



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: "Latvia"

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I - Political context

POLITICAL CHANGE

I.1

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

Before the economic crisis the last parliamentary elections were held in 2006. During the crisis there were two elections - ordinary elections in 2010 and emergency elections in 2011.[\[1\]](#) There are 100 places in the Parliament of Latvia and elections are held every four years and the MPs are elected by proportional representation with a 5% threshold. Latvia has a multi-party system.

Electoral developments

On 13 January 2009 big demonstrations took place asking the President to dismiss the Parliament due to the general dissatisfaction with the way the Government was dealing with the crisis (around 10 000 people participated); but these demonstrations remained without results. However on 20 February 2009 then Prime Minister Ivars Godmanis resigned. As the reason he mentioned the lack of cooperation from the coalition members TP and ZZS.[\[2\]](#) On 12 March 2009 Valdis Dombrovskis became the new Prime Minister. He established an unsteady and not very comfortable coalition. In general he benefited from being outside the Government before and from having opposed the stabilisation programme before for it being insufficient.[\[3\]](#) He managed to achieve an almost symbolic meaning of being a 'new figure' capable of dealing with the mistakes of previous governments. Therefore he enjoyed a broad mandate to act and this allowed him to successfully carry out austerity measures without significant opposition.[\[4\]](#)

In 2010 a new political alliance consisting of National Party (Tautas partija) withdrew from the coalition leaving prime minister at the time, Valdis Dombrovskis, in a minority coalition. The minority coalition continued working comparatively successfully but there of course were problems with getting political support for new legislation, inter alia the draft laws implementing austerity measures.

On 2 October 2010 the next parliamentary elections took place. The spectrum of political parties noticeably changed. One of the previously main political forces National Party (Tautas partija) which had 23 places in Parliament after the 2006 elections was liquidated before the 2010 elections due to the negative response to this party expressed by the society and in the press. Three parties together established a political union called the Unity (Vienotība) with Valdis Dombrovskis as a candidate for the position of Prime Minister and this union included some of the previous members of the National Party. The Unity provided a counterweight to the left-wing Harmony Centre (Saskaņas centrs) mostly representing Russian voters. The Unity won the elections and Valdis Dombrovskis became the Prime Minister again. Regarding the re-election of "Latvia's tough-minded governing coalition" Bideleux argues that this means that the chosen strategy of the government enjoyed strong

popular backing.^[5] This is questionable when such issues as unwillingness of the people to vote for either pro-Russian parties or parties associated with oligarchs are taken into account. Even during the crisis at the end of the day the main reasons for and against voting for a particular political force were national considerations and divide between political parties mostly went along the lines of 'Russian' and 'Latvian'.

In 2011 the President of Latvia (Valdis Zatlers) decided to initiate a referendum to dismiss the Parliament after one of the MPs (Ainārs Šlesers, associated with oligarchs) was not subjected to prosecutions due to his immunity (the Parliament voted against his extradition). One of the reasons mentioned was also the inability of the government to deal with the crisis in the present situation. However, true reasons seemed to be political because the political situation was shaky and with the help of emergency elections Valdis Zatlers might have seen a chance to avoid losing his position as a President and a possibility to successfully enter the political scene, since at the time it was clear that he would not be re-elected for a second term.

After the referendum, where the population voted in favour of dismissing the Parliament, the previous president (Valdis Zatlers) established a political party, which together with the party of Valdis Dombrovskis (Vienotība) gained considerable support. The only party which advertises itself as being left-wing, even though its policies at most could be considered centric, and which is considered to be representing the interests of the Russian-speaking part of the country, Saskaņas Centrs (SC), won the elections but was not able to build a coalition. This party to this day has never been in the governing coalition in the Parliament. Valdis Dombrovskis was able to unite three parties (Vienotība, ZRP and NA) in the coalition. Therefore he remained Prime Minister also after the emergency elections.

The reasons behind the emergency elections were mainly political and the results were representative of the divide between Latvian and Russian votes as well as illustrated some resentment towards some personalities considered to be 'oligarchs'. Partly, at least due to the lack of truly socially oriented parties in Latvia, the results of the emergency elections did not represent the dissatisfaction with the social situation. However the social considerations served at least to some extent as an excuse behind initiating emergency elections and it was also behind the phenomenon of 'empty votes' as a type of protest about the lack of political parties offering socially oriented politics.

Frederiks Ozols has rightly argued that local peculiarities have to be taken into account when the election results in Latvia during the times of crisis are considered. The descriptions of left- and right- or centric-oriented are particular in Latvia - Russian speaking parties are considered to be more left and Latvian speaking ones - right and centrist.^[6] During the 2010 Parliamentary elections, the media claimed that the people have voted for the austerity policy implemented by Valdis Dombrovskis because the alliance Unity won the vote and Prime Minister Valdis Dombrovskis was one of its main leaders. This led to a conclusion by the media (especially foreign) that support is given for even more austerity measures. This conclusion is incomplete because there were more reasons behind this victory. The protest votes against Russia-linked political forces thought to be influenced by the Kremlin, the phenomenon 'voting with an empty envelope',^[7] the fact that many

citizens had left the country to find work abroad and the successfully chosen slogan by Unity - 'stability' - to which people were responding very well, also played a role.[8]

It has been argued that "Latvians have given their backing to more tough austerity measures, re-electing the country's centre-right government in the first vote since the Baltic state received a €7.5bn bail-out from the International Monetary Fund".[9] However, this is doubtful at least. The vote was quite nationalist (as it has been the case since regaining the independence) and since there are no (Latvian) political forces taking a more social position, voters really have no choice. Prime Minister Valdis Dombrovskis after the elections said that the "Voters have quite clearly voted for stability".[10] It is rather argued that voters simply did not vote for parties associated with oligarchs and for pro-Russian parties and had no possibility to choose political parties which would aim to protect social rights and stand up for social matters.

Social mobilisation

In Latvia there has been only one significant demonstration concerning matters of the economic crisis. It took place on 13 January 2009 and was organised by a recently established political party "Sabiedrība citai politikai" which later was one of the parties establishing the political alliance Unity (Vienotība). It was organised against the deteriorating economic situation in the country[11] and during it the President was asked to dismiss the Parliament on the basis of general dissatisfaction with the changes to legislation introduced by the Parliament. Around 10 000 people took part in the demonstration[12] and it was definitely the biggest since Latvia regained independence in 1991. Also the Free Trade Union Confederation actively took part by demanding immunity for labour law from measures during the crisis. During the crisis the Free Trade Union Confederation disagreed with many of the austerity measures.[13] Additionally, shortly after 13 January 2009 farmers' protests were organized on January 27, 2009. Moreover, other actions coordinated through the Internet like flash mobs and special websites took place.[14]

There have also been some smaller demonstrations, however, they did not gather significant support of people and have remained almost without any consequences or resonance in the press.[15] For example, on 24 July 2009 about a hundred of employees of state institutions were demonstrating against wage reductions in the State Social Insurance Agency, the State Employment Agency and the State Revenue Service. The demonstration was organised by the Trade Union of Employees of State Institutions, Self-governments and Finance Sector.[16] This is exemplary of the type and extent of the demonstration culture in Latvia. Similar protests were organised by the pensioners when the pension cuts were introduced.

Instead the social mobilisation in Latvia normally happens via more individualised means, for example, litigation (see information on cases decided by the Constitutional court during the economic crisis) or the sending of petitions and letters to institutions, Government and individual MPs. Rajevska and Romanovska have argued that already the demonstrations on 13 January 2009 and the following dismissal of government and postponing of the most important austerity measures to after the European Parliament and local government elections were very atypical for the Latvian political culture.[17] Indeed one could almost

agree with the pessimistic view that “When these protests failed to bring about change, the public’s response was to vote with their feet and exit the country”.[\[18\]](#) It is more characteristic for Latvians to deal with the crisis on their own in individual ways.

It is true that “unconventional participation forms like demonstrations, boycotts are not common in Latvia after the renewal of independence. Even during crisis the population chose not to demonstrate but simply emigrate from the country.”[\[19\]](#) Bideleaux has argued that “the present-day adult populations of Europe’s post-communist states were for the most part poor, disillusioned, demoralized, atomized, weakly unionized, worn down by ‘transition fatigue’, somewhat inured to seemingly endless hardship and upheaval and disinclined to join political parties, social movements and public protests.”[\[20\]](#) As a consequence he stated that the normal response to the economic crisis is “to grit their teeth, keep their heads down and work even harder than before, in the hope or expectation that this crisis would (like previous ones) eventually blow itself out and allow people to get on with their lives.”[\[21\]](#) To at least some extent one could agree with this statement. Besides since the demonstrations taking place on 13 January 2009 did not have the intended effect on the Government and the Parliament, it seemed that demonstrations do not lead to any socially better solutions.

Labour issues

In general, the bailout itself is considered a success story, at least by the politicians. However, the general public might have a rather different opinion. Latvians tend to ‘protest with their feet’ by leaving the country which together with a low birth-rate might deepen and aggravate the consequences of the crisis. The social consequences have not been fully evaluated yet and it might be true that they turn out to be worse than predicted. The central issue faced by the country at the moment and in the upcoming years will be how to keep people in the country where wages are lower than the European average and as well social protection does not seem alluring at all. The biggest fear is that the loss of young people who are the most flexible and most likely to leave will rapidly worsen the demographic situation and inevitably cause more economic problems in the future.

For example a research carried out by marketing and public opinion research centre “SKDS” shows that 76.8% of respondents do not believe that the state is able to ensure a sufficient pension and 18.7% have chosen the answer “I rather would not believe”.[\[22\]](#) Just 0.5% believes in the ability of the state to ensure this.[\[23\]](#)

Approximately 20% of SKDS’s respondents have been in the situation when an employer does not pay the severance pay and other compensations. Even a higher number of respondents (21%) has written the resignation “of one’s own will” or “as agreed by both sides” due to the influence by the employer. 15% of respondents have received a notice of termination of employment relationship without due procedure and in violation of the notice period foreseen by law.[\[24\]](#)

During and since the crisis the fear of unemployment has played an increasingly important role in facilitating breaches of labour laws (e.g. undeclared employment, ‘wages in envelopes’). The SKDS’s research show that in fear of losing their job more than half of

respondents (52%) would agree to the breach of their own labour rights and to receive 'wage in envelope', if the employer suggested it.[25] Only half (50%) in a situation when their labour rights were breached would try to convince the management of the company to observe their rights, 28% would submit a complaint to institutions responsible for dealing with these issues, 11% would hand in resignation, 6% would not react at all and 18% would not know what to do.[26]

A research carried out by the Baltic Institute of Social Sciences shows that two problems are dominant - overtime work without pay and 'wages in envelopes' (22% of respondents have faced such situations). In the construction industry almost half of respondents indicate two additional problems - delays of pay and employment without a contract in written form. More rare are the breaches of labour rights in the public sector; however, some before unseen problems have been indicated as well here - unpaid overtime work, worsening of working environment, use of personal means for carrying out work and abusive treatment by colleagues (might be caused by stress concerning employment cuts).[27]

Interesting might be that the EU has not been strongly blamed for the crisis in Latvia. It has even been argued that the EU has nothing to do with the situation when its competences are considered and the social responsibility has to be taken by the government and, in general, by the country itself.[28]

While the Prime Minister has stated that the main indication for overcoming the crisis will be a decrease in unemployment levels[29] and not the increase of GDP, it rather seems that the situation is more complicated and the indication of overcoming the crisis in the long-term will rather be the stabilisation of the demographic situation.

A survey carried out in December 2010 (number of respondents 1004) showed that only 23.1% of respondents "feel safe about their future in Latvia". More than half (56.7%) said that they did not and one fifth of respondents had difficulties to evaluate the feeling of safety concerning their future in Latvia. This shows a high degree of uncertainty and insecurity.[30]

No surveys seem to have been carried out considering how successful the bailout is in the opinion of Latvians. However, it seems that the overall bleak prognoses and perspectives taken by the Latvians indicate that they do not consider it to be a complete success story. One issue is the financial crisis in a fiscal sense but a completely other is the social crisis and the following deepening of the demographic crisis. Until these will be solved, there is no ground to consider the overcoming of the crisis in Latvia a success story.

Additional information:

1. Short overview concerning the main political parties which played a role during the crisis.

The main political parties represented in the Parliament during the crisis:

1) TP - Tautas partija (People's Party) was a conservative right wing party, founded on 2 May 1998. It was part of the 7th, 8th, 9th and 10th Parliament. It has led several Governments (the one led by A. Kalvītis was blamed for excessive spending and for leading Latvia towards

the crisis by following Governments and as well by part of the people). On 9 July 2011 a decision was taken to liquidate the TP.

2) LPP/LC - Latvijas Pirmā partija/Latvijas Ceļš (Latvia's First Party/Latvian Way) was a centric political party in Latvia, created by merging the Christian democratic Latvia's First Party (LPP), the liberal Latvian Way (LC) and a couple of regional parties.

On 12 June 2010 the TP and LPP/LC by uniting several smaller political forces established PLL (Par Labu Latviju (For Good Latvia) which participated in the 10th Parliament Elections but got only 8 MPs.

3) ZZS - Zaļo un Zemnieku Savienība (Union of Greens and Farmers) is a centre oriented green and agrarian political party alliance founded in 2002.

4) JL - Jaunais Laiks (New Era Party) was a centre-right political party which was represented in 8th, 9th and 10th Parliament. It was founded in 2002 and in 2011 by merging with PS and SCP formed Vienotība.

5) PS - Pilsoniskā Savienība (Civic Union) was a liberal conservative party founded in 2008. It has also been described as right-wing or centre-right. The PS in 2011 by merging with JL and SCP formed Vienotība.

6) SCP - Sabiedrība Citai Politikai (Society for Political Change) was a social liberal political party, founded on 6 September 2008. In the 10th Elections it ran as part of the alliance Vienotība. The SCP after the elections demanded the exclusion of TB/LNNK from the new Government. The SCP in 2011 by merging with JL and PS formed Vienotība.

7) Vienotība (Unity) - This is a liberal-conservative or center-right political party. It was founded as political alliance of the PS, SCP and JL in March 2010. It was formed to provide a counterweight to the left-wing SC. On 6 August 2011 the alliance was transformed into a single political party.

8) TB/LNNK - Tēvzemei un Brīvībai/LNNK (For Fatherland and Freedom/LNNK) was a free market national conservative political party. It was founded in 1993. Initially belonging to the nationalist right the party became more moderate and shifted emphasis from supporting economic interventionism to the free market. For the 10th Elections it formed an alliance (NA) with far right nationalist VL (Visu Latvijai (All For Latvia). In July 2011 both parties transformed into a single political party under the name NA (Nacionālā Apvienība (National Alliance).

9) NA - Nacionālā Apvienība (National Alliance) is a right-wing political party. The party is formed by conservatives, Latvian ethnonationalists and economic liberals. It was first formed as an electoral alliance in 2010 by TB/LNNK and VL and in July 2011 it transformed into a unitary political party.

10) PCTVL - Par Cilvēktiesībām Vienotā Latvijā (For Human Rights in United Latvia) is a left-wing political party, supported mainly by ethnic Russians and ethnic minorities. It was established in 1998. In recent years its voters have switched allegiance to SC and in the 10th

Elections it lost its representation in the Latvian Parliament. The political party has never been in a government coalition.

11) SC - Saskaņas Centrs (Harmony Center) is a center-left political party founded in 2005 mainly supported by ethnic Russians. It positions itself in favour of social democracy and one of its emphases is on good relationships with Russia. It also supports increased social spending in order to boost the economy and increase the general welfare. The political party has never been in a government coalition.

12) ZRP - Zatlera Reformu Partija (Zatler's Reform Party) is a centre-right political party founded by the former President Valdis Zatlers on 23 July 2011. It was founded on the same day when the referendum for Parliamentary dissolution took place. One of its main claims was that it will not cooperate with 'oligarch parties' - ZZS, LPP/LC and TP. In April 2012 the party changed its name to Reformu Partija (RP, Reform Party).

2. Short overview (timeline) concerning changes in the political situation (changes of Government, political parties, coalition/opposition division etc.) during the crisis.

There are 100 MPs in the Parliament of the Republic of Latvia.

7 Oct 2006 - 9th Elections of the Parliament:

- TP - 23 MPs
- ZZS - 18 MPs
- JL - 18 MPs
- SC - 17 MPs
- LPP/LC - 10 MPs
- TB/LNNK - 8 MPs
- PCTVL - 6 MPs

7 Nov 2006 - A. Kalvītis establishes a Government and becomes Prime Minister. The Coalition consists of TP, ZZS, LPP/LC, TB/LNNK

5 Dec 2007 - the Government of A. Kalvītis resigns

20 Dec 2007 - I. Godmanis establishes a Government and becomes Prime Minister. The Coalition consists of LPP/LC, TP, ZZS, TB/LNNK

20 Feb 2009 - the Government of I. Godmanis resigns

12 Mar 2009 - V. Dombrovskis establishes his First Government and becomes Prime Minister. The Coalition consists of JL, TP, ZZS, TB/LNNK, PS

2 Oct 2010 - 10th Elections of the Parliament:

- Vienotība - 33 MPs
- SC - 29 MPs
- ZZS - 22 MPs
- NA - 8 MPs
- PLL - 8 MPs

3 Nov 2010 - the First Government of V. Dombrovskis finishes its work

3 Nov 2010 - V. Dombrovskis establishes his Second Government and becomes Prime Minister again. The Coalition consists of Vienotība and ZZS

17 Sep 2011 - 11th Elections of the Parliament (Emergency Elections)

- SC - 31 MPs
- ZRP - 22 MPs
- Vienotība - 20 MPs
- NA - 14 MPs
- ZZS - 13 MPs

25 Oct 2011 - the Second Government of V. Dombrovskis finishes its work

25 Oct 2011 - V. Dombrovskis establishes his Third Government and becomes Prime Minister again. The Coalition consists of Vienotība, ZRP and NA

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

[3] Samuel Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy', ILJ 41(3), pp. 305-327, p. 310.

[4] Ibid.

[5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

[8] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:

<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)

[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

[12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatiuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvara-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)

[13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: <http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-o>

[n-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf](#) (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12.

[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauja: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

[24] D. Gailīte, Darba tiesību „diskriminācija” krīzes laikos. Jurista Vārds, Vol. 23 (576), 9 June 2009. Available under <http://www.juristavards.lv/index.php?menu=DOC&id=192899> (last visited 2 Nov 2012).

[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijasradio.lv/zinas/raksts.php?id=49153&gr=0> (last visited 2 Nov 2012)

[30] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-pol>

[icy-in-latvia.pdf](#) (last visited 2 Nov 2012) p. 19-20

II - Changes to the Budgetary Process

BUDGETARY PROCESS

II.1

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

At the moment the budgetary process is as follows:

The yearly state budget is adopted in the form of a law by the Parliament upon the proposal of the government.

The Annual Budget and the Budgetary Framework are developed and approved in accordance with the Law on Budget and Financial Management (LBFM)[\[1\]](#) and Law on Fiscal Discipline (LFD)[\[2\]](#). Both Annual Budget and Budgetary Framework are adopted by the Parliament in the ordinary procedure (two readings, simple majority vote). In case the budget is not approved, that is understood to be a non-confidence vote concerning the Government and the Government is considered to be dismissed.[\[3\]](#) According to Article 16 LBFM the Minister for Finance is responsible for the development of the Draft Medium Term Budget Framework Law and the Draft Annual State Budget Law (package of budget bills).

Article 66 of the Constitution provides that the Parliament determines, before the beginning of the fiscal year, the State Revenues and Expenditures Budget and that the Cabinet of Ministers submits the draft budget law to the Parliament. At the end of the budgetary year, the Government submits an accounting of budgetary expenditures for Parliamentary approval. Budget laws are among those, which cannot be submitted to a national referendum (Article 73 Constitution).

The Cabinet of Ministers ensures the formulation and implementation of the State budget, as well as determines the procedure for financial activities of local governments and bodies non-financed by the budget (Art 2(2) LBFM). The State budget funds may be allocated or received only according to the appropriation provided for in the Annual State Budget Law (Art 5(3) LBFM). The State budget appropriations are determined by the Annual State Budget Law (Art 9(1) LBFM).

According to Article 16.¹(1) LBFM, the Minister of Finance until 15 December of the current year submits a Draft Schedule for the Development and Submission of the Draft Medium Term Budget Framework Law and the Draft Annual State Budget Law for the next year to the Cabinet of Ministers. In accordance with Article 16.²(2) LBFM each year the Minister of Finance in co-operation with the Minister of Economics and in consultation with the Bank of Latvia up-dates the medium term macroeconomic development forecasts and develops the Draft Medium Term Budget Framework Law for the subsequent three financial years and submits it to the Cabinet in accordance with the Schedule for the Development and Submission of the Draft Medium Term Budget Framework Law and the Draft Annual State Budget Law.

When the Government decides on the Draft Medium Term Budget Framework Law or on amendments to the Medium Term Budget Framework Law, it has to take into account the opinion of the Chancellery of the President, the Supreme Court, the Constitutional Court, the Council of Justice, the State Audit Office, the National Electronic Mass Media Council, the Office of the Ombudsman, the Public Utilities Commission and the Office of the Prosecutor General regarding the maximum permissible total amount of State budget expenditure for the relevant institution (Article 16.²(8) LBFM). The norms of the previous Medium Term Budget Framework Law applying to the second and third year of operation become invalid by the coming into force of the next Medium Term Budget Framework Law (Article 16.²(9) LBFM). The Cabinet submits the Draft Medium Term Budget Framework Law for the subsequent three years to the Parliament before 30 April of the current year (Article 16.²(10) LBFM).

Ministries and other central State institutions shall develop and submit to the Ministry of Finance the State budgetary requests prepared in conformity with the basic principles for the development of the budgetary requests (Article 18(1) LBFM). In general, ministries and other central State institutions shall develop the State budgetary requests within the scope of the maximum permissible amount of the State budget expenditure specified in the Medium Term Budget Framework Law for the relevant year (Article 18(11) LBFM). The Minister for Finance has to develop the Draft Annual State Budget Law on the basis of the Medium Term Budget Framework Law and the submitted budgetary requests (Article 19(2) LBFM). All the ministries and other central State institutions, after they receive the Draft Annual State Budget Law (the package of budget bills), can within two weeks submit to the Minister for Finance reasoned objections concerning the Draft Law (Article 20(1) LBFM). Afterwards the Minister of Finance submits the Draft Law to the Cabinet of Ministers (Article 20(3) LBFM). Followingly, the Cabinet of Ministers decides on submission of the Draft Law to the Parliament (Article 20(5) LBFM).

