that is operated by the opposition with the task to keep track on whether the rules were observed. However, this suggestion was not substantiated at all and was not even considered by the other participants in the debates.

Rumen Ovcharov (Coalition for Bulgaria) expressed several criticisms. He criticised the Compact for not putting the responsibility to the Member States that were responsible for the crisis and for not giving preferences to Member States, like Bulgaria, which followed strict fiscal discipline. Mr Ovcharov also repeated his question from the Committees' meeting – why Bulgaria rejects Title IV if the tax harmonisation provisions were deleted and even if they were not? The last statement on tax harmonisation spurred a lot of criticisms against Mr Ovcharov stating that the tax harmonisation could be the worst possible scenario for Bulgaria. During those criticisms, the issue of three-speed Europe (see *supra*) was raised again. Mr Ovcharov insisted that it was an illusion that not accepting Title IV was better and was going to give a lot more freedom for action to Bulgaria. Plamen Oresharski (Coalition for Bulgaria) stated that the Fiscal Compact was not going to solve anything and as such it was redundant. Mr Ovcharov's opinion that Bulgaria had to accept Title IV was voiced also by Sergei Stanishev (Coalition for Bulgaria).

Aliosman Imamov (DPS) started by pointing out the advantages of the Fiscal Compact – the enforcement mechanisms for the non-complying Member States. He also suggested that Bulgaria should accept Title IV as well and proposed the deletion of the limitation to the possible negotiated positions included in the draft Decision. Ventsislav Lakov (ATAKA), effectively, also proposed the removal of the limitations for negotiations but for different reasons. In his opinion, the idea of the Fiscal Compact was that the people of Europe pay for the deals of the rich. He also said that that with the draft Decision the Bulgarian tax system is getting carved in stone, which also means that the poor Bulgarian citizens pay instead of the rich. Nevertheless, he still supported the first point of the draft Decision which was

approving the participation of Bulgaria in the negotiations.

Several other statements were made by national representatives but no substantively new points were introduced and, after a few minor editing proposals were made, the draft was put to a vote. The voting *en bloque* was 129 ‘for’ 1 ‘against’ and 48 ‘abstaining’.<sup>305</sup> It is interesting to note, however, that when the draft Decision was voted part by part, all 181 present and voting voted ‘for’ on the point of the Decision approving the Bulgarian participation in the negotiations. No explanations of the negative or abstaining votes were provided. After this the draft of the Compact was mentioned a few times during the report of the Prime Minister on 10 February 2012 to the National Assembly on the development of the priority topics and files during the Polish and Danish Presidencies. However, no substantive debate on that point was made.<sup>306</sup> Finally, in view of the reached consensus on the text of the Fiscal Compact within the European Council meeting on 30 January, the Council of Ministers decided on 29 February 2012 to empower the Prime Minister to sign the Fiscal Compact.<sup>307</sup>

## RATIFICATION

### IX.2

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

After looking at the debates on the negotiation of the Fiscal Compact one is left with the feeling that the ratification was going to follow soon after the agreement was concluded. However, this did not happen and no particular reason for this was found during the research.<sup>308</sup> The ratification process started at the Council of Ministers. With reference to Article 15(1) LIA, the Council of Ministers adopted a Decision in which it approved the Fiscal Compact and proposed to the National Assembly to ratify the agreement with a Declaration under Article 14(5) of the Fiscal Compact.<sup>309</sup> The ratification was proposed on the basis of Article 85(1) subparagraphs 5, 7 and 8 CRB. Those provisions relate to the mandatory ratification powers of the National Assembly to ratify international agreements which “envisage the state's participation in international arbitration or legal proceedings”, “affect the action of the law or require new legislation in order to be enforced” and “expressly require ratification”, respectively.

The ratification proposal was submitted to the National Assembly on 11 November 2013 and the draft ratification law was discussed in the Committees on Foreign Policy, on the Committee on European Affairs and Oversight of the European Funds and on Budget and

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<sup>305</sup> In favour – GERB (101), the Blue Coalition (11), and independents (17); against ATAKA (1); abstaining Coalition for Bulgaria (27), DPS (18) and ATAKA (3).

