



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

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I POLITICAL CONTEXT*

POLITICAL CHANGE

I.1

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

In February 2008, Presidential elections took place. At the time, the President used to be elected by Parliament. The candidates were incumbent President Klaus, and economist Jan Švejnar. In the first attempt (three rounds), neither of the candidates was elected (with Klaus missing one vote in the last round). The week after, a second attempt took place and Klaus was narrowly elected for the second five-year term. The elections divided Civic Democrats, as well as the governing coalition with Greens supporting Švejnar and Christian Democrats unable to agree on the support for either of the candidates. Failure to re-elect Klaus would have probably led to the fall of Prime Minister Topolánek and his coalition Government.

In 2008 the Lisbon Treaty ratification saga started. A group of members of the Chamber of Deputies (paradoxically members of the Civic Democrats, the party who hold the position of the Prime Minister and half of the seats in the Government, which negotiated and signed the Lisbon Treaty) filed a petition to the Constitutional Court for a preliminary review of the compliance of the Lisbon Treaty with the Constitution. The President joined the proceeding. The Court ruled that the petitioned parts of the Lisbon Treaty are in compliance with the Czech constitutional order (*Lisbon Treaty I*). Subsequently, the Chamber of Deputies and the Senate gave their consent to the Treaty on February 18, 2009 and May 6, 2009 respectively.

Until May 8, 2009 the Czech Government lead by PM Mirek Topolánek (Civic Democrats, a traditional conservative party and the main party on the right since 1992) was composed of Civic Democrats (81 seats in the Chamber of Deputies of the Parliament), Christian Democrats (13) and Greens (6). The Government did not have a majority (100 seats out of 200 in the Chamber of Deputies of the Parliament) and the coalition partners exercised disproportional influence in the Government. This second Topolánek Government was thus inherently unstable since its inception (the original vote of confidence was secured by the votes of two opposition MPs). Despite this fact, the Government passed its major reform of public finance (effective from January 1, 2008) amending 46 laws. Three new environmental taxes were created; the tax system was simplified; direct taxes were decreased, while indirect taxes increased; the average tax burden became around 21.3%. The reform also

* All translations from Czech in this report are mine.

introduced patients' fees, changed a price-setting scheme for medicaments, and reformed various social benefits. In 2008-09, two Deputies left the Greens and three Deputies from Civic Democrats formed a fraction, including one Christian Democrat,¹ with economic reforms and church restitutions being the major divisive issues. These changes further weakened the coalition Government.

In September 2009, a group of Senators (mostly from the Civic Democratic Party again) filed another petition to the Constitutional Court for a preliminary review of the compliance of the Lisbon Treaty with the Constitution. The Court ruled that also in the newly petitioned parts of the Lisbon Treaty, the Treaty was in compliance with the Czech legal order (*Lisbon Treaty II*). Despite the consent of three-fifth majorities in both chambers of the Parliament and two Constitutional Court judgments (the Court in obiter dictum indicated that the President was obliged to sign the Treaty promptly), the President refused to sign the Treaty unless the Czech Republic was given the same guarantees regarding the application of the Charter in CR as were given to the UK and Poland. CR was last to ratify. The Government therefore negotiated a political declaration adopted by the European Council in October 2009 that the Protocol 30 on the UK and Poland exemptions would be modified to include the Czech Republic as well.² President Klaus signed the Treaty, mentioning the pressure from the Constitutional Court and his on-going reservations, on November 3, 2009 and the ratification instrument was deposited ten days later with the Italian Government. On September 5, 2011 the Czech Government, in a letter from its Permanent Representative, submitted to the Council a proposal, in accordance with Article 48(2) TEU, for the amendment of the Treaties to add a Protocol concerning the application of the Charter to the Czech Republic. On May 22, 2013, the European Parliament adopted a resolution calling upon the European Council not to examine the change of Protocol 30 in regard to the Czech Republic's "opt out" mentioning, among others, meanwhile emerging case law of the CJEU on the so-called opt outs for the UK and Poland.³ Eventually, the 'Czech exemption' has not been included into the ratification of Croatian Accession Treaty as originally envisaged and with a new President elected in 2013 and a new Government appointed in 2014 (both of centre-left affiliations), the 'Czech exemption' has been buried.

¹ On the other hand, four former Social Democratic Deputies left the party and occasionally supported the Government.

² See the European Council Conclusions, Brussels Oct. 29-30, 2009, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/110889.pdf.

³ Judgment of the Court of Justice of 21 December 2011 in Joined Cases C-411/10 and C-493/10, especially paragraph 120. See European Parliament resolution of 22 May 2013 on the draft protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic (Article 48(3) of the Treaty on European Union) (00091/2011 – C7-0385/2011 – 2011/0817(NLE)). Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-209>.

Going back to Czech domestic politics in 2009, the division within Civic Democrats appeared to be crucial. President Klaus, who disliked Topolánek who succeeded him as the chairman of the party, which Klaus founded in early 1990s, retained significant influence over some members of the party. From January to June 2009, CR held the EU Presidency. During the Presidency, on March 24, 2009, the Social Democrats and the Communist Party with help of two Civic Democrats and two Greens voted non-confidence to the Government (it was already fifth attempt to vote non-confidence). Given that there was no majority in the Parliament, President Klaus upon an agreement between the governing coalition and the main opposition party, Social Democrats, mandated Jan Fischer, then the director of the Czech Statistic Office, to form a technocratic government until early Parliamentary elections. The Fisher Government took office on May 8, 2009.

The Constitution at the time did not provide for the possibility of voluntary dissolution of the Parliament by its own action (or by the President). Only more complicated variants existed. The Chamber of Deputies of the Parliament therefore followed a precedent from 1998 and passed a constitutional law on its own dissolution agreed to by the Senate and the President, with a view that early elections could take place in the Autumn. A group of MPs turned upon the Constitutional Court, which surprisingly annulled the constitutional law stating that it was not law at all as it lacked fundamental qualities of law, foremost general applicability.⁴

The elections to the Chamber of Deputies therefore took place in the regular term only. In the general elections on May 28-29, 2010, several new political parties gained seats in the Chamber of Deputies, particularly a conservative TOP 09, lead by Karel Schwarzenberg (former Foreign Minister representing the Greens) and Miroslav Kalousek (former leader of Christian Democrats) and a centrist and populist Public Affairs (Věci Veřejné), a truly new party with politically inexperienced MPs. These new parties gained momentum due to the financial crisis calling for fiscal responsibility and anti-corruption programme. New Civic Democrats' leader Petr Nečas formed a government (effective from July 13, 2010) composed of Civic Democrats (53 seats in the Chamber of Deputies of the Parliament), TOP 09 (41), and Public Affairs (24). The Government called itself a "coalition for fiscal responsibility, rule of law and fight against corruption", which also summarizes its programme. Despite a comfortable majority of 118 seats out of 200 seats in the Chamber of Deputies, the Government became soon unstable. The main clashing points were church restitutions and pension reform.

⁴ *Parliamentary Elections (Case Melčák)* Pl. ÚS 27/09 [2009] No. 318/2009 Coll., English translation available at: <http://www.concourt.cz/view/726>. In general, the Constitutional Court cannot review constitutional amendments. A constitutional amendment, once enacted, changes the constitution and thus changes the referential framework for the Constitutional Court. However, according to the Court, a constitutional amendment that breached procedural and material requirements of constitutional revision (Art. 9/1,2 of the Czech Constitution), the eternity clause included, could not be considered constitutional law at all.

On October 23, 2010 Senate elections took place,⁵ in which the Social Democrats gained majority (41 seats out of 81) for the first time in the history of the Senate traditionally dominated by Civic Democrats. The municipal elections, that took place at the same time, were narrowly won by Social Democrats.

In December 2010, Social Democrats unsuccessfully voted non-confidence to the Nečas Government. The first Government major crisis came in April 2011 as a result of corruption scandal within the junior coalition partner, Public Affairs.⁶ After the leader of the party and another member were found guilty by the first instance court in April 2012, eight MPs left the party and formed a new party LIDEM (Liberal Democrats). Public Affairs left the coalition and a new coalition between Civic Democrats, TOP 09, and LIDEM was formed and received the vote of confidence (105 MPs out of 200). The new junior party was very unstable and made the coalition governance difficult (another crisis emerged in December 2012, when LIDEM left the Government after its leader Karolína Peake was recalled by the PM from her post of Defence Minister after only 8 days in the office due to a pressure from President Klaus and his supporters within Civic Democrats).

On January 1, 2012, The Constitutional Court issued its judgment in the *Slovak Pensions* case, proclaiming the judgment of the CJEU in the preliminary question in *Landtova* case to be ultra vires and therefore without effect in CR.⁷ On October 20, 2012, Senate elections took place with Social Democrats enhancing their majority and the left parties gaining constitutional (three-fifth) majority. At the same time, Regional elections took place. Social Democrats won and formed regional governments in 11 out of 14 regions.⁸ These failures of the governing coalition significantly weakened the Nečas Government.

In November 2012, the Parliament voted on major tax reform of the Government (mainly

⁵ Senators are elected for a term of six years. Every two years one-third of the Senate is renewed. Senate does not vote on a budget and on a vote of confidence (that means the Government is accountable to the Chamber of Deputies only). The Senate may veto ordinary laws (a majority of 101 members of Chamber of Deputies may override the veto; the President disposes of the same power). Constitutional laws require three-fifth majority of both Chambers.

⁶ In connection with another alleged corruption (in the State Fund for Environment, due to which a Environment Minister resigned), Social Democrats called for another vote of non-confidence, which the Government survived again.

⁷ Pl. ÚS 5/12 *Slovenské důchody (Slovak Pensions) XVII* [2012]. See Tichý, L., Dumbrovský, T. Ústavní soud ČR mezi dvěma právními řády: od interpozice k nové evropské doktríně (The Constitutional Court of the Czech Republic between two legal orders: From interposition towards new European doctrine), *Právní rozhledy* 2013, 21(6): 191-198.

⁸ Communists formed a coalition government in 1 region, and Civic Democrats governed in 1 region (Prague – elections took place in 2010). In 2013 the Civic Democrat mayor of Prague was replaced by a mayor from TOP 09 with support of Social Democrats, thus Civic Democrats lost their last region.

VAT increase). Given an internal opposition within Civic Democrats, but also other coalition parties, the Government connected the vote on the reform with a confidence vote. If the reform failed, it would mean a fall of Government. In order to solve the crisis, three MPs from Civic Democrats, who refused to vote for the reform, resigned from the Parliament in exchange for positions in state-owned private companies. In June 2013 the three former MPs were arrested and charged with corruption constituted in these acts. This fact contributed to the fall of the Nečas Government.

In January 2013, the outgoing President Klaus granted a controversial amnesty that, among others, stopped prosecution of number of people suspected from large financial frauds during the 1990s. According to the Constitution, an amnesty act needs a countersignature of PM, and by countersigning, the Government takes political responsibility (as the President is not politically accountable). The Government was divided over the issue (PM allegedly did not consult his action with the Government)⁹ and many competing constitutional interpretation on what is the Government role in sanctioning President's acts emerged. The opposition called the Parliament to vote non-confidence, however, this attempt failed once again. Further blow to the centre-right Government came with the presidential elections on January 25-26, 2013. First time ever direct general elections of president were won by Miloš Zeman,¹⁰ who defeated Karel Schwarzenberg, conservative TOP 09 leader.

Miloš Zeman promptly (on April 3, 2013) finalized the ratification of the Council Decision on Art. 136 TFEU Amendment in a ceremony for which he "requested" attendance of Commission President Barosso to indicate the change of course towards the EU integration.¹¹ TOP 09, junior government party, attempted to use the momentum and urged for accession to the Fiscal Compact, threatening to leave the Government. However, as the momentum dissipated, they backed down.

On June 13, 2013 a major scandal lead to resignation of PM Nečas, which necessarily meant

⁹ It complicated the position of Schwarzenberg in the presidential race, who served as a Deputy PM in the Government.

¹⁰ Zeman was a Social Democratic PM 1998-2002. After new leaders of Social Democrats, despite left having majority, did not support Zeman in the indirect presidential elections of 2002 (Klaus was elected instead), Zeman left the party and set up his own leftist party. Zeman has had a similar influence on the Social Democratic party as Klaus has exercised over Civic Democrats even after he left the party. He has tried to exploit this support with Social Democrats and Communists voting for confidence to Rusnok Government appointed by Zeman).

¹¹ Zeman and Barosso also hoisted the EU flag at the Prague Castle, the seat of the President.

a fall of the whole Government.¹² By that time, the original majority of 118 seats out of 200, with which the Government started, did not exist anymore (11 MPs created three new political parties and another 6 were without political affiliation). Neither there was any other majority. The governing coalition nominated Civic Democrat Deputy Chairwoman and Chairwoman of the House of Deputies Miroslava Němcová for PM declaring a support of 101 (out of 200) MPs. Despite the declared majority for Němcová, President Miloš Zeman, who doubted such majority existed, designated Jiří Rusnok (former Finance Minister in Zeman Government in 2001-02, an economist, CEO of ING Pension Fund, and a member of the National Economic Council of the Government since 2010 – an expert advisory body of the Government) to form a new government. This was an unprecedented step from the President, given that CR is *parliamentary* democracy. The President, former leader of Social Democrats, elected in direct general elections unlike his predecessors, considered his mandate considerably strengthened by the fact of popular vote, while the Nečas Government was widely unpopular due to its fiscal austerity programme (tax increase, social benefits cuts, pension reform, etc.) and corruption scandals.¹³ On August 7, 2013, the Government failed to pass vote of confidence and resigned. At the same time previously declared majority for Němcová ceased to exist. In reaction to the fact that no majority (either on right or left or for the technocratic government) existed, the Chamber of Deputies asked the President to dissolve the Chamber (the Constitution was changed to allow explicitly for such option) and the President, who is obliged by the Constitution to do so in such case, dissolved the Chamber on August 28, 2013 and set early elections for October 25-26, 2013.

Social democrats lead by Bohuslav Sobotka won the general elections (50 seats in Chamber of Deputies), although with much less share of votes than expected, followed closely by a new protest movement party ANO of billionaire Andrej Babiš (47 seats). Communists were third (33 seats), followed by TP 09 (26 seats), Civic Democrats (16 seats), another new protest movement party Úsvit (14 seats) and Christian Democrats (14 seats). The former coalition parties were utterly defeated. A new center-left government of PM Sobotka composed of Social Democrats, ANO, and Christian Democrats was appointed in January 2014. It declares a turn in Czech European politics, pledging to accede to the Fiscal Compact and banking union and work towards adoption of euro.

In November 2013, the Czech central bank started massively selling Czech koruna to decrease its value fearing a risk of deflation in 2014. The central bank pledged to keep a koruna to euro ratio at 27:1 (in comparison to 25:1 before the intervention; koruna

¹² Several high profile politicians and civil servants were arrested and charged with abuse of office and corruption, including the head of the PM cabinet and close advisor (and mistress above all) Jana Nagyová.