The Cabinet of Ministers has to submit the Draft Annual State Budget Law for the next financial year to the Parliament by 1 October (Article 21(1) LBFM). In a year when the Parliament is elected the Draft Annual State Budget Law (a package of budget bills) has to be submitted to the Parliament not later than four months following the newly elected Parliament has given its vote of confidence to a new Government (Article 21(3) LBFM). Any amendments to the Annual State Budget Law also have to be submitted for to a vote in the Parliament (Article 21(4) LBFM).

The Parliament examines and approves the Draft Annual State Budget Law (the package of budget bills) submitted by the Cabinet in accordance with the legislative procedure (Article 22(1) LBFM). The Budget is approved in two readings^[4] and if in any of them the draft budget law is rejected, it is assumed that it is a “no-confidence” vote for the Government (Article 30 of the Parliament Rules of Procedure). Hence in such cases there is a need to establish and approve a new Government.

According to Article 9 LBFM the Minister of Finance can perform reallocations for a ministry or other central State institutions within the appropriation determined in the Annual State Budget Law among the programmes, sub-programmes and expenditure codes.

This has to be done in conformity with economic categories and from the appropriation planned in a separate budget programme for undivided financing for implementation of the European Union policy instruments and other foreign financial assistance projects and measures to ministries and other central State institutions, as well as appropriations from ministries and other central State institutions for implementation of the European Union policy instruments. After informing the Parliament, the Minister of Finance can change the appropriations among ministries and other central State institutions for the use of foreign financial assistance funds granted to the State budget institutions and for the use of the surplus of foreign financial assistance funds at the beginning of a financial year. The Minister of Finance also has the right to reallocate the appropriations among ministries and other central State institutions, including in cases of function reallocation or structural reforms, if a Cabinet decision has been taken and the Parliament has agreed with such reallocation by a separate decision.

If prior to the beginning of a financial year, the Annual State Budget Law has not come into force, the Minister of Finance shall approve the State budget expenditure, loans and borrowings required for the activities of the State (Article 15 LBFM).

The Minister of Finance issues an opinion regarding draft laws providing for additional expenditure or changes in the revenues and which were not submitted to the Parliament by the Cabinet but by some other institution (Article 10(1) LBFM). If, following the coming into force of the State Budget Law, the Parliament adopts laws or the Cabinet takes decisions causing an increase in local government expenditure or a decrease in their revenues in the current financial year, the State budget funds from which the increase in the local government expenditure or the decrease in their revenue will be covered have to be specified in these laws or decisions (Article 10(2) LBFM).

To reduce general economic risks, to avoid socio-economic crises or to reduce their impact and to ensure the availability of financial resources in the case of an emergency situation, the Law on Long-Term Stabilisation Reserve determines the procedure for the establishment and use of the long-term stabilisation reserve (Article 8(1) LBFM).

The Constitutional Court has determined the limits of its own competences for when it is asked to decide on the compatibility of a state budget law with hierarchically higher legal norms (e.g. the Constitution). The court checks only whether in the preparation and approval of the state budget the Parliament and the Cabinet of Ministers have complied with the law.^[5] Therefore the Constitutional Court carries out more procedural rather than substantial checks.

GENERAL CHANGE

II.2

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

Please see Questions VI.2, VI.7, VI.10, II.1 and III.8.

Fiscal discipline

In general before the crisis the Budgetary Framework could easily be amended and was not binding. It was not adopted in the form of law by the Parliament (as it is now) but was adopted by a decision of the Cabinet of Ministers. Before the introduction of the Budgetary Framework in a form of law it was possible to update the framework twice a year and the ceilings for expenditure established by the framework were not binding upon the Government; therefore, no strict fiscal discipline was ensured. The necessity to improve this system was recognized and in the conception of the Law on Fiscal Discipline it was proposed to elevate the adoption of the framework to the Parliamentary level, make its character more binding, limit the possibility to amend it by allowing amendments only in a particularly bad economic situation.[\[6\]](#) These changes were introduced by amending the Law on Budget and Financial Management (amendments of 25 April 2013)[\[7\]](#) and by adopting the Law on Fiscal Discipline in 2013. When the medium-term budgetary framework law is prepared it has to be taken into account that general government debt at the end of the year cannot exceed 60% GDP in factual prices. The adjusted maximum allowed expenses for the appropriate year have to be determined by taking into account the balance and expenditure growth conditions.[\[8\]](#)

It was also proposed to ensure that the possibility to amend the yearly budget is limited in order to ensure stable and deliberative fiscal policy. It was proposed that amendments in the state budget could be made only if they do not influence the expenditure of the following years and if the budgetary income is essentially lower for the one determined by the state budget law in order to ensure measures of fiscal consolidation.[\[9\]](#) This was achieved by amending the Law on Budget and Financial Management.

Law on Fiscal Discipline

One of the greatest changes affecting the budgetary process was the adoption of the Law on Fiscal Discipline (LFD) in early 2013. The LFD determines the principles and conditions of fiscal policy in order to ensure a balanced budget within the economic cycle and in this way facilitates sustainable state development, macroeconomic stability and aims to reduce the negative influence of outside factors on the economy. The LFD intends to realise counter-cyclical fiscal policy.[\[10\]](#)

As the main instrument for responsible and well-thought fiscal policy the Medium-term Budgetary Framework Law has been foreseen. This has to be prepared every year for the period of the next three years. The maximum budgetary expenditure for the first and second year will be inherited from the second and third year from the previous framework law. The medium-term budgetary framework draft law has to be supplemented by a declaration on fiscal risks, which determines the necessary measures for ensuring the stability of fiscal indicators. The general governance of fiscal risks is carried out by the Cabinet of Ministers.[\[11\]](#)

The LFD ensured the fulfilment of Maastricht criteria and conditions of Stability and Growth Pact which establish that the state budgetary deficit within a year cannot exceed 3% GDP and the state debt to GDP ratio cannot exceed 60%.[\[12\]](#)

Fiscal Discipline Council

The Fiscal Discipline Council has been established. For more information in this regard please refer to Question VII.5.

Law on Budget and Financial Management

The amendments to the Law on Budget and Financial Management (LBFM) established the process for adopting the medium-term budgetary framework. These amendments provided that a medium-term budgetary framework will be prepared every year for a three year period and it will include the main medium-term budgetary objectives and priorities as well as the main state macroeconomic and budgetary indicators. The amendments also determined the main inheritance principles of budgetary indicators and in this way created a legally binding framework for medium-term budgetary planning.[\[13\]](#) The first medium-term budgetary framework law already has been adopted.[\[14\]](#)

During the crisis the Constitutional Court considered the Budget Package and the way changes were made to the state budget to be problematic (Case No 2011-03-01, para. 18). In order to ensure consolidation of the state budget the Cabinet of Ministers repeatedly submitted the draft laws for introducing reforms in the budgetary process together with the annual budget law or its amendments. By doing this the Government achieved their adoption in shortened periods of time and the Government control over their content was maintained. The Constitutional Court in this regard argued that the draft annual budget law package can contain only issues which refer to the particular budgetary year and are closely connected with the use of state financial means.[\[15\]](#)

In order to ensure medium-term budget planning changes have been introduced in the LBFM. The changes provide that in the future every year a Law on the Medium-term Budget Framework for three years will be prepared which will contain the main medium-term budget objectives and priorities, as well as the main state macroeconomic and budget indicators.[\[16\]](#) This new approach is aimed at improving the budgetary planning and avoiding situations where the state suddenly finds itself in the midst of crisis. In addition, the law will provide the inheritance principles regulating the projected values of financial indicators by thus creating a legally binding medium-term basis for budgetary planning. At the time it was planned that the framework law for the first time will be prepared together with the 2013 budget and will be submitted to the Parliament until 1 October 2012. Starting with the period 2014-2016 the framework law will be prepared yearly until 20 April in accordance with the changes implemented in the Law on Fiscal Discipline.[\[17\]](#)

On 1 October 2013 new amendments to the LBFM were submitted to the Parliament. The proposed amendments would amend Article 9 by stating that "The Minister of Finance has a right to increase the appropriation established in the yearly state budget law for state debt obligations and broaden the limits for Government action in case of unforeseen circumstances by informing the Cabinet of Ministers and the Budget and Finance (tax) Parliamentary Commission within five working days." As well the Article 39 will provide: "The expenses for fulfillment of the state debt obligations have to be carried out in accordance with the agreement provisions independently from the budgetary means allocated for this in the yearly state budget and the determined limits for Government action. If the Minister of Finance finds out that expenses for fulfillment of the state debt obligations exceed the

appropriated means for this within the state budget, the Ministry of Finance increases the appropriation in the state budget and broadens the scope of allowed Government action in case of unforeseen circumstances.”[\[18\]](#) This amendment has been included in the budgetary package for 2014 and will be approved together with the budget law for 2014.

In general it is complicated to differentiate between the changes implemented purely due to the crisis and changes due to the crisis measures adopted at the EU level. The changes to some extent can be seen as a response to both. Concerning the changes foreseen because of the Six-Pack please refer to Section VII.

INSTITUTIONAL CHANGE

II.3

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

The Fiscal Discipline Council has been established. Please see Question VII.5.

Bank of Latvia

The amendments to the Law on the Bank of Latvia specified the objectives and tasks of the Bank of Latvia, and specified the functional, institutional, personal and financial independence of the Bank of Latvia. The Law on the Bank of Latvia now provides that its main objective is to maintain price stability and, by not endangering this objective, the Bank of Latvia as well supports the general economic policy in the EU. The law provides that in accordance with the Statutes the Bank of Latvia takes part in the fulfilment of the ESCB tasks (the defining and exercising of the EU monetary policy, carrying out of the foreign currency operations, holding and management of the external reserves of the EU Member States, collecting of statistical data, preparation of statistics and its dissemination). The Law also provides the rights and instruments of the Bank of Latvia in order for it to be able to achieve its objectives and manage its tasks.[\[19\]](#) In addition the amendments have removed the possibility to liquidate the central bank, since liquidation of the central bank would be a breach of the ECB Statute and TFEU. At the same time this still did not remove the possibility for the Parliament to liquidate the Bank of Latvia as an institution, if at the same time succession – establishment of a new central bank – is ensured.[\[20\]](#)

Parliament

The Parliament also has gained new competences. First, the Parliament now adopts the medium-term budgetary framework law which previously was approved by the Cabinet of Ministers (see also question II.1). Second, in case of the situation when the state has to borrow money from international lenders, if the loan exceeds 20% of the GDP, then the Parliament has to vote on this matter (see also Question X.4).

Independent institutions

The rights of the independent institutions in the budgetary process have been specified. Now the Government when it approves the Framework Budgetary law has to hear the opinions of the independent institutions, record this information and submit it to the legislator by annexing the

proposed draft budgetary framework law. Also in the process of approving the annual budget the Government has to hear these institutions and has to submit the information to the legislator. In this way it is ensured that the Parliament decides on the expenditure of independent institutions.[21]

Reform management task force

During the crisis the international lenders encouraged public consultation in discussing the 'crisis law'. In response the Government created a 'reform management task force'. This body included officials from the Ministry of Finance, trade union representatives, the head of the Budget and Finance Commission, the representative of the Latvian Chamber of Commerce and Industry and the Latvian local governments associations.[22]

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?

At the moment the deadline for submitting the draft Budgetary Framework law is 30 April which at the same time is the deadline for submitting the Convergence Programme of Latvia to the European Commission. Both Budgetary Framework Law and Convergence Programme are prepared on the basis of the same macroeconomic forecasts. However at the same time the framework is more detailed than the Convergence Programme and therefore for its drafting additional time is necessary. Therefore it was proposed together with the 2013 Budget package to introduce changes in Article 16.²(10) Law on Fiscal Discipline that the framework law has to be submitted to the Parliament before 15 May (instead of 30 April). Thus, it was ensured that the Budgetary Framework Law is based on the most topical evaluation of the macroeconomic situation and is compatible with the data incorporated in the Convergence Programme.[23]

The Law on Budget and Financial Management was amended by providing that the Finance Minister submits the plan for preparing a new Budgetary Framework Draft Law and Budget Draft law before 15 December. Thus, there is a greater probability that the work concerning the annual state budget law adoption in the Parliament will be already finished.[24]

MISCELLANEOUS

II.5

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

Not applicable.

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In

general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

[3] Samuel Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy', ILJ 41(3), pp. 305-327, p. 310.

[4] Ibid.

[5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

[8] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:

<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)

[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

[12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvara-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)

[13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under:

<http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-on-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12.

[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauija: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

[24] D. Gailīte, Darba tiesību „diskriminācija” krīzes laikos. Jurista Vārds, Vol. 23 (576), 9 June 2009. Available under <http://www.juristavards.lv/index.php?menu=DOC&id=192899> (last visited 2 Nov 2012).

[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijasradio.lv/zinas/raksts.php?id=49153&gr=0> (last visited 2 Nov 2012)

[30] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 19-20

III - Changes to 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)?

In general, the legal instruments which had to be adopted to implement Euro-crisis law were adopted in the form of (amendments to) ordinary laws and at times in the form of Regulations of the Cabinet of Ministers. Constitutional amendments have been proposed but have not been adopted. At times institutions have changed their internal procedures to ensure successful accommodation of the Euro-crisis law (e.g. internal regulations of the Ministry of Finances were changed to ensure that certain draft laws and plans are coordinated with international lenders).

An interesting discussion in Latvia concerned the question whether the state should create a new form of binding normative acts – Regulations of Ministers. This question arose as well in the discussions with the international lenders when the question of how to make the legal system more efficient was considered. However, all the discussions on this question ceded once the Committee of Constitutional Rights issued its opinion on the Constitutionality of Possible Regulations of Ministers.[\[1\]](#) It essentially stated that in order to implement such new form of regulations, the Constitution would have to be amended and law amendments would not suffice. Also, such regulations would be connected with additional risks and their usefulness was doubtful. The Committee suggested paying more attention to improving the efficiency of the adoption processes of the Regulations of the Cabinet of Ministers.[\[2\]](#)

CONSTITUTIONAL AMENDMENT

III.2

HAVE THERE BEEN ANY CONSTITUTIONAL AMENDMENTS IN RESPONSE TO THE EURO-CRISIS OR RELATED TO EURO-CRISIS LAW? OR HAVE ANY AMENDMENTS BEEN PROPOSED?

No amendments in the Constitution have yet been adopted. However, there have been proposals for such amendments which have not been revoked, even though their advancement in the Parliament is doubtful. Please see Question IX.4.

CONSTITUTIONAL CONTEXT

III.3

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

Not applicable.

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

CONSTITUTION?

Please see Question IX.4.

RELATIONSHIP WITH EU LAW

III.5

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

There have not been discussions in the context of constitutional amendments being seen as changing the relationship between national and European constitutional law.

ORGANIC LAW

III.6

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

No.

CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

III.7

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

Not applicable.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

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

In the case of Latvia during the time when the country received financial assistance and in general, the debtor-lender relationship was very unequal.^[3] This was mainly due to the fact that Latvia does not have a big economy with a significant market share on the global markets. In addition, the negotiations with international lenders were not public. This all gave the Government both reasons and the possibility to argue that all the changes introduced during the crisis were forced upon the country from 'outside'.

On the other hand, changes to the budgetary process and budgetary laws often preceded the necessity to implement Euro-crisis law requirements. For example, the Law on Fiscal Discipline was approved in the Parliament's first reading before similar requirements resulted from EU law (for example, before the Fiscal Compact was signed). Thus, these changes were and should be seen more as an internal reaction to the crisis, than as implementation of external – Euro-crisis –law. This was so as well partly due to the fact that the crisis in Latvia started comparatively early and 'was over' even before the newest measures were introduced at the European level.

MISCELLANEOUS

III.9

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

Since Latvia joined the Eurozone on 1 January 2014, discussions before accession to Eurozone might be interesting. The Parliament on 1 January 2012 adopted the Law on the Order of Implementing the Euro. From the annotation of this law and the minutes of the Parliamentary session of 31 January 2013 it follows that the legislature by adopting this law has supported the Government's objective to implement the euro starting from 1 January 2014.^[4] In the second (and final) reading Prime Minister Valdis Dombrovskis emphasized the benefits the euro will give to Latvia in his opinion:

- Accession to the euro as a logical step was foreseen already in the Latvian accession Treaty. Latvia does not have an 'opt-out' concerning this question.
- Latvia fulfils all the Maastricht criteria and has joined the Exchange Rate Mechanism II already in 2005 by pegging Lats (LVL) to euro (EUR) and determining a narrow floating possibility (+/-1%). However there were problems with the Maastricht criteria and Latvia had to postpone joining the euro twice.
- Since 2004 joining the euro has been one of the aims mentioned in all Government declarations.
- The irresponsible macroeconomic policy has cost us dearly and in 2008-2010 Latvia lived through the worst economic crisis in the whole EU. The implementation of the euro was determined as one of the objectives of the strategy for overcoming crisis with support inter alia from the social partners - trade unions and the Employers' Confederation of Latvia. The Euro is the next logical step in exercising our macroeconomic policy. Already at the moment we in fact are importing the monetary policy of the Eurozone without being in it and without participating in the decision-making and with paying the exchange rates.
- The introduction of the Euro will achieve lower interest rates, more rapid inflow of investments, increase in export, reduction of costs of currency exchange and better resilience to economic shocks.
- The ECB in the case of necessity ensures liquidity for Eurozone banks. In 2008 Latvia was forced to ensure Parex Bank with liquidity from budgetary means. If the euro would have already been implemented, the ECB would have ensured Parex liquidity and the crisis would have been less harsh for Latvia.
- The main argument against the euro which has been mentioned is the renouncement of independent monetary policy. It is true that after joining the euro the monetary policy will be determined by the ECB. However already now the LVL is pegged to the euro and in fact Latvia is importing the monetary policy of the Eurozone. After joining the euro, essentially nothing will change in this matter. If we would like to have total monetary independence we would need to unpeg the LVL from the euro. In such case it is sure that the LVL would lose its value. In other terms independent monetary policy means de facto devaluation of the LVL

which would come together with inflation and high interest rates.

- Concerning the possible collapse of the Eurozone he emphasized that the EU has done much to deal with the causes of the crisis and to overcome it. Many initiatives have been adopted in order to strengthen the EU economic governance and the EFSF and ESM were created. In general the Eurozone will come out of this crisis stronger and with better governance than ever before.

- The prices in the countries that have recently joined the euro have increased insignificantly.

- Joining the euro has as well a geopolitical aspect. By joining we strengthen our affiliation to the family of leading West-European countries. Followingly, also our role in the EU and in the world will grow.[5]

On 5 June 2013 the ECB and the European Commission confirmed and accepted Latvia joining the Eurozone in 2014.[6] And since 1 January 2014 Latvia belongs to the Eurozone.

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

[3] Samuel Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy', ILJ 41(3), pp. 305-327, p. 310.

[4] Ibid.

[5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

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2013)

[9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:

<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)

[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

[12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatiuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvara-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)

[13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-on-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under:

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[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 *Journal of Communist Studies and Transition Politics* 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptaauja: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

[24] D. Gailīte, Darba tiesību „diskriminācija” krīzes laikos. *Jurista Vārds*, Vol. 23 (576), 9 June 2009. Available under <http://www.juristavards.lv/index.php?menu=DOC&id=192899> (last visited 2 Nov 2012).

[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijasradio.lv/zinas/raksts.php?id=49153&gr=0> (last visited 2 Nov 2012)

[30] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 19-20

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 LATVIA 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?

Neither of the instruments was seriously discussed in Latvia. Since Latvia was not yet in the Eurozone, it was not a member of the EFSF. Therefore, Latvia did not prepare an official position on the EFSF and it was not discussed in the Parliament (Saeima).

In general, from a report from an informal ECOFIN meeting, which took place 16-17 September 2011, it follows that Latvia supported the position that the Eurozone countries should do everything in order to ratify the EFSF as soon as possible. As well, generally, Latvia supported the view that at the national level the fiscal policy questions should be dealt with either in the Constitution (Satversme) or in the appropriate laws and the consolidation should continue. According to the report, special attention should be paid to the promotion of growth and implementation of structural reforms.^[1]

From the EFSF Newsletter it follows that after joining the Eurozone in 2014 "Latvia will not join as a guarantor of EFSF and therefore there will be no impact on EFSF issuance and the bonds that are available for tap".^[2]

There is no publicly available information regarding any discussions concerning the EFSM.

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 Latvia and in what way does it involve Parliament?

Not applicable, since Latvia is not a member of the EFSF.

Guarantees

IV.3

Member states are obliged to issue Guarantees under the EFSF. What procedure was used for this in Latvia? What debates have arisen during this procedure, in particular in relation to the implications of the guarantees for (budgetary) sovereignty, constitutional law, socio-economic fundamental rights, and the budgetary process?

Not applicable, since Latvia is not a member of the EFSF.

Activation problems

IV.4

What political/legal difficulties did Latvia encounter during the national procedures related to the entry into force of the EFSF Framework Agreement and/or the issuance and increase of guarantees?

Not applicable, since Latvia is not a member of the EFSF.

Case law

IV.5

Is there a (constitutional) court judgment about the EFSM or EFSF in Latvia?

No, there has not been such a case before the Constitutional Court.

Implementation

IV.6

What is the role of Parliament in the application of the EFSF, for example with regard to decisions on aid packages (Loan Facility Agreement and Memorandum of Understanding) and the disbursement of tranches, both of which need unanimous approval by the so-called Guarantors, i.e. the Eurozone member states?

Not applicable, since Latvia is not a member of the EFSF.

Implementing problems

IV.7

What political/legal difficulties did Latvia encounter in the application of the EFSF?

Not applicable, since Latvia is not a member of the EFSF.

Bilateral support

IV.8

In case Latvia 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?

Latvia did not provide funding on a bilateral basis to other Member States.

However, part of the funding provided to Latvia came from other Member States. Scandinavian countries (Sweden, Denmark, Finland, Norway and Estonia) together promised to provide 1.9 billion euro and the Czech Republic and Poland together with the European Bank for Reconstruction and Development - 0.4 billion euro[3] (for the details concerning financial assistance for Latvia please see Question VIII.4).

MISCELLANEOUS

IV.9

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

There have been some concerns that after joining the Eurozone Latvia will be forced to pay or compensate e.g. Greek debts due to its loans received under the EFSF.[4] These concerns have been one of the most popular arguments invoked against joining the Eurozone.[5] They have been answered by official economists of the Bank of Latvia by stating that Latvia did not participate in Eurozone decisions on Greek loans and loans for other countries; therefore there is no legal ground for involving Latvia in guaranteeing these loans because this financial aid was approved without Latvian participation.[6]

The same opinion has been expressed in the Journal on the Latvian Interests in the EU, issued by the Ministry of Foreign Affairs, where another senior economist from the Bank of Latvia (V. Mičūne) argued that Latvia will join the euro after the EFSF will have already finished its active work and when this fund will be simply taking care of Greek, Portuguese and Irish loans until their full repayment.[7] According to her, since at the time of the conclusion of these particular loans Latvia was outside the Eurozone, did not participate in the decision-making processes, and by the time Latvia joins the Eurozone the EFSF will already have fulfilled its primary objective, Latvia cannot and will not be involved in guaranteeing this financial aid.[8] It was recently confirmed that Latvia will not become a member of the EFSF.[9]

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

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[4] Ibid.