<sup>306</sup> See the discussion on 10 February 2012 in the context of the Euro-Plus Pact.

<sup>307</sup> Council of Ministers, Protocol № 8 of 29 February 2012.

<sup>308</sup> When the procedure was started, from the Member States that signed the Compact, it was only Bulgaria and Belgium that had not ratified it.

<sup>309</sup> Council of Ministers, Decision № 692 for a proposal to the National Assembly to ratify the [Fiscal Compact] of 11 November 2013.

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Finance of which the latter was the leading one. All three Committees in their reports proposed to the National Assembly to ratify the Fiscal Compact. The National Assembly considered the proposed draft law in its plenary session on 28 November 2013. The National Assembly approved the proposal and ratified the Fiscal Compact. It conjoined the two voting procedures within the same session, on the basis of Article 76(2) of the then applicable version of the Rules,<sup>310</sup> as there were no amendments proposed to the draft law. Finally, the law ratifying the Fiscal Compact was promulgated in the SG<sup>311</sup> by the President on the basis of Article 98(4) CRB on 3 December 2013,<sup>312</sup> as is the procedure for any other law.

There was no involvement of the BCC during the ratification process or after it. Furthermore, no referendum was convened, although during the debates on 27 January 2012 Sergei Stanishev, after referring to a statement by the Czech Republic, stated that this option should not be ruled out as this was a serious issue. Considering that the Government during the ratification was composed of a minority coalition, the bigger part of which was from the party of Mr Stanishev, who was also still its leader at the time, if he and his party considered the matter so important, there were all the preconditions for convening a referendum. However, considering the raging protests against that Government at that very same time this would have been ‘the last nail in the coffin’, which inevitably came during the European Parliament elections in the spring of 2014.

## RATIFICATION DIFFICULTIES

### IX.3

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

The ratification of the Fiscal Compact took place on 28 November 2013 and went through fairly easy and straightforward without encountering particular political or legal difficulties. However, there were a few things this author finds interesting to note. Firstly, in the verbatim record of the Council of Ministers meeting on 6 November 2013,<sup>313</sup> when the ratification was proposed, a comment was made on why Bulgaria had not already ratified, with an accusatory rhetoric to the previous Government. It is interesting because it was again Mr Stanishev who, in his 27 January 2012 comment, suggested that Bulgaria should not be swift with the ratification after the Compact was concluded.

In the Committees, it is interesting to note that in the Report of the Committee on the European Affairs the provisions of the CRB cited were Article 85(1) subparagraphs 1, 5, 7 and 8 thereof. That is, Article 85(1)(1) was included and it was replicated in the Report when presented in the National Assembly. This provision refers to international agreements which are of a political or military nature. However, the fact that there was no mentioning

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<sup>310</sup> Rules for the Organisation and the Activity of the National Assembly, SG 58 of 27 July 2009, as amended, SG 60 of 30 July 2009, SG 98 of 11 December 2009, SG 100 of 15 December 2009, SG 43 of 8 June 2010.

<sup>311</sup> Law for the ratification of the [Fiscal Compact], SG 106 of 10 December 2013.

<sup>312</sup> Presidential Decree № 240 of 3 December 2013, SG 106 of 10 December 2013.

<sup>313</sup> Council of Ministers, Stenographic record of the meeting on 6 November 2013.

whatsoever on the constitutional basis in that regard seems to suggest that it was a typo.<sup>314</sup> As regards the voting, it shows as well the lack of difficulties with 17 ‘for’ and 1 ‘abstaining’ in the Committee on the European Affairs, 14 ‘for’ and 2 ‘abstaining’ in the Committee on Foreign Policy and 16 ‘for’ without negative or abstaining votes in the Committee on Budget and Finances. No explanations of the abstaining votes were provided.