¹³ Which was rather a result of reforms to make prosecution and police more independent on politicians than any unusual amount of corruption among state officials.

dropped by 4.4.% in one day).¹⁴ This move was criticized by politicians, while economists were divided.¹⁵

Let me briefly describe major political and economic reforms in the Czech Republic during the Euro-crisis. In general, despite the corruption scandals and unstable majority of the Nečas Government, it more or less successfully passed most of its economic reform programme. Also, the Finance Ministry was rather stable – lead between 2007 and 2013 (with an exemption of the technocratic government in May 2009 – July 2010) by Miroslav Kalousek from the conservative TOP 09. Although the debt rose from 37.8% of GDP in 2010 to 48.5% of GDP in 2013, the reasons rest in growing mandatory expenses, mainly pensions burden on the one hand, and stagnating GDP growth on the other hand. The Government passed church restitutions (financial separation of the church from the state negotiated since 1989), enhanced the independence of police and prosecution, and passed a major Civil Code reform. It failed to start up economic growth (its austerity measures, including social benefits cut, and limitation of investments affected the recovery from a foreign trade decline (80% of trade exchange is with the EU, mostly with Germany), did not incite the citizens to join its pension reform; and although it stopped the gradual increase of annual deficits, the debt has grown considerably. Most of the economic reforms between 2009-2013 were recommended by the EU as part of EDP started with CR in 2009 with an aim to be concluded by 2013.

Regarding the Eurocrisis measures, there has been more support for the ESM (only Public Affairs, Communists, and a part of Civic Democrats were against) than for the Fiscal Compact (supported by Social Democrats and TOP 09 only), the banking union (denied by all), and the Euro Plus Pact among the political parties. Majority of political parties argued a vital dependence of CR on a healthy Eurozone, given that almost 80% of CR export goes to the EU, mostly Germany. Moreover, the arguments go, all major Czech banks are daughters of banks with the seat in Belgium, France, Austria, or Italy and so the entire banking system is closely connected to the Eurozone. From the debates, it can be seen that support or refusal of the Eurocrisis-incited plans mostly depends on whether immediate obligations follow for CR from a plan. Any plans requiring transfer of competences or financial assistance have been difficult to defend. This must be assigned to a long-term opposition to

¹⁴ Czechs Play Koruna Hardball With Unlimited Interventions , Bloomberg, Nov. 8, 2013, <http://www.bloomberg.com/news/2013-11-07/czechs-play-koruna-hardball-as-intervention-triggers-record-drop.html>.

¹⁵ Očima expertů: Měnová intervence ČNB. Komu pomůže a komu ublíží? , Peníze.cz, Nov. 15, 2013, <http://www.penize.cz/makroekonomika/275985-ocima-expertu-menova-intervence-cnb-komu-pomuze-a-komu-ublizi>. Zeman: ČNB intervencí zpomalila vstup do eurozóny, Týden.cz, Feb. 18, 2014, http://www.tyden.cz/rubriky/byznys/cesko/zeman-cnb-intervenci-zpomalila-vstup-do-eurozony_298587.html#.UwmBYjycqg.

the EU integration from then President Klaus who were able to influence part of the leading right party, the Civic Democrats. The Civic Democrat PMs Topolánek and Nečas had to reconcile their position with this fraction within the party. Even the pro-European TOP 09 has been hesitant to support measures that would limit fiscal sovereignty of CR, while Social Democrats feared that any pledge to strict fiscal policies would limit their ability to deliver their promises once they win elections and form government. Various polls results indicated historically low support to further integration making any transfer of competences to the EU politically very difficult.

A general position of CR towards the Eurocrisis measures was summarized in the Government's document of 2013¹⁶ "Stabilisation and future of the EMU: A Czech Republic contribution to the European debate." In the section "Addressing fiscal policy failure and non-compliance with EU rules on coordination of fiscal and economic policies," CR emphasizes: "The basic principle of coordination should be a differentiated approach towards non-euro area and euro area countries. For the former, the existing framework of coordination of fiscal and economic policies is sufficient. For the latter, the coordination should take into account the degree of risk that particular Member State poses to the smooth functioning of the monetary union. It is possible to discuss additional options how to motivate euro area Member States threatening the well functioning of the monetary union to implement the necessary reform measures to the benefit of the whole. Member States whose economic situation is stable and their public finances sustainable should remain free to decide on their own fiscal policies and economic reform measures as long as they observe the relevant EU law. After all, they are the ones best suited and legitimized to choose the most appropriate approach."¹⁷

¹⁶ New center-left government appointed in Jan. 2014 has not comprehensively formulate its policy yet. As mentioned above, a certain turn can be observed with the government's pledge to accede to the Fiscal Compact, join the banking union, and work towards adoption of euro.

¹⁷ Government of the Czech Republic, Stabilisation and future of the EMU: A Czech Republic contribution to the European debate, April 24, 2013, available at: http://www.vlada.cz/assets/evropske-zalezitosti/dokumenty/CZ_non_paper_on_EMU.pdf.

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

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

This and the two subsequent questions will be answered with regard to the current legislative state. That means that the Fiscal Constitution Bill and its draft implementing laws will not be taken into account (there is a little chance that they will be adopted in the current version or that they will be adopted anytime soon).

With a draft of annual budget bill, the Government prepares medium-term expenditures frameworks. The Chamber of Deputies of the Parliament issues a resolution on the medium-term expenditures frameworks, where the expenditures for the two years following the upcoming budgetary year are set (that is a draft law of annual budget bill for 2014 will be accompanied with the medium-term expenditures frameworks for 2015 and 2016). The Chamber of Deputies consents to the expenditures for those two years following an annual budget by single amounts in the form of a regulation. These expenditures limits are binding for the preparation of the next annual budget. The medium-term expenditures frameworks are based on Government political programme – that is they work with a scenario that the Government policies for three upcoming years will be implemented.

A draft of annual budget bill (for central government) is prepared by the Ministry of Finance (MF) in cooperation with administrators of individual chapters of the budget, territorial self-governments, associations of municipalities, Regional Councils of Cohesion Regions and state funds.¹⁸ Regions and the capital Prague submit data for municipalities upon request of MF within 30 days. Other legal and physical persons submit their requests for the state budget by April 30 of a current year.¹⁹

Preliminary results of macroeconomic forecasts are published in January and March of a current year. On their basis medium-term expenditure frameworks are prepared and updated. MF submits to the Government a preliminary draft of medium-term expenditures frameworks by April 15 of a current year; the Government discusses the draft and adopts changes by April 30 of a current year. In April, the Office of the Government prepares and

¹⁸ Sec. 8 of the Law No. 218/2000 Coll. on Budgetary Law as amended.

¹⁹ Sec. 2 of the by-law of the Ministry of Finance of the Czech Republic No. 133/2013 Coll. setting the extent and structure of data for preparation of draft law on annual budget and draft medium-term outlook of state budget and the deadlines for submissions.

submits the Convergence Programme and National Reform Programme to the Commission and the Council. MF subsequently prepares a draft of revenues and expenditures structured according to individual chapters for the purposes of annual budget; single amounts of medium-term expenditures frameworks for the purposes of the draft Chamber of Deputies resolution; draft revenues and expenditures of state budget and state funds for the purposes of the draft medium-term expenditures frameworks. MF submits these drafts to the Government by May 31 of a current year and the Government discusses the drafts and adopts changes by June 20 of a current year. MF announces the amounts (expenditures and revenues) and other binding numerical characteristics to the administrators of individual chapters of the central government budget by June 30 of a current year. The administrators of individual chapters (ministries and other central institutions of central government such as the Office of the Government, state security agencies, the Energy Regulation Office, competition authority, etc.) act accordingly towards organizations and state funds under their supervision. Based on these binding numerical characteristics, the administrators of individual chapters of the central government budget prepare draft budgets of their chapters and draft medium-term outlook and submit the drafts to MF by July 31 of a current year. MF prepares and submits to the Government draft annual budget and draft medium-term expenditures frameworks by August 31 of a current year.²⁰

Meanwhile, during July, the Ministry of Finance evaluates the recommendations of the Council in reaction to the Convergence Programme in line with the Government approved limits on budget expenditures and revenues. In August, the Ministry preliminary incorporates the recommendations into the draft budget, so that the Government may discuss and approve a draft budget bill including the expenditures frameworks and medium-term outlook. At this time the Government and Ministry of Finance are given an opportunity to react on the Council recommendations, whether they are beneficial and acceptable. Subsequently, the Ministry of Finance works with the recommendations in detail, assesses their feasibility, and incorporates them into a draft budget bill in September.²¹

The Government shall submit annual budget bill and draft medium-term expenditures frameworks to the Chamber of Deputies of the Parliament three months before the start of a new budgetary year; that is by September 30 of a current year. The Chamber of Deputies is the only chamber of the Parliament that discusses and passes annual budget bill. Albeit in ordinary legislative procedure, the Senate does not have any competences over annual budget bill. Also, the President lacks, in comparison with ordinary legislative procedure, a

²⁰ Secs. 8, 8a, and 8b of the Law No. 218/2000 Coll. on Budgetary Law as amended.

²¹ See “Minutes from the 12th session of the Budgetary Committee of the Chamber of Deputies of the Parliament, March 1 and 3, 2011”, p. 9.

competence to return annual budget bill. Three readings take place. The President of the chamber assigns budget bill to the Budgetary Committee. In the first reading, the Minister of Finance presents the budget. Only the overall revenues and expenditures, deficit and its financing, and relationship to territorial self-governments' budgets (basic characteristics) are discussed. The Chamber of Deputies may adopt changes to the basic characteristics and set the deadline (20-30 days) for the Government to submit a revised budget bill. If basic characteristics are agreed to, they cannot be changed in the subsequent readings. Budget bill is assigned to competent Committees, which adopt their resolutions (after requesting an opinion of the competent administrator of the budgetary chapter) and submit them to the Chamber. The resolution may be accompanied by an opponent report. The Budgetary Committee may react to any part of the budget bill, while other Committees acts only within their specialization. In the second reading, Committees' resolutions are discussed and amendments to the budget bill may be submitted. In the third reading, only technical, grammatical, and similar changes can be made. However, a proposal to repeat the second reading is admissible. All proposals from the second (content based) and third (technical) readings are voted individually and subsequently a vote on the amended budget bill takes place. The law on annual budget is published in the State Gazette. If the law on annual budget is not adopted, provisional budget procedure is activated – MF prepares indicators of provisional budget in cooperation with administrators of individual chapters. The administrators then prepare monthly budgets in the sphere of their competences. The maximum amount of expenditures for each month cannot surpass one twelfth of the overall expenditures of the previous budgetary year.²²

The Government prepares and submits to the Chamber of Deputies a mid-year report on the performance of economy and observance of the state budget and an evaluation of the observance of territorial self-governments' budgets, associations of municipalities, Regional Councils of Cohesion Regions, and the development of state assets, state guarantees, state debt, including their detailed analysis and outlook on observation of the budget in the second half of budgetary year, and in case of deviation from the agreed budget, an information on steps taken to ensure stability of budget management. MF surveys closely budgetary performance and informs the Government about it in the first and third quarters; the Government submits a report to the Budgetary Committee of the Chamber of Deputies the month following first and third quarters. The mid-year report and quarterly reports are published. All the participants in central government budget must submit data for these reports. Failure to do so results in suspension of budgetary funds.²³

²² Secs. 101-106 of the Law 90/1995 Coll. as amended on the Rules of Procedure of the Chamber of Deputies of the Parliament.

²³ Sec. 20 of the Law No. 218/2000 Coll. on Budgetary Law as amended.

After the end of the budget year, MF prepares a draft central government final account, which is discussed by the Government and submitted to the Chamber of Deputies of the Parliament by April 30. The Chamber issues a resolution on the central government final account. It also decides on the financing of deficit or use of surplus in case these differ from the agreed budget.²⁴

GENERAL CHANGE

II.2

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

The timeline of a budget preparation changed (the first phase) with the introduction of the European Semester (see question VIII.8) and preparation and observance of medium-term expenditures framework was detailed.

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 substantial changes in the competences of central government institutions were made in reaction to the Euro-crisis. Some changes had been introduced before or independently of the Euro-crisis legislation (such as binding resolution of the Chamber of Deputies of Parliament on medium-term expenditures framework), other changes have been drafted (the Fiscal Constitution Bill and its implementing laws – see further).

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?

See question VIII.8.

MISCELLANEOUS

II.5

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

No.

²⁴ Sec. 30 of the Law No. 218/2000 Coll. on Budgetary Law as amended.

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)?

So far, no implementation laws are in force, apart of those that preceded Euro-crisis law. The intent of the Nečas Government has been to adopt Fiscal Constitution, which would be detailed in ordinary laws. To ensure stability of the new fiscal legislative framework, the Fiscal Constitution Bill requires implementing laws to be adopted by both chambers of Parliament (Art. 14).²⁵ Certain technical changes (e.g. the European Semester)²⁶ occurred only in the practice of the Ministry of Finance and the Office of Government.

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?

Two constitutional amendments were submitted by the Government to the Parliament:

1. Constitutional bill on fiscal responsibility (Fiscal Constitution Bill) setting the BBR, MTO and sanction mechanism for both the state and territorial self-government budgets.
2. Constitutional bill amending the competences of the Supreme Auditing Office so that it can audit organs of territorial self-government (regions and municipalities) and private companies. The constitutional bill passed in the Chamber of Deputies, but was rejected in the Senate.²⁷

The Fiscal Constitution Bill represents a major internal reaction to the Euro-crisis, therefore I shall develop more on its political context, legislative process, content, and implications.

²⁵ Under ordinary legislative procedure, the Senate may only veto a bill, which the Chamber of Deputies can overrule with absolute majority,

²⁶ The annual budgetary timetable is approved by the Chamber of Deputies resolution.

²⁷ The constitutional amendment had been submitted by the Government already in the previous Parliamentary term in November 2009, but did not pass further than the first reading. See Chamber of Deputies of Parliament Document No. 960, 5th Parliamentary Term. Available at: <http://www.psp.cz/sqw/historie.sqw?o=5&t=960>.

The Nečas Government prepared a constitutional amendment on fiscal responsibility (Fiscal Constitution Bill). The constitutional amendment was submitted to the Chamber of Deputies of the Parliament on November 10, 2012;²⁸ the first reading took place on February 6, 2013 and the second reading on June 11-12, 2013. The political crisis that started in June 2013 and ended with a confidence vote to new government in February 2014 (after early elections in October 2013) stayed the legislative process. An opposition party (TOP 09) resubmitted the original Fiscal Constitution Bill to the Chamber of Deputies. However, the new government is unlikely to accept the Bill in its current version. Despite these uncertainties, let me present the current version of the Fiscal Constitution Bill as it is the only proposal at the moment and has been subject to extensive debate over the past years. It is important to emphasize, that the Fiscal Constitution Bill aimed to implement certain parts of the Council Directive 2011/85/EU, which had to be transposed by December 31, 2013 (that means CR is currently in default on its obligation). One of the problems is that without an amendment to the Constitution, the Government does not dispose of sufficient tools to control fiscal responsibility of regional and municipal self-governments, including an enforcement of medium-term budgetary objectives. The Fiscal Constitution Bill aimed to enter into force on January 1, 2014 with exceptions indicated below.

Draft Fiscal Constitution as amended by the Budgetary Committee of the Chamber of Deputies of the Parliament:²⁹

1. All public institutions must have medium-term budgetary outlook for at least two years beyond the annual budget.
2. The draft establishes National Fiscal Council – see question VII.5.
3. Debt brakes: Corrective measures activate on the 15th day of the month following the month in which the debt to GDP ratio was announced. The draft works with two indicators – debt (or level of indebtedness) and public debt – debt (level of indebtedness) is the amount of public debt minus the amount of state debt incurred by an emission of state obligations from which a financial reserve for financing state debt is created.
 - a. If the debt is between 45-50% GDP, the Government informs the Chamber of Deputies and submits, after consulting the National Fiscal Council (NFC), measures to slow down the debt raise. New state guarantees may be issued

²⁸ Chamber of Deputies of the Parliament Document No. 821/0, 6th Parliamentary Term.