[5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

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[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

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[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevska-romanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

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[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-on-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

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[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauija: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

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[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

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[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijasradio.lv/zinas/raksts.php?id=49153&gr=0> (last

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[30] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 19-20

V - 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 LATVIA ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

There were no political or legal difficulties during the negotiations on the amendment of Art 136 TFEU.

On 10 December 2010 in the sitting of the Parliamentary Committee for European Affairs (PCEA) the Minister for Foreign Affairs (G.V. Kristovskis) presented the Government's position.[\[1\]](#)

In the position Latvia indicated that it supports the amendments, which were regarded as necessary for creating a system for overcoming the crisis. Latvia agreed that the mechanism based on these Treaty amendments would be formed by the Eurozone countries by concluding intergovernmental agreements but the non-euro countries will be able to decide on joining the mechanism, if they wish to do so. As essential was seen the participation of non-euro states in the discussions concerning the establishment and financing of the mechanism,[\[2\]](#) probably, in light of the fact that Latvia was planning to join the Eurozone in 2014 which in the meantime has happened. The position was approved.[\[3\]](#)

As well from the meeting of 23 March 2011 it is clear that Latvia supported the coming into force of the Art 136 TFEU amendment on 1 January 2013.[\[4\]](#)

APPROVAL

V.2

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

There are two ratification procedures depending on whether or not an international treaty delegates part of national competences to international institutions. According to Art 68 of the Constitution:

"All international agreements, which settle matters that may be decided by the legislative

process, shall require ratification by the Saeima.

Upon entering into international agreements, Latvia, with the purpose of strengthening democracy, may delegate a part of its State institution competencies to international institutions. The Saeima may ratify international agreements in which a part of State institution competencies are delegated to international institutions in sittings in which at least two-thirds of the members of the Saeima participate, and a two-thirds majority vote of the members present is necessary for ratification.

Membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the Saeima.

Substantial changes in the terms regarding the membership of Latvia in the European Union shall be decided by a national referendum if such referendum is requested by at least one-half of the members of the Saeima.”[\[5\]](#)

In the case of the Art 136 TFEU amendment there were some discussions concerning the appropriate procedure for approval. The Parliament consulted its legal services and the Ministry of Foreign Affairs and in the end agreed that the amendments do not expand the scope of EU competences and no new competences are being delegated to the European institutions. Hence it was decided that the draft law on “The Decision of the European Council amending Article 136 of the Treaty on the Functioning of the European Union dealing with stabilization mechanism for countries whose currency is euro” can be adopted by using a simple ratification procedure (with a vote of simple majority).[\[6\]](#) Thus, the draft law was adopted in two readings and by simple majority. Two instead of three readings is an exception provided for inter alia international treaties according to the Art 114(2)(3) of The Rules of Procedure of the Saeima.[\[7\]](#)

In total there are 100 places in the Latvian Parliament. In the first reading there were 79 MPs present; 78 MPs out of those voted in favour and one abstained. Therefore the draft law was convincingly approved in the first reading.[\[8\]](#) In the second reading 79 MPs out of 79 who were present voted in favour and no one abstained or voted against, therefore the draft law was unanimously adopted in the second reading by all the MPs who were present at the reading.[\[9\]](#)

The President announced the law on 9 May 2012 and the ratification was notified to the EU Council on 24 May 2012.

RATIFICATION DIFFICULTIES

V.3

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

In general, no real difficulties were encountered during the ratification process of the 136 TFEU Treaty amendments. However, there were some debates in the Parliament.

Before the draft law ratifying amendment of Art 136 TFEU reached the Parliament there were some discussions about the necessity of a qualified majority in this case in accordance

with Art 68 Constitution. At the time the coalition had only 56 (out of 100) votes in the Parliament and the Union of Greens and Farmers (ZZS) at the time was in the opposition. In January 2012 the Prime Minister expressed an opinion that there will likely be a need for a two-thirds majority concerning several questions connected with European financial stabilization.[\[10\]](#) As well the Speaker of the Parliament (Solvita Āboltiņa, coalition, Vienotība) stated that the discussions for ensuring a two-thirds majority will be carried out with the two biggest forces in the opposition - ZZS and SC in order to convince them that this is a question not for political quarrels but instead a question of „the future existence of Latvian state”.[\[11\]](#) ZZS, being in the opposition, used this opportunity and the unclear situation concerning the necessary amount of votes and proposed a deal where it will support the initiatives for strengthening the fiscal discipline only if it will get two minister places in the coalition.[\[12\]](#)

In response to the deal proposed by the ZZS the Government indicated that a broadening of the coalition is not on the agenda and in reaction the ZZS later revoked its demands.[\[13\]](#) However, on 29 February 2012 in order to gain Parliamentary support inter alia for the amendment of Art 136 TFEU the Prime Minister signed an agreement with ZZS where he undertook to get bigger direct payments to Latvian farmers starting from 2014 and no less cohesion funding than in the previous planning period.[\[14\]](#) In return, the ZZS promised to support the Fiscal Compact and associated changes in national laws (this includes as well the support for ratification of the amendment of article 136 TFEU), except for potential changes in the Constitution. The agreement provides that the Prime Minister in the discussions concerning the EU multiannual budget for 2014-2020 will “strongly insist” on ensuring that in the context of the Common Agricultural Policy Latvian farmers will get significantly greater support, reaching around 80% of the average level of payments in the EU while at the same time the funding for rural development will not be reduced.[\[15\]](#)

In the end when Art 136 TFEU amendment reached the Parliament, it was decided that in this particular case a two-thirds majority is not necessary (see Question V.II). Nevertheless, in fact, after all the discussions preceding the ratification, the amendment gained such a level of support.

After the ratification Prime Minister Valdis Dombrovskis expressed satisfaction that the “opposition puts the national interests of Latvia in higher regard than the borderlines between coalition and opposition”.[\[16\]](#) He continued that “These [Fiscal Compact] Treaties are important instruments to ensure the stability of Latvia and the whole of Europe. The Latvian position in these questions will determine whether we will join the core [countries] leading European development.”[\[17\]](#)

During the ratification process when the draft law ratifying amendment of Art 136 TFEU was discussed in the Committee of Foreign Affairs in the Parliament the Minister of Foreign Affairs, Edgars Rinkevičs, stressed that even though the Treaty amendments providing for establishment of the ESM have to come into force on 1 July 2012, Latvia will have to join the ESM and start the payments only after joining the Eurozone in 2014.[\[18\]](#) It was planned that the Latvian payment would be around 144.29 million LVL during a five-year-period.[\[19\]](#)

In the Parliamentary session on 26 January 2012 V. Zatlers (previously the President of

Latvia, at the time one of the leaders of the coalition political force Reform Party (RP)) emphasized that there is a need to build both an economically and politically stronger European Union (EU) internally in order to gain greater influence and competitiveness at the global level. Therefore, the Art 136 TFEU amendment and Fiscal Compact in Latvia are on top of the agenda. He stressed that there are no doubts that by strengthening the euro and the EU Latvia strengthens its own economy and, thus, in fact is protecting its own economic and national interests.[\[20\]](#)

The draft law ratifying Article 136 TFEU Treaty amendment was adopted in two readings. In the first reading on 8 March 2012 the Parliament voted for the draft law almost unanimously. The representative from the Foreign Affairs Committee (Ojārs Kalniņš, coalition, Vienotība) explained that with the help of these changes to the Lisbon Treaty a concrete mechanism will be created for fighting such economic problems as Greece and other Member States were facing at the moment:

“The payments to this new stabilization mechanism are similar to insurance. We do not know whether there will be an accident, however, for the sake of security we buy insurance in order to cover potential losses. Similarly, the Eurozone countries with the help of this new mechanism will secure themselves against liquidity problems in the future”.[\[21\]](#)

Only one MP (K. Engelis, Coalition, ZRP) participated in the debates during the final (second) reading and expressed an opinion that this vote will have a symbolic meaning and will have an impact on how the joining the Eurozone will be decided by the Parliament and whether a simple vote in the Parliament will be enough then as well. He stated that already by joining the EU Latvia has expressed its willingness and determination to introduce the euro and this vote can be seen as a vote for the euro. He insisted that unanimity would be very important because it would be a clear signal both to the society of Latvia and its partners in the EU that a strong euro belongs to the national interests of Latvia. He added that it will be easier for Latvia to survive potential crises in the future, if it will be part of the Eurozone.[\[22\]](#)

CASE LAW

V.4

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

No, there has not been such a judgment.

MISCELLANEOUS

V.5

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

Not applicable.

- [1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)
- [2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.
- [3] Samuel Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy', ILJ 41(3), pp. 305-327, p. 310.
- [4] Ibid.
- [5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.
- [6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)
- [7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???
- [8] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)
- [9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:
<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)
- [10] Ibid.
- [11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)
- [12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatiuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvara-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)
- [13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-on-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12.

[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauija: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

[24] D. Gailīte, Darba tiesību „diskriminācija” krīzes laikos. Jurista Vārds, Vol. 23 (576), 9 June 2009. Available under <http://www.juristavards.lv/index.php?menu=DOC&id=192899> (last visited 2 Nov 2012).

[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

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[30] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 19-20

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 LATVIA 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.

There is no information concerning any difficulties encountered in the negotiation process.

The Prime Minister of Latvia (Valdis Dombrovskis) in the European Council meeting on 24-25 March 2011 confirmed that Latvia is ready to join the Euro Plus Pact. He argued that by joining this Pact Latvia participates in increasing the EU competitiveness and will be part of the EU strategy for economic growth.[1]

From the Informative Report from April 2011 it follows that Latvia joined the Euro Plus Pact because of its aim to join the Eurozone on 1 January 2014. The Report further states that Latvia will identify the necessary actions to reach the aims of the Pact and will implement them into the Convergence Programme and the National Reform Programme.[2]

In general Latvia aspired to realise a more effective Euro Plus Pact and was in favour of determining specific objectives and/or reference indicators for the courses of action established by the pact. Latvia supported the current European semester process and the individual recommendations for the Member States. The general national position concerning the Pacts which can be found on the webpage of the Ministry of Foreign Affairs states that the tax policy is considered a very important instrument for Latvia for attracting investments; therefore it wants to maintain national competence over tax policy. At the same time Latvia agrees to continue the coordination of tax policy questions among the Member States. It's position was that it could support initiatives in the area of direct taxation, if they are based on non-binding recommendations. In addition, Latvia was in favour of actions aimed at coordinating the needs of labour markets with the skills of workforce.[3]

The positions of Latvia approved by the Government remained unchanged after the

approvals in the Parliamentary Committee for European Affairs (PCEA). From the minutes of the meeting of the PCEA on 23 March 2011 it follows that the Foreign Affairs Minister (G.V. Kristovskis) informed the MPs that because the competitiveness and convergence have to be improved in the EU as a whole and not just in the Eurozone, and Latvia aims at joining the euro in 2014, Latvia is ready to join the Euro-Plus-Pact. The minutes state that Latvia supported the Pact's aims to facilitate competitiveness, employment and sustainability of state finances and financial stability by at the same time taking into account that the choice of measures remains with the Member States. G.V. Kristovskis stressed that he appreciates that the Pact remains within the framework of the existing procedures and instruments. It was planned to include the actions for fulfilment of the Pact in the National Reform Programme and Convergence Programme.[\[4\]](#)

The position of Latvia concerning particular aspects:

- The competitiveness objective: The national exclusive competence has to be fully respected in the social area regarding determination of wage levels and development of pension systems. The different practice and situation in various Member States has to be taken into account. Investments in research and development in Latvia are one of the lowest in the entire EU; therefore availability of EU funds was considered to be very important here.
- The employment objective: Latvia supported tax reforms with an aim to facilitate employment.
- Sustainability of state finances objective: Latvia welcomed the determination to strengthen sustainability of state finances. The position stated that Latvia has already implemented various activities towards strengthening fiscal sustainability in the legal framework (e.g. a Law on Fiscal Discipline). Latvia fully supported that fiscal discipline should be embedded at all levels.
- Financial stability objective: Latvia intended to continue active participation in developing initiatives in the area of financial stability and in case of necessity undertook to implement them in the national legal framework.[\[5\]](#)

The position for the European Council of 23-24 June 2011, approved in the Parliamentary Committee for European Affairs (PCEA) on 21 June 2011, provided that Latvia agrees that in the future the Euro-Plus-Pact Member States should strive to better reflect the measures for fulfilment of the Pact's requirements. At the same time the position stressed that the choice of these measures remains the individual responsibility of each Member State in light of the particular situation and available resources. [\[6\]](#)

MISCELLANEOUS

VI.2

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

There is no information concerning any changes to the rules and practices of the budgetary process specifically aimed at complying with the Euro Plus Pact. However, in general the

adoption of the Law on Fiscal Discipline has been mentioned as an example for implementing Euro Plus Pact requirements.[\[7\]](#)

Latvia dealt with the consideration of the necessary actions which should be undertaken in order to comply with the Euro Plus Pact in the Convergence Programme and the National Reform Programme.[\[8\]](#) The compliance with the Euro Plus Pact was done together with compliance with the Memorandums of Understanding (MoU). There was no clear separation in the dealing with both of these instruments. The Convergence Programme stated that

“At the same time with carrying out the measures foreseen in the MoU, Latvia respects the Annual Growth Report and macroeconomic and fiscal guidelines, as well as the commitments under the Euro Plus Pact”.[\[9\]](#)

Inter alia, the Convergence Programme provided that the obligations under the Euro Plus Pact have been dealt with and will be dealt with as follows:

- The task to ensure the sustainability of state finances

The general budget deficit in 2011 was 3.5% GDP. The budget for 2012 was prepared with a planned deficit of 2.1% GDP. Latvia had ensured the achievement of governmental budget and has tried to ensure a smaller budget deficit than requested by the international financial assistance programme in order to ensure the obedience of the Maastricht criteria concerning budget deficit and to ensure the termination of the excessive deficit procedure.[\[10\]](#) During the financial assistance procedure the cooperation with the European Commission and the IMF has been very active and any essential decision having fiscal impact has been discussed with them.[\[11\]](#) During the preparation of the 2012 budget a list of measures for reducing the deficit was prepared. The draft law for the 2012 budget was submitted to the Parliament in the end of November 2011 and not the beginning of September as originally planned due to the emergency elections in October 2011 (see in more detail Question I.1). The Programme states that with all this the tasks under the Memorandum of Understanding, the Annual Growth Report and the Euro Plus Pact have been fulfilled.[\[12\]](#)

In order to ensure the sustainability of the social insurance system which is one of the commitments for Latvia under the Euro Plus Pact, it was planned to increase the retirement age to 65 years, increase the early retirement age and increase the minimal record of service for eligibility for state pension to 15 years.[\[13\]](#) This has been done with the changes in the Law on Pensions which provided that starting in 2014 the retirement age will increase for three months every year. From 2025 on the retirement age will be 60 years and the minimal record of services for eligibility for state pension - 20 years.[\[14\]](#)

- The strengthening of the financial sector

The work concerning bank restructuring was continued, as well as the work to strengthen the stability of the financial sector in compliance with the Memorandum of Understanding and Euro Plus Pact.[\[15\]](#)

An Advisory Council for State aid for program coordination and development had been established based on the government decision of 1 November 2011. The main task of the

Council is to evaluate all existing state aid instruments. The Council evaluates the state aid programmes which fully or partly are implemented in the form of financial instruments.[\[16\]](#)

In 2011 the Government approved the strategy for selling Parex bank and Citadele bank. It was planned to sell one of the banks in an auction but due to the situation in the financial markets this decision has been deferred. It is planned to sell this bank before the end of 2014.[\[17\]](#)

It has been decided to change the status of the Parex bank and waive its credit institution licence. In accordance with the restructuring plan approved by the European Commission the bank will continue the asset development to maximally regain the state investments. The working period for Parex bank has been determined until 2017.

According to the Convergence Programme the stability measures for the financial sector are being continued. The Financial and Capital Market Commission[\[18\]](#) continues to improve the normative framework in order to promote strengthening of the capital base of the banks. Alongside individual 'horizontal' bank checks are carried out in order to evaluate banking loan restructuring processes, market risk management and implementation of policies in accordance with Financial and Capital Market Commission provisions.

In the fall of 2011 the Financial and Capital Market Commission suspended the activity of AS 'Latvijas Krājbanka' and the bankruptcy procedure was started in the beginning of 2012.

The licencing of consumer credit providers (non-bank) began on 1 November 2011 in order to increase the protection of consumers.

The Convergence Programme foresaw that in 2012 and in the following years legislative measures will be taken in the financial sector connected with implementation of EU instruments adopted in this area and in order to improve the legal framework in general. In order to improve the legal framework for insolvency and liquidation of credit institutions, the Law on Credit Institutions will be amended. It was planned to improve the framework for supervision of credit institutions.[\[19\]](#)

- The facilitation of competitiveness and growth

Measures to ensure effective and transparent use of EU funds and to improve the quality of evaluations (e.g. seminars, workshops) were carried out. The question of optimization of implementation of EU funds was incorporated in the Government Declaration for the 2014-2020 planning period (for example, consolidation of work of institutions dealing with EU funds).[\[20\]](#)

Measures to ensure more effective use of energy and natural resources have been carried out. The work in progress is "the Strategy for Energetics 2030". The EU measures in this area are being implemented, especially concerning the liberalization and integration of EU energy markets.[\[21\]](#)

- The Employment

Measures to implement effective active labour market policy with an aim to reduce the high

risk of structural unemployment and to increase the employment and the level of economic activity were carried out. In addition, measures to reduce the black economy are being implemented and as well it is planned to reform the tax system of labour market.[22]

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

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[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

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[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

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[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

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[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauija: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

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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 LATVIA 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.

There were no serious difficulties but some discussions arose in the process of approving the national position concerning the Six-Pack.

Initial position

During the approval of the initial national position for the ECOFIN of 8 June 2010, even before the Commission issued the proposals for Six-Pack in September 2010, there were discussions in the Parliamentary Committee for European Affairs (PCEA) concerning the question whether Latvia should agree that in the name of greater financial stability the Member States should submit their budgets for evaluation in the EU even before their adoption in national parliaments. Vaira Paegle (the chairwoman for the PCEA, coalition, PS) argued that from one side this would help in disciplining the Member States and would not allow them to create too big of a budget deficit; on the other side, the question arises whether this will not limit the sovereignty of the Member States and whether this complies with the Lisbon Treaty. The chairman of the Budget Committee, Gundars Bērziņš (coalition, ZZS) stressed that such changes at the EU level would show in due time how the Latvian budgetary principles compare with other Member States. He, however, sceptically evaluated the possibility of financial sanctions for failing to comply with the Stability and Growth Pact and argued that a ban on access to cohesion funds for these Member States would only worsen their situation.^[1]

The members of the committee brought up the question of sovereignty. The issue was emphasized by the chairwoman of the PCEA (Vaira Paegle, Pilsoniskā Savienība (PS)):

„Concerning this question a well-balanced political decision is necessary. [We] have to decide whether we agree that in the name of greater financial stability the Member States

will submit their budgets for evaluation to the European Union even before their approval in the national Parliaments. From one side, it would help to discipline the Member States and would not allow them to create too big budgetary deficits. At the same time it has to be carefully assessed whether such initiative does not limit the sovereignty of the Member States and is in compliance with the Treaty of Lisbon.”[\[2\]](#)

Another member of the PCEA (Dzintars Rasnačs, Nacionālā Apvienība, NA) stressed the importance of the issue:

“This is a question concerning the sovereignty of Latvia, and it can be taken only after broad discussions among experts and politicians. This could be a step towards a federal Europe and, thus, could limit the sovereignty of Latvia.”