In the National Assembly, an interesting comment was made by the President of the Committee on Foreign Policy after he presented the Report. He suggested that the Government formally sought a greater (than simple) majority for the ratification of the agreement. He referred to Article 85(1)(9) CRB which provides for a qualified two-thirds majority for transfer-of-competence agreements to the EU. The Government did not base the ratification on that provision because it was not required since Bulgaria preserved the right to form its own tax policy. However, the Committee President suggested that with this agreement the National Assembly lost powers with respect to adopting the State budget and its implementation. Be that as it may, he clarified that he was not making a formal proposal for changing the ratification procedure. Instead, he was focusing the attention on the importance of the agreement being ratified and its implications on the powers of the Government and the National Assembly. In the absence of other statements the ratification went to a vote. The voting was 114 ‘for’ and 9 ‘abstaining’ on the first reading and 109 ‘for’ and 5 ‘abstaining’ on the second reading.<sup>315</sup> No explanations of the abstaining votes were provided.

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

The CRB did not contain a Balanced Budget Rule before the Euro crisis. There was, however, a proposal for the amendment of the CRB in that respect which failed to attract the support it needed. This is further explained in Question III.2. In order to comply with the provisions of Article 3(2) of the Fiscal Compact Balanced Budget Rules were nevertheless introduced in the Bulgarian legal order. The first round of these rules was introduced in the

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<sup>314</sup> The constitutional bases are in principle not being mentioned in the ratification law itself (although one could wonder why). As such this cannot be crosschecked.

<sup>315</sup> In favour – GERB (30), Coalition for Bulgaria (63), DPS (21); abstaining GERB (2) and ATAKA (7). In the second vote the abstaining were only from ATAKA.

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amendments to the LPSB, discussed above. However, with the Fiscal Compact a further amendment was needed. Considering the need for implementation of the Six-Pack, which is also discussed above, a new law was made (the LPF, discussed in the answers to the Six-Pack Questions). The LPF, next to implementing the Six-Pack, implemented also Title III of the Fiscal Compact, as it transpires from its explanations. In particular, the Balanced Budget Rules are contained mainly in Article 23 and to a certain extent in Article 25 LPF. Article 23 implements the 0.5% and 1% structural deficit rules but by putting a 40% limitation on the debt, as it was included in the LPSB. Article 25 LPF implements Article 3(1)(a) of the Fiscal Compact as well as the 3% deficit rule, which is mentioned in the preamble of the Fiscal Compact. The draft law on the Fiscal Council (see the answer to Question VII.5) elaborates further on the adoption and implementation of corrective mechanisms and explicitly states in its miscellaneous provision that it also implements requirements under Title III of the Fiscal Compact.

Accordingly, considering the wording of Article 3(2) of the Fiscal Compact it is barely respected. The laws discussed *supra* are not of constitutional character. They are permanent only in the sense that there is no temporal limitation put on them *ab initio* but they can be changed by another majority in the National Assembly. The Balanced Budget Rules being laid down in the LPF are, indeed, at the moment guaranteed “to be fully respected and adhered to throughout the national budgetary process”. However, time will show, considering the volatile political situation in Bulgaria which is explained in Question I.1, for how long Bulgaria will keep its part of the bargain.<sup>316</sup>

## 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.

One of the arguments for the participation of Bulgaria in the Fiscal Compact was that Balanced Budget Rule is not going to negatively affect Bulgaria.<sup>317</sup> It was stated that Bulgaria can participate without the need to make cardinal changes in its policy or additional sacrifices.<sup>318</sup> As such the position of the Government was that the Balanced Budget Rule will continue the already established practice in Bulgaria; will indicate stability of the Bulgarian economy to the markets; and will be an opportunity for Bulgaria to be among the best performing Member States within the EU. The implementation of the Balanced Budget Rule through the LPF was the object of certain critiques from the opposition – Coalition for Bulgaria and DPS – during the first reading of the draft Law in the National Assembly on 15

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<sup>316</sup> The fact that the LPF can be changed with a simple majority was also pointed out by Qnaki Stoilov in the National Assembly session on 28 November 2013, when the Compact was ratified.

<sup>317</sup> Stenographic record of 25 January 2012, *supra*, n 303.