²⁹ The amendment was negotiated between the Government and the main opposition party, Social Democrats, and adopted by the Committee on May 9, 2013. Chamber of Deputies of the Parliament Document No. 821/2, 6th Parliamentary Term.

only after agreed to by the absolute majority of the Deputies and the absolute majority of the Senators.

- b. If the debt is between 50-55% GDP the same measures are activated plus, first, the Government shall lower the expenses for the current budget year (this is valid only for the first year, in case the debt over 50% GDP continues to exist) with exceptions enlisted in laws (such laws must be agreed to by both Chambers of the Parliament); second, the Government shall not increase the expenses for the following budget year above the expenses of the current year (with the exception enlisted in laws – such laws must be agreed to by both Chambers of the Parliament); third, the Government shall not submit to the Parliament laws decreasing revenues from taxes and fees, with an exception of international obligations); fourth, the Government shall consent only to balanced budgets of health insurance companies, that provides public insurance (surpluses from previous years may be included); fifth, the base for public officials salaries shall decrease by 20% in the following year.
- c. If the debt is between 55-58% GDP, first, the measures under point a. are activated; second, the Government must lower the expenses for the current budget year (this is valid only for the first year, in case the debt over 50% GDP continues to exist) with exceptions enlisted in laws (such laws must be agreed to by both Chambers of the Parliament); third, the Government shall not submit to the Parliament laws decreasing revenues from taxes and fees, with an exception of international obligations); fourth, the base for public officials salaries shall decrease by 20% in the following year (that is measures under point a. and selected measure under point b.); plus fifth, the Government submits to the Parliament balanced or surplus budget of the state and state funds; and sixth the Government shall consent only to balanced budgets of health insurance companies, that provides public insurance (surpluses from previous years may NOT be included).³⁰ If the debt of the territorial self-government is higher than 55% GDP, the self-government shall adopt balanced or surplus budget, unless the deficit can be financed from a previous years surplus or returnable financial assistance. If the debt is over 55% GDP, public institutions (state, state funds, health insurance companies, territorial self-governments) shall not take any new long-term liabilities increasing the debt.
- d. If the debt is 58% GDP and above or if the public debt is above 60% GDP, the

³⁰ This measure was set to come into force as of January 1, 2018.

measures under point c. above activate plus the Government shall return to the Parliament for the vote of confidence without delay.

4. The exceptions from the corrective measures may be provided by implementing laws in case of, first, significant worsening of the economic development or worsening of security situation of the state; second, state of emergency; third, natural disaster; and fourth, expenses resulting from international obligations.
5. A territorial self-government's (TSG) overall debt shall not exceed 60% of its revenue average in the last four years. If a TSG exceeds the limit, it shall correct the debt following the procedure prescribed in the implementing laws. If a TSG does not comply, the state may put on hold the revenues from taxes designated for the TSG, in the level of 5% of the difference between the debt and 60% of its revenue average in the last four years. These revenues can be used for paying the debts incurred before the year the revenues were put on hold. These measures aimed to enter in force on January 1, 2018.

Implementing (ordinary) bills were submitted to the Parliament on June 27, 2013 – Government Bill on the Rules on Fiscal Responsibility³¹ and Government Bill Amending Selected Laws in Connection with Adoption of the Law on the Rules on Fiscal Responsibility.³² The laws aimed to create an independent Committee for budgetary forecasts (Výbor pro rozpočtové prognózy), which would evaluate economic and budgetary forecasts of central government and territorial self-governments. Forecasts evaluated as realistic or conservative would represent the basis for the preparation of an annual budget. The laws would further introduce sanctions for territorial self-government units (regions and municipalities). If a territorial self-government unit exceeds 60% of the average revenues in the last four years, the Ministry of Finance suspends the unit's share on the revenues from the VAT and income tax in the amount corresponding to the breach of unit's obligation.³³

The Fiscal Constitution Bill and implementing bills have not gained support of the then main opposition party, the Social Democrats. Finance Minister Kalousek called the Social Democrats hypocrites for urging the Government to sign the Fiscal Compact on the one hand, but, on the other hand, being unwilling to support the Fiscal Constitution, despite the

³¹ Chamber of Deputies of the Parliament Document No. 1097/0, 6th Parliamentary Term.

³² Chamber of Deputies of the Parliament Document No. 1098/0, 6th Parliamentary Term.

³³ Vláda předložila poslancům doprovodné zákony k Finanční ústavě (The Government submitted to the Parliament implementing laws to the Fiscal Constitution), epravo.cz, July 8, 2013, available at: <http://www.epravo.cz/zpravodajstvi/vlada-predlozila-poslancum-doprovodne-zakony-k-financni-ustave-91908.html>.

Government's will to compromise. Kalousek reiterated that the same text of the Fiscal Constitution would be needed if CR signed the Fiscal Compact; and so, the Fiscal Constitution Bill in fact implements the Fiscal Compact.³⁴ The opposition (Social Democrats and Public Affairs) criticized that the draft would limit the future government ability to restore economic growth – that it would forbade to lower taxes and increase investments (by endangering a co-financing ability of CR regarding the EU funds and EIB loans and so limit the ability to use these funds and credits; endangering public-private investment projects for the same reason, etc.).³⁵ In sum, the opposition claimed that such constitutional limitations are unacceptable at this stage of economic cycle. A fraction of Civic Democrats criticized the Fiscal Constitution Bill for taking fiscal and tax sovereignty from the Parliament (by entrenching debt and deficit limits in the Constitution) as well as not preventing that increase in taxes would not be used for further spending, but for lowering the debt.³⁶ Then opposition leader Bohuslav Sobotka (now PM) further warned that by entrenching the fiscal limits in the Constitution gives new powers to the Constitutional Court to review an annual budget for possible breach of the Constitution. Also, he pointed out that the limits posed by the Fiscal Constitution Bill are not observed by the Government itself – the multiannual budgetary frameworks counts with deficits in the next three years which would lead to reaching the debt limit of 55% of GDP in 2016 with a consequence that for 2017 there would have to be a balanced budget, or else the Constitutional Court will strike down 2017 budget law.³⁷ At the same time, the current tax reforms lowers the predicted revenues for these years. This puts the future government in double unfavourable position – lowering the revenues, while preventing large investments and obliging the future government to considerably cut expenses between 2016 and 2017 (by around 10%). Also, he emphasized that the debt breaks in the version before the compromise made in the Budgetary Committee are activated when the public debt reaches 40% (the first break), then when it reaches 45% (the second break), and finally when it

³⁴ Finance Minister Kalousek, stenographic protocol, Chamber of Deputies of the Parliament, June 11, 2013, available at: <http://www.psp.cz/eknih/2010ps/stenprot/054schuz/s054024.htm>. TOP 09 was for the adoption of the Fiscal Compact.

³⁵ MP Vít Bárta (Public Affairs), MP Paroubek (former Social Democratic Prime Minister), MP Sobotka (Shadow Prime Minister, Chairman of Social Democrats), stenographic protocol, Chamber of Deputies of the Parliament, June 11, 2013, available at: <http://www.psp.cz/eknih/2010ps/stenprot/054schuz/s054025.htm> et seq.

³⁶ MP Doktor (Civic Democrats), stenographic protocol, Chamber of Deputies of the Parliament, June 11, 2013, available at: <http://www.psp.cz/eknih/2010ps/stenprot/054schuz/s054027.htm>.

³⁷ The Governing coalition opposed this claim. They negotiated with Social Democrats for half a year their objections and the result was that the deficit has to decrease, in line with SGP, by 0.5% a year. Finance Minister Kalousek, stenographic protocol, Chamber of Deputies of the Parliament, June 12, 2013, available at: <http://www.psp.cz/eknih/2010ps/stenprot/054schuz/s054061.htm>.

reaches 50% (the third break), while at the end of 2013, the public debt is predicted to reach already 48%.

Sobotka also made clear the position of Social Democrats towards the Fiscal Compact. CR must accede to the Compact in the future and must implement the debt break on the constitutional level, however, it is CR who must choose proper time for these changes – now the Government needs more flexibility to regain sufficient economic growth.³⁸ Social Democrats published in February 2013 five conditions under which they were willing to support the Fiscal Constitution Bill: First, ratification of the Fiscal Compact (which goes well beyond the Fiscal Constitution Bill, especially in the enhancing the economic and fiscal cooperation; though in particularities Social Democrats raised objections to the Compact – e.g. that the requirement of structural deficit of 0.5% of GDP is harming in the current stage of economic cycle); second, full implementation of EU legislation into the Fiscal Constitution Bill (current indicators are not compatible with EU standards); third, revelation of hidden debts created by the Nečas Government, so that the future government is fully aware of its limits; fourth, submission of implementing laws (done by the Government in the end of June 2013 only); fifth, change of the limit for debt break activation from 40-50% to 45-55%, given that the public debt have risen from 28,28% in 2006 to 45% at the end of 2012, that is during the conservative governments.³⁹

The Communists have not fully rejected the Fiscal Constitution Bill, however they first urged for an exemption of health insurance sector from the public debt and deficit rules (arguing that given the current bad economic situation of the health care sector, deficit financing is necessary and entrenching the fiscal rules on the health insurance sector in the Constitution would soon create a conflict with the constitutional right for accessible and quality health care). Further, the Communists claimed that the fiscal limits set by the Fiscal Compact are unsustainable and that the EU considers changing the course anyway towards more investments, which can be financed under the current situation by increasing the debt only. Also they claimed that fiscal constitutions do not work on their own (e.g. Spain), but need a rational economic policy (that is, it is indifferent whether CR enacts a fiscal constitution or not), nor such institutions as an independent fiscal council proves successful (e.g. Hungary).⁴⁰

MP Paggio (from a junior coalition party LIDEM) pointed to the fact that the criticism of the

³⁸ MP Sobotka, stenographic protocol, Chamber of Deputies of the Parliament, June 12, 2013, available at: <http://www.psp.cz/eknih/2010ps/stenprot/054schuz/s054028.htm>.

³⁹ Czech Social Democratic Party, Press Release, Feb. 19, 2013. Available at: <http://www.cssd.cz/media/tiskove-zpravy/5-podminek-cssd-k-prijeti-fiskalni-ustavy/>.

⁴⁰ MP Dolejš, stenographic protocol, Chamber of Deputies of the Parliament, June 12, 2013, available at: <http://www.psp.cz/eknih/2010ps/stenprot/054schuz/s054056.htm>.

Fiscal Constitution Bill was in fact a criticism of the Fiscal Compact.⁴¹ He also called for more flexibility and differentiated approach to Member States (one size does not fit all). Also, he stated that the Fiscal Compact was only a message for financial markets and cannot and will not be respected by many MS.⁴² MP Šeich (Civic Democrats) reminded the Parliament that balanced budget rule was nothing exotic or atypical, as it could have seemed from the debate, but that proposals for balanced budget rule were made already in 1995 (first Klaus Government; within annual budgeting practice) and again in 2002 (by Klaus as well, this time in the form of constitutional amendment). If CR had adopted the balanced budget constitutional rule in 2002 (rejected by a Social Democratic Government at the time), it would have been one of few countries (after Germany (a weak version of “golden rule” before the 2009 reform), Poland (1997 reform), and Switzerland (2001 reform)) with such rule on a constitutional level; and to have such rule then would have made much more sense and brought results given the growth was about 6% in the subsequent years.

The implementing laws have not been discussed in the Parliament.

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?

No, the Czech constitutional order has not contained any of these.

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

In general, the constitutional order of the Czech Republic consists of several constitutional acts - Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic in the strict sense, and a number of other constitutional acts and their amendments.⁴³ The

⁴¹ He emphasized on the hypocrisy of Social Democrats behaving in that way as fiscal restrictions made in CR by Czech Government are bad and fiscal restrictions made in the EU are good.

⁴² MP Paggio, stenographic protocol, Chamber of Deputies of the Parliament, June 12, 2013, available at: <http://www.psp.cz/eknih/2010ps/stenprot/054schuz/s054030.htm>.

⁴³ The concept of constitutional order is defined in Art. 112 (1) of the Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic: “The constitutional order of the Czech Republic is made up of this Constitution, the Charter of Fundamental Rights and Basic Freedoms, constitutional acts adopted pursuant to this Constitution [e.g. Constitutional Act No. 347/1997 Sb., on the Creation of Higher Territorial Self-Governing Units; Constitutional Act No. 110/1998 Sb., on the Security of the Czech Republic; Constitutional Act No. 515/2002 Sb., on the Referendum on the Czech Republic’s Accession to the European Union] and those

constitutional order forms a referential framework for the Constitutional Court for evaluating constitutionality of all other acts. All constitutional provisions, disregarding in which constitutional act they are to be found, have the same legal status with one exception: the eternity clause in Art. 9(2) of the Constitution grants 'higher status' to "the essential requirements for a democratic state governed by the rule of law", whose changes are impermissible. Intermediate status between constitutional law and ordinary law is assigned to international treaties ratified by the Parliament (which possess application priority over ordinary laws in case of conflict). The European Union law and its interpretation by the EU institutions, to provide a rather simplified answer,⁴⁴ is in compliance with the Czech constitutional order as long as it does not breach the "the essential requirements for a democratic state governed by the rule of law" protected by the eternity clause as interpreted by the Constitutional Court. The Constitutional Court reviews the existing EU law and acts of the EU institutions from the point of compliance with the eternity clause.⁴⁵ However, in case of *ex ante* review of international treaties (after they are signed, but before their ratification), the Court reviews their compliance with the entire constitutional order (not only the eternity clause).⁴⁶ For more on the constitutional review of international treaties see the answer on questions related to the ratification of the European Council Decision on Art. 136 Amendment below).

Constitutional amendment can take form of a separate constitutional act or a change to existing constitutional act. There is no legal difference in these forms. A constitutional amendment requires adoption by three-fifths of all Deputies and three-fifths of Senators present (Art. 39 (4) of the Constitution).

Constitutionality of a constitutional amendment can be assessed by the Constitutional Court for compliance with the "the essential requirements for a democratic state governed by the rule of law" protected by the eternity clause.⁴⁷ The Czech legal order provides for

constitutional acts of the National Assembly of the Czechoslovak Republic, the Federal Assembly of the Czechoslovak Socialist Republic, and the Czech National Council defining the state borders of the Czech Republic, as well as constitutional acts of the Czech National Council adopted after the sixth of June 1992".

⁴⁴ For analysis of the Czech Constitutional Court's European doctrine see Tichý, L., Dumbrovský, T., *Between Two Legal Orders. A Relativist Doctrine for a Member State Constitutional Court?*, in Henning Koch, Karsten Hagem-Sørensen, Ulrich Haltern, and Joseph H.H. Weiler (eds) *Europe. The New Legal Realism. Essays in Honour of Hjalte Rasmussen*. Copenhagen: DJØF Forlag, 2010, pp. 757-782

⁴⁵ *Sugar Quotas Regulation II*, Pl. ÚS 50/04 [2006] No. 154/2006 Coll., English translation available at http://angl.concourt.cz/angl_verze/cases.php.