The State Secretary of the Ministry of Finance agreed that this is a question of balance.[\[3\]](#) The position was, nevertheless, approved with Dzintars Rasnačs abstaining.[\[4\]](#)

The Position for the European Council (28-29 October 2010)

On 22 October 2010, when the position of Latvia for the European Council meeting of 28-29 October was approved, the Six-Pack discussed some more. The position of Latvia was that it supported stronger fiscal and macroeconomic surveillance at the EU level. The national position stated that for defiance of fiscal discipline effective sanctions should be enforced – these should concern not only cohesion funds but all categories of EU budget expenditure. There is no indication that the discussions this time would have touched upon the question of sovereignty. The position was approved.[\[5\]](#)

The Position for ECOFIN (7 December 2010)

The initial positions concerning particular instruments belonging to the Six-pack were approved all together on 3 December 2010 and, initially, without any discussions due to the fact that „they will be re-drafted many times because already at this stage the Member States have different opinions.”[\[6\]](#)

The Position for ECOFIN (15 February 2011)

In the meeting on 14 February 2011 the PCEA decided on the position of Latvia for the ECOFIN Council of 15 February 2011. The general approach on the implementation of the macroeconomic imbalances procedure was that in principle Latvia supports stricter rules for the Member States and increased automaticity in the decision-making procedures. Latvia supported the idea that the chosen form of the instrument should be a Directive.[\[7\]](#) The position emphasized that it is important not to create a hulking and administrative-burden-consuming procedure. In principle the position supported the proposal but expressed an opinion that the levels of indicators in the macroeconomic imbalances procedure for non-euro countries have to differ from the Eurozone countries (due to the necessity to catch up). This was kept as an objection in the position because it was not considered to be enough to mention this in the preamble and, instead, the position argued that this has to be included in the main body of the measure.[\[8\]](#)

Concerning the expected implementation measures, the Finance Minister stated that the Law on Fiscal Discipline has to be adopted. There was some discussion as well concerning the fact that excessive macroeconomic imbalances are not allowed and one MP (Dzintars Rasnačs, opposition, NA) asked what would happen in the case of force majeure. To this the Finance Minister answered that divergences are allowed in case of economic downturn.[\[9\]](#)

The Position for ECOFIN (15 March 2011)

The initial position presented before the PCEA on 14 March 2011 was not approved. The (not-approved) position provided that Latvia in the name of a compromise supports that the penalty payments under the sanction mechanism for avoiding macroeconomic imbalances in Eurozone will go to the ESM. The doubts concerning the question that these penalty payments go to a fund from which the rule-breakers will later receive aid remained. The position also supported the amendments to Regulation No 1466/97 concerning the 'expenses rule' (the expenses of the government cannot grow faster than the GDP). In the same way the position supported amendments to the Regulation concerning speeding up of the excessive deficit procedure and explanation of its implementation. In addition, the position supported the taking into account of the net costs of the pension reforms and allowing of a deficit level which does not substantially exceed the reference level in Member States where the level of debt is lower than 60% GDP.[\[10\]](#)

In this meeting a short discussion arose concerning the allocation of penalty payments under the proposals.[\[11\]](#)

The main discussions however centered on sovereignty. While the government representative emphasized the need to reach a compromise among all Member States, MP J. Dombrova (opposition, NA) asked why Latvia should lose a part of its sovereignty by adopting all these instruments and why we should limit our operations in favour to supranational organisations. "What will happen in case there is a situation when Latvia needs to exceed the deficit - like in Japan - then we would have to pay the penalty?" she continued. The Government representative expressed the opinion that the essence of the Six-pack is that it is hard to create a united market, to have a united currency, if the fiscal policy is not united. He argued that some sort of sovereignty has to be given up in order to create a level playing field for economic processes and that budgetary deficit ceilings are meant for normal and not extreme situations.[\[12\]](#)

Another member of the NA (opposition), Dzintars Rasnačs expressed suspicion that this would be a step towards federalization and asked "who will determine the sanctions and whether it will not be the case that the small Member States will be punished while the breaches by the big Member States will be overseen?" He expressed suspicions that double-standards are being used by the EU. The Government representative answered that the sanction mechanism is provided in the agreement and in the recommendation of the European Commission. He argued that "we support stable criteria and if they are breached, then there is a clear mechanism for punishment."[\[13\]](#)

In addition, MP S. Dolgopolovs (opposition, Saskaņas Centrs (SC)) expressed the opinion

that already now there was a budgetary deficit and sanctions will only worsen the situation. MPs J. Dombrova (NA), S. Dolgopolovs (SC) and Dz. Rasnačs (NA) inquired about the potential amount of penalty payment in case Latvia does not comply with the limits of budgetary deficit.[\[14\]](#) Due to the fact that the Finance Minister did not participate in the meeting, the potential amount of the sanctions was unclear as well as from what means they would be paid, the argumentation in favour of these instruments was not considered to be convincing. Hence the position was not approved (5 - in favour, 8 - abstained; in general, it seems that the opposition MPs abstained but the precise divide between position and opposition has not been indicated).[\[15\]](#)

The Position for ECOFIN (16/17 May 2011)

From the Informative Report concerning the questions planned for consideration in the ECOFIN on 16-17 May, it follows that the Government was of the opinion that the discussions with the European Parliament concerning the proposals of the six-pack were not very transparent.[\[16\]](#) The Report stated that, even though it was necessary to deal with all these issues rapidly, in order for these proposals to come into force as soon as possible, the discussions should not have been so premature in order not to lose the quality of the proposals. The report stated that many of the EP's suggestions made the proposals less clear and more complex (especially the EP suggestions concerning the proposal for the Regulation on macroeconomic imbalances where the EP wanted a much broader role for itself). According to the Government such solution would make the implementation procedure unnecessarily complex and create an additional administrative burden in the Member States.[\[17\]](#)

The Position for ECOFIN (20 June 2011)

On 17 June 2011 the national position for the ECOFIN meeting of 20 June 2011 was approved by the PCEA. The position provided that Latvia has no problems with the reversed majority voting procedure.[\[18\]](#) The main question for Latvia which was emphasized was that the sanctions for the excessive imbalances procedure should apply only to the Eurozone member states.[\[19\]](#) In the position Latvia in the name of compromise agreed to the inclusion of the EU 2020 indicators, even though the initial position concerning this question was negative. Latvia was opposed to the use of delegated acts but was ready to yield in the name of compromise.[\[20\]](#)

Position for ECOFIN (4 October 2011)

Finally, on 30 September 2011 the PCEA approved the national position providing for approval of the compromise reached after the Council discussions with the European Parliament "because it will promote strengthening of fiscal discipline in the EU as a whole and in each Member State individually".[\[21\]](#)

There were some discussions concerning the question when the sanctions will apply to Latvia, to which the Government representative answered that it is planned to approve the regulations in the end of 2011, they will have to be observed starting with 2012 and implemented until beginning of 2014. Therefore, it was estimated that they will apply to

Latvia starting with 2014 independently of whether or not Latvia will belong to the Eurozone.[\[22\]](#)

The question why Latvia should support a measure which could endanger its economic situation in the long-term was asked by MP J. Dombrova (NA, opposition). To this, the Government representative answered that the Six-Pack contains a long-term view and is not a reaction to the crisis; the states will have to obey fiscal discipline in both good and bad times.

Other questions concerned possible expectations and retreats in situations of crisis, the transition periods, potential proposals necessary for implementing the Six-Pack (the Government representative indicated that the Law on Fiscal Discipline will be submitted to the Parliament), the differentiation of sanctions and the question whether stopping of the funds is fair (to this the answer was that this would only be the case when there are grave breaches of fiscal policy, as was the case of, for example, Greece).[\[23\]](#)

From the Informative Report on questions discussed in the ECOFIN on 4 October 2011 it follows that Latvia concerning the redaction of the proposals supported the compromise version achieved during the Polish Presidency after problems in discussions during the Hungarian Presidency. Latvia supported the compromise version because it would contribute to strengthening of the fiscal discipline in the EU. In general, Latvia supported stricter coordination of the EU economic policy, since that would promote a practice of more responsible fiscal and macroeconomic policy in the Member States which, according to the position, is a precondition for the stability of the Eurozone and the economic and financial stability of the whole EU.[\[24\]](#)

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)?

In order to implement the Directive the Minister of Finance had two proposals:

- Fiscal risks. Article 14 of Directive 2011/85/EU provides that the Member States have to identify the potential liabilities. According to the suggestions for the second reading of the Draft Law on Fiscal Discipline, this provision has to be looked at in a broader context by taking into account the global tendencies of governance of fiscal risks with an aim to mitigate the negative effect such risks have on the stability of fiscal indicators. The Minister of Finances proposed to amend the Law on Fiscal discipline (which at the time was already after the first reading in the Parliament) to provide that the amount of the fiscal security margin, which after the first reading was proposed to be 0.5% GDP, in the future has to be calculated in accordance with the risks identified.[\[25\]](#) In the final, adopted version Article

17(2) of the Law on Fiscal Discipline provides that the amount of the fiscal security margin in the context of the Medium-term Budgetary Framework is determined in accordance with the quantifiable fiscal risks included in the fiscal risks declaration and it cannot be lower than 0.1% GDP.[26]

- Fiscal Discipline Council. Art 6(1)(b) of Directive 2011/85/EU provides that the Member States have to ensure monitoring of compliance with the fiscal rules, based on reliable and independent analysis carried out by independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States. An analogous requirement has been foreseen in the Fiscal Compact. Originally in the first reading the Draft Law on Fiscal Discipline did not provide for such a provision and stated that the obedience of the fiscal rules has to be ensured by the Cabinet of Ministers. The Ministry of Finance's suggestions for the second reading provided the establishment of a Fiscal Council with an aim to ensure independent supervision of compliance with the rules of fiscal discipline.[27] In the final, adopted, version of the Law of Fiscal Discipline Art 21 provides the establishment of the Fiscal Discipline Council as an independent collegial institution for monitoring the compliance with this law. According to Art 23 the members of this council are approved by the Parliament for a six-year period. The members cannot belong to political parties (Article 24(1)) and can be revoked only by the Parliament or after he or she has been convicted for a crime (Article 25) (see in more detail Question VII.5).

In more detail the requirements of Chapters V and VI of the Directive were implemented by Law on Fiscal Discipline (Articles 2(2), 4(7), 5, 6 and 7),[28] Law on Budget and Financial Management (Articles 16, 16¹, 16², 17, 19, 21, 22, 29, 30, 30¹, 31, 41 and 43)[29] and Law on Long-Term Stabilisation Reserve (Article 26).

IMPLEMENTATION DIFFICULTIES

VII.3

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

See Question VII.1.

MACROECONOMIC AND BUDGETARY FORECASTS

VII.4

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

According to Art 20 Law on Fiscal Discipline the Ministry of Finance is responsible for producing medium-term macroeconomic forecasts, including the forecasts of growth of the GDP, potential growth of the GDP and GDP deflator forecasts. These macroeconomic forecasts have to be coordinated with the Bank of Latvia and the Ministry of Economics.[30]

FISCAL COUNCIL

VII.5

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

No, there was no independent Fiscal Council in line with the requirements of the Directive 2011/85/EU and it has been specially created by the Law on Fiscal Discipline.[\[31\]](#) Before Directive 2011/85/EU was adopted it was foreseen that this supervision will be exercised by the Government (Cabinet of Ministers).[\[32\]](#) This last aspect was changed due to the Directive 2011/85/EU.

The Law on Fiscal Discipline concerning the Fiscal Discipline Council (Council) provides[\[33\]](#) :

- The Council is an independent collegial institution established for monitoring compliance with this law (Article 21).
- The Council consists of six members: three are proposed by the President of the Bank of Latvia in cooperation with the Finance minister and three by at least 10 MPs (Article 22). The candidates are elected by the Parliament for a six-year period. The same member can be elected for two successive terms. (Article 23).
- The Council is led by a chairman or chairwoman elected by the Council members. He/she organizes the work of the Council, leads the meetings, employs the secretary of the Council and represents the Council (Article 26).
- The Council monitors the obedience of fiscal rules in the preparation of the yearly budget law and the budgetary framework, checks the correctness of implementation of the balanced budget rule and expenditure growth condition, monitors the compliance with the Law on Fiscal Discipline in regard to the state budget, budgets of municipalities and derived public bodies (the institutions having a completely independent budget). The Council as well prepares an opinion concerning the allowed derogation from the balanced budget rule in case of serious economic downturn and prepares various reports (e.g. report concerning compliance with fiscal discipline and other questions regarding fiscal policy and macroeconomic development) (Article 28(1)-(8)).
- The Council has rights to cooperate with state and local government institutions, legal and natural persons and foreign institutions, to request and receive information from the state institutions necessary for fulfilling its tasks, to submit suggestions to the Ministry of Finance and the Cabinet of Ministers regarding the drafting of the yearly budgetary law and budgetary framework law, to invite experts and other specialists to give an opinion at the Council meetings and to submit suggestions to the Cabinet of Ministers concerning necessary changes in the laws concerning fiscal discipline (Article 28(9)).
- The Council drafts a report before the budgetary framework is submitted to the Parliament and this report is added to the proposal (Article 29(1)).

- If the Council discovers a breach of the Law on Fiscal Discipline, it drafts an irregularity report which has to be submitted to the Cabinet of Ministers and the Parliament (Article 29(2)).
- Technically the work of the Council is ensured by the Ministry of Finance (Article 31(2)) and its members belong to the united wage system for public employees (Article 31(3)).[\[34\]](#) This means that the Ministry of Finance plans the budget for the Council in a separate programme (Article 31(6)) and makes sure that the Council has all the administrative and technical means for carrying out its tasks. The Council, however, has full independence in carrying out its functions.

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 LATVIA 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?

There is no information about any difficulties associated with the regulation in particular. For the general discussion concerning the Six-Pack negotiations please refer to Question VII.1.

With regard specifically to Regulation (EU) No 1174/2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, the information concerning the negotiation regarding any concerns is that, according to an Informative Report prepared by the Ministry of Finance, during the negotiations concerning the proposal for this Regulation Latvia disagreed with the European Parliament's proposal to apply this Regulation as well to the non-euro Member States.[\[35\]](#)

REGULATION No 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS

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

MTO PROCEDURE

VII.7

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

The Law on Fiscal Discipline adopted by the Parliament on 31 January 2013 (came into force on 6 March 2013) provides:

- According to Art 5(1) the medium-term budgetary framework draft law (framework) is prepared for a three year period and it determines the maximum allowed Government spending for the first and second year according to the previously determined amount for the second and third year. If the framework has not been prepared the previous year, then the maximum allowed government spending is determined in the amount that was determined for the third year of the last framework.

- According to Art 5(2) if the adjusted allowed maximum Government spending minus the security of fiscal reserve for the appropriate year in comparison to Government spending minus the security of fiscal reserve determined in the previous framework differs for more than 0.1% GDP, the draft framework for the next year has to include an adjusted maximum Government spending.

- According to Art 5(3) the framework for every year of the period contains the following indicators:

§ forecasted GDP at constant and current prices;

§ forecasted potential GDP, its forecasted growth rate and its growth rate for the next two years following the third year of the period;

§ planned general government structural balance (it is noted in the law that this term has to be understood in the same way as in Regulation No 1175/2011);

§ planned general Government budgetary balance expressed as interest from the GDP;

§ forecasted state budget revenues;

§ adjusted expenses;

§ adjusted maximum public spending;

§ fiscal security reserve;

§ other necessary indicators.

- According to Art 7(1), if in the previous year a framework was prepared, then the yearly budget law is prepared in accordance with the framework.

- According to Art 7(2), when the yearly budget is prepared, the state budget expenditure has to be determined below the adjusted maximum allowed Government spending according to the framework for the appropriate year. This difference serves as the fiscal security reserve.

- According to Art 7(3) and 5(1), when the yearly budget is exercised the adjusted maximum allowed Government spending minus fiscal security reserve cannot normally be exceeded except in situations determined by Article 5(1) (changes in such budgetary positions as the expected expenditure concerning recipients of social benefits and pensions, the expected expenditure concerning the social security recipients and the average estimates of pensions and benefits, the increase in expenditure concerning prevention of

material losses due to natural disasters, accidents etc., the increase in expenditure necessary for exercising the judgments of international courts and the Constitutional Court, the payments to Budget of the EU and payments in the context of international cooperation and in some other similar cases).

When the Government defined the objectives of the budget balance for 2012 it took into account Art 9(1) which provides that the Member States until the achievement of medium-term budgetary objectives have to improve the structural balance with the rate 0.5% GDP per year. According to this the general governmental budget deficit for 2012 has been determined to be 2.1% GDP, for 2013 - 1.4% GDP, 2014 - 0.8% GDP and 2015 - 0.3% GDP.[36]

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)?

There is no information concerning changes to the rules and practices on the national budgetary timeline specifically for implementing the new rules on European Semester for economic policy coordination.

MTO DIFFICULTIES

VII.9

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

In general Latvia supported a greater involvement of national parliaments in the context of the European Semester but disagreed with a greater involvement of the European Parliament.[37] For the general positions concerning the Six-Pack please refer to Question VII.1.

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)?

Every year a budgetary framework draft law for three following years is prepared and submitted to the Parliament. This draft law determines the maximum allowed Government spending. According to Article 7(1) Law on Fiscal Discipline, if in the previous year a framework was prepared, then the yearly budget law is prepared in accordance with the framework. When a yearly budget is prepared, the state budget expenditure is determined below the adjusted maximum allowed Government spending according to the framework for the appropriate year (Article 7(2) Law on Fiscal Discipline). According to Article 7(2) Law on Fiscal Discipline, when the yearly budget is exercised, the adjusted maximum allowed government spending minus fiscal security reserve cannot normally be exceeded.[38]

According to the Law on Medium-term Budgetary Framework for 2012, 2014 and 2015 it aims to ensure fiscal discipline in accordance with inter alia Regulation No 1466/97 (Article 1(1))

CURRENT MTO

VII.11

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

The Law on Medium-term Budgetary Framework (adopted by the Parliament on 15 November 2012, came into force on 1 January 2013) for 2013, 2014 and 2015 determines that in drafting this law the forecast used for GDP was 16 958 000 000 in 2014 and 17 988 700 000 in 2015 (Article 4).[\[39\]](#)

The general Government deficit target for 2013 is 1.4% GDP, for 2014 - 0.8% GDP and for 2015 - 0.3% GDP (Article 5). In structural terms the general Government deficit target cannot exceed 1.3% GDP in 2013, 0.9% GDP in 2014 and 0.4% GDP in 2015 (Article 6).[\[40\]](#)

The state budget financial balance amount, the maximum total government expenditure and the revenue forecasts are stated in the annexes of the Law on Medium-term Budgetary Framework.[\[41\]](#)

The Law on Medium-term Budgetary Framework for 2014, 2015 and 2016 which was adopted by the Parliament on 6 November 2013 and came into force on 1 January 2014 provides that[\[42\]](#):

- In drafting this law the forecast used for GDP in comparative prices is 11 562 300 000 euro in 2014, 12 021 800 000 euro in 2015 and 12 501 800 000 euro in 2016 and the forecast used for GDP in factual prices is 24 763 600 000 euro in 2014, 26 391 800 000 euro in 2015 and 28 136 300 000 euro in 2016 (Article 3). In drafting this law the forecast used for potential GDP in comparative prices is 11 502 800 000 euro in 2014, 11 972 400 000 euro in 2015 and 12 465 500 000 euro in 2016 (Article 4) and the potential GDP growth speed forecast is 3.7% for 2014, 4.0% for 2015, 4.1% for 2016, 4.1% for 2017 and 3.9% for 2018 (Article 4).

- The aim for the general government structural balance target is -1% GDP in 2014, -1% GDP in 2015 and -0.9% GDP in 2016 (Article 5).

- The aim for general government budget balance is -0.9% GDP in 2014, -0.9% GDP in 2015 and -0.8% GDP in 2016 (Article 6).

The annotation of this recently adopted law provided: the allowed structural deficit objective is determined by taking the national MTO (which according to Article 10 of the Law on Fiscal Discipline is -0.5% GDP) as a basis and by using the allowed deviations for increasing the contributions to the second level pension system (allowed by Regulation No 1175/2011). The increase in contributions to the second level pension system is carried out in three parts: in 2013 the contributions are increased from 2 to 4% (the fiscal impact 0.5% GDP), in 2015 - from 4 to 5% (the fiscal impact 0.27% GDP) and in 2016 from 5 to 6% (the fiscal

impact 0.29% GDP). In accordance with this provision the structural deficit aim is determined in amount of 1.0% GDP in 2014 and 2015 and 0.9% GDP in 2016. Latvia will completely delete the deviations and return to the MTO in 2019.[43]

ADOPTION MTO

VII.12

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

Until 31 December 2013 Article 7(2)(a) consolidated Regulation 1466/97 was applicable. The Convergence programme was prepared by the Ministry of Finance and approved by the Government (the Cabinet of Ministers) by a simple majority vote. The Programme is further discussed in the Foreign Affairs Committee of the Parliament and approved.[44] After it has been approved by the Government and the Parliamentary Committee it is submitted to the European Commission.[45] The objective in the 2012 Convergence programme was to correct the excessive deficit by 2012 and to approach the MTO by the end of the programme period. For 2013 the programme targets deficit of 1.4% GDP. In general it is planned that Latvia will approach its MTO by the end of the Convergence programme period - in 2015.[46]

Since 1 January 2014 Article 3(2)(a) consolidated Regulation 1466/97 applies to Latvia and the MTO is incorporated in the stability programme. The procedure for adopting and incorporating the stability programme will likely be the same as for the convergence programme.

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

There were no difficulties or specific debates concerning this Regulation. For the negotiations of the Six-Pack in general please refer to Question VII.1.

REGULATION No 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

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

SANCTIONS

VII.14

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

Please see Question VII.1.

GENERAL CHANGES

VII.15

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

So far it seems that there is no need to further amend the budgetary process in order to comply with the Six-Pack.

MISCELLANEOUS

VII.16

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

Not applicable.

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

[3] Samuel Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy', ILJ 41(3), pp. 305-327, p. 310.

[4] Ibid.

[5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

[8] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under:

<http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:

<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)

[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

[12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatiuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvara-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)

[13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-on-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of

Europe” workshop “National Responses to Financial Crisis”. Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12.

[20] R. Bideleux, ‘Contrasting Responses to the International Economic Crisis of 2008–10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries’ (2011) 27 *Journal of Communist Studies and Transition Politics* 338–363. p. 339.

[21] Ibid.

[22] LETA, Aptauija: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

[24] D. Gailīte, Darba tiesību „diskriminācija” krīzes laikos. *Jurista Vārds*, Vol. 23 (576), 9 June 2009. Available under <http://www.juristavards.lv/index.php?menu=DOC&id=192899> (last visited 2 Nov 2012).

[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijaradio.lv/zinas/raksts.php?id=49153&gr=0> (last visited 2 Nov 2012)

[30] Rajevska F., Romanovska L. “Crisis Impact on Social Policy of Latvia”. Paper presented at the 17th Annual Conference of the Hungarian Political Science Association “Structures and Futures of Europe” workshop “National Responses to Financial Crisis”. Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 19-20

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 LATVIA 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.