<sup>318</sup> *Ibid.*

November 2012.<sup>319</sup> The resulting critique was that these numerical indicators should not be included in the law that lays down the fundamentals for the creation of the State Budget. Firstly, it was argued, that Bulgaria never went beyond the 40% debt so there was no need to include it. Secondly, it was argued that the economic environment should dictate the fiscal policy and not the other way around. Those fiscal indicators, it was argued, should be determined by the Government depending on the economic and social environment. These critiques were not commented on by the majority.

## RELATIONSHIP BBR AND MTO

### IX.6

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

The relationship between the Balanced Budget Rule of Article 3(1)(b) of the Fiscal Compact and the MTO rule in the Six-Pack was not discussed at the National Assembly. While there were certain discussions on the Balanced Budget Rule and the soundness of its numerical expression in the Bulgarian legislation, there were no references to the MTO.

## CASE LAW

### IX.7

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

Neither of the two has been litigated at the BCC.

## NON-EUROZONE AND BINDING FORCE

### IX.8

HAS BULGARIA 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?

Bulgaria is not bound by Title IV of the Fiscal Compact until it joins the Eurozone. See the answers to Questions IX.1 and IX.2.

## MISCELLANEOUS

### IX.9

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

No other relevant information.

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<sup>319</sup> National Assembly, Stenographic record of the 410<sup>th</sup> meeting, 15 November 2012.

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## **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.

Not relevant for Bulgaria.

### **NEGOTIATION**

X.2

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

Not relevant for Bulgaria.

### **STATUS INSTRUMENTS**

X.3

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

Not relevant for Bulgaria.

### **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?

Not relevant for Bulgaria.

## **ROLE PARLIAMENT ADJUSTMENT REQUIREMENTS**

X.5

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

Not relevant for Bulgaria.

## **ADJUSTMENT REQUIREMENTS**

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

Not relevant for Bulgaria.

## **MISSIONS**

X.7

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

Not relevant for Bulgaria.

## **CASE LAW INTERNATIONAL INSTRUMENTS**

X.8

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

Not relevant for Bulgaria.

## **CASE LAW IMPLEMENTING MEASURES**

X.9

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

Not relevant for Bulgaria.

## **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).

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Not relevant for Bulgaria.

## **CONDITIONALITY BOND PURCHASES ECB**

X.11

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

Not relevant for Bulgaria.

## **MISCELLANEOUS**

X.12

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

No other relevant information.

**ANNEX I: TABLE OF ABBREVIATIONS**

BCC	Bulgarian Constitutional Court
BNB	Bulgarian National Bank
BSP	Bulgarian Socialist Party
BWC	Bulgaria Without Censorship
CCB	Corporate Commercial Bank
CP	Convergence Programme
CRB	Constitution of the Republic of Bulgaria
CRIS	Special Committee on the Financial, Economic and Social Crisis
CSR	Country Specific Recommendation
DANS	State Agency for National Security
DPS	Movement for Rights and Freedoms
ECJ	European Court of Justice
ECOFIN	Economic and Financial Affairs Council
EFSF	European Financial Stability Facility
EFSM	European Financial Stability Mechanism
EMU	European Monetary Union
ERMII	Exchange Rate Mechanism
ESM	European Stability Mechanism
EU	European Union
FIB	First Investment Bank
FLSU	First-Level Spending Units
GDP	Gross Domestic Product
GERB	Citizens for the European Development of Bulgaria
GNA	Grand National Assembly
LIA	Law on International Agreements
LNA	Law on Normative Acts
LPF	Law on Public Finances
LPSB	Law for the Planning of the State Budget
LSB	Law on the State Budget
MEIP	Macroeconomic Imbalances Procedure
MTO	Medium-term Budgetary Objective
NDSV	National Movement Simeon the Second
NFSB	National Front for the Salvation of Bulgaria
NRP	National Reform Programme
PES	Party of European Socialists
RZS	Order Law and Justice
SG	State Gazette
SGP	Stability and Growth Pact
TBF	Three-year Budget Forecast
TFEU	Treaty on the Functioning of the European Union
VMRO - BNM	Internal Macedonian Revolutionary Organization - Bulgarian National Movement