⁴⁶ *Lisbon Treaty I*, Pl. ÚS 19/08 [2008], No. 446/2008 Coll., English translation available at http://angl.concourt.cz/angl_verze/cases.php.

⁴⁷ *Parliamentary Elections (Case Melčák)* Pl. ÚS 27/09 [2009] No. 318/2009 Coll., English translation available at: <http://www.concourt.cz/view/726>.

both ex ante (abstract review) and ex post constitutional review (concrete review). Under the ex ante review the Constitutional Court has power to annul statutes or individual provisions thereof if they are in conflict with the constitutional order and to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute. A petition, proposing the annulment of a statute, or individual provisions thereof, may be submitted the President; a group of at least 41 Deputies or a group of at least 17 Senators; a Panel of the Court in connection with deciding a constitutional complaint; the government if an international court finds that an obligation resulting for the Czech Republic from an international treaty has been infringed by the encroachment of a public authority.⁴⁸ Under the ex post or concrete review, the Constitutional Court has a jurisdiction over constitutional complaints of natural or legal persons against final decisions or other encroachments by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms.⁴⁹

Both constitutional bills indicated in the answer to question III.2 were proposed by the Government as part of its programme of fiscal responsibility agreed to after the general elections of 2010. While the Fiscal Constitution Bill aimed to be adopted as a separate constitutional law, the Supreme Auditing Office Constitutional Bill aimed to amend the Constitution. However, this difference is purely technical (all constitutional laws form together a 'constitutional order'). All constitutional laws have same legal force (with an exception of the eternity clause in Art. 9(2) of the Constitution that grants 'higher status' to "the essential requirements for a democratic state governed by the rule of law", whose changes are impermissible – the self-government is one of such 'essential requirements' according to the Constitutional Court). The two constitutional bills neither explicitly regulate their relationship to other constitutional provisions, nor do they directly affect them.. For the relationship with other constitutional provisions and problems it raises (judicial review of annual budgetary laws; affect on economic and social rights, such as affordable healthcare) see the political debate on the Fiscal Constitution Bill in answer to question III.2.

RELATIONSHIP WITH EU LAW

III.5

IS THE CONSTITUTIONAL AMENDMENT SEEN AS CHANGING THE RELATIONSHIP BETWEEN NATIONAL AND

⁴⁸ Sec. 64 of the Constitutional Court Act. Available in English at <http://www.usoud.cz/en/constitutional-court-act/>.

⁴⁹ Sec. 72 of the Constitutional Court Act. A complainant (under concrete review) may submit, together with his constitutional complaint, a petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint, if the complainant alleges it to be in conflict with a constitutional act, or with a statute, where the complaint concerns some other enactment. (Sec. 74 of the Constitutional Court Act).

EUROPEAN CONSTITUTIONAL LAW?

No. The draft constitutional law on Fiscal Constitution partly implements the Directive 2011/85 and the Regulations 2275/2011 and 1177/2011. However, the Czech Republic is not party to the Fiscal Compact or the ESM. The second draft constitutional law did not implement any EU or international obligations of CR.⁵⁰

ORGANIC LAW

III.6

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

The concept of organic laws does not exist in the Czech legal order. Intermediate status between constitutional laws (that forms together a constitutional order with 'essential requirements for a democratic state governed by the rule of law' having kind of supra-constitutional force) and ordinary laws is assigned to international treaties ratified by the Parliament (which possess application priority over ordinary laws in case of conflict).

CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

III.7

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

No constitutional amendment has been adopted yet. However, both constitutional bills mentioned above require implementing laws. Two implementing (ordinary) bills to the Fiscal Constitution were drafted. Implementing law must be, of course, in compliance with the constitutional law and other parts of the constitutional order. Especially regarding the obligations imposed on territorial self-governments, it must be restrictive.

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?

For thorough analysis see answer to question III.2. So far, no implementation laws are in force. The changes already made (which were mostly realized as part of the Government programme on fiscal responsibility) were not perceived as implementing Euro-crisis law.

⁵⁰ Apart of the INTOSAI Lima Declaration of 1977, that is however, not binding. The limits to audit control of territorial self-government are set by the European Charter of Local Self-Government of the Council of Europe.

CZECH REPUBLIC

Given that both constitutional bills mentioned above are not perceived as direct implementation of Euro-crisis law (for political intertwining of the Fiscal Constitution Bill and the Fiscal Compact see answer to question III.2), also the implementing laws would not be perceived as such.

MISCELLANEOUS

III.9

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

No.

IV EARLY EMERGENCY FUNDING

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

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

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

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

The EFSF is a special purpose vehicle created under Luxembourgish private law by the 17 member states of the Eurozone. The EFSF Framework Agreement was signed on June 7, 2010. On June 24, 2011, the Heads of State or Government of the Eurozone agreed to increase the EFSF’s scope of activity and increase its guarantee commitments. (http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf and http://www.efsf.europa.eu/attachments/faq_en.pdf)

NEGOTIATION

IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID THE CZECH REPUBLIC 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 Czech Republic (CR) is not a member of the Eurozone and has not participated in the operations of the EFSF. Regarding the EFSM, which applied to all MS, CR has guaranteed the loans to Ireland and Portugal from the mechanism in the amount equalled to approximately 1.25% (the Czech Republic’s share on the EU budget),⁵¹ in particular CR has guaranteed the loans in the amount of 6.7 bn CZK (app. 258,3 millions EUR) in the case of Ireland and 7.7 bn CZK (app. 297 millions EUR) in the case of Portugal.⁵²

The EFSF was criticized for its legal framework – a private company by shares under Luxembourg law with full immunity in all MS, that is being an organization “above law,

⁵¹ Češi by na pomoc Portugalsku dali až 11,25 miliardy korun (The Czechs would participate with up to 11.25 billions CZK in the aid to Portugal), *E15.cz*, April 7, 2011, available at: <http://zpravy.e15.cz/domaci/ekonomika/cesi-by-na-pomoc-portugalsku-dali-az-11-25-miliardy-koron>.

⁵² Czech National Bank, *Hospodářská a měnová politika v EU (Economic and Monetary Union in the EU)*, available at: http://www.cnb.cz/cs/o_cnb/mezinarodni_vztahy/cr_eu_integrace/.

staying outside common European legislation, functioning outside the primary law, while having direct and significant impact on all MS of the EU, including [Czech Republic].”⁵³ A general criticism of the EFSM was raised in connection with the ESM within the debates on Article 136 TFEU Amendment. The debate on EFSM was rather non-existent. The political situation can be the reason – CR had a technocratic government and all political parties were preparing for general elections on May 28-29, 2010 (the voting in the Council took place on May 11). Therefore the issue was not debated in the Parliament (the Committee on EU affairs only took note on the (technocratic) Government position (supporting the EFSM) without any discussion. Finance Minister Eduard Janota stated in support of the CR position that the financial crisis and particularly the situation in Greece had caused the raise of Czech state debt obligations costs by 0.4% in the first 7 days in May only. President Klaus stated that CR should resist any involvement in assistance to Greece.⁵⁴

ENTRY INTO FORCE

IV.2

ARTICLE 1(1) EFSF FRAMEWORK AGREEMENT PROVIDES THAT IT WILL ENTER INTO FORCE IF SUFFICIENT EUROZONE MEMBER STATES HAVE CONCLUDED ALL PROCEDURES NECESSARY UNDER THEIR RESPECTIVE NATIONAL LAWS TO ENSURE THAT THEIR OBLIGATIONS SHALL COME INTO IMMEDIATE FORCE AND EFFECT AND PROVIDED WRITTEN CONFIRMATION OF THIS. WHAT DOES THIS PROCEDURE LOOK LIKE IN THE CZECH REPUBLIC AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

CR has not participated in the EFSF.

GUARANTEES

IV.3

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

CR has not participated in the EFSF.

ACTIVATION PROBLEMS

IV.4

⁵³ MP Kateřina Klasnová (Public Affairs party), Chamber of Deputies of the Parliament, June 5, 2012 (during ratification of the EC Decision on the Art. 136 Amendment), available at: <http://www.psp.cz/eknih/2010ps/stenprot/040schuz/s040017.htm>.

⁵⁴ Euroskop.cz, Vnitřní trh in May 2010 (Internal Market in May 2010), June 4, 2010, available at: <https://www.euroskop.cz/13/16552/clanek/vnitрни-trh-v-kvetnu-2010/>. Of course, the EFSM did guarantee loans to Ireland and Portugal, not Greece.

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

CR has not participated in the EFSF.

CASE LAW

IV.5

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

No. CR has not participated in the EFSF.

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?

CR has not participated in the EFSF.

IMPLEMENTING PROBLEMS

IV.7

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

CR has not participated in the EFSF.

BILATERAL SUPPORT

IV.8

IN CASE THE CZECH REPUBLIC 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?

Czech Republic did not participate in providing funding on a bilateral basis.

MISCELLANEOUS

IV.9

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

Not applicable

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V TREATY AMENDMENT ARTICLE 136(3) TFEU

At the 16/17 December 2010 European Council a political decision was taken to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. On March 25, 2011 the European Council adopted the legal decision to amend article 136 TFEU by adding a new third paragraph: “The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.”

The process of approval of this decision by the member states in accordance with their respective constitutional requirements as prescribed by article 48(6) has been completed and the amendment has entered into force on 1 May 2013.

NEGOTIATION

V.1

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

The Parliament gave a preliminary consent to the Government to agree to the draft European Council Decision on Art. 136 Amendment.⁵⁵ On March 16, 2011, the Chamber of Deputies of the Parliament mandated the Government to agree to a compromise that would not differ substantially from the original draft, that would respect the basic framework set by the Statement by the Eurogroup of Nov. 28, 2010, and that would be in compliance with Art. 48/6 TEU.⁵⁶ The Government then conditioned its consent to the plan – a Treaty amendment would be strictly limited to the aim sought and would not transfer new competences to the EU (the second condition, however, follows from the limitations of the simplified procedure itself). Under these two conditions, CR agreed to the use of the simplified procedure.

In the Parliamentary debate, Prime Minister (PM) Nečas emphasized that the Amendment does not transfer new competences to the EU, that there is no obligation for CR to financially participate on the ESM operations and at the same time nothing prevents CR to voluntarily participate on the mechanism ad hoc. He reassured that strong Euro is essential for the Czech economy and that CR supports the draft Amendment and the ESM in

⁵⁵ A preliminary consent procedure was adopted with the ratification of the Lisbon Treaty. Sec. 109i lit. b) of the Law No. 90/1995 Coll., Rules of Procedure of the Chamber of Deputies, a Sec. 119k lit. b) of the Law No. 107/1999 Coll., Rules of Procedure of the Senate.

⁵⁶ Chamber of Deputies of the Parliament, Resolution No. 368/1 of March 16, 2011 on the Draft European Council Decision on Art. 136 Amendment.

general.⁵⁷ There was no substantial opposition to the Amendment.⁵⁸ The preliminary consent to the government position was given by 120 votes in favour to 2 against (170 out of 200 deputies were present).⁵⁹

APPROVAL

V.2

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

The European Council Decision was considered a “presidential” international treaty falling within Art. 49 of the Czech Constitution.⁶⁰ The ratification therefore required an assent of both chambers of Parliament and ratification in the narrow sense by the President (Art. 63 of the Constitution). There was little discontent about the required majority. Given that the Amendment does not transfer new competences to the EU, simple majority would suffice. However, the EC Decision was finally considered under Art. 10a of the Constitution (which has been regularly used as a constitutional basis for the previous EU Treaties changes),⁶¹ requiring three-fifth majority of all Deputies and three-fifth majority of Senators present (Art. 39/4 of the Constitution). The Parliament opted for this solution in order to build and declare broader consensus on the issue. The Senate agreed to the EC Decision by 49:9 votes (62 out of 81 Senators present) on April 25, 2012.⁶² The breakdown of votes was as follows: Social Democrats: 29 in favour, 10 not present, 1 abstention; Civic Democrats: 9 in favour, 6

⁵⁷ PM Petr Nečas, stenographic protocol, Chamber of Deputies of the Parliament of the Czech Republic, March 16, 2011. Available at: <http://www.psp.cz/eknih/2010ps/stenprot/014schuz/s014053.htm>.

⁵⁸ MP Dana Váhalová only urged for broader involvement of private sector and worried about the fact that the new mechanisms of stability is established outside the EU institutions, while the current crisis would need rather deepening of EU integration. Stenographic protocol, Chamber of Deputies of the Parliament of the Czech Republic, March 16, 2011. Available at: <http://www.psp.cz/eknih/2010ps/stenprot/014schuz/s014055.htm>.

⁵⁹ Ibid.

⁶⁰ Art 49 of the Constitution reads: “The assent of both chambers of Parliament is required for the ratification of treaties: a) affecting the rights or duties of persons; b) of alliance, peace, or other political nature; c) by which the Czech Republic becomes a member of an international organization; d) of a general economic nature; e) concerning additional matters, the regulation of which is reserved to statute.”

⁶¹ Art. 10a of the Constitution reads: “(1) Certain powers of Czech Republic authorities may be transferred by treaty to an international organization or institution. (2) The ratification of a treaty under paragraph 1 requires the consent of Parliament, unless a constitutional act provides that such ratification requires the approval obtained in a referendum.

⁶² Stenographic Protocol, Senate of the Parliament, April 25, 2012, available at: <http://www.senat.cz/xqw/xervlet/pssenat/htmlhled?action=doc&value=64331>.

against, 8 not present, 1 abstention; Christian Democrats: 5 in favour, 1 against; TOP 09: 4 in favour, 1 abstention; non-attached Members: 1 in favour, 2 against, 2 abstentions.⁶³ The Chamber of Deputies agreed to the EC Decision by 140:18 votes (189 out of 200 Deputies present) on June 5, 2012.⁶⁴ The breakdown of votes was as follows: Social Democrats: 47 in favour, 3 not present, 3 abstentions, 1 authorized absence; Civic Democrats: 41 in favour, 4 against, 4 not present, 2 abstentions; TOP 09: 41 in favour; Communists: 1 against, 1 not present, 24 abstentions; Public Affairs: 1 in favour, 11 against; non-attached Members: 10 in favour, 2 against, 1 not present, 2 abstentions, 1 authorized absence.⁶⁵

RATIFICATION DIFFICULTIES

V.3

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

The ratification process of the European Council Decision (introducing the Article 136(3) TFEU) was stalled due to a refusal of President Václav Klaus to sign it. President Klaus set the precedence with his initial refusal to sign the Lisbon Treaty.⁶⁶ On the legal ground, the debate centred on the meaning of the provision of the Czech Constitution regulating the ratification process. The Constitution provides that the President of the Republic “negotiates and ratifies international treaties” (Art. 63(1)(b)) and that “[t]he assent of both chambers of Parliament is required for the ratification of [qualified] treaties” (Art. 49).⁶⁷ The President has interpreted these provisions literally – the President ratifies the Treaty and the Parliament gives assent, meaning that the ratification of a treaty is in the hands of the

⁶³ Voting No. 17, April 25, 2012, available at: <http://www.senat.cz/xqw/xervlet/pssenat/hlasy?G=12721&O=8>. The Government Coalition at the time consisted of Civic Democrats and two junior parties TOP 09 and LIDEM. LIDEM was a group of MPs who had left former Government Coalition party Public Affairs. LIDEM did not have enough Ms to create its own political group and so their votes are registered under non-attached members.