Latvia supported the conclusion of the ESM Treaty and an establishment of a permanent ESM because “it would ensure the stability of the finances of the Eurozone in general.”^[1] Latvia’s position emphasized that it was pleased with the opportunity to participate in the discussions concerning the mechanism because at the time of negotiations was planning its accession to the Eurozone.^[2]

The general position was that primarily the work should be done to strengthen the economic governance in the EU in order to avoid actual use of the ESM and in order for it to be available just as a precautionary measure. A very important issue for Latvia was the calculation of payments and a fair and simple formula for calculation. According to the Informative Report from March 2011, this formula should not create essential disparities in the Member State payments in comparison with their GDP. The receipt of financial assistance should be based on strict rules to avoid malicious use of this mechanism when states hope to receive free financial resources without giving a strong political commitment to stabilize the situation in the country and divert the consequences upon other Member States.^[3]

According to the minutes of the meeting by the Parliamentary Committee for European Affairs (PCEA) on 23 March 2011 regarding the position of Latvia for the European Council meeting on 24-25 March 2011 Latvia’s national position was to support the strengthening of the ESM, especially the increase in flexibility for interest payments. Latvia negatively looked at the diversification of funding tools (e.g. unconditional credit-line creation). Latvia supported the agreement on the ESM and considered that primarily the economic governance in the EU has to be strengthened in order to avoid the necessity to use the ESM and, thus, it could operate mainly as a precautionary measure.^[4]

From the PCEA meeting of 14 March 2011 it follows that Latvia participated in the extended meetings of Eurozone countries concerning the creation of the ESM and its main

characteristics. This was considered to be very important because after joining the Eurozone in 2014 Latvia will have to take part in all the new commitments of the ESM.[\[5\]](#) If a Eurozone state will not be able to repay the financial aid, this could have an influence also on the budget of Latvia. Provisionally the Latvian payment in the capital was estimated to be approximately 140-280 million EUR.[\[6\]](#)

In general Latvia's position was to support the independent creation of the ESM because it will ensure the stability of Eurozone finances in general. Latvia believed that the ESM should primarily operate only as a precautionary measure. Very important was the issue about the calculation of the paid-in capital and it was stressed that it cannot create essential differences among Member State payments in comparison to their GDP. The receipt of means from the ESM has to be based on stringent conditions in order to avoid abuse of the mechanism. Latvia supported the efforts of smaller Member States to achieve the establishment of fairer contribution key. [\[7\]](#)

The discussions in the PCEA concerned the German suggestions on the contribution key (the equality of rules concerning big and small Member States - how to use such indicators as population and GDP to calculate the contributions). One MP (R. Kārklīņa, coalition, Vienotība) suggested that the Slovenian formulation that "the rich one should pay more" should be used in the position. The position was approved.[\[8\]](#)

RATIFICATION

VIII.2

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

Before 2014 Latvia was not a party to the ESM Treaty and not part of the Eurozone. However, since Latvia will join the Eurozone in 2014, the Cabinet of Ministers on 22 August 2013 issued an order (No 393) "For Latvian Accession to the ESM"[\[9\]](#). This order commands to the Ministry of Finance to provide in the long-term funding commitments under the Ministry of Finance's sub-programme 41.03.00 „Contributions to International Organizations" contributions in the amount of 201 900 000 euro for the ESM. This includes contributions in the amount of 40 380 000 euro in 2014, 2015 and 2016 and contributions in the amount of 80 760 000 euro in the following period until 2018.[\[10\]](#)

The Draft Law „On the Treaty on the Establishment of the European Stability Mechanism" was approved by the Government on 12 November 2013[\[11\]](#) and submitted to the Parliament on 21 November 2013. The annotation of the Draft Law states that Latvia will be a Eurozone member starting in 2014 and that all Eurozone Member States have to be members of the ESM. In accordance with Article 2 ESM joining the ESM is possible for a Member State as soon as an ECOFIN decision is taken on abrogation of the derogation from adopting the euro. Therefore, the accession to the ESM for Latvia could start on 6 August 2013. The Ratification is necessary in order for Latvia to become a member of the ESM. In addition, the ratification law will provide the authorization order for Latvian representatives in the ESM Board of directors and Board of governors.[\[12\]](#)

The Draft Law was considered to be „urgent" by the responsible Parliamentary Committee

and by the Parliament majority before the first reading and will be approved in two readings with a simple majority. Two instead of three readings is an exception provided for inter alia international treaties according to the Art 114(2)(3) of The Rules of Procedure of the Saeima.[\[13\]](#) A qualified majority procedure in accordance with Article 68 Constitution (in cases where international treaties which delegate part of the state competences to international institutions are ratified a qualified majority is needed – two-thirds of the votes of the present MPs with at least two-thirds of all the MPs being present at the sitting) is not applied in this case – it is not considered that the Treaty would delegate state competences to international institutions. So far the Draft Law has been approved without any debates in the first reading (56 in favour, 1 – against and 26 abstained).[\[14\]](#)

RATIFICATION DIFFICULTIES

_VIII.3

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

Latvia has not yet finished ratification of the ESM (the Draft Law ratifying the ESM Treaty was adopted in the first reading in the Parliament (Please see Question VIII.2). During the first reading the Draft Law ratifying the ESM Treaty was adopted without any discussions.[\[15\]](#)

However, there have been some discussions, since Latvia is to join the ESM in 2014. On 13 Aug 2013 it was reported that Latvia will borrow the means for payments in the ESM.[\[16\]](#) A representative from the Ministry of Finance has argued that these 40.4 million euro which Latvia will have to contribute to the ESM are not expenses but rather a capital investment. According to him, Latvia will borrow this money and will pay interest for this loan. In this way the contributions to the ESM will not increase the budget deficit and will not reduce the fiscal room for next year's budgetary expenses.[\[17\]](#)

It has been argued that, if the EU countries are disciplined and do not get into new financial troubles, the expenses of Latvia will be small – above 300 million euro; and they will serve as a payment for security that in case of negative economic scenario, Latvia will receive help. However, in case of problems, the ESM might require from Latvia an almost five times bigger amount of financial means and there is a risk of losing this money. Latvia does not foresee such a scenario but economic experts have argued that it is very real.[\[18\]](#)

CASE LAW

VIII.4

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

Latvia has not yet finished ratification of the ESM Treaty. So far there has not been any information concerning potential litigation before the Constitutional Court regarding this Treaty.

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?

Latvia is not yet a party to the ESM Treaty (the ratifying Law is pending before the Parliament). Since Latvia is in the process of adopting the ESM ratifying law and accompanying laws, it could be considered that the Parliament has a direct say concerning the first payment of the paid-in capital required from Latvia by the ESM Treaty.

The Annotation of the Draft Law ratifying the ESM Treaty provides that depending on the type of decision the Latvian Representative on the ESM Board sometimes needs agreement of the Parliament, its Budget and Finance (Taxation) Committee or the agreement of the Cabinet of Ministers. The criteria for determining in what kind of decisions the Parliament should be involved are two:

- a. The Parliament adopts a decision in cases where the content of Treaty provisions are being changed. The decision from Parliament is not necessary, only if some numerical value in the Treaty is changed automatically in accordance with a mechanism determined in other provisions of this Treaty (e.g. accession of a new member to the ESM)
- b. Agreement from the Budget and Finance (Taxation) Committee of the Parliament is necessary in cases where Parliament's decision is not necessary but there are changes regarding contributions by Latvia. The agreement is not necessary only if such changes clearly result from already established Treaty provisions.[\[19\]](#)

In the Draft Law On State Budget 2014, which has been submitted to the Parliament by the Government on 1 October 2013[\[20\]](#) an article concerning the commitments of the Republic of Latvia regarding the ESM was included (please refer as well to question VIII.3).

According to the annotation of the Draft Law On State Budget 2014:

- The 7th recital of the preamble to the ESM Treaty provides that all Eurozone countries become member states of the ESM.
- Article 11(1) ESM Treaty provides that the contribution key for subscribing to ESM authorised capital stock shall be based on the key for subscription, by the national central banks of ESM Members. However, in order for the Treaty not to create too great financial burden for less well-off member states, it provides a flexible solution in respect of the way contributions are made (transitional period for 12 years). Latvia qualifies for these lighter provisions.
- The contributions to the ESM do not create negative consequences to the state budget balance and do not influence the budget deficit.[\[21\]](#)

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.

Latvia is currently in the process of ratifying the ESM Treaty. The Draft Law is currently pending before the Parliament and the rules on the role of the Parliament can still change. Please refer to Questions VIII.3 and VIII.5 (especially to VIII.5 concerning the Parliament's role).

In general, since the Draft Budget Law 2014 contained an article concerning Latvia's commitments under the ESM Treaty starting with 2014, the Parliament voted on this matter together with the proposed budget for 2014. Further the Parliament's role will be determined in accordance with the Laws accompanying the ESM Treaty ratification; so far for the Government's proposal concerning the provisions regulating the role of the Parliament in these matters please refer to Question VIII.5.

APPLICATION DIFFICULTIES

VIII.7

_WHAT POLITICAL/LEGAL DIFFICULTIES DID LATVIA ENCOUNTER IN THE APPLICATION OF THE ESM TREATY?

So far there have not been any real debates on this matter, since Latvia joined Eurozone only very recently - 2014.

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?

Latvia is currently in the process of ratifying the ESM Treaty. Please see Questions VIII.3-6 for details.

According to the Annotation of the Draft Law on the ratification of the ESM following changes and amendments to national law will be necessary:

- 1) Amendments to the Law on Budget and Financial Management: Article 9(14) to give the Finance Minister the right to increase the yearly appropriation determined by the yearly state budget law for contributions to the ESM, by not increasing the total amount of liabilities determined by the budget law. It is necessary because the actual payment of paid capital each year can differ from the one determined by the yearly budget law. This results from Article 41 ESM Treaty.
- 2) Changes in the Regulations of the Cabinet of Ministers (5 March 2013, No 120) in order to ensure fulfilment of Article 12(3) ESM Treaty (Collective action clauses shall be included, as of 1 January 2013, in all new euro area government securities, with maturity above one year, in a way which ensures that their legal impact is identical).
- 3) Changes in the Order of the Cabinet of Ministers from 20 December 2006 (No 991) to include the ESM there and to ensure proper records of shareholding of Latvia

MISCELLANEOUS

VIII.9

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

There have been debates concerning the fact that after joining the Eurozone Latvia will be required to contribute to the ESM. This has been used as well as one of the arguments against joining the Eurozone in 2014.

Latvia will have to pay 186 million euro in five instalments (each amounting to about 37.2 million euro). After the first 12 years during which Latvia will be under the favourable conditions it will have to contribute the remaining 138 million euro. The requested capital will be 1.3 billion euro.^[22] It has been argued that this system is unfair considering that e.g. Greece - which was the main beneficiary from crisis funds - has a GDP of 15.900 euro per person, while the GDP in Estonia was only 9.100 euro and in Latvia 6.400 euro.^[23]

In a speech given concerning the Euro Implementation law^[24] the Prime Minister (Valdis Dombrovskis) on 31 January 2013 emphasized as well the arguments in favour of the ESM:

“The EU and especially Eurozone states are connected with each other and instability in one can lead to instability in others and negatively influence the economy of the whole Eurozone. Therefore contributions to the ESM should be seen not as saving particular Member States but as a contribution to the common stability. It has been as well reminded that a couple of years ago Latvia itself received financial aid and that the mechanism could be compared to that of the IMF”.^[25]

He argued that solidarity is one of the founding principles of Europe:

“Neither politically nor economically is our country completely self-sufficient, therefore the contributions can be seen as insurance payments which can be useful for us.”^[26]

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

[3] Samuel Dahan, ‘The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy’, ILJ 41(3), pp. 305-327, p. 310.

[4] Ibid.

[5] R. Bideleux, ‘Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries’ (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

[8] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:

<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)

[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

[12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatiuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvara-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)

[13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: <http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-o>

[n-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf](#) (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12.

[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauja: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

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[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijasradio.lv/zinas/raksts.php?id=49153&gr=0> (last visited 2 Nov 2012)

[30] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-pol>

[icy-in-latvia.pdf](#) (last visited 2 Nov 2012) p. 19-20

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 LATVIA ENCOUNTER IN THE NEGOTIATION OF THE FISCAL COMPACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

The Parliamentary Committee of European Affairs (PCEA) repeatedly discussed the Fiscal Compact before it was signed, and its members participated in various conferences dedicated to the Fiscal Compact.^[1] The Government decision to accede to this Treaty was supported by the Parliamentary Committee of European Affairs.^[2]

In the meeting of the PCEA on 13 January 2012, it decided on the national position concerning the Fiscal Compact, which previously had been approved by the Government.^[3]

During this meeting, the Minister of Foreign Affairs (E. Rinkēvičs) informed that the position provides that Latvia supports closer coordination of fiscal discipline and the economy among the Member States with an aim to avoid excessive budgetary deficits which create instability of financial markets in Europe. He continued that a stable environment of economic and financial markets is a precondition for ensuring sustainable and stable economic development in Europe. The position favourably appreciated the initiative to involve EU institutions in the implementation of Fiscal Compact provisions, ensuring the supremacy of EU law and the determination to incorporate the provisions of this Treaty in EU primary law when possible.

At the same time the position insisted that the involvement of EU institutions is appropriate only insofar as the founding Treaties allow this and the Fiscal Compact cannot serve as a legal basis for adoption of EU legislation. It was emphasized that it is important to clearly define in what way the Court of Justice of the European Union (CJEU) competence under this Treaty is compatible with the TFEU, especially Article 126(10) TFEU. The position did not support an extension of CJEU competences more than necessary for achieving the aims of the Fiscal Compact; for example, the position did not support the CJEU's control over national constitutions. According to the position, the tasks for national courts and their interaction with the CJEU should be clearly formulated. The CJEU could have supervisory powers only concerning clearly legally defined obligations of the contracting parties and the scope of CJEU competences has to be in compliance with the EU competences. The position

stressed the importance of information exchange and transparency and the need to ensure that non-euro countries can participate in Euro summits in observer status. As well it has to be clear that the Maastricht criteria are not changed by the Fiscal Compact.[\[4\]](#)

A. Lejiņš (MP, Fellow of the PCEA chairman, coalition, Vienotība) stated that the issue of the Maastricht criteria is not sufficiently clear. To this the Finance Minister answered that they remain in force but that the goal is to strive for a structural deficit of 0.5% of GDP. Another MP (S. Dolgopolovs, opposition, SC) objected that when the importance of this Treaty is considered, then there is a need to work with each Article separately and not only with the text as a whole.[\[5\]](#) As well a concern that the Fiscal Compact significantly changes the CJEU competences and could potentially breach the founding Treaties was expressed by MP B. Cilevičs (opposition, SC).[\[6\]](#) In reaction to this last comment the Foreign Affairs Ministry representatives stressed that the position is exactly that this new Treaty cannot breach the founding Treaties.[\[7\]](#)

There was as well a suggestion to put this position for vote in the Parliament (instead of it remaining in the hands of the PCEA). The votes in the Committee were much divided on this (8 in favour and 9 - against); the suggestion was rejected.[\[8\]](#) In reaction to this the MPs belonging to Harmony Centre (SC) (opposition) left the meeting. Followingly, the position proposed by the Government concerning the Fiscal Compact was approved (10 in favour, none against).[\[9\]](#)

After the signing of the Fiscal Compact the Prime Minister indicated that this event has sent a clear signal to the international markets concerning the determination of Member States to foster growth and avoid crisis in the future. The ratification was now in the hands of the Parliament and he stressed there will be no hesitation from the Government to move forward with the ratification.[\[10\]](#)

RATIFICATION

IX.2

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

Latvia ratified the Fiscal Compact by adopting the Law on Treaty on Stability, Coordination and Governance in the Economic and Monetary Union on 31 May 2012.[\[11\]](#) Since it was considered that the treaty delegates a part of the national competences to international institutions, a vote of constitutional majority was necessary.

This procedure in accordance with Article 68 of the Constitution (Satversme) provides that in cases where international treaties which delegate part of the state competences to international institutions are ratified a qualified majority is needed - two-thirds of the votes of the present MPs with at least two-thirds of all the MPs being present at the sitting. Otherwise the usual rules apply. The law was adopted in two readings (in the second and final reading 67 MPs out of 96 MPs who were present voted in favour of ratification, 29 - against, no one abstained).[\[12\]](#)

Since Latvia does not yet belong to the Eurozone (it plans to accede in 2014) Article 4 of the ratifying law states that the treaty will be applied after the decision repealing the derogation awarded to the Republic of Latvia under Article 139(1) TFEU comes into force.

RATIFICATION DIFFICULTIES

IX.3

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

In accordance with Art 68(2) of the Constitution which determines the procedure for ratification of international treaties which delegate part of the state institution competence, a quorum of two-thirds of the votes was needed in a sitting when it is put on the vote with at least two-thirds of the MPs being present.[\[13\]](#) The Fiscal Compact went through two readings in accordance with Art 114 of the Rules of Procedure of the Parliament.

Due to the necessity to achieve a 2/3 majority in order to ratify this Treaty, the coalition needed the support from the opposition. The ZZS originally promised that it would be ready to support the initiatives for strengthening financial discipline only, if it would get two minister positions in the coalition. The parties who are in the coalition refused such offer and the ZZS retreated from its demands. The ZZS came up with a suggestion that if it received a written promise from the PM about defending the Latvian position in the talks concerning direct payments to farmers and division of cohesion funding, ZZS would vote in favour of the fiscal discipline instruments.[\[14\]](#) This was essentially an agreement achieved between the PM and the opposition force ZZS and this agreement was relevant as well inter alia for achieving the necessary support for the ratification of the Fiscal Compact.

There were some particularly heated debates in the Parliament:

Voting for submission of the proposal to the Committees

When the Parliament decided on whether or not to submit the Fiscal Compact for consideration in the committees, Igors Pimenovs from Saskaņas Centrs (SC, opposition) spoke out "against" the ratification. This opinion has to be considered important because SC was and still is the biggest force in the opposition.

He stated that the agreement concerns all Member States who have accepted the euro as the only means of payment or are planning to join the Eurozone. This means that the agreement directly concerns Latvia. He stressed its high political importance.[\[15\]](#) According to I. Pimonovs, this agreement establishes fundamental restrictions in yearly budget planning, provides for an enforcement mechanism for obeying these restrictions and implements external sanctions for disobedience. He argued that this treaty will limit the ability of Latvia to influence its own economic development and will not allow starting the necessary investments in infrastructure, creation of jobs, investments in education, science and solutions for the overwhelming demographic problems. "In the long-term Latvia will lose its competitiveness. This Treaty will endanger the future existence of this nation and because of that the SC does not support its ratification," he continued.[\[16\]](#)

I. Pimenovs further argued that the agreement was created in order to avoid further

irresponsible borrowing exercised by some Eurozone countries in the international financial markets. They borrowed money by using the high authority of the euro ensured by the economies of the developed countries of the Eurozone - Germany, France, Austria and the Netherlands - but the failing economies became a huge burden for the whole EMU and the developed countries disliked this fact. "But Latvia," he argued, "did not borrow; Latvia fully fulfilled the Maastricht criteria. The extravagance of Latvian government which is criticized here did not lead to non-fulfilment of its commitments. Latvia does not need this Treaty!"[\[17\]](#)

According to Pimenovs the Fiscal Compact does not protect the Member States, including Latvia, from a new crisis because it restricts only the state expenses and does not regulate the consumption and money flows in the private sector, whereas "exactly the private capital inflows were the reason behind the credit bubble and overheating of the economy."[\[18\]](#) "This agreement," he argued "takes away such economic development tool as fiscal stimulation; worse is that it happens in addition to the loss of autonomy of the monetary policy. Finally the treaty breaches the principle of sovereignty because it requires establishing fundamental restrictions for fiscal policy in our legislation and Constitution." "If Brussels would assume the responsibility for our territorial development in exchange to restricting our sovereignty, then we could think about it, but at the moment," he continued, "we fight for bigger, fairer direct payments to our farmers and at least for the same level of cohesion funding."[\[19\]](#) "Who needs this Treaty? Who can afford to join it? The Member States whose export exceeds import. Why is the Treaty beneficial for them?" [\[20\]](#) I. Pimenovs argued that the Treaty is beneficial for them because it captures the division of Member States in exports who determine the economic forces in the markets and importers who stay dependent on these forces forever. He asked the Parliament not to support submission of this draft law to the committees and to vote 'against' or to abstain.[\[21\]](#)

In the end 57 MPs were in favour of ratification, 25 - against and one abstained. The draft law was passed to the committees (to the Committee of Foreign Affairs (responsible) and the Committee of Budget and Finances).[\[22\]](#)

Debates in the first reading

In the first reading on 17 May 2012 Ojārs Kalniņš (coalition, Vienotība) in the name of the Parliamentary Committee of Foreign Affairs stated that after consideration and hearing the Minister of Foreign Affairs (Ilmārs Rinkēvičs) and the head of the Legal Unit of the Parliament (Gunārs Kusiņš) as well as after consideration of the opinion prepared by the Ministry of Foreign Affairs the Parliamentary Committee of Foreign Affairs[\[23\]](#), which argued that for ratification of this Treaty the procedure prescribed by Art 68 Constitution should be applied,[\[24\]](#) agreed that this Treaty might delegate part of the competence of the state institutions to the institutions of the European Union. Therefore it was admitted that for its ratification in the Parliament a constitutional quorum is necessary.[\[25\]](#)

In the debates Igors Pimenovs again spoke out against the ratification. He insisted that in spite of the fact that the issue of fiscal discipline today can be considered fashionable; each Member State still has its own interests. According to him the national interests of Latvia are to ensure fast and rapid growth of our economy. He stressed that "Latvia cannot put up

with a slow and gradual (2-3%) growth every year because our country is small and many young people are leaving it to find a job elsewhere.” He said that this is a very different challenge from the ones faced by the old democracies who prepared the draft of this Treaty which was created to avoid irresponsible borrowing in the financial markets in the future. “This does not concern Latvia!” he argued “We behaved very well and accurately followed all the Maastricht criteria.” He insisted that the irresponsible behaviour of the Government lead by A. Kalvītis did not affect Latvia’s fulfilment of international commitments. The cause of the crisis was the private consumption and the Treaty does not deal with this. Signing the Fiscal Compact Treaty will mean to refuse development policy. “We cannot support this Treaty in these circumstances.”