⁶⁴ Stenographic protocol, Chamber of Deputies of the Parliament, June 5, 2012, available at: <http://www.psp.cz/eknih/2010ps/stenprot/040schuz/s040022.htm#r4>.

⁶⁵ Voting No. 12, June 5, 2012, available at: <http://www.psp.cz/sqw/hlasy.sqw?g=55930&l=cz>.

⁶⁶ Shortly before the Lisbon Treaty ratification process, a constitutional amendment was adopted creating a new procedure for constitutional review of an international treaty allowing the Constitutional Court to review its constitutionality before ratification. The Treaty was not found in conflict with the Constitution (there were two decisions – Lisbon I and Lisbon II; the first initiated by a group of MPs and joined by the President and the second review initiated by a group of Senators). After these decisions, the legitimacy of the Presidents’ refusal to sign the Treaty was considerably low – the Government and both chambers of the Parliament assented to the ratification and the Constitutional Court found the Treaty in compliance with the Constitution.

⁶⁷ The Constitution of the Czech Republic is available in English at <http://www.usoud.cz/en/constitution-of-the-czech-republic/>.

President with his signature to the treaty being the constitutive moment (unlike in the case of statutes). “Ratification” was thus interpreted as the act of signing a treaty by the President with the Parliament giving the assent *before* the actual ratification.⁶⁸ In President Klaus’s view, the President is responsible for the ratification of an international and may refuse to ratify it.⁶⁹ President Klaus eventually ratified the Lisbon Treaty.

However, he repeated this approach with the European Council Decision, despite the fact that both Chambers of Parliament had given their assent to it. This time, the pressure from the EU partners was lower given that the mechanisms sought after by the European Council Decision have been already operational. As the Art. 136 TFEU Amendment does not create any immediate obligations for the Czech Republic and before taking any obligations arising thereof, another decision (to join the Euro) would have to be taken, there was no intention to submit the amendment to the Constitutional Court for a review. According to Klaus, the Art. 136 TFEU Amendment and the ESM were “horrifying and absurd.”⁷⁰

As the conflict between the President on the one hand and the Government and the Parliament on the other hand escalated, the Senate passed a motion calling the President to sign the ratification instrument promptly.⁷¹ In January, the President issued a decree providing for a broad amnesty. This led to a considerable political turmoil. The Senate took an unprecedented step and lodged a constitutional action against the President. According to Art. 66 (2) of the Constitution, “[t]he President of the Republic may be prosecuted for high treason before the Constitutional Court on the basis of a charge brought by the

⁶⁸ The majority of Czech constitutional and international law scholars had an opposite view – the President cannot refuse to ratify a treaty unless it deviates from the text, which the Czech Republic agreed to and became bound from international law point of view (that is the text the Government representative signed on the international level). See e.g. P. Šturma, V. Balaš, J. Syllová, V. Jirásková, Selected problems of international treaties, negotiation and ratification process, 2010 (prepared for the Ministry of Foreign Affairs in connection with the Lisbon Treaty ratification process). Part 3.3, available at: http://www.mzv.cz/file/570095/Vybrane_problemy_sjednavani_mezinarodnich_sm_luv_res.pdf.

⁶⁹ The alternative interpretation was that the President is obliged to ratify given that all other constitutional actors agreed to the ratification (the Government by negotiating the Treaty, the Constitutional Court by founding the Treaty not in conflict with the Constitution, and especially the Parliament by agreeing with three-fifth majorities in both Chambers). Moreover, the President is responsible for negotiating international treaties and he delegates this competence to the Government. Although this construction is rather theoretical, as in practice, it is the Government who negotiates international treaties, it allows for an argumentation that it was the President who negotiated the Treaty (via Government) and therefore it is incoherent with such constitutional construction for him to refuse ratification.

⁷⁰ Klaus: Euroval považuji za zruďnou věc, nepodepíšu jej, E15.cz, Dec. 7, 2012, available at: <http://zpravy.e15.cz/domaci/politika/klaus-euroval-povazuji-za-zrudnou-vec-nepodepisu-jej-938718>.

⁷¹ Stenographic protocol, Senate of the Parliament, Dec 6, 2012, available at: <http://www.senat.cz/xqw/xervlet/pssenat/hlasovani?action=steno&O=9&IS=4898&D=06.12.2012#b13494>.

Senate.”⁷² Although an amnesty decree issued in January 2013 was the main focus, charges of gross violation of the constitutional order included President’s refusal to ratify the European Council Decision. In fact it was listed as the first charge in the constitutional action.⁷³ However, before the Court decided, Klaus’s term of office expired and the Court ruled, for that reason, the constitutional action inadmissible.⁷⁴

The political discourse took a new turn with the Czech presidential elections in January 2013.⁷⁵ The idea of direct presidential elections has been discussed for a decade and the first elections were widely followed by general public. Miloš Zeman was an “independent” candidate (meaning he collected 50 thousands voters’ signatures instead of being nominated by a Parliamentary party). This gave him more freedom in the campaign, including on EU issues. Both main candidates, Karel Schwarzenberg⁷⁶ and Miloš Zeman, took pro-European rhetoric, however with Zeman being more nationalistic.⁷⁷

⁷² The Constitution has been amended in connection with the introduction of direct elections of the President to make the impeachment more difficult procedurally (the indictment now requires consent of three-fifth majorities in both Chambers of the Parliament; while until then simple majority was required), while at the same time the reasons for indictment were extended. The amendment has not been in force yet at the time of the impeachment of President Klaus.

⁷³ Constitutional Court of the Czech Republic, Decision on the Senate Constitutional Action against the President of the Republic, Pl. ÚS 17/13 [2013].

⁷⁴ This opinion was contested given that the Constitution stipulates that the consequence of being found committing treason is also that the person is losing his eligibility to acquire the office again (Vaclav Klaus can, in theory, candidate for the President in the future). The reasons for the Constitutional Court decision are not clear. The constitutional charge was highly controversial and supported by narrow majority in the Senate. Both the Prime Minister and the President-elect condemned the charge.

⁷⁵ Elections took place on January 11-12, 2013 (first round) and January 25-26, 2013 (second round). The elections were for the first time direct elections with candidates either being nominated by a political party with members in one of the Chambers of the Parliament (Parliamentary party) or securing 50 thousands signature of eligible voters.

⁷⁶ Schwarzenberg’s party TOP 09 was a liberal, the most pro-European party in the centre-right government lead by Civic Democratic leader Prime Minister Petr Necas.

⁷⁷ Zeman is a former Prime Minister (1998-2002), who headed Social Democratic Party and managed to establish it as the main party on the left. However, since presidential elections of 2003 (the President was elected by both chambers of the Parliament at the time), in which Zeman was a nominee of the Social Democrats, but lost due to a “coup” by leaders of his own party and President Klaus was elected instead (re-elected in 2008), Zeman withdraw from politics and has been at odds with the Social Democrats since. In 2013 elections, Social Democrats nominated their own candidate, a young and pro-European Social Democrat Jiri Dienstbier. Zeman, who appealed to the same electorate, thus needed to differentiate himself, taking more nationalistic tone. Then President Klaus has been discredited by introducing a controversial amnesty and the majority of the contenders for the office distanced themselves from Klaus on a variety of matters, the EU issues being one of them, though not dominant.

Shortly after Miloš Zeman was elected, he announced a new course towards the EU⁷⁸ – that he would sign the European Council Decision promptly, while emphasizing the Treaty does not create any new obligations for the Czech Republic. He took the office on March 8, 2013 and signed the Decision on April 3, 2013. As the Czech Republic was the last Member State to ratify, upon the conclusion of the ratification process in the Czech Republic, the EC Decision amending the Treaty entered into force on May 1, 2013. The Schwarzenberg's party TOP 09 tried to exploit the new pro-European course of the President and called for the Government to join the Fiscal Compact, threatening to leave the Government otherwise. However, this effort dissipated.

CASE LAW

V.4

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

No. In general, an amendment to the Constitution adopted in anticipation of the Czech accession to the EU entrusted the Constitutional Court with review of conformity with constitutional acts of international treaties. Prior to the ratification of a qualified treaty (a treaty transferring powers to international organization or institution and treaties requiring ratification of Parliament), the Constitutional Court has jurisdiction to decide concerning the treaty's conformity with the constitutional order. A treaty may not be ratified prior to the Constitutional Court giving judgment (Art. 87 (2) of the Constitution). A petition, may be submitted by one of the chambers of Parliament, as of the moment when the treaty is submitted to it for its consent to ratification, until the moment when the treaty receives that consent; a group of at least 41 Deputies or a group of at least 17 Senators, from the moment when the Parliament has given its consent to the ratification of the treaty, until the moment when the President of the Republic ratifies the treaty; a group of at least 41 Deputies or a group of at least 17 Senators, from the declaration of the results of a referendum in which consent to the ratification of a treaty is given, until the moment when the President of the Republic ratifies the treaty; and the President of the Republic, from the moment when the treaty was submitted to him for ratification.⁷⁹ The court reviews only provisions of a treaty contested by the petitioner, not a treaty in its entirety. That means, a decision on compliance with the constitutional order of a treaty does not represent *res iudicata* and other authorized persons may submit their own petitions with different argumentation or for provisions not contested yet. So far, only the Lisbon Treaty was subject to the review (twice).

⁷⁸ The signing ceremony was attended by the Commission President Barroso.

⁷⁹ Sec. 71a of the Constitutional Court Act.

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MISCELLANEOUS

V.5

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

No.

VI EURO-PLUS-PACT

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

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

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

NEGOTIATION

VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID THE CZECH REPUBLIC 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.

After the Pact was endorsed on March 11, 2011 on the European level, it was discussed in the Parliament. On a general level, the Czech Government appreciated that the Pact was based on intergovernmental cooperation and not on a coordination method which would put the Commission at the helm. However, concerns about the unclear role of the Commission were raised. Regarding the content, a majority of the suggested measures have been already in force in CR or introduced as part of the Government’s national reform programme. CR however strongly disagreed with tax harmonization, including the suggested financial transaction tax. CR took into account that the Pact had softened these measures, however CR was worried about the future direction in this area, in particular, that the Pact might incite further plans on tax harmonisation and spread in the future into other areas that would mean practical enlargement of EU competences.⁸⁰

PM Nečas further worried about a number of potential issues – unclear legal basis of the Pact, unclear role of the Commission and other institutions (e.g. without any concrete legal basis in the Treaty the Pact entrusted the Commission with monitoring of the obligations resulting from the Pact). Given the obligation to incorporate the commitments into national reform programmes under Europe 2020, the Commission would in fact not only monitor, but also evaluate the progress of a MS and issue concrete recommendations on what to change. In result, the role of the Commission would be as strong as in the coordination

⁸⁰ PM Petr Nečas, stenographic protocol, Chamber of Deputies of the Parliament of the Czech Republic, March 23, 2011. Available at: <http://www.psp.cz/eknih/2010ps/stenprot/014schuz/s014131.htm#r2>.

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method. PM also criticized that through such measures like Euro Plus Pact, a group of states would use the Commission (paid from the Czech contribution to the EU budget) for tasks that go beyond the competences of the Union. Finally, PM complained that CR could not participate in the negotiations (as non-Eurozone MS) and was presented with the final product only and asked to “take it or leave it” without a reasonable time to discuss the Pact, which would entail to adopt number of national legislative measures, with the Parliament and social partners getting involved (it is worth mentioning that the main trade union urged the Government not to participate in the Pact). Given all these reservations towards the Pact, CR decided not to join the Pact at the moment and wait for further development.⁸¹ The main opposition party, the Social Democrats, supported the Pact in general (including the possible future tax harmonization and creation of EU corporate taxes) and urged the Government to join the Pact.⁸²

MISCELLANEOUS

VI.2

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

CR does not participate in the Pact.

⁸¹ Ibid.

⁸² MP Lubomír Zaorálek, stenographic protocol, Chamber of Deputies of the Parliament of the Czech Republic, March 23, 2011. Available at: <http://www.psp.cz/eknih/2010ps/stenprot/014schuz/s014134.htm>.

VII SIX-PACK

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

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

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

NEGOTIATION

VII.1

WHAT POSITIONS DID THE CZECH REPUBLIC 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?

Regulations 1173/2011 and 1174/2011 do not apply to CR and the two measures were not discussed in the Parliament. During the vote in the Council, CR, however, supported both acts. For Regulations 1175/2011 and 1177/2011 see the answer to question VII.9. Regarding the Directive: Main arguments were laid down during the negotiations. The Parliament supported the position of the Government,⁸³ which adopted a negative opinion towards the Directive stating that national fiscal frameworks should not be regulated at all on the EU level, even if EU legislation aims to set up minimal requirements only.⁸⁴ Particularly, the limitation of regional and municipal fiscal autonomy in favour of the central government was found troubling.⁸⁵ In my view, the level of interference of the central government into the regional and municipal self-governance that the Directive presupposed requires a transposition through a constitutional amendment. CR further stated that it agreed to the principles on which the Directive was based – the requirements for higher transparency, rules on budgetary process, statistics and data collection. However, CR believed that

⁸³ Given the consensus between the Government and both chambers of the Parliament, I refer to "CR position".

⁸⁴ Finance Minister Miroslav Kalousek, stenographic protocol, Chamber of Deputies of the Parliament of the Czech Republic, Feb. 3, 2011. Available at: <http://www.psp.cz/eknih/2010ps/stenprot/013schuz/s013173.htm#r1>.

⁸⁵ MP Dana Váhalová, *ibid*.

maximal fiscal freedom had to be retained and therefore was principally against the Directive. CR considered an adoption of non-binding guidelines with the similar content to be a more appropriate solution. When the Directive passed the Council, CR urged for “a balance between the benefits for effective, holistic, and transparent management of fiscal policy and administrative burden connected with full implementation of the directive and [sought] to postpone the transposition deadline” (the deadline was originally set for Jan. 1, 2013).⁸⁶

DIRECTIVE 2011/85/EU

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

IMPLEMENTATION

VII.2

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

Implementation was foreseen through the adoption of a constitutional law on fiscal responsibility (Fiscal Constitution)⁸⁷ and two ordinary laws – law on fiscal responsibility and another law amending a number of laws regarding the budgetary processes and competences, mainly the Law No. 218/2000 Coll. on Budgetary Rules and the Law No. 250/2000 Coll. on Budgetary Rules of Regional and Municipal Budgets. Further legislative changes regarding obligations of social security funds and government institutions that are not included in the treasury such as public universities and public research institutions were also envisaged. No measures have been adopted yet (see question VII.3). The Government report on the Directive states that in general the current budgetary legislation and practice is in compliance with the requirements set in the Directive. “The Law on budgetary rules introduced in 2003 a system of fiscal targeting and required that medium-term fiscal frameworks and medium-term budgetary outlook are prepared for the state budget and state funds, including a numerical fiscal rule for their preparation. This results from the adoption of a medium-term fiscal target for the entire government sector expressed as a share on GDP following the ESA 95 methodology, which is further detailed during the preparation of the said medium-term documents.”⁸⁸ According to the Government report, the problems of the current budgetary frameworks in CR rest in non-compliance with the

⁸⁶ See “Czech Government and Parliament position on Dir. 2011-85 within the Six-Pack”, p. 3.

⁸⁷ The changes on the constitutional level must include the part on the executive power, on the Supreme Auditing Office, and on the territorial self-government. Ibid. 14-15.

⁸⁸ Ibid. at 10.

medium-term objectives, where the central government lacks, with an exemption of the state budget and state funds, competence and tools to monitor the development and to enforce the objectives on the level of regions and municipalities. Under the current situation, there is no independent fiscal council and independent evaluation of the forecasts prepared by the Government.

Accounting and statistics

On Jan. 1, 2010 the accounting reform came into force, which means Arts. 3/1 and 10 have been already implemented, as well as the emphasis on the inclusion of potential risks and benefits (Art. 14/3). Also the necessary changes regarding data submissions (cash-based data monthly and quarterly and the reconciliation table) will be realized before the end of 2013 (Art. 3/2a and 2b – for the reconciliation table, the Government requires further specifications of the obligations).⁸⁹

Macro-economic and fiscal forecasts

“Budgetary practice of CR has been for a long time using a macroeconomic and fiscal projection of the Ministry of Finance (MF), which disposes of its own expert capacity. Forecasts of MF take into account the most probable economic development using prudently chosen characteristics; they are prepared based on the most current data and take into account to a certain extent (given the time incongruity) past forecasts of the Commission (Art. 4/1 of the Directive). Forecasts of MF nonetheless do not contain alternative scenarios of economic development (Art. 4/2 of the Dir.). An independent body does not audit these regular forecasts. Although it is not expressly required by the Directive [to establish such independent body], the long-term practice of MF has been such that the forecasts are scrutinized by a panel of independent economists (Art. 4/4 of the Dir.). Currently CR compares its forecasts with a panel of around 15 recognized Czech and foreign institutions, in which the Commission is represented as well. The comparison is made four times a year, out of which twice CR asks the institutions to prepare forecasts. Evaluation of the forecast of MF by way of comparison with the forecasts of the panel participants is published by MF alongside with quarterly forecasts, which encompass methodology, assumptions, and chosen characteristics (Art. 4/3 of the Dir.). The [Nečas] Government based on its political program intends to establish a national fiscal council. When such council is established, the Government may consider enlarging the council’s competences to encompass alongside an assessment of fiscal impacts also an evaluation of the forecasts of MF, although the Directive does not expressly require this. The system of preparation and the quality of forecasts of MF are sufficient; the forecasts of MF have high reputation.”⁹⁰

⁸⁹ Ibid. at 11-12.

⁹⁰ Ibid. at 12.

Numerical fiscal rules

The Nečas Government aimed to introduce the fiscal numerical rules of the SGP into a Fiscal Constitution (Art. 5(a) and (b) of the Dir.). It recognized that the fiscal frameworks for 2013 and after must be set in such a way, that the fiscal consolidation leads to the MTO, which the Czech Republic set as a structural deficit of 1% of GDP. CR has already introduced into its budgetary practice the so called fiscal targeting that implicitly contains a numerical fiscal rule (Art. 5(a) of the Dir.).⁹¹

Medium-term budgetary frameworks

CR has already established medium-term budgetary frameworks (Art. 9/1,2(a) of the Dir.) and it supports the directive's emphasis on medium-term fiscal frameworks. However, their enforcement is low and depends on political support. CR has not considered introducing a sanction mechanism directly into the budgetary rules; yet, an introduction of certain non-financial sanctions beyond the budgetary rules is considered desirable, e.g. systemic publishing of instances of non-compliance with procedural rules and of breaches of the frameworks. Medium-term expenditures frameworks are adopted in the form of a resolution by the Chamber of Deputies of the Parliament, however, as I have already mentioned, there is no sanction mechanism in the case of non-compliance (Art. 6(c) of the Dir.). Moreover, the Parliament's Rules of Procedure does not guarantee a discussion on the frameworks by the Parliament. The medium-term expenditures frameworks of the MF strictly state exemptions, under which the frameworks do not need to be followed in the preparation of state budget. The medium-term expenditures frameworks currently encompass state budget and state funds only. To fully comply with the Directive, that is to enlarge the frameworks to cover the entire general government, is currently unachievable. The frameworks are based on realistic prudent economic forecasts (Art. 9/3 of the Dir.). In order to make the frameworks to cover all government institutions, a constitutional law is needed. CR plans to enlarge the current system of enhanced budgetary surveillance of municipalities and organizations paid from their budgets onto an entire sub-sector of local governmental institutions. Instead of direct management of municipal debts development, CR prefers setting up clear rules on excessive debt or insolvency and a controlled bankruptcy of a municipality. CR also considers a constitutional law that would limit options of deficit financing, e.g. through the golden rule.⁹²

As of February 2014, the Directive has not been implemented yet. Pending legislative changes includes Fiscal Constitution Bill, bill on fiscal responsibility and bill that would amend numerous other laws to be in compliance with a new fiscal framework, in particular

⁹¹ Ibid.

⁹² Ibid. at 13-14.

Law No. 320/2001 Coll., on financial supervision of central government, Law No. 420/2004 Coll., on review of fiscal management of territorial self-government units and voluntary associations of municipalities, Law No. 551/1991 Coll., on health insurance companies, Law No. 362/2010 Coll., on fiscal information duties of health insurance companies. In addition an amendment to the Constitution extending competences of the Supreme Auditing Office and a Bill on management and control system in central government are envisaged. Furthermore, several bylaws shall be updated: bylaws of the Ministry of Finance to the Law No. 563/1991 Coll., on accounting, and bylaws of the Ministry of Finance to the Law No. 218/2000 Coll., on budgetary rules.

IMPLEMENTATION DIFFICULTIES

VII.3

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

The Government drafted and submitted to the Parliament a proposal for constitutional law – Fiscal Constitution on Oct. 10, 2012. Although the proposal reached the second reading in the Chamber of Deputies of the Parliament, June 2013 political crisis (resignation of the Nečas Government) and new elections in October 2013 prevented further progress with the bill. After October 2013 general elections, former government party, now in opposition, TOP 09 reintroduced the Fiscal Constitution Bill. However, the new centre-left Sobotka Government do not plan to support the current version as the status quo gives him more fiscal room for manoeuvring in order to implement his social agenda and investment plans. The new government, however, announced to discuss two, in their view, interconnected issues – accession to the Fiscal Compact and some form of a Fiscal Constitution. See more in the answers to the questions on the Fiscal Compact and to III.2 in fine).

MACROECONOMIC AND BUDGETARY FORECASTS

VII.4

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

The Ministry of Finance currently prepares macroeconomic and budgetary forecasts and there has been no intention to change this practice. An explicit competence in order to implement the Directive is included in the draft implementing law to the Fiscal Constitution Bill.⁹³

⁹³ The draft implementing law amends the Competence Law (Sec. 4/1). Chamber of Deputies of the Parliament Document No. 1098/0, 6th Parliamentary Term.

Implementing laws to the Fiscal Constitution Bill, which were submitted to the Parliament on June 27, 2013, provides for an independent Committee for budgetary forecasts (Výbor pro rozpočtové prognózy), which evaluates economic and budgetary forecasts of central government and territorial self-governments. Forecasts evaluated as realistic or conservative would represent the basis for the preparation of the annual budget. Due to a political crisis and early elections in October 2013, the legislative process for both the Fiscal Constitution Bill and the implementing laws was terminated. The Social Democrats, who head the new coalition government appointed in January 2014, will most probably come up with their own drafts.

FISCAL COUNCIL

VII.5

DOES THE CZECH REPUBLIC HAVE IN PLACE AN INDEPENDENT FISCAL COUNCIL (ARTICLE 6(1) DIRECTIVE 2011/85/EU: 'INDEPENDENT BODIES OR BODIES ENDOWED WITH FUNCTIONAL AUTONOMY VIS-À-VIS THE FISCAL AUTHORITIES OF THE MEMBER STATES')? WHAT ARE ITS MAIN CHARACTERISTICS? DOES THE CZECH REPUBLIC HAVE TO CREATE (OR ADAPT) A FISCAL COUNCIL IN ORDER TO IMPLEMENT DIRECTIVE 2011/85/EU?

Not yet. See answer to question VII.3. According to current version of the Fiscal Constitution Bill (resubmitted to the Chamber of Deputies of the Parliament by an opposition party in December 2013), Art. 3 creates National Fiscal Council (NFC) as “an independent organ that has a competence in the area of fiscal and budgetary policy, surveys the budgetary management of public institutions and observation of the rules on fiscal responsibility and evaluates them” (para 1). A detailed implementation will be left to ordinary law (para 3). The NFC has five members. The Chairman, Vice-Chairmen, and other Members of the NFC are elected by the Chamber of Deputies of the Parliament (para 2) for six-year term by simple majority (Sec. 30 of the draft implementing law).⁹⁴ The Government nominates the Chairman, the Senate nominates the first Vice-Chairman, the Czech National Bank nominates the second Vice-Chairman, the remaining two members are nominated by the Ministry of Finance and by at least 7 heads of regional self-government units, respectively (Sec. 27 of the draft implementing law). The NFC calculates the debt and publishes its calculations in the same way the laws are published (Art. 5).⁹⁵ The NFC gives an opinion on expenditure framework of annual budget and state funds, which the Finance Ministry publishes. If the Ministry does not agree with the NFC’s opinion, it shall substantiate and publish its objections (Sec. 12/3 of the draft implementing law). The opinion of NFC is thus not binding. The NFC further evaluates whether the fiscal numerical rules are observed and submits a report to the Chamber of Deputies of the Parliament before the annual budget is agreed; and prepares and submits to the Chamber of Deputies

⁹⁴ Chamber of Deputies of the Parliament Document No. 1097/0, 6th Parliamentary Term.

⁹⁵ See “Government proposal for a constitutional law on fiscal responsibility”.

of the Parliament a report on the long-term sustainability of public finance, including an evaluation on how the Government-planned policies would effect the sustainability (Sec. 23 of the draft implementing law).

REGULATION NO 1176/2011 ON THE PREVENTION AND CORRECTION OF MACROECONOMIC IMBALANCES

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT>)

MEIP DIFFICULTIES

VII.6

WHAT POLITICAL/LEGAL DIFFICULTIES DID THE CZECH REPUBLIC ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

No changes on the budgetary process have been introduced.⁹⁶ Sanctions do not apply to CR and hence there was little debate. The Senate in its resolution to the draft Six Pack considered the MIP in general beneficial for functioning of the EMU, however, it opined that for “preparation of the comparative survey and evaluation of indicators the degree of integration into the Economic and Monetary Union as well as the degree of actual convergence of a given economy in relation to the EU average must be taken into account.”⁹⁷ The Senate further fundamentally disagreed with the symmetrical approach to some of the indicators and complained that the set of indicators is not part of the draft and so the national parliaments could not fully evaluate the effectiveness of the control mechanism for macroeconomic stability. Finally, the Senate pointed to the fact that the Government had only indirect influence, through its measures supporting competitiveness, on the development of macroeconomic indicators, such as actual effective exchange rate or balance of payments current account, and that these measures had effect with considerable delay only.⁹⁸

Finally, as for imbalances, in 2012 the Commission report concluded that there was no need of in-depth analysis in the context of the MIP. Also, in the previous round of the MIP, the

⁹⁶ The macroeconomic forecasts are prepared by the Ministry of Finance. The macroeconomic scenario of the Convergence Programme and macroeconomic framework of state budget and budgetary outlook are regularly compared with forecasts of relevant institutions that forms so called Colloquium composed of several ministries, Czech National Bank, major banks, major think tanks, and trade associations, plus with the forecasts of the Commission and the IMF.

⁹⁷ The Resolution of the Senate of the Parliament No. 76, 8th Senate term, Jan. 26, 2011, available at: <http://www.senat.cz/xqw/xervlet/pssenat/htmlhled?action=doc&value=58637>.

⁹⁸ Ibid.

Czech Republic had not been identified as experiencing imbalances.⁹⁹

Given the positive result of the 2012 report, no policy changes were made in connection with the report. The identified problems have been known in CR and have been an object of long-term policies. The Nečas Government regularly implemented the policy recommendation of either the biannual Commission Convergence Reports (the last published in May 2012)¹⁰⁰ or the annual Council Recommendation on the National Reform Programme and the Convergence Programme (the last published on July 9, 2013).¹⁰¹ These recommendations were reflected in the main programming document, the Programme

⁹⁹ "In the previous round of the MIP, the Czech Republic was not identified as experiencing imbalances. In the updated scoreboard, the net international investment position is above the indicative threshold. The net international investment position has deteriorated because of sustained, albeit moderate, deficits in the current account balance of around 3 per cent of GDP over the last three years: these are mainly driven by the outflow of dividends on the high stock of foreign direct investment. Overall, the risk of external vulnerabilities is limited because of the relatively low value of gross external debt liabilities. The trade balance recorded a robust surplus in 2011 but gains in export market shares are gradually easing, reflecting the falling share of new green-field projects in foreign direct investment. At the same time import growth is also expected to ease. As domestic demand remains weak, the current account deficit is projected to continue to improve in the coming years and this is expected to contribute to stabilising the net international investment position around the current level. Contrary to the appreciation trend observed before the global financial crisis, the real effective exchange rate has remained broadly stable since 2009. The inflow of capital to the Czech Republic went hand-in-hand with considerable wage growth in all sectors of the economy, even though productivity increases were limited mostly to the tradable sector. While the aggregate nominal unit labour cost growth decreased to close to 3 per cent over the past three years, and is expected to remain subdued in the near future, the cumulative productivity gap in the non-tradable sector may weigh on the competitiveness of the economy: first, because the non-tradable sector provides inputs to other sectors, thus directly affecting their competitiveness of the latter; and second, since higher wage growth in the non-tradable sector may hinder shifts in labour towards export-oriented industries that have more scope for productivity growth. Adjustment, accompanied by falling real house prices, is underway in construction and real-estate activities, which had been boosted by relatively easy lending conditions before the crisis: the share of bank loans to value added in these industries doubled in 2005-8. The largely foreign-owned banking sector in the Czech Republic has remained resilient, and the moderate levels of private- and public-sector indebtedness have prevented the emergence of any negative feedback loops. Overall, the Commission will at this stage not carry out further in-depth analysis in the context of the MIP." Report from the Commission. Alert Mechanism Report – 2013, COM(2012) 751 final, p. 7-8. Available at: http://ec.europa.eu/economy_finance/articles/governance/pdf/alert_mechanism_report_2012-11_en.pdf.

¹⁰⁰ European Commission. Convergence Report 2012. Available at: http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-3_en.pdf.

¹⁰¹ Council Recommendation of 9 July 2013 on the National Reform Programme 2013 of the Czech Republic and delivering a Council opinion on the Convergence Programme of the Czech Republic, 2012-2016. 2013/C 217/04. OJ C 217/14. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:217:0014:0017:EN:PDF>.