The result in the first reading was 68 in favour, 26 - against and nobody abstained. Therefore the draft law was approved in the first reading.[\[26\]](#)

The debates during the second reading

In the Second reading the following positions were taken: Finance Minister (A. Vilks): “Latvia has gone through a very deep crisis. We have actually already adopted many of the points established by the Treaty.”[\[27\]](#) He gave seven arguments in favour of the ratification:

§ The Treaty will strengthen the EU by precluding excessive budgetary deficits which create the instability of European financial markets. The national parliaments of EU countries are carrying out politics that create additional expenses and reduce the tax income. The consequences of such politics are being fully felt today. The Fiscal Compact is necessary to stop such a practice.[\[28\]](#)

§ The Treaty is compatible with the course towards realization of responsible fiscal policy started by Latvia and will not lead to changes in this, already undertaken, course towards balanced budget in the economic cycle.[\[29\]](#)

§ The Treaty strengthens the Latvian sovereignty. He argued: “By obeying Art 3 Fiscal Compact we will avoid a situation where we have to ask for international financial assistance and which is connected with the loss of sovereignty in the budgetary processes. The loss of sovereignty associated with the Fiscal Compact is a myth provided that sovereignty is not understood as living in complete isolation. States are bound by international treaties. Latvia is bound by EU regulations. Therefore, nowadays the state sovereignty is not absolute. This Treaty is an agreement among states concerning some definite principles of fiscal policy. Latvia cannot be isolated. We are integrated in the EU, we have to respect its main guidelines.”[\[30\]](#) When talking about the loss of sovereignty, Latvia has to admit that in the last years, while we were in the international assistance programme, the state budget was supervised. This treaty absolutely does not affect the way we will look at our expenditure and revenue. That, he concluded, has been left to ourselves.[\[31\]](#)

§ The Treaty reduces the cost of Latvian bonds. One of the objectives of the Fiscal Compact is the creation of trust that the EU can manage its deficit. This trust is a necessity, because

the interest rate a Member States will have to pay to cover their deficits depends on it.[\[32\]](#)

§ How much Latvia will receive from the EU funds is not directly dependant on joining the Fiscal Compact. However, the ratification of this treaty can serve as an argument because, if the fiscal conditions in the country are in order, the risk that the funds will be used inappropriately decreases.[\[33\]](#)

§ The Treaty ratification should not be delayed. Latvia does not act as an exemplary pioneer; it does act as a pragmatic European state. Since Latvia supports the principles of fiscal discipline, it makes sense that the Treaty is ratified without unnecessary delay.[\[34\]](#)

§ The Treaty fosters growth. He recalled the argument of the opponents that the austerity policy limits development. To counter this argument he invoked the example of Estonia “These opponents should consider the example of Estonia and compare their development. Estonia followed austerity policy before the crisis whereas we implemented policy of completely the opposite nature. However, it did not lead to a more rapid economic growth in the long term but the negative consequences can be seen. We for our interest on depth are paying approximately 2% GDP while Estonia pays approximately 10 times less. Latvia pays around 200 million to our lenders while Estonia can afford to invest such sums in its economy. The idea that we can borrow because it will lead to benefits in the future is theoretically correct but who will take responsibility that this borrowed money will truly boost growth? The effect on growth can turn out to be minimal while the debt will have to be repaid. It will be paid by today’s and future generations.” “Latvia is a small country and its capabilities in overcoming the crisis were huge. Latvia has overcome its own size reputation-wise both economic and territorial. Latvia has become a more serious player in the EU because of our decisive actions. It is very important to sign this Treaty for sustainable and balanced development. This Treaty will result in a better reputation, a better environment for businesses and credit ratings” he concluded.[\[35\]](#)

- I. Pimenovs (opposition, SC): He spoke out against the ratification and argued that the Fiscal Compact will not allow carrying out investments in the infrastructure, science, education and will prevent solving the demographic problems. His main arguments were that the Treaty does not solve problems with the private consumption and hence the same problems which caused the crisis can arise again in the future and the fiscal discipline enforcement mechanism and the external sanctions for disobedience of the Treaty breach the sovereignty of Latvia. According to Pimenovs, Latvia will lose the chance to put in action the main and very serious instrument for our future development - fiscal stimulation; the limit to structural deficit will not allow Latvia to solve its own problems due to the population size (just about 2 million) and emigration tendencies. He argued that this Treaty is beneficial only for the countries which used the European currency to reduce their currency risks close to zero and Latvia cannot support this Treaty at the moment and in the current circumstances.[\[36\]](#)

- I. Līdaka (opposition, ZZS): expressed general satisfaction with the Treaty.[\[37\]](#)

- Dz. Ābiķis (coalition, Vienotība): The ratification is a geopolitical question (concerns our geopolitical orientation). He stated that during the hard times in Europe, it is fashionable to

criticize the EU. "We are on the borderline between East and West and cannot afford to be in the grey zone. In the East the GDP per person is more than ten times less than average in the EU. In spite of the fact that there is a difficult situation in Europe, we don't have a choice. We need the EU more than the EU needs us. If we want to be an EU state, we need to support this decision."[\[38\]](#)

- A. Lejiņš (coalition, Vienotība): He argued that the Fiscal Compact is an inter-governmental Treaty but in principle does not differ from the so called EU legislation. "A year ago we approved one directive and five regulations, the so called six-pack. Essentially this Treaty is the same we have already approved. And the six-pack grew from the SGP. We are not approving anything new today."[\[39\]](#) He continued: "If we again compare Estonia and Latvia. Estonia complied with the SGP, we did not. Who ended up losing more sovereignty? Estonia gained more, we lost. It is possible that there will be a growth pact asked for by Mario Draghi. It will not be possible to support the growth agreement without a Fiscal Compact. In fact, we strengthen our sovereignty in this way because we do not live in an isolated world."[\[40\]](#)

- V. Liepiņš (coalition, ZRP): He claimed that it is necessary to talk about responsible growth. He argued that there are many examples of what responsible growth and conservative fiscal policy can do. "Germany went through the same some years ago. And which is the strongest economy in Europe? Germany? If we talk about some kind of sovereignty loss, then big countries like Spain, Portugal, Ireland, and Italy have largely lost this sovereignty. And if we want to be Greece, then, please, do not vote for this ratification. I do not want to be in Greece, I want to be in growing Latvia."[\[41\]](#)

- S. Mirskis (opposition, SC): He asked to the MPs whether the words „Latvian independence” and „sovereignty” do not mean anything to all for them anymore. He drew the comparison with the Soviet Union concerning the Fiscal Compact. "MPs voting in favour of the ratification will in fact be voting against the sovereignty of Latvia."[\[42\]](#)

- D. Reizniece-Ozola (opposition, ZZS): "The word "austerity" could be considered to be the non-word of 2010. We speak about a two-speed Europe. We speak about economic breakthrough which is as well our top priority in the National Development plan. But at the same time we enter into contradictions because only with austerity we will not be able to ensure this development. When talking about signing this Treaty we have to think not only about austerity but as well about development."[\[43\]](#) She talked about the insufficient funding for education and increases in the retirement age. Further she continued: "it is likely that we will sign this Treaty but we should not blindly follow Ms Merkel and listen to the German opinion but as well support, for example, the belief of Mario Monti that we have to think about the development as well. We always tell the population that the IMF forces us to save money. It is not the truth! The IMF recently complimented Mario Monti who not just carried out austerity but as well talked about courageous decisions for the economic development in Europe."[\[44\]](#)

- I. Latkovskis (coalition, NA): He stated that he will most likely vote in favour of the Fiscal Compact but stressed two concerns regarding this Treaty: the possible loss of sovereignty (or speculations about it) and the rush which comes alongside this Treaty. "The

speculations concerning sovereignty tame the population to an illusion that we can have such a unique economy without arbitrary behaviour and that Latvia can be such a super-country which will successfully operate between different blocks. The sovereignty when we talk about national matters, national identity and "Latvian Latvia" I see only in economically very strong and united Europe. It is of course not today's Europe. If we want arbitrary economic behaviour and enjoy limited European Union, then that is the already mentioned example of Greece. I am against the speculations concerning sovereignty and in the name of sovereignty I ask you to vote in favour today."[\[45\]](#)

- I. Zariņš (opposition, SC): "There is a lack of understanding what this Treaty will fundamentally do. There are no rational arguments in favour of a rushed ratification of this Treaty without a deeper discussion concerning its consequences. Especially in a situation where other European countries do not obey these conditions and do not even try to carry out appropriate measures of fiscal discipline."[\[46\]](#) He argued that the Treaty forces upon all the states an identical fiscal framework without taking into account the level of their economical development which, in turn, means that some states (for example Germany) will have leverage over other Member States whose potential is smaller or weakened, as is the case in Latvia. "I do not say that a state should not exercise fiscal discipline but before that comes the proportionality, understanding and sustainable vision of development." He claimed that Latvia is approaching the problem from the wrong angle: "In this case a state which is unable to compete with mature economies by being in this level playing field puts itself in a role of victim by at the beginning feeding mature state economies with its workforce and being forced to sell its activities. This means the privatization of the capital belonging to the state, to its people."[\[47\]](#)

- A. Bērziņš (opposition, ZZS): He argued that the Fiscal Compact will add to the development of Europe and insisted that the Parliament is voting for a document which will allow Latvia to reasonably develop within the EU and to move forward.[\[48\]](#)

- I. Grigule (opposition, ZZS): "We have to understand that with the ratification of this Treaty we are telling our people who have saved and lived with few means, in whose expense we have come out of this crisis that we will not be able to reasonably support them for many, many years." "We will not be able to increase wages to the teachers, medics, policemen, and mothers, increase pensions because after signing this Treaty big budgetary means will go for co-funding for EU structural funds. Of course we can talk here about sovereignty and speculations with it. But the Czech Republic has not signed those Treaties and the Czech President has clearly stated "We will not give our sovereignty and decision-making concerning the destinies of our people to Brussels bureaucracy and Eurocrats". France has signed but what happens there? The programme of the new president is diametrically different from Sarkozy's. He still insists that in this form and version France will not ratify this Treaty. Maybe we should wait for the proposals of French colleagues and then take the decision? What happened in the bastion of austerity - Germany? If the elections were held today, Merkel would not be Prime Minister. Germany itself is not able to ratify the agreement at the moment. More and more countries retreat from Germany. We should wait a bit because we will not be able to breach this agreement that easily. I do not question the course of action taken by V.Dombrovskis and A.Vilks - the fiscal discipline is

the right way. But is this the reason why we should rush at this moment in a moment when we even do not know whether Germany will ratify?"[49]

- A. Elksniņš (opposition, SC): He argued that the fact that Latvia will have to pay 150 million in the stability mechanism is something the Government should explain to all those to who it has promised wage increase. "The EU dictates to us the conditions under which we receive cohesion funding and direct payments to farmers. Each of you when you started your MP duties took an oath to be loyal to Latvia and not the European Union, to strengthen the sovereignty of Latvia, not that of the EU." [50] "The preamble of the Fiscal Compact emphasizes that the EU economic policy has to be taken into account. If any lawyer would study more in detail what is meant there with the coordination of the economic policy, then we would not have doubts and discussions concerning the Latvian sovereignty and strengthening of independence of Latvia. The agreement requires implementing provisions to support all the Eurozone. Where is Latvia in here? Member States have to refrain from any measures endangering the economic objections of the union. In the future we will make decisions for the European Union and not for Latvia. We will support proposals which the Commission could submit. We are signing for the future, for the potential proposals and undertake to support them. I have to agree with Mr Zariņš that with the economic growth we will have problems. In addition, this agreement has been drafted as a real Criminal codex. The CJEU will impose fines, penalties and the agreement does not provide for a possibility to refuse these commitments. I ask you not to overstep your oath - you have sworn to Latvia and not to the EU." [51]

- Vjačeslavs Dombrovskis (coalition, ZRP): He referred to the establishment of the EU as a historic challenge and the common currency - euro - as one of the necessary steps in-between. He argued that at the moment there is a choice between two roads: "The first is to use this crisis to increase integration both in labour markets and in a fiscal sense in order for the common currency to work. And there is the place for the Fiscal Compact which is one of the preconditions for the common currency to work in the future. The second road leads either to collapse or degradation of Europe." [52] "The process happening now is very old - the rich countries do not want to pay for the poor anymore. What will happen if the EU collapses? You will get full sovereignty. What does it mean? First of all, Latvia is a receiving country - both cohesion funds and direct payments for farmers. If we will be completely sovereign, nothing like that will exist. Such full sovereignty historically means that it is hard to keep it. If there will not be euro, then maybe there will be rubbles. We are at the moment showing to Germany and other countries like Greece and Spain as well that there is light at the end of the tunnel and that growth after austerity is also possible. This might be a benefit for us and could help us to gain a favourable attitude from Germany and other countries in the talks concerning the multi-annual budget. And that of course is a political decision." [53]

- Dz. Kudums (coalition, NA): He stated that his party's three main values are „Latvian Latvia”, economically strong Latvia and secure Latvia. He argued that the NA is for economic security and therefore he does not see any reason not to support this Treaty today. [54]

- K. Seržants (opposition, ZZS): "When we talked with the Prime Minister recently he told

us that it would be good to support the Fiscal Compact now but also that nothing bad would happen if we supported it in the fall. Earlier ratification would be a good signal. The question is for who is this a good signal? Of course for our good friends in Europe but not for our citizens and voters because, I repeat, this Treaty will be active only in euro countries and we have a long road ahead to that. If anybody has noticed, the support for the euro among citizens is around 4% at the moment. We should start thinking about convincing people to vote for the euro.”[\[55\]](#)

- J. Reirs (coalition, Vienotība): “I completely disagree with colleagues who argue that Europe is dictating all this to us. Latvia began the implementation of these ideas into laws already in January last year. Therefore Latvia came to a conclusion that when a state is led in a fiscally responsible manner, growth will follow earlier than the rest of Europe. It is beneficial for us for this Treaty to be ratified in order for us to live in a secure Europe. I ask to be responsible and to think about sovereignty of Latvia. And the sovereignty of our country is only the space of Europe, not that of Eurasia.”[\[56\]](#)

- J. Dombrova (coalition, NA): “We had many discussions in our faction concerning this Treaty. This Treaty is not good but in this moment - necessary. I really hope that this is the last attempt towards federal Europe.”[\[57\]](#)

- I. Čepāne (coalition, Vienotība): “Today especially when we are talking about sovereignty, about independence, populism hits a new level. I am simply ashamed about these things. Please read if not the doctrines of constitutional law then at least the judgment of the Constitutional court concerning the Treaty of Lisbon. By carrying out completely irresponsible politics during 2007-2008, in 2009 in fact the very basis of the existence of this country was endangered. The country was close to insolvency. Latvia faced the most rapid decrease in GDP in Europe, the highest inflation in Europe due to this irresponsibility. Some of the MPs in this room have a memory loss because if the opposite was true, such discussions as today would not take place. I invite you not to speak about loss of sovereignty without understanding what you mean with that in the current geopolitically economic situation.”[\[58\]](#)

- I. Pimenovs (opposition, SC): “We cannot compare ourselves to Poland because the Polish currency floats freely against the euro while our national bank refused to do that due to its very neoliberal approach based simply [on will] to ensure the introduction of the euro. If we would follow the federalization of the EU, then Brussels would have already taken all responsibility for the development of our territory. But at the moment we are fighting for the cohesion funding and the direct payments for our farmers. Therefore our destiny is in our hands. There are countries in front of us and behind us. But the only mechanism to use is our legislature and our sovereignty. And this means the chance to use fiscal stimulation to develop our economy. With this Treaty we refuse this stimulation for ourselves.”[\[59\]](#) He concluded that ratification of the Fiscal Compact is a mistake.[\[60\]](#)

- J. Urbanovičs (opposition, SC): “It is clear that to talk about sovereignty is as useless as to talk about virginity which has been lost years ago. There are more serious matters to discuss. It is clear that we will end up ratifying this Treaty. I simply want to explain why we are voting against.”[\[61\]](#) He continued that the SC will vote against the demonstration of

weakness and fate that there will never be a government able to predict, plan and able to carry out its plans. “The banking sector is Swedish, television – Swedish. Swedes will show, tell; Latvia will watch and listen, will go to Swedish banks and take loans. Since all the three Governments Dombrovskis has led, we have taken away one by one all the instruments which could be used to influence the economy. Since the moment when Lats was pegged to the euro, there of course is no value to have it.[62] In this case we should really just go for the euro already.”[63]

- A. Brigmanis (opposition, ZZS): “The spirit of this Treaty is such that we belong to the EU. Since we signed the accession treaty, it is clear that these common events, common provisions to a certain level dictate our life. A good question is when this Treaty will start to work in Latvia and whether Latvia will join the euro? I disagree with the statement that the decision for joining the euro should be left to the Parliament. It is more a question for a referendum.”[64]

- O. Ē. Kalniņš (coalition, Vienotība): “We in the Committee of Foreign Affairs as well had such interesting discussions. Only there was one more argument which I did not hear here today. That was the reminder that on 19 April we unanimously supported the ESM.[65] And if we consider that to be a rescue measure then this Fiscal Compact is a control mechanism. And if a control mechanism works, we will not need the rescue mechanism. If we accepted „A” in April, then it is time to do „B” today. The [PCEA] invites you to support this draft law in its second and final reading.”[66]

In the second reading the quorum was reached (97 MPs were at the sitting). The result was 67 in favour, 29 – against and 1 abstained. The draft law ratifying the Fiscal Compact was therefore adopted.[67]

Debates following the ratification

In general all the parties forming the coalition at the time (Vienotība, ZRP and NA) were in favour of adoption of the Fiscal Compact (even though during previous Governments the members of NA had expressed worries concerning federalization of Europe etc.). As well, due to an agreement concluded between ZZS and Valdis Dombrovskis, the members of ZZS, even though at the time it was in opposition, mainly supported the ratification of the Fiscal Compact. The only political party whose members were against the ratification was SC (opposition).

After the ratification Finance Minister Andris Vilks stressed that Latvia had to adopt this Treaty because its essence is fully clear to Latvia due to the events during the crisis. He argued that this Treaty will strengthen sovereignty because it will help to avoid budgetary problems which could lead to requesting international assistance which in turn would lead to Latvia losing sovereignty over its budget.[68]

The Chairman of the Parliament after the ratification of the Fiscal Compact stated “By ensuring the ratification [...] our country has taken an essential step in order to be part of the core in Europe in the future. This will promote the economic growth of the block and increase the global competitiveness. Already before Latvia has successfully showed that by exercising responsible fiscal policy it is possible to overcome the crisis and to return to

growth. However as well in the upcoming years in order to ensure the economic breakthrough which is topical for Latvia responsible fiscal policy will be on the agenda in our country”.[\[69\]](#)

The Fiscal Compact was one of the rare occasions when a “European” measure served as a basis for a lively discussion among not just practitioners but legal scholars as well. The Latvian law journal “Lawyer’s Word” (Jurista Vārds) asked various experts representing different groups whether the Fiscal Compact and the competences allocated to the EU do not breach state sovereignty and whether as a result of ratification there will be a situation where a collision between jurisdictions of the CJEU and the Constitutional Court will arise?[\[70\]](#) Here are some of the opinions expressed:

- The Head of the Legal Bureau of the Parliament G. Kusiņš stated that Latvia already has given part of its competences to the EU and the Fiscal Compact does not foresee anything very new because it has to be applied only insofar as it is compatible with the founding Treaties and EU law. According to him, it establishes closer cooperation among the states. Previous case law of the CJEU and constitutional courts indicate that they can successfully divide the questions of competences among themselves.[\[71\]](#)

- The Parliamentary Secretary of the Ministry of Finance K. Korna argued that already with the ratification of the Lisbon Treaty Latvia gave up definite competences, also in the field of economic policy (the control of excessive budgetary deficits). She continued that the Balanced budget rule, essentially, is an instrument for implementing the Maastricht criteria. The Fiscal Compact strengthens the power of the European Commission in the area of budgetary control but there is no reason to think that this would breach the state sovereignty. K. Korna stated that the CJEU and the competences of the Constitutional Court are separated because the Fiscal Compact will be implemented with the Law on Fiscal Discipline.[\[72\]](#)

- Dr. iur. Inese Lībiņa-Egnere (Legal Committee of the Parliament and assistant professor at the University of Latvia) emphasized that Latvia already with the Lisbon Treaty gave to the EU certain competences concerning the control of excessive budgetary deficits and no exclusive competences are being transferred by the Fiscal Compact.[\[73\]](#)

- Prof. Vjačeslavs Dombrovskis (assistant professor at the Riga Graduate School of Law and Chairman of the Parliamentary Committee of Economy, Environment and Regional policy) stated that Constitutional amendments are necessary in order to ensure the obedience of the Law on Fiscal Discipline because otherwise in the hierarchical order of legal acts it will be on the same level as the annual budget law. This will create confusion. He stressed the role of the Fiscal Discipline Council.[\[74\]](#)

- I. Pimenovs (MP, SC) argued that the Fiscal Compact expresses an apparent federalization tendency of the EU. According to him, this would be acceptable, if at the same time the responsibility of the ‘EU central government’ would increase concerning the development of all of its territories and for improvement of the life quality. Otherwise, Latvia’s fight for cohesion funding so far has rather resembled colonial charity.[\[75\]](#)

- Dita Amoliņa (Ph.D. candidate at the University of Latvia) argued that in essence the Fiscal Compact reduces the discretion of Member States to shape their economic policies in accordance with their own views – the scope of competence in preparing the state budget has been reduced. There

are doubts about whether the Fiscal Compact provides for something new or different. She argued that it, however, broadens the competences of the CJEU.[\[76\]](#)

- K. Bukovskis (Deputy Director of the Institute of Foreign Policy Latvia) stated that the Fiscal Compact contains provisions which reduce sovereignty, if it is understood as keeping the last word of legitimately leading the national political elite. It allows the Commission to more closely follow the adoption of state budgets and to request amendments.[\[77\]](#)

- J. Ošlejs (economist) argued that there is a need for a referendum concerning the Fiscal Compact. He stated that to regulate the budgetary process in the Constitution is an absurd thought. It is clear that the legislator has to have the right to create as big a state debt as necessary at a certain moment. To regulate the budgetary issues in the Constitution in a satisfactory manner is not possible.[\[78\]](#)

The Council of International and European Law Experts (established under the wing of the Ministry of Foreign Affairs) also gave an opinion on the Fiscal Compact.[\[79\]](#) In general it concluded:

- The Fiscal Compact contains provisions which cannot be found in the EU legal framework currently in force and strengthens the EU rules on economic governance by inter alia elevating the secondary EU measures to the level of primary law. The opinion states that from one side the Commission only has competences to make suggestions; but from another, it cannot be excluded that the Fiscal Compact increases its competences.[\[80\]](#)

- In general, it can be argued that the agreement on CJEU jurisdiction does not touch upon the TEU and TFEU. According to the opinion, the additional jurisdiction is precise and narrow and the Fiscal Compact stresses the importance of maintaining the role of national parliaments.[\[81\]](#)

- The opinion concluded that new competences cannot be transferred to the EU with the help of the Fiscal Compact; however, the agreement is meant for strengthening the budgetary control and it is foreseen to implement this in the founding Treaties, therefore the Fiscal Compact opens an opportunity for closer mutual supervision and involvement of the Commission in the adoption of balanced budgets in contracting states.[\[82\]](#)

- Concerning the necessity to apply the qualified majority voting requirement for the ratification, the Opinion stated that the constitutional ratification procedure has to be applied in this case. The right ratification procedure is the one under Article 68(2) Constitution, when the significance and the development of state budgetary preparation rules and EU policy under the Fiscal Compact are taken into account.[\[83\]](#)

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 LATVIA? 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.

One proposal for changes in the constitution was still pending before the Parliament at the moment Latvia signed the Fiscal Compact but which touches upon the Balanced Budget Rule. The proposal was given to the Parliamentary Committees for consideration. The draft proposal foresaw to amend Art 66 Constitution which, if amended, would read as follows:

“66. The Parliament is responsible for the economic budget and the creation of savings for state development and financial stability. The Parliament every year before the beginning of the financial year decides on state revenues and expenditures in the framework of a multi-annual budgetary plan. The draft budget is submitted to Parliament by the Cabinet of Ministers, which keeps the public finances balanced.

If the Parliament makes a decision concerning unforeseen expenses, then the decision has to determine the means from which to cover these expenses.