Declaration of the Nečas Coalition Government for the 2010 vote of confidence.¹⁰²

REGULATION No 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:20111213:EN:PDF>

MTO PROCEDURE

VII.7

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

See answer to question VII.2. In 2001, an institution of medium-term expenditures frameworks was introduced, however without sanctions. With an annual budget bill, government presents to parliament expenditures limits for two years following the upcoming budgetary year. Chamber of Deputies approves the expenditures framework by a resolution. Through expenditures framework, government binds itself not to spend in two years following the budgetary year more than stated in the expenditures frameworks and in case the revenues are greater than expected, the difference ought to be used to lower the deficit.¹⁰³ However, because two-year expenditures frameworks are presented to parliament with every annual budget bill, they are in fact binding only for a following budget bill (that is for the first year of their application). Moreover, the fact that expenditures framework are adopted in the form of parliament's resolution only, they are legally unenforceable and represent at the end merely a political commitment.¹⁰⁴

The Draft Fiscal Constitution creates an obligation for all public institutions to prepare medium-term budgetary outlook for at least two years following the annual budget (that is,

¹⁰² Programme Declaration of the Government of the Czech Republic. August 4, 2010. Available at: http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Programove_prohlaseni_vlady.pdf. In particular: First, public finance reform with a view to stop the public debt growth and adopt such fiscal measures to achieve balanced budget in 2016; second, pension reform in view of changing demographic structure of Czech population; third, health care reform leading to modernization and higher effectiveness; fourth, tertiary education reform; and fourth, adoption of measures for higher transparency of public procurement and measures against corruption in public sector. Ibid. at p.3.

¹⁰³ Finance Minister Miroslav Kalousek, stenographic protocol, Chamber of Deputies of the Parliament of the Czech Republic, Dec. 15, 2010. Available at: <http://www.psp.cz/eknih/2010ps/stenprot/009schuz/s009199.htm#r3>.

¹⁰⁴ Since the introduction of expenditures frameworks, they have been ignored on several occasions, Finance Minister Kalousek during a Parliamentary debate on medium-term objectives for 2014 and 2015, stenographic protocol, Chamber of Deputies of the Parliament, Dec. 19, 2012, available at: <http://www.psp.cz/eknih/2010ps/stenprot/049schuz/s049275.htm>.

in fact, three years). The draft implementing laws aims to replace the current quasi deficit rule of the fiscal objective by an expenditure rule. That means an expenditure ceiling will be created (maximum growth of corrected nominal expenditures) for public institutions. The amount of consolidated expenditures of the state budget and state funds, set according to the expenditure rule for the following budgetary year and two subsequent years, will be submitted to the Chamber of Deputies of the Parliament for its approval, while the amount of consolidated expenditures of public institutions' budget will be submitted to the Chamber of Deputies of the Parliament for information only. The construction of the expenditure rule is based on the reference medium-term rate of expenditure growth (expenditure benchmark).

EUROPEAN SEMESTER

VII.8

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

The European Semester was first introduced into practice in January 2011. Before the European Semester, preliminary results of macroeconomic forecasts were published in January and March of a current year. On their basis, medium-term expenditures frameworks were prepared and updated. Thus the period from February till April was crucial. The European Semester meant to incorporate into the first phase the data and documents collected between February and April that are submitted to the Commission and the Council (convergence programme and national reform programme). Preparation of these documents is in the competence of the Office of the Government and they reflect all chapters of the budget. Given that the Government discusses and approves the medium-term expenditures frameworks objectives in April, that is at the time when the convergence programme and national reform programme must be submitted to the Union, the process of the preparation of the two documents needed to be speeded up – a material on medium-term expenditures frameworks will therefore not be submitted to the high meeting of the Ministry of Finance and will not be subject to external comment procedure.

The subsequent steps within a budgetary process in CR following the European Semester are as follows – during July, the Ministry of Finance evaluates recommendations of the European Council in line with government-approved limits on budget expenditures and revenues. In August, the Ministry incorporates the recommendations preliminarily into a draft budget, so that the Government may discuss and pass a draft budget including the expenditures frameworks and medium-term outlook. At this time the Government and Ministry of Finance are given opportunity to react on the Council recommendations; whether they are beneficial and acceptable. Subsequently, the Ministry of Finance works with the recommendations in detail, assesses their feasibility, and incorporates them into a

budget bill in September. Subsequently, a budget bill is submitted to the Parliament.¹⁰⁵

MTO DIFFICULTIES

VII.9

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

CR voted (as all other MS) for the Regulation in the Council.¹⁰⁶ During the parliamentary debate, Finance Minister Kalousek stated that the Czech Republic “generally supports the changes that would lead to the most possibly strict fiscal discipline, enhance credibility and enforcement of the budgetary outlook; however, the primary responsibility for the budgetary policy must remain with the national governments.”¹⁰⁷ The position of the Government touched also upon the reverse QMV voting – CR supports this scheme, unless it is extended to other voting of the Council in the area, e.g. recommendation of the Commission in the corrective part. CR is of opinion, that reverse QMV will enhance equality between big and small MS.¹⁰⁸ Minister Kalousek emphasized that, although the “sanction” in the form of interest-bearing deposit is not applicable to CR as a non-Eurozone MS, CR must observe the development in this area closely given the obligation resulting from the convergence programme (future Eurozone membership). He also warned that in the next stage, the Commission plans to enlarge the sanction mechanism to non-Eurozone MS, where conditionality clauses would be introduced into expenditure programmes of the EU. Finally, he stated that the aim of CR was to support such system that would sanction every MS equally, where small or new MS would not be discriminated.¹⁰⁹ The only criticism came from the Communist Party, who denied SGP as such, called for more flexibility and solidarity, individual focus (giving more weight to different structural problems and given stage in the economic cycle in a MS) and warned that these new rules may substantially limit options for such important reforms in CR such as a pension reform or a health-care

¹⁰⁵ See “Minutes from the 12th session of the Budgetary Committee of the Chamber of Deputies of the Parliament, March 1 and 3, 2011”, p. 9.

¹⁰⁶ Vote Watch Europe, Council vote on Nov. 8, 2011, available at: <http://www.votewatch.eu/en/proposal-for-a-regulation-of-the-european-parliament-and-of-the-council-amending-regulation-ec-no-14.html>.

¹⁰⁷ Finance Minister Miroslav Kalousek, stenographic protocol, Chamber of Deputies of the Parliament of the Czech Republic, Feb. 3, 2011. Available at: <http://www.psp.cz/eknih/2010ps/stenprot/013schuz/s013077.htm>

¹⁰⁸ The Government and the Parliament assessed Regs. 1175/2011 and 1177/2011 together. See “Czech Government and Parliament position on reg. 1175-2011 and 1177-2011 - amendments to SGP within the Six-Pack”, p. 4. The reverse QMV should be consider as an exemption and applied restrictively. Ibid. at 6.

¹⁰⁹ Ibid.

reform.¹¹⁰ The Parliament gave to the Government a mandate to support the Regulation by a vote 84:4 (132 out of 200 deputies present).¹¹¹

The Government Report on Reg. 1175/2011 and 1177/2011 further emphasizes that the government considers the introduction of principle of prudent fiscal policy to be the key innovation that will make governments respect the medium-term objective (mainly that accidental incomes, e.g. from privatization, will be used for deficit reduction), something that has been often neglected in the budgetary practise of CR. According to the Report, CR also supports the possibility to take into account expenses for a pension reform when deciding on the EDP.¹¹² It supports an extension of the period beyond five years.

CR has not changed any laws in connection to the Regulation, relying on its direct applicability (in the extent binding to CR).¹¹³

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)?

See the answer for question VII.12.

CURRENT MTO

VII.11

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

MTO is 1% and will be revised in 2016.

On 26 April 2013, the Czech Republic submitted its 2013 Convergence Programme covering the period 2013-2016 and, on 17 April 2013, its 2013 National Reform Programme. The Convergence Programme reads: "The government's primary intention is to conclude the excessive deficit procedure based on the 2013 figures, and not to further deepen the

¹¹⁰ MP Jiří Dolejš, *ibid.*

¹¹¹ Voting no. 72, *ibid.*

¹¹² CR particularly appreciated that a special regime was incorporated into the SGP in order to take into account, when assessing fiscal and budgetary position and activation of the EDP, a pension reform, which has been under preparation in the CR at the time.

¹¹³ The Government and the Parliament assessed Regs. 1175/2011 and 1177/2011 together. See "Czech Government and Parliament position on Regs. 1175-2011 and 1177-2011 - amendments to SGP within the Six-Pack", p. 6-7.

procyclical effects of fiscal policy. At the same time, the government is intended, as soon as the situation permits it (probably in 2015 and 2016), to contribute to recovery of the Czech economy in the negative phase of the output gap by introducing a lower tax burden without exceeding the limit of 3 % deficit of GDP once again. The target to balance the total budget in 2016 and achieve the medium-term objective this year at the level of 1 % of GDP of the structural deficit has therefore been postponed until confidence in the economy is restored and sustainable economic growth gets underway once more.”¹¹⁴

On July 9, 2013, the Council adopted its ‘Recommendation on the Czech Republic’s 2013 national reform programme and delivering a Council opinion on the Czech Republic’s convergence programme for 2012-2016’. The Council stated that “[t]he Convergence Programme confirms the previous medium-term objective (MTO) of a deficit of 1 % of GDP, which adequately reflects the requirements of the Stability and Growth Pact. The (recalculated) structural budget deficit is projected to increase by 0,3 %, 0,2 % and 0,5 % of GDP in 2014, 2015 and 2016 respectively; therefore no adjustment towards the MTO is foreseen in the Convergence Programme, which is not in line with the Stability and Growth Pact. The rate of growth of government expenditure complies with the expenditure benchmark of the Stability and Growth Pact in 2014 but deviates by 0,3 % and 0,5 % of GDP in 2015 and 2016 respectively, assuming improvements of 0,5 % of GDP towards the MTO judged as appropriate by the Commission. According to the Convergence Programme, the debt-to-GDP ratio is forecast to continue to increase over the programme period, albeit at a slowing pace, and to reach 51,9 % of GDP in 2016.”¹¹⁵

ADOPTION MTO

VII.12

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

MTO is a political commitment, which is incorporated into the medium-term expenditures frameworks prepared by the Ministry of Finance in coordination with the guarantors of individual budgetary chapters. The frameworks contain revenues and expenditures for the next budgetary year and two subsequent years, including the anticipated deficit and its financing.¹¹⁶ It is submitted to the Chamber of Deputies of the Parliament for information.

¹¹⁴ Convergence Programme, April 2013, p. 4.

¹¹⁵ Council Recommendation of 9 July 2013 on the National Reform Programme 2013 of the Czech Republic and delivering a Council opinion on the Convergence Programme of the Czech Republic, 2012-2016, OJ C 217/14, July 30, 2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:217:0014:0017:EN:PDF>, preamble point 9, para 2.

¹¹⁶ Sec. 4 of the Law No. 218/2000 Coll. as amended.

The Chamber of Deputies adopts a resolution to an annual budget bill submitted by the Government. The resolution indicates medium-term expenditures for the year following the annual budget in the form of a single amount. Such medium-term expenditures amount is legally binding for an annual budget preparation.¹¹⁷ However, as mentioned above, no sanction mechanism exists for a situation when an annual budget bill does not respect the expenditures frameworks. Because such annual budget bill, once enacted, has a superior legal force to parliament's resolution on expenditures frameworks, there is no option for challenging budget bill at the courts. Finally, although expenditures frameworks are agreed for two years following an annual budget bill, only the expenditures frameworks for the first year matter, because expenditures frameworks for the second year can be always updated with the subsequent annual budget bill accompanied by new two-year expenditures frameworks. Convergence Programme, which explicitly sets the MTO, is adopted by Government and submitted to Parliament for information only.

REGULATION No 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

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

EDP DIFFICULTIES

VII.13

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

Sanctions do not apply to CR. The Czech Republic was subject to EDP in 2004 and again in 2009 and so the practice of Ministry of Finance is adapted to this process. Hence the effect for CR is minimal and the debate was limited. The Government supported the proposed changes and the Parliament agreed to Government's position. No legislative changes made (according to the Government report no legislative changes are needed as the Regulation is directly applicable).¹¹⁸

REGULATION No 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

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

SANCTIONS

VII.14

¹¹⁷ Sec. 8 of the Law No. 218/2000 Coll. as amended.

¹¹⁸ See "CZ_SGP reform within the Six Pack - Government and Parliament position". Chamber of Deputies Document No. 237-E, 6th Parliamentary Term, 2011.

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

The Regulation is not applicable to the Czech Republic (Art. 1/2 of the Regulation).

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?

Nothing to add to what was answered in the previous questions.

MISCELLANEOUS

VII.16

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

No other information

VIII ESM TREATY

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

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

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID THE CZECH REPUBLIC 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. CR is not a party to the ESM Treaty. During the negotiations on the EC Decision on Art. 136 Amendment, CR announced its general position on the ESM:

1. “Mechanism shall be activated in the case of a threat to the Eurozone as a whole,
2. shall be considered ‘assistance of last resort’ (ultima ratio),
3. on the request of the affected Member State of the Union,
4. strict conditionality of the financial assistance,
5. involvement of private sector and IMF, and
6. an option for a voluntary involvement of a MS that is not member of the Eurozone, on an ad hoc basis.”¹¹⁹

All these main characteristics were included in the ESM Treaty.

CR followed the preparation of the ESM Treaty closely given its obligation to join the Euro; therefore I will shortly describe the situation regarding the current debates on the issue. Given Art. 2/1 of the ESM Treaty, a potential accession of CR is dependent on abrogation of the derogation from adopting euro. Although in theory, a MS with derogation, except Denmark and the UK, are under obligation to join Euro once they fulfil the convergence criteria, in reality (especially given the criteria of participation in ERM II for at least two

¹¹⁹ See “Czech Government and Parliament position on Draft Council Decision on Art. 136 Amendment”, p. 4-5.

years) the accession to the Eurozone is dependent on a political will of a MS with derogation. Despite the Czech Republic discussing a possibility to join the Eurozone for a decade, there has not been a target date set yet. After the tenure of the Eurosceptic President Klaus (who was supported by Civic Democrats and the Czech National Bank, whose all members of the Banking Council he has appointed during his tenure), the new President Miloš Zeman has profiled himself as pro-European by signing Art. 136 Amendment in April 2013, shortly after his inauguration. In an interview for Passauer Neue Presse, President Zeman mentioned he could imagine CR joining the Eurozone in five years, a move denied by then PM Nečas (leader of rather Eurosceptic Civic Democrats), as well as by then Finance Minister Kalousek (deputy leader of pro-European TOP 09) as unrealistic. Successful monetary policy of the Czech National Bank in the last decade and the Eurocrisis only add arguments for not changing the status quo. There are also doubts about the Czech Republic obligation to join the Eurozone based on the on-going transformation of the Eurozone governance. The argument goes that given that CR could not participate in majority of these changes (due to not being a member of the Eurozone), its obligation to join the Eurozone, the Czech Republic agreed to by the fact of its accession to the EU in 2004, is not valid anymore as the content of this obligation has transformed considerably. This leads to an argument that an accession to the Eurozone must be subject to a nationwide referendum. The last poll has shown that 77% of the respondents were against the adoption of the Euro.¹²⁰

During the ratification debates on the European Council Decision on Art. 136 TFEU Amendment, the Government emphasized that the consent to the Decision and the position of CR towards the ESM are separate issues. It indirectly admitted that it is not given that CR will join Euro and even if that happens, CR will negotiate the terms of its accession to the ESM.¹²¹ In early 2014, with new centre-left government and with new President, who, as mentioned above, publicly announced his support to the Czech membership in the Eurozone and who on a first occasion appointed a supporter of Euro accession to the Czech National Bank's Banking Council, the situation has started to change. In February 2014, the

¹²⁰ Centrum pro výzkum veřejného mínění Sociologický ústav AV ČR, Občané o přijetí eura – duben 2013 (Citizens on Euro adoption – April 2013), May 3, 2013, available at: http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a7005/f3/pm130503.pdf. A graph showing long-term view of citizens on the adoption of Euro indicates that until 2006 there was a majority support for the adoption of Euro, since 2006 the negative view prevailed with 2010 being the decisive turning point towards strong opposition to the Euro adoption. While the shift between 2006 and 2009 can be assigned to the successful monetary policy of the Czech National Bank and the increasing Euroscepticism of then President Klaus, fully revealed after his reelection in 2008 (that made him a lame-duck President given that he could not be reelected), the radical shift in 2009 and later must be assigned to the perception of the Eurocrisis and its management. Ibid.

¹²¹ Foreign Minister Karel Schwarzenberg, stenographic protocol, Chamber of Deputies of the Parliament, May 9, 2012, available at: <http://www.psp.cz/eknih/2010ps/stenprot/038schuz/s038123.htm#r4>.

CZECH REPUBLIC

Czech Prime Minister Sobotka has pledged to accede to the Fiscal Compact and the Banking Union.¹²²

RATIFICATION

VIII.2

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

CR is not a party to the ESM Treaty.

RATIFICATION DIFFICULTIES

VIII.3

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

CR is not a party to the ESM Treaty.

CASE LAW

VIII.4

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

No.

CAPITAL PAYMENT

VIII.5

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

CR is not a party to the ESM Treaty.

APPLICATION & PARLIAMENT

VIII.6

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

The Parliament does not have any formal role in the activities of the ESM or in determining the actions of the Minister for Finance when acting as a member of the Board of Governors

¹²² Oliver, C., New Czech prime minister vows to ratify EU fiscal compact, Financial Times, Feb. 20, 2014, <http://www.ft.com/intl/cms/s/0/c413ca0c-9a4f-11e3-8e06-00144feab7de.html#axzz2ttcsndWI>.

of the ESM. The only obligation of the Minister of Finance is to notify every 6 months the Parliamentarian Committee of Finance and Budget on the progress or any new developments on the ESM, in accordance with Recital 4 of the Preamble of Law 14 (III) of 2012.

CR is not a party to the ESM Treaty.

APPLICATION DIFFICULTIES

VIII.7

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

CR is not a party to the ESM Treaty.

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?

CR is not a party to the ESM Treaty.

MISCELLANEOUS

VIII.9

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

It was calculated that CR, if it joins ESM right away, would contribute in the first five years by the amount of 32 bn CZK (cca 1.2 bn Euro).¹²³ According to an opposition party Public Affairs, CR would pay additional 40 bn CZK in 12 years and 310 bn CZK in guarantees. This potential burden will become an important factor in whether to join the Euro or not.¹²⁴ According to a fraction within Civic Democrats (in line with then President Klaus), through the ESM, CR would burden future generations beyond any reasonable measures; the ESM incites moral hazard of debtors; and the creditors are obliged to “irrevocably and unconditionally undertake to pay on demand any... capital call made on them, within seven days” (Art. 9/3 in fine of the ESM Treaty).¹²⁵

¹²³ MP Jan Bauer, chairman of the Chamber of Deputies Committee for EU affairs, stenographic protocol, Chamber of Deputies of the Parliament, May 9, 2012, available at: <http://www.psp.cz/eknih/2010ps/stenprot/038schuz/s038124.htm>.

¹²⁴ MP Kateřina Klasnová (Public Affairs), stenographic protocol, Chamber of Deputies of the Parliament, June 5, 2012, available at: <http://www.psp.cz/eknih/2010ps/stenprot/040schuz/s040017.htm>.

¹²⁵ MP Michal Doktor (Civic Democrats), stenographic protocol, Chamber of Deputies of the Parliament, June 5, 2012, available at: <http://www.psp.cz/eknih/2010ps/stenprot/040schuz/s040018.htm>.

CZECH REPUBLIC

IX FISCAL COMPACT

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

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

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

NEGOTIATION

IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID THE CZECH REPUBLIC 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.

When the U.K. vetoed the original Franco-German proposal to include a fiscal compact into the Treaties during the December 8-9, 2011 European Council, the Czech Republic alongside Sweden and Hungary appeared to initially back the UK. However, instead of supporting the U.K. veto, the Czech Republic and the two other countries only made a reservation to the summit results stating they would have to consult their parliaments first.¹²⁶ The Czech Republic continued in the negotiations and decided finally not to sign the Fiscal Compact early in February 2012. In a press release, the Government explained: “Prime Minister Petr Nečas clearly declared that he will not commit to signing the compact before he can be confident that he will be able to fulfill this commitment... According to the Czech Prime Minister there has also been a form of abuse in that [the text was modified] directly at the meeting of the heads of state or government of the EU Member States, which they then immediately afterwards bindingly vote on, without the possibility for proper reading, analysis and evaluation.”¹²⁷ Two content-based issues were raised at this stage: on Article 7 (the commitment to support proposals of the Commission was considered as “a massive

¹²⁶ Europe's great divorce, Charlemagne, The Economist, Dec. 9, 2011, <http://www.economist.com/blogs/charlemagne/2011/12/britain-and-eu-summit>. David Cameron blocks EU treaty with veto, casting Britain adrift in Europe, The Guardian, Dec. 9, 2011, <http://www.theguardian.com/world/2011/dec/09/david-cameron-blocks-eu-treaty>.

¹²⁷ Government of the Czech Republic, The main arguments of Prime Minister Petr Nečas regarding why the Czech Republic has not committed to ratification of the fiscal compact, Press release, Feb. 6, 2012, <http://www.vlada.cz/en/media-centrum/tiskove-zpravy/the-main-arguments-of-prime-minister-petr-necas-regarding-why-the-czech-republic-has-not-committed-to-ratification-of-the-fiscal-compact-92710/> (in English).

change in the operation of the EU”, which must be refused in principle, although it applies to Eurozone members only) and on inadequate conditions for participation at the Eurozone summits.¹²⁸ Legal memorandum of the Government (prepared, however, later, in April 2012) raised concerns on the chosen form of international treaty (“highly problematic and unprecedented”), the use of EU institutions (Treaty that stays outside the EU framework cannot extend powers of the EU institutions), the transfers of sovereign powers (the government concluded that the Treaty transfers new powers to a special “international institutions” created by the Treaty; with a result that constitutional majority is needed for its ratification), and the extent in which the Treaty changes the original commitment of the CR given in the Accession Treaty of 2003 to join the Eurozone).¹²⁹

The internal political dynamics was once again affected by a strong opposition from then President Klaus towards the Fiscal Compact. While TOP 09 (junior government party, represented by Foreign Minister Karel Schwarzenberg and Minister of Finance Miroslav Kalousek) backed the Fiscal Compact (almost unconditionally¹³⁰) already during the negotiations, the Civic Democrats (represented by then Prime Minister Petr Nečas) were rather sceptical towards the idea.¹³¹ Eurosceptic fraction in the Civic Democrats (among others, MEP for the Civic Democrats and chairman of the European Conservatives and Reformists group in the European Parliament Jan Zahradil) connected to the founder of the party and then President Václav Klaus, exercised a strong influence over the Party in EU matters incited by strong announcement of President Klaus that he would block any such move. On Jan. 11, 2012, President Klaus sent an official letter to the Prime Minister “informing him that he will refuse to sign any legislation that would relinquish any Czech sovereign powers over budgetary and fiscal policy to the EU.”¹³² While PM Nečas attempted

¹²⁸ “The text only ensures restricted participation for non-eurozone members at summits on specific subjects. It of course does not say who will stipulate and interpret the subjects in advance. It is the opinion of the Prime Minister that all the countries that have committed to adopting the euro should, as standard, be invited as observers (of course without voting rights) to all summits if their commitment is to be valid.” Ibid.

¹²⁹ Memorandum of the Department for European Affairs of the Office of the Government of the Czech Republic, that is a leading analysis for the Government legal position, April 2012, <http://www.vlada.cz/assets/evropske-zalezitosti/dokumenty/Analyza-UV-final.pdf>.

¹³⁰ Given their strong support even before the final text emerged.

¹³¹ TOP 09 leader Schwarzenberg declared “We will position ourselves as a clearly pro-European party, which adheres to deeper European integration, and will try to lead the country into the mainstream [of the integration process]. We are no EU-grovelers, but with our position towards Europe we are fundamentally different from the euro-hesitant go euroskeptic Civic Democrats (ODS).” Česká pozice (Czech Position), EU budgetary integration threatens to topple Czech coalition, Jan. 12, 2012, quoting Czech daily Lidové noviny, available at: <http://www.ceskapozice.cz/en/news/politics-policy/eu-budgetary-integration-threatens-topple-czech-coalition>.

¹³² Ibid.

to gain time, TOP 09 threatened to leave the government if the Czech Republic does not participate in the Fiscal Compact. A government crisis in April 2012 (see the overview of the Czech politics during the period this study covers in the answer to question I.1) pushed the disagreements on the Fiscal Compact on the side lines.

The major opposition party (Social Democrats) supported the Fiscal Compact and was furious that the Government did not discuss its intention not to sign it with the Parliament. The parliamentary rules of procedure adopted in connection with the Lisbon Treaty, however, requires the Government to ask for preliminary consent for its position at the European Council only, first, when the EC acts within the EU Treaties, and second when the Government aims to give consent to a measure (the rules do not provide for a situation when the Government intends to disagree with a proposal at the EC).¹³³

RATIFICATION

IX.2

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

CR is not a party to the Fiscal Compact. Before CR decided not to sign the Fiscal Compact, Civic Democrats supported ratification in a referendum, while TOP 09 would most probably urge for a Parliamentary ratification only. Then President Klaus clearly stated he would not ratify the Compact. In February 2014, PM Sobotka pledged to sign the Fiscal Compact with President Zeman supporting the move.

The Czech legal academic discussion focused on whether the Fiscal Compact means a (i) *transfer of competences* on (ii) an *international organization or international institution*. The Fiscal Compact has been found to create new competences, in particular the commitment of contracting parties to supporting the proposals and recommendations of the Commission prepared within the excessive deficit procedure (Article 7).¹³⁴ At this same time, the Fiscal Compact contains decision-making rules that as consequence create a specific international institution consisting in cooperation between the Commission and the contracting parties. The conclusion is that the Fiscal Compact creates some new competences to an international institution within the excessive deficit procedure that goes beyond the mandate of the TFEU,

¹³³ Sec. 109i of the Act No. 90/1995 Coll. on the Rules of Procedure of the Chamber of Deputies of the Parliament. Available at: <http://www.zakonyprolidi.cz/cs/1995-90#cast15A>.

¹³⁴ Arts. 3, 4 and 5, on the other hand, do not create new competences beyond what is mandated by the existing EU Treaties. Gerloch, A., *Povaha Smlouvy o stabilitě, koordinaci a správě v Hospodářské a měnové unii sjednávané mezi zeměmi Eurozóny z hlediska požadavků stanovených ústavním pořádkem České republiky na proces její ratifikace*, *Acta Universitatis Carolinae – Iuridica*, 2012, 99-108,

the Protocol on the Excessive Deficit, and the Stability and the Growth Pact¹³⁵, rather than implementing competences already transferred to the EU by the Czech Republic by its ratification of the 2003 Accession Treaty and the Lisbon Treaty. As a consequence, the Fiscal Compact requires ratification by the three-fifth majority of both chambers of the Parliament or in a referendum.¹³⁶

RATIFICATION DIFFICULTIES

IX.3

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

CR is not a party to the Fiscal Compact. For the discussion on constitutional basis for ratification see above.

BALANCED BUDGET RULE

IX.4

ARTICLE 3(2) FISCAL COMPACT PRESCRIBES THAT THE BALANCED BUDGET RULES SHALL TAKE EFFECT IN NATIONAL LAW THROUGH "PROVISIONS OF BINDING FORCE AND PERMANENT CHARACTER, PREFERABLY CONSTITUTIONAL, OR OTHERWISE GUARANTEED TO BE FULLY RESPECTED AND ADHERED TO THROUGHOUT THE NATIONAL BUDGETARY PROCESSES." HOW IS THE BALANCED BUDGET RULE (INTENDED TO BE) IMPLEMENTED IN THE CZECH REPUBLIC? 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.

CR is not a party to the Fiscal Compact. However, the Government agreed to a constitutional amendment on fiscal responsibility (Fiscal Constitution), the legislative process currently stayed.

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.

¹³⁵ See the conclusions of the Memorandum of the Department for European Affairs of the Office of the Government of the Czech Republic, that is a leading analysis for the Government legal position, April 2012, <http://www.vlada.cz/assets/evropske-zalezitosti/dokumenty/Analyza-UV-final.pdf>.

¹³⁶ Gerloch, A., *Povaha Smlouvy o stabilitě, koordinaci a správě v Hospodářské a měnové unii sjednávané mezi zeměmi Eurozóny z hlediska požadavků stanovených ústavním pořádkem České republiky na proces její ratifikace*, *Acta Universitatis Carolinae – Iuridica*, 2012, 99-108, at 104.

CR is not a party to the Fiscal Compact.

RELATIONSHIP BBR AND MTO

IX.6

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

CR is not a party to the Fiscal Compact. Based on the current MTO, the balanced budget shall be reached by 2017. However, recent debates suggest that this target is too ambitious and it will be revised. The predicted deficit for 2014-16 is 2.9, 2.8, and 2.8% GDP respectively and so to reach balanced budget in 2017 (that is to decrease the deficit from 2.8 to 0.5%) is improbable.

CASE LAW

IX.7

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

No.

NON-EUROZONE AND BINDING FORCE

IX.8

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

No.

MISCELLANEOUS

IX.9

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

No.

X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT

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

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

Several member states have (also) indirectly benefited through the Securities Markets Programme (SMP) created in May 2010, a bond-buying programme of the European Central Bank that was replaced in September 2012 by the Outright Monetary Transactions (OMT) programme (Greece, Ireland, Portugal, Italy, Spain).

(<http://www.ecb.int/mopo/liq/html/index.en.html#portfolios>)

CONTEXT

X.1

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

CR has not received financial assistance.

NEGOTIATION

X.2

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

CR has not received financial assistance.

STATUS INSTRUMENTS

X.3

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

CR has not received financial assistance.

TRANSPOSITION NATIONAL LEGAL ORDER

X.4

CONSIDERING THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS, WHAT PROCEDURE DOES THE

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

CR has not received financial assistance.

ROLE PARLIAMENT

X.5

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

CR has not received financial assistance.

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

CR has not received financial assistance.

MISSIONS

X.7

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

CR has not received financial assistance.

CASE LAW INTERNATIONAL INSTRUMENTS

X.8

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

No. CR has not received financial assistance.

CASE LAW IMPLEMENTING MEASURES

X.9

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

No. CR has not received financial assistance.

BOND PURCHASES ECB

X.10

DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE MOMENT WHERE THE EUROPEAN CENTRAL BANKS STARTED BUYING GOVERNMENT BONDS ON THE SECONDARY MARKET

CZECH REPUBLIC

(THROUGH THE SECURITIES MARKETS PROGRAMME, SMP).

CR has not received financial assistance.

CONDITIONALITY BOND PURCHASES ECB

X.11

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

CR has not received financial assistance.

MISCELLANEOUS

X.12

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO THE CZECH REPUBLIC AND FINANCIAL SUPPORT?

No.