After the end of a budgetary year the Cabinet of Ministers submits to the Parliament for approval a report for the fulfilment of the budget.”[\[84\]](#)

In essence this draft proposal would establish at constitutional level the following principles connected with fiscal discipline: the principle of national development providing for the growth of the national economy, the principle of financial stability (the state debt is reduced to a sustainable amount), the principle of austerity (a reasonable and responsible use of the resources and avoidance of unnecessary expenditure), the principle of saving (creation of saving of budgetary means which is created by exercising a budget with surplus), the principle of medium-term budgetary planning (provides that the budget will be planned for several years), and the principle of balance (means that the government will have to exercise anti-cyclical fiscal policy and balance the budget within a budgetary cycle). The principles in detail are implemented in the Law on Fiscal Discipline.[\[85\]](#)

These proposed amendments of the Constitution in the end were not advanced partly due to the lack of political support, to the general unwillingness to amend the Constitution and partly because constitutional law experts have expressed the opinion that the principles of fiscal discipline can be ensured by ratifying international or EU instruments, together with the adoption of the Law on Fiscal Discipline.[\[86\]](#)

In general, amendments to the Constitution in Latvia are very rare and the general opinion of the politicians and as well among experts is that the very laconic Constitution of Latvia should be amended only in cases of grave necessity. The fact that the Fiscal Compact was approved using the procedures in Art 68(2) Constitution means that it after ratification became an act at the constitutional level and not merely an ordinary law, therefore the provisions implementing Fiscal Compact including those implementing the Balanced Budget Rule will have special significance/status. This weight might be enough to ensure their priority.[\[87\]](#)

More precisely the Balanced Budget Rule is implemented in the Law on Fiscal Discipline.

According to Art 10 of the Law on Fiscal Discipline the framework budgetary law

determines the general government structural balance for each year of the framework period not lower than -0.5% GDP. According to Art 11 the Government structural balance is adjusted in order to ensure that the factual divergences of previous years do not affect the balanced budget. Derogation from the balanced budget rule is possible in cases of force majeure when there is a need to carry out prevention measures exceeding 0.1% GDP, if the dangers mentioned in Art 62 Constitution^[88] have to be prevented or during a serious downturn of economy (Article 12(1) Law on Fiscal Discipline).

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.

The Law on Fiscal Discipline was developed from June 2010 until November 2011 and was drafted in cooperation with experts from the IMF and the European Commission. It was initially not meant for the implementation of the Fiscal Compact; however, since the law was developed in close cooperation with European Commission and the IMF during the time when potential changes at the EU level concerning EMU were considered, it ended up being drafted along the lines of discussions leading up to the Fiscal Compact. When the Law of Fiscal Discipline was already in the Parliament and before it was adopted^[89], the Fiscal Compact was signed and it was decided to adjust the draft law along the lines of this new treaty.^[90]

The basic rule in the Law on Fiscal Discipline is the provision on balanced budget in an economic cycle. This is ensured by using a formula which depending on whether the GDP grows faster or more slowly in comparison to the speed of average growth establishes the minimal surplus which has to be created or the maximal deficit. The second basic principle provides that with the help of the medium-term budgetary framework for three following years the allowed limit for Government expenditure is fixed (by thus strengthening medium-term planning of expenditure policy).

The Fiscal Compact was signed on 2 March 2012 already after the approval of the Law on Fiscal Discipline in the first reading in the Parliament. The Government decided that it is reasonable to coordinate the Law on Fiscal Discipline with the requirement of Fiscal Compact at this stage. The Finance Minister proposed the following changes for the second reading^[91]:

- Change in the balance formula: The Fiscal Compact provides for a different methodology for ensuring a balanced budget. The proposed changes amended this methodology for it to be compatible with the Fiscal Compact.
- Limits on growth speed of expenditure: The Fiscal Compact provides that in addition to limiting structural deficit, expenditure, except for inflation, cannot grow faster than the potential GDP growth. The proposed changes would implement this.
- Automatic correction mechanism: While the original version of the draft law on fiscal

discipline provides an ex-ante regime for ensuring that the general balance is obeyed, the Fiscal Compact provides for a more elastic approach by allowing that the structural balance can differ from the planned one (ex post corrective mechanism). The proposed changes would implement this.

- The differentiation between short-term and structural fiscal policy: The Fiscal Compact differentiates between one-time increase in revenues or expenditure and an increase with a permanent character. The proposals for the second reading on the Law of Fiscal Discipline are analogous.

- Allowing the structural deficit for productive investment projects: The proposed draft for the first reading foresees a strictly balanced budget. The Fiscal Compact on the other hand provides that a structural deficit of not more than 0.5% GDP is allowed. This proposal suggested to retain the general rule of 0% structural balance but as an exception provides for derogation in order to realise productive investments. The average derogation in a four year period cannot exceed 0.5% GDP.

- Convergence on the medium-term budgetary balance objective: The draft proposal for the Law on Fiscal Discipline provided that the balance formula will be used starting in 2015. Regulation No 1175/2011 contains a provision (Article 5(1)) that has to be obeyed, if the structural balance is much more negative than the medium-term objective. In this case the structural balance has to be improved with a rate of at least 0.5% GDP per year. The Fiscal Compact on the other hand provides that the speed of structural balance improvements is determined individually for each state so that in the period of the stability programme (4 years) the actual balance would reach its objective. In accordance with the Regulation and the Fiscal Compact the proposals for the second reading provide for an analogous solution. The improvements in the structural balance have to happen at the rate of at least 0.5% GDP per year or another rate, if that is established by an international Treaty. Both Regulation No 1175/2011 and the Fiscal Compact provide that during the period of improving the structural balance the expenditure has to increase more slowly than the GDP growth. Proposed changes for the second reading suggested an analogous approach.

These suggestions were taken into account and implemented in the Law on Fiscal Discipline.

Please see the relevant debates in the Parliament concerning Fiscal Compact under Question IX.3.

During the debates on the Law on Fiscal Discipline (starting with the second reading, after the Fiscal Compact was already signed) the following points were raised:

1) I. Pimenovs (opposition, SC): Expressed satisfaction with the fact that Article 11 has been amended with possible derogations from balanced budget rule (the derogation is possible, if national public investment project(-s) is implemented with total amount of funding is not less than 0.5% GDP). He expressed doubts about using structural balance as basis for grounding austerity policy in accordance with the Fiscal Compact.[\[92\]](#)

2) J. Reirs (coalition, Vienotība). He responded to the comment concerning ratification of

the Fiscal Compact. He stated: „Latvia already during the last Parliament decided to draft a Law on Fiscal Discipline [...]. And it is not our fault that Europe has come to these conclusions a year later than we did and that we already started working on this draft law. There cannot be claims about „obedient” approval of inter-governmental fiscal treaty because we, practically, adopted a thing what we had started to solve already. Thank you for the media which today reminded me that Latvia started work with these documents earlier than Europe.”[\[93\]](#)

3) Z. Kalniņa-Lukaševica (RP, coalition) favourably greeted establishment of a Fiscal Discipline Council.[\[94\]](#)

RELATIONSHIP BBR AND MTO

IX.6

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

There is no information concerning such debates.

CASE LAW

IX.7

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

No, there is no such judgment.

NON-EUROZONE AND BINDING FORCE

IX.8

Has Latvia 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, Latvia has not submitted such declaration and this option has not been discussed, since Latvia planned to join the Eurozone already on 1 January 2014 and has done so.

MISCELLANEOUS

IX.9

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

According to a report prepared by the Ministry of Finance on the Commission’s plans regarding Art 11 Fiscal Compact, the coordination of the economic policy has to be carried out only where there are clear reasons for this stemming from the interests of the EMU. Latvian opinion was that reforms should be coordinated where there is a risk that EMU stability can be negatively influenced. The Report provides that possibly the economic coordination could be carried out concerning those policies which, even if they do not influence the stability of the EMU in general, have an impact on neighbouring countries.

Latvia maintained an open position concerning this. In addition the Report stated that Latvia is open to discussions concerning the question which areas should be coordinated. In general tax policy is important for attracting investments; therefore Latvia wants to maintain national competence regarding this matter.[95] Latvia agreed that there could be cases when the implementation of reforms has to be funded jointly and that would be in the interests of the whole EMU. It was stressed that it is essential to ensure that the EU has sufficient means and mechanisms to prevent mistakes of fiscal and economic policy in the Member States which otherwise would have to be corrected with the help of the solidarity mechanism.[96]

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

[3] Samuel Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy', ILJ 41(3), pp. 305-327, p. 310.

[4] Ibid.

[5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

[8] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:

<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)

[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

[12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatiuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvar-a-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)

[13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-on-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12.

[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauija: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March

2011. Available under
<http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pieti-ekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

[24] D. Gailīte, Darba tiesību „diskriminācija” krīzes laikos. Jurista Vārds, Vol. 23 (576), 9 June 2009. Available under <http://www.juristavards.lv/index.php?menu=DOC&id=192899> (last visited 2 Nov 2012).

[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijasradio.lv/zinas/raksts.php?id=49153&gr=0> (last visited 2 Nov 2012)

[30] Rajevska F., Romanovska L. “Crisis Impact on Social Policy of Latvia”. Paper presented at the 17th Annual Conference of the Hungarian Political Science Association “Structures and Futures of Europe” workshop “National Responses to Financial Crisis”. Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 19-20

X - 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.

A summary of the situation leading up to the necessity of financial assistance is given by Pleps and Balodis in 'Financial Crisis and the Constitution of Latvia'.^[1] In short they argued that: After accession to the EU rapid economic growth based on private consumption took place in Latvia. Most of the money often taken in the form of bank loans was invested in non-exportable goods. This all led to high inflation. In the short term this situation provided for increases in tax revenues, thus, expanding the budget expenditure accordingly.^[2] The first warnings concerning an approaching crisis could be heard already in 2007. In 2008 the official indicators also showed that a crisis was approaching. Due to the global financial crisis and downgrading of Latvia's credit rating, the availability of external financial resources collapsed at the end of 2008. At the end of the year the inflation was still at a rate of 15.6%.^[3]

In late 2008 the Government took over the Parex bank which was in fact insolvent - this Government decision strongly influenced the state financial situation and has had long-term effects. The Parex Bank according to its assets was the second biggest bank in Latvia (its assets constituted 13.8% of all assets of Latvian banking sector).^[4] The decision to take over the Parex Bank was taken by the Government after the Financial and Capital Market Commission (FCMC), the Ministry of Finance and the Bank of Latvia concluded that without state support the bank faced immediate insolvency threat.^[5]

On 18 December 2008 the Parliament adopted the law on Bank Takeover.^[6] This law allowed bank takeover in exceptional cases with the case of Parex Bank in mind.^[7]

On the same day, 18 December 2008, Latvia submitted a letter of intent to the IMF in which it stated that it wished to receive an international loan and promised to limit its budget expenditure, as well as to implement a series of political and structural reforms.^[8] An interesting fact is that these promises had not been reviewed or approved by the Parliament.

Already during the Parliamentary debates on 8 May 2008 the MPs expressed worries that the budget fails to comply with the original predictions and according to the plan, the growth has decreased from 7.5 to 5.5% and the inflation has grown from 6.3 to 15%.[\[9\]](#)

On 4 June 2008 after the request of 34 MPs the Parliament decided on the draft decision on the tasks for the Cabinet of Ministers to overcome the economic crisis. The draft decision provided that the Cabinet of Ministers has to submit to the Parliament before 1 July 2008 a detailed report concerning fulfilment of the Law on the State Budget for 2008 during the first five months and an action plan for reducing the influence of the inflation on less socially protected groups of the society. A task was given to the Government to convene an emergency Parliamentary session where it had to report on the planned actions for overcoming the economic crisis before 10 July 2008.[\[10\]](#)

The 2009 budget was adopted but evaluated by the MPs as an 'illusion'. It was argued that it has been based on unfounded optimistic forecasts.[\[11\]](#)

On 4 December 2008 an emergency parliamentary meeting convened by the Prime Minister Ivars Godmanis took place concerning the financial situation in Latvia.[\[12\]](#) In this meeting I. Godmanis reported on the draft agreement the Government was discussing with the IMF and explained the situation with the takeover of the Parex Bank. He stated that Latvia was 44% behind from the planned revenues. He stressed that the Government was ready to implement cuts but was not ready to change the fact that the Latvian currency Lats (LVL) is pegged to the euro (EUR) because in the Monetary Programme of Latvia it was written that the Bank of Latvia ensures that LVL is pegged to EUR (1 EUR - 0.70284 LVL) with the possible fluctuation within 1% limit.[\[13\]](#)

During the crisis Euroskepticism grew as well. For example, V. Lācis (MP not associated with any political faction, after having been elected from the NA list[\[14\]](#)) on 4 December 2008 expressed the opinion that joining the EU was the reason behind this crisis. "The EU is the one determining the economics and the EU politicians with their liberal approach have gotten completely lost. Liberal capitalism is dead," he argued. He stated that "of course if in one area of the country the subsidies are seven times bigger, then the other area will go bankrupt. Our agriculture is destroyed with the help of unreasonable payments for farmers in other countries."[\[15\]](#)

MP K. Šadurskis (opposition, PS) argued that, "if when the unrealistic budget was adopted it was impossible to explain to the Government how silly it is to adopt unrealistic revenue forecasts and to allocate non-existing money, then the IMF managed to explain this in one moment. [...] Now the Government for its expensive life has to pay with part of state sovereignty." He expressed a belief that the Government under the IMF supervision will work better.[\[16\]](#)

Another MP, A. Štokenbers (not associated with any political fraction, after having been elected from the TP list=) emphasized the paradox that the Prime Minister when talking about the economic stabilization plan expressed an opinion that the Parliament should not be burdened with this problem, while in every other country where at the moment economic stabilization takes place, the Parliament is the one deciding on it. He insisted that strong

Parliamentary control is necessary in these circumstances.[\[17\]](#)

On 4 December 2008, before the agreements on international assistance were concluded, the Finance Minister (A. Slakteris) reported to the Parliament that after talking to the IMF he has found out that a scenario similar to Argentina was considered for Latvia (devaluation). The Government disagreed with this as well as the Bank of Latvia but the only alternative was reduction in expenditure. He promised that this will very soon be presented before the Parliament. "Our own vision" the Finance Minister reported "on how to get out of this critical situation will serve as a basis for whether the international community as represented by the European Commission and the IMF will be ready to lend us the money."[\[18\]](#) He insisted that Latvia needs this loan in order to avoid a situation where the state expenditure would have to be reduced so heavily that the state would in fact have to stop functioning. He stated that "We will have to greatly reduce expenditure and increase revenues, in part by increasing taxes. These will not be popular decisions but otherwise we can end up in a country which cannot pay wages and pensions."[\[19\]](#) He expressed a hope that both Government and opposition will be capable of making these decisions that will not be easy.[\[20\]](#)

In the same session the Prime Minister (I. Godmanis) insisted that the Government still controls the situation - financially, economically, structurally and legally. However, the programme for receiving financial aid is bilateral and that was the reason why it was not fully reported to the Parliament. The Programme is coordinated with the European Commission, the IMF and possibly with other participants. The document has not been coordinated yet. He asked the Parliament to vote for the Stabilization programme (which basically was the content of the letter of intent)[\[21\]](#) but the draft agreement with the international lenders was not fully disclosed to the Parliament.[\[22\]](#) The Parliament voted on the Stabilisation and Growth Recovery Programme (presented before the Parliament in the form of amendments to various laws on 11 December 2008) together with amendments to 2009 Budget. The Parliament hence got a limited information concerning the Government plans (the stabilization programme) but, since the draft agreement with the international lenders was not fully disclosed as well as the letter of intent one could argue that the Government made the political promises to receive the loan mostly on its own with a very limited involvement of the Parliament (please see more information on the stabilisation programme under Question X.2). Besides, the Parliament did not vote on the authorization for the Government to borrow per se, only on the intention to stabilize the state economy by carrying out various reforms as stated in the stabilisation programme. The Stabilisation Programme does not mention the Government's plans to borrow money in any way.[\[23\]](#)

NEGOTIATION

X.2

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

The financial assistance instruments were generally decided among the Government and international lenders. The Parliament was not directly involved in the negotiations. The negotiations between the Government and the lenders (European Commission, the IMF, the Nordic countries etc.) were not public and the information concerning these negotiations is not publicly available. Since Government was the one fully deciding on whether or not to take a loan, there were initially no debates in the Parliament.

In December 2008 the Government adopted The Economic Stabilisation and Growth Restoration Programme.[\[24\]](#) This stabilization plan provided that the office positions in the public sector will be reduced by 15%, the wages will be coordinated with the actual situation in the labour market and the euro will be introduced before 2012. Also changes in the 2009 budget were approved. The Plan forecasted the nominal debt in amount of 5 billion and provided that the Finance Minister can give guarantees on behalf of the state in 2009 in the amount of 229 331 463 Lats (LVL) (~ 328 286 154 EUR).[\[25\]](#)

This programme in the form of amendments to various laws (2009 Budget Law etc.) was presented before the Parliament on 11 December 2008.[\[26\]](#)

The Prime Minister (I. Godmanis) before the Parliament stated that he had coordinated this programme consisting of proposals for amendments and changes in various laws with ministries, institutions and, importantly, international financial institutions. Concerning concrete proposals he argued that the reduction in public sector wages cannot be discussed because it has been determined and supported by the international institutions. At the time he stated that the Government will maybe borrow, if its request for a loan is accepted. He said that the Government is not against including other institutions like the Bank of Latvia and State Audit Office in controlling how the borrowed means will be used. This programme is a precondition for possibly receiving the help in the future.[\[27\]](#)

The Finance Minister (A. Slakteris) invited the Parliament to support the stabilisation programme. He reported that the Government is talking with the representatives from the international finance institutions.[\[28\]](#)

S. Kalniete (opposition, PS) stated that her faction will support this programme not out of loyalty to the Government but because this vote will determine whether Latvia in a couple of months will still be solvent and thus will exist at all. She insisted that this Government has to be changed because dealing with the money which Latvia will receive from the IMF, European Commission and Nordic countries cannot be entrusted to it. She stated that she will vote in favour only because this programme is not created by the Government but by experts from international institutions.[\[29\]](#)

A. Pabriks (opposition, Sabiedrība citai politikai) stated that his faction cannot accept such stabilization agreement because it is not created through solidarity and will not solve economic problems in a just way and will not affect all citizens equally. He insisted that in order to overcome the economic crisis, there is a need to first overcome political crisis.[\[30\]](#)

V. Agešins (opposition, SC) stated that his faction supports the request for help to the IMF and other potential donors because it is clear that without outside help Latvia will not

survive. However, they insisted that the Government has to be changed.[31]

After lengthy discussions the Parliament voted in favour of the programme.[32] Since the approval of the programme happened in the form of voting for amendments to various and numerous laws, it is not really possible to indicate all the votings results and majorities in detail. However, in general, the coalition members (LPP/LC, TP, ZZS, TB/LNNK) all supported the programme, as well as some members of the opposition.

In late 2008 the Government voted on accepting an international loan.[33] On 18 December 2008 Latvia sent a Letter of Intent addressed to the IMF.[34] The Letter stated that the Government has developed a strategy to counter financial pressures in the near term and requested that the IMF would support the proposed programme through a 27-month Stand-By Arrangement in the amount equivalent to SDR[35] 1.521626 billion (1,200.02 per cent of quota or €1.7 billion) covering the period December 2008 to March 2011.[36]

The main objectives of the programme proposed by the Government and as outlined in the Letter of Intent were to stem immediate liquidity pressures, to restore long-term stability by strengthening the banking sector, correcting fiscal imbalances and adopting domestic policies that will improve competitiveness while maintaining a fixed (narrow-band) exchange rate, and to strengthen the long-term structural performance of our economy.[37]

On 7 December 2008 the IMF stated that “[...] good progress has been made towards a possible Fund-supported program for the country. In cooperation with the European Commission, some individual European governments, and regional and other multilateral institutions, we are working with the authorities on the design of a program that maintains Latvia’s current exchange rate parity and band. This will require agreement on exceptionally strong domestic adjustment policies and sizeable external financing, as well as broad political consensus in Latvia. In this context we welcome the commitment made today by the Latvian authorities. All participants are working to bring these program discussions to a rapid conclusion.”[38]

On 19 December 2008 the IMF announced the Staff-Level Agreement with Latvia on a €1.7 Billion Stand-By Arrangement as Part of Coordinated Financial Support.[39]

The Council decision from 20 January 2009 (2009/289, 2009/290 amended by 2009/592) made available to Latvia medium-term financial assistance of up to EUR 3.1 billion, with a maximum average maturity of seven years. Community assistance was provided in conjunction with a loan from the IMF of SDR 1.5 billion under an IMF stand-by arrangement approved on 23 December 2008. The Nordic countries (Sweden, Denmark, Finland, Norway and Estonia) were to contribute EUR 1.9 billion, the World Bank - EUR 0.4 billion, the EBRD, the Czech Republic and Poland - EUR 0.4 billion.[40]

Since the materials regarding talks of the Government with the international lenders and as well minutes of the Government meetings considering negotiations of the international financial assistance instruments are not publically available, information concerning the Government’s position is scarce. Moreover, the Parliament was involved in the negotiations post-factum and therefore did not directly participate in them. This leads to a situation

where the political debates happening at the time have been left unclear.

On 9 September 2009 already after the conclusion of the financial assistance instruments and the change of the Government from one led by Ivars Godmanis to the one led by Valdis Dombrovskis the new Finance Minister (E. Repše) reported before the Parliament on spending of the received loans. He reported that “as a basis for the loan agreement served the promise approved by the Government to reduce the deficit, carry out structural reforms, increase competitiveness, create new workplaces and facilitate export.”[\[41\]](#) He argued that the requests by international lenders coincided with the interests of Latvia. The international agreement signed by two Governments (the Government led by the Prime Minister I. Godmanis signed the first Letter of Intent to the IMF and first MoU and the Government led by Prime Minister V. Dombrovskis signed the second Letter of Intent and the Supplemental MoU) is essentially with the IMF and the European Commission. He continued that the decision to solve problems connected with competitiveness is included as well in the Supplemented Economic Stabilisation and Growth Recovery Programme which was approved by the Parliament in late 2008 (presented before the Parliament in the form of amendments to various laws on 11 December 2008) together with amendments to 2009 Budget. He stressed that each expense is in compliance with the state budget and other regulations and no expenditure can be carried out by circumventing the Cabinet of Ministers, the Parliament or the order provided by law.[\[42\]](#)

V. Muižniece (opposition, TP) on 9 September 2009 commented on the way in which the issues were solved during the borrowing process. The political parties of the coalition all signed the 2nd Letter of Intent addressed to the IMF. She argued that this, however, happened without any discussions, any evaluation, in a very rushed way and almost through blackmail. “The Prime Minister Valdis Dombrovskis on 27 July invited us to sign the letter within one day without sufficient introduction and consideration of its content, he argued. The reason behind him mentioning this was that the IMF was having a meeting in which a part of the loan would be decided upon. Later it turned out that such meeting took place a month later.” She stated that the TP supports the necessity of loans but cannot support the way in which the Prime Minister and the Finance Minister acted in this situation. The Government at the same time is exaggerating the IMF requests concerning tax reforms.[\[43\]](#)

On 12 March 2009 Prime Minister Valdis Dombrovskis in the session on the confidence vote for the new Government stated that fiscal stabilization measures within the international lending programme are very painful. However, he argued, “if we will stabilize the state budget, we will receive the next financial assistance package.” He claimed that the doubts concerning the factual financial independence can be cleared up only by skilful use of borrowed means and by continuing the restriction of the budget. “This will allow to overcome the crisis without losing the foundations of the economic and social system by strengthening the democracy and improving the efficiency of government.”[\[44\]](#) He asked once more to evaluate the benefits of being in the EU and stated that Latvia needs to aim to join the Eurozone as soon as possible because the united currency will provide for a stable basis for economic recovery.[\[45\]](#)

J. Sokolovskis (opposition, PCTVL) emphasized the fact that the Parliament was considering

the Letter of Intent containing measures which have to be approved by Parliament after the document had already been signed by the Government a long time ago. He asked whether it should not have been debated in the Parliament before it was signed rather than simply confronting the Parliament with it as an accomplished fact.[\[46\]](#)

To this last question the Finance Minister answered that such documents can contain sensitive information which cannot reach the hands of market participants and that because of this some parts were taken out of the published version. He claimed that making this information publicly available would have endangered the financial interests of Latvia.[\[47\]](#) Also, the Prime Minister rejected accusations concerning lack of transparency in the process of negotiations with the international lenders by referring to the practice of the previous Government where the information also became (partly) available only after the Government had signed the first Letter of Intent and the MoU.[\[48\]](#)

STATUS INSTRUMENTS

X.3

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

There have been only few discussions in this regard (please see some opinions under Question X.4).

At least from the way how it was dealt with in Latvia the Letter of Intent and its following reviews were never allocated any official status and most likely can be considered to be simply publicly expressed commitments by the Government.

The MoU and its supplements might be considered to be inter-governmental international treaties. If this is the case, since they have been concluded by the Government and have not been directly approved or ratified by the Parliament, in the hierarchy of the normative acts they stand below ordinary laws or international agreements (which would have been ratified by the Parliament) but above Regulations of the Cabinet of Ministers.

If the MoU and its supplements would be considered part of EU law (there has not been any discussion in this regard in Latvia), they would have supremacy over national law. Article 15(4) Administrative Procedure Law provides that the legal norms of the European Union (Community) shall be applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. The case law of the Court of Justice of the European Union has to be taken into account (e.g. direct effect, supremacy).

The Parliament theoretically could have rejected the measures promised both in Letters of Intent and the MoUs once they were brought before it in the form of proposals for changes and amendments of law. However, since in practice this would have had grave political and economic consequences, such as not receiving next instalments of financial assistance, the Parliament felt strong pressure to support the austerity measures. Moreover, Government (representing coalition) had agreed to them, so especially in cases where a simple majority rule applied in Parliament there were no problems in finding the support within the Parliament. To implement the requirements of MoUs a simple majority was usually enough

since no Constitutional changes were required.

TRANSPOSITION NATIONAL LEGAL ORDER

X.4

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

The Constitution does not prescribe any special procedure for transposition of financial assistance instruments in the national legal order. It is not fully clear whether the financial assistance instruments had to be regarded as international treaties, and, thus, should have gone through ratification by the Parliament. In fact, they did not, therefore in practice they were treated more like inter-governmental treaties which as opposed to international treaties can be concluded by the Government in the realm of its competences on its own and without the involvement of the Parliament. However, there was some discussion on whether this was correct.

For example, the authors of the research 'Analytical work about international contract law and their interaction with the rights of the EU and its member state' came to a conclusion that neither Letter of Intent nor the MoU are international treaties and therefore they do not create legally binding commitments for Latvia.[\[49\]](#)

On the other hand, M. Lejnieks has argued that the letters of intent and the following loan agreements or decisions to issue credit, even if they are publicly being declared as not connected, one-sided acts, should be looked at as united transactions, international treaties, which touch upon questions normally decided by the legislature.[\[50\]](#)

At the time when Latvia decided on the financial assistance the regulations on receiving international financial assistance were as follows. The Law on Budget and Financial Management provided that the Finance Minister on behalf of the state can take loans within the allowed limits in the annual budget law. Also he could take loans for covering the state budgetary deficit and re-financing of the state debts as well as for other objectives, if they have been established by the annual budget law (Article 35(1)). For the sake of economy and efficiency, the Minister for Finance could select the lender, the type of borrowing and the currency (Article 35(1)). The yearly budget stated the limits to the allowed actions by the Government in case of unforeseen circumstances (Article 35(3)).

After the international loans were already received, the procedure has been changed (partly due to the judgment by the Constitutional court in case No 2009-43-01 - see Question X.8). The new procedure provides that the Minister of Finance may borrow in the name of the State an amount which during the financial year exceeds 20% from the amount of GDP specified in the annual State Budget Law in the financial year only after the Prime Minister or Minister for Finance has presented a report regarding the relevant plans to borrow before the Parliament and a law authorizing such a loan has been adopted and has come into force (Article 35(2¹) The Law on Budget and Financial Management). Equal conditions apply as well if the conditions of the intended loan can be recognised as an "important and significant matter for the life of the State and society" and which concerns the

implementation of tax policy, social protection system or other matters that have to be solved by amending legislation, even if the intended loan does not exceed 20% of GDP. The necessity of the loan has to be well-motivated in a report regarding the relevant loan, submitted by the Prime Minister or the Minister of Finance. The report must state the amount, purpose of use, time period and repayment schedule thereof, as well as intended measures of the Government for fulfilment of the conditions of the borrowing and repayment thereof shall be indicated (Article 35(2²)).

Upon the request by the Cabinet of Ministers on 18 January 2010 the President's Commission of Constitutional Rights^[51] issued an opinion "On the Necessity of Parliamentary Approval for Receipt of Large-scale Loans (Opinion)".^[52] This Opinion together with the judgment of the Constitutional Court triggered the amendments of the law mentioned above. One of the reasons behind the Opinion was the doubts about the legitimacy of already received loans after the Constitutional Court's judgment.

The Opinion states that it does not classify legally whether the agreements were international treaties in the sense of Article 68 Constitution, however, it shortly gives the answer for the hypothetical situation that the agreements were to be classified as international agreements in this sense.^[53] This seems to indirectly indicate that there is a good possibility that the agreements might have to be classified as international treaties from the perspective of the Latvian legal system.

The Committee based its Opinion on the "Significance theory". First, it stated that an undertaking of international credit-commitments in accordance with Article 61 Constitution can be within the competence of the Cabinet of Ministers, if the Constitution, general principles, laws, international and EU law do not take this question out of its competences. The Opinion provides that the question can be 'taken out' of Government's competences in accordance with the Significance theory, which provides that the most important state and society issues have to be decided by the legislator in accordance with the order determined by the Constitution. Also the Parliament, independently of this theory, at any time can take over any question concerning state politics in the realm of its competences. If the Parliament has not done so, then because of the problem of certainty and predictability peculiar to the Significance theory, the previous actions by the Government cannot automatically be considered unlawful because then the principle of legal certainty would not be sufficiently taken into account.^[54]

The Opinion states that the Parliamentary approval (including retroactive authorization *ex tunc*) is necessary for international loans that essentially and in the long-term affect the economic situation of Latvia.^[55] The Significance theory does not per se establish the necessary form for solving this question.^[56]

In sum, the Opinion argued that the financial assistance instruments required an approval by the Parliament but the form of such approval was irrelevant.^[57] In this case the fact that coalition and opposition partners on 10 December 2008 signed an agreement on measures for dealing with crisis was considered to be crucial. Paragraph 2 of this agreement provided that it is necessary for Latvia to borrow additional financial means from international institutions. The Opinion argued that, even though this agreement was not a

formal political decision, it expressed the political will of the majority. Further, on the basis of this agreement an independent Council on Supervision of Financial and Economic Stabilisation Process was established. This Council whose tasks were carried out by the Parliamentary Committee of Public expenses and revision represented the interests of the Parliament every step of the way.[\[58\]](#) It supervised the dealing with the borrowed means.[\[59\]](#) However, this was not considered to be fully sufficient and, according to the Opinion, the Parliament should adopt a special decision or law accepting the previous actions of the Cabinet of Ministers.[\[60\]](#)

The opinion concluded that, if these instruments were international treaties in the sense of Article 68 Constitution, then the approval by the Parliament was needed in the form of law.[\[61\]](#)

Following the Opinion, on 21 January 2010, the Parliament voted on “The Task for the Cabinet of Ministers to borrow financial means in the framework of the international financial assistance programme”.[\[62\]](#) The main discussions were as follows:

- Dz. Zaķis (MP, JL, coalition): He argued that the Constitutional Court judgment (the pension case, see Question X.9) determines two main things: first, Latvia must immediately pay the deterred pensions and, second, parliamentary authorization is needed for the actions of the Government concerning the loans from the IMF, EU and other donors. He invited the MPs to support the draft decision.

- V. Dombrovskis (Prime Minister): He stressed that this is a general (framework) decision about whether or not to continue the programme of international financial assistance. He stated: “[...] the Constitutional Court in its judgment has stated that a decision concerning international loans of such extent which create essential impact on [state] economy, a general [framework] Parliamentary support is necessary. The prepared draft decision entrusts such a task to the Cabinet of Ministers - to continue the programme of international financial assistance. I believe that this is really a very important and decisive moment and therefore I ask all MPs to support this decision.”[\[63\]](#) He further argued that there were diverse opinions among the lawyers concerning whether such general decision authorizes the Government to sign the concrete documents, among them the third letter to the IMF and supplementary memorandum with the European Commission. In order to avoid such discussion as well a report from the Minister of Finance regarding these documents will be provided.[\[64\]](#) He stressed as well the importance of the Opinion from the Constitutional Rights Committee which stated that decisive is the will of the Parliament and not the form of expression. Because of that he argued that the discussion about whether to choose the form of law or a decision is artificial and the decisive element is the will of the Parliament.

- V. Muižniece (MP, TP, coalition). She argued: “It is important to maintain the task that was given to us not by some monetary fund, not by some Government decision, but [the one] given by the Constitution -parliamentary control over all tasks exercised by the Government and clear authorization and tasks given by Parliament”. She stated that the TP could not support this decision.[\[65\]](#)

- S. Āboliņa (MP, JL, coalition). She referred to the fact that the Constitutional Court has decided that the decision on pension cuts was unjust and legally flawed and that these pensions have to be paid back. She stressed that Latvia is still in the situation where only the IMF is agreeing to lend money to Latvia because no international market will lend as any means. She invited all political forces to support the draft decision.[\[66\]](#)
- J. Sokolovs (MP, PCTVL, opposition). He asked whether, if this decision is so important, it has to be adopted in such haste and in such form. He stressed the fact that such important and strategic decisions are being adopted in such great hurry without serious discussions, without analysis of consequences and simply because the international lenders are waiting. He argued that Latvia is a parliamentary republic and not the Government, not the IMF, not some other organization but the Parliament has to take important decisions.[\[67\]](#)
- O. Kastēns (MP, LPP/LC, opposition). He stated that the parties which are in the opposition at the moment but were in coalition when the agreement with international lenders was reached, now receive complaints about that agreement. He argued that he has re-read the agreement which was concluded with lenders and „there was not one word concerning the pension cuts which afterwards turned out to be unconstitutional.” As the things mentioned in the agreement, he stated, structural reforms, stabilization of the banking sector but there was nothing about „such weird issues” as reduction of wages of working seniors. He argued that this is a vote for stability of the Government and his party is ready to support this document. However „previous experience with decisions taken in secrecy and realised against the Constitution create doubts: What will happen during the next half year? What type of decisions will be made? Will the pensions again be reduced? And, if the VAT will be increased, then Latvia will for long years to come [be dependent on the IMF]. And in this situation it cannot be allowed.” He inter alia stated that the Parliament has been turned into the hostage of Government’s instability.[\[68\]](#)
- U.I. Grava (MP, JL, coalition). He argued that everyone wants to position the IMF as some huge Latvian state foe who has led us and future generations to a situation from which we will not come out. He stated that the IMF has exceeded his lending quota concerning Latvia six times. „The IMF has given to us the same amount as to ten poorest countries in the world but we treat [this institution] as our great enemy! We should appreciate what has been done by the international lenders by coming to Latvian aid and their actions have already brought fruit. At this moment our financial sector has stabilised, our bank capital has grown [...]. We have already stepped out from this deep crisis and that has happened thanks to these loans which came from other world countries. And at this moment we cannot create new doubts and suspicion [which would lead] to reducing our credit ranking and scaring off foreign investors.”[\[69\]](#)
- A. Seile (MP, PS, coalition). She stated that the PS will support the draft decision. She argued that the approval by the Parliament does not imply any new commitments. She argued that the decision and the letter of intent refers only to the agreements which were concluded by the Government already during the Government of I. Godmanis. The authorization by the Parliament will simply be a boost for Latvian economics. In case of

decisions about new lenders and new amounts of loans, a special law will be necessary.[70]

- V. Buzajevs (MP, PCTVL, opposition). He argued that the Parliament has a right and an obligation to implement in its authorization additional restrictions to the Government with the aim of protecting Latvian society and financial system.[71]

- K. Pētersonē (MP, LPP/LC, coalition). She stressed the problems created by the fact that the draft decision authorizes the sending of the letter of intent whose content is confidential and therefore cannot be openly discussed. She offered a discussion concerning the question, why the Government in essence has expressed a lack of confidence in the Parliament (which has voted for this Government) and requires that the Parliament with this decision gives an unconditional loyalty pledge to the Government. She stated that this process in which the Parliament now has to vote for this decision is a result of serious disagreements within the Government and creates unnecessary tensions in the society.[72]

- A. Bērziņš (MP, LPP/LC, opposition). He argued that the original position of the LPP/LC was to vote against the decision projects. The faction was not against determining the maximum amount the Government can borrow and the aims for which this loaned money can be used, however, they were against the fact that it is unclear to the Parliament on what conditions these new loans are being given as well as against the fact that the Government tries to tie together all the memorandums which were created during the previous Government and their addendums which are being drafted now.[73]

- J. Urbanovičs (MP, SC, opposition). He stated that his faction was not in opposition towards the state, society and the population; they have been in opposition to politicians who have behaved reckless and even punishable. He argued that the SC is in opposition towards the Government, governing coalition, but not the people. Therefore the SC with its vote will not delay the work of coalition but will not take any responsibility. Basically, he stated that they will vote for the decision but refuse any responsibility about this decision.[74]

In general this Parliamentary hearing illustrated the disagreement in the coalition between the TP and other political forces because the TP had submitted an additional project which would have imposed an obligation upon the Government to report all the actions regarding the international financial aid and would restrict the areas the Government could propose amendments to. For example the proposal by the TP provided that the taxes will not be increased etc.[75]

In the end the Draft decision "The Task for the Cabinet of Ministers to borrow financial means in the framework of the international financial assistance programme" was approved with 55 voting in favour, 22 - against and 3 - abstained.[76]

ROLE PARLIAMENT

X.5

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

Previously the Parliament did not play any role in the adoption of the financial assistance

instruments besides being the one later deciding upon laws necessary for complying with the demands made by them. However, the procedure has been changed since Latvia originally received international financial assistance. Please refer to the Question X.4.

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

The Memorandum of Understanding (MoU) (signed on 28 January 2009 by the European Commission on one side and Latvia represented by the Prime Minister, Minister of Finance, Governor of the Bank of Latvia and the Chairwoman of the Financial and Capital Market Commission) on the other side^[77]:

- the EU financial assistance was provided in support of Latvian Economic Stabilization and Growth Programme (ESGP) “to maintain domestic and international confidence in the financial system, to contribute directly and indirectly to arresting and reversing the worsened cost competitiveness and inflationary pressures by reductions in public sector wage costs as a centrepiece of a much tighter fiscal stance, and to strengthen the economy’s growth potential by a range of structural reforms”

- the financial assistance will be distributed in six instalments (the first instalment was released subject to entry into force of the Loan Agreement and this MoU - based on Latvian authorities’ “Economic stabilisation and revival programme” - and amended budget for 2009 (both adopted by Parliament on 12 December 2008)).

- Latvia undertook to carry out fiscal consolidation and expenditure control, in particular, reduction of public sector wages and employment, fiscal governance reform, banking sector stability, financial sector regulation and supervision reforms, as well as structural reforms.^[78]

- In particular Latvia undertook to carry out the following actions (summary in regard to the requirements for all six planned instalments):

· Fiscal consolidation:

§ adoption by the Parliament of a supplementary budget law for 2009, including 5% contingency reserve;

§ progress with 2009 government cash flow deficit below 5% GDP;

§ public sector nominal wage and employment cuts;

§ improve the wage payment system for direct public administration employees

§ establishment of a single human resource planning and management system for public administration institutions

§ enactment of a Law on Public Private Partnership

§ enactment of the amended Budget and Financial Management Law

- § any additional revenue relative to budget plans should be used to achieve a lower-than-targeted budget deficit
- § enactment of the 2011 budget law targeting a general government deficit of not more than the Treaty reference level of 3% GDP
- § verification of progress in public sector nominal wage and employment limitation
 - Fiscal governance reform:
 - § adoption of measures to strengthen public finance management (improve budget formulation process, strengthen Ministry of Finance's spending controls, making the medium-term budget framework operational, increase budgetary transparency and external oversight);
 - § The Ministry of Finance macroeconomic forecasts in the future should be reviewed by the Ministry of Economy and Bank of Latvia in consultation with external experts;
 - § Publicly owned enterprises must give commitments to deliver reduction in compensation levels;
 - § Implementation of the State Audit Office recommendations from September 2008.
- § Progress with the implementation of the amended Budget and Financial Management Law
 - Financial sector regulation and supervision:
 - § Ensuring that minority shareholders of Parex Bank do not benefit from the resolution of the bank;
 - § strengthening financial sector supervision by the Financial and Capital Market Commission (FCMC)
 - § take measures to ensure that the banking system is adequately provisioned with capital
 - § take measures to strengthen cross-border supervision and communication between the supervisory authorities in home and host countries
 - § establish a framework enabling banks' clients to require debt maturity and currency restructuring of outstanding loans on market conditions
 - § take additional measures to strengthen financial sector supervision and regulation
 - § implement measures to strengthen Bank of Latvia and the FCMC's capacity to assess and address solvency and liquidity concerns in banks in timely manner
 - § improvement of the personal bankruptcy framework
 - § The Bank of Latvia should closely monitor developments in credit markets and real economy

- Structural reforms:

- § adoption of a comprehensive and credible export promotion strategy'

- § take steps to ensure effective access to financing for SMEs

- § set up a systematic and comprehensive system for the evaluation of the impact of EU Funds' interventions

- § develop a standardized methodology for formal eligibility requirements in public procurement procedures

- § increase availability of active labour market policies

- § review the economy-wide wage-setting mechanisms to foster employee compensation involvement

- § improve the VAT overpayment refund system

- § take measures to avoid further delays in implementation of the Operational Programme "Human Resources and Employment"

- § the number of public R&D priorities should be reduced to provide more resources to relevant research fields

- § within the framework of the 2009 budget law, have committed enough budgetary resources for implementation of the planned Structural Funds co-financed programmes

- § within the framework of the 2010 and 2011 budget laws have committed enough budgetary resources for implementation of the planned Structural Funds co-financed programmes

- The MoU as well provided for the establishment of a detailed system for monitoring and reporting.[\[79\]](#)

The Commission services carried out a review mission in cooperation with the IMF staff from 27 May to 17 June 2009 to assess the progress made with respect to the specific conditions attached to the second instalment of the EU assistance.

Supplemental Memorandum of Understanding (first addendum) (First addendum MoU) signed by the European Commission on one side and Latvia represented by the Prime Minister, Minister of Finance, Governor of the Bank of Latvia and the Chairwoman of the Financial and Capital Market Commission)[\[80\]](#) on the other side:

- because of the more favourable developments in the balance of payment needs and following the disbursement of the second instalment, it is appropriate to postpone the third and fourth instalments to the fourth quarter of 2009 and the first quarter of 2010, respectively.[\[81\]](#)

- "The second instalment of EUR 1.2 billion shall be released subject to the entry into

force of the Loan Agreement and this revised Supplementary MoU, which [...] is based on the amended budget for 2009 adopted by the Latvian Parliament on 16 June 2009 and on key measures indicated by the Latvian authorities in order to complete the consolidation over the next years".[\[82\]](#)

- in view of the significant further deterioration in the economic outlook the deficit targets referred in the MoU of January 2009 were replaced by new targets

- Specific economic policy criteria spelled out in the MoU concerning the third and following instalments will be augmented by the following actions:

- progress with the preparation of the 2010 budget law entailing a further improvement in the budget balance by 500 million LVL, thereby targeting deficit of no more than 8.5% GDP;

- all significant Cabinet decisions or other decisions with a fiscal impact, including on social security or any guarantee scheme, shall be announced and undertaken only after discussions with the European Commission and the IMF;

- increase financing for local governments to meet the raising social needs;

- strengthen the powers and analytical capacities of the Ministry of Finance to control the preparation and execution of the budget; introduce a system to control contingent and implicit liabilities;

- effective sanction procedures shall be put in place for individual misuses of public funds;

- prepare amendments to the Budget and Financial Management Law with assistance from EU and IMF experts;

- adopt a unified public sector wage grid;

- strengthen the capacity of the Structural Funds and Cohesion Fund Managing Authority to control and decide on EU funding spending;

- establish separate, special state budget sub-programmes for each EU funds' intermediate body by the next budgetary year, as well as a separate special Treasury account for the cash management of all EU funds;

- when drafting the 2010 budget law, sustain appropriate human resources in institutions dealing with management of EU funds;

- undertake steps to address the high indebtedness of the private sector;

- progress in public sector nominal wage and employment cuts;

- increase funding of active labour market policies;

- Ministry of Finance shall coordinate and mobilize international and national expertise

under the ESF-co-financed initiative for administrative capacity building;

- the Small Business Act shall be implemented by providing a special program for supporting small and micro companies;
- operations of state and government-owned companies and their subsidiary companies shall be assessed against the criteria set in the Latvian State Administration Law.[\[83\]](#)

Supplemental Memorandum of Understanding (second addendum) (Second addendum MoU) signed by the European Commission on one side and Latvia represented by the Prime Minister, Minister of Finance, Governor of the Bank of Latvia and the Chairwoman of the Financial and Capital Market Commission) on the other side[\[84\]](#):

- A first review mission was carried out by the Commission services in cooperation with IMF staff from 27 May to 17 June 2009. Based on the findings a Compliance Note sent by the authorities on 26 June 2009 and in consultation with the Economic and Financial Committee, the economic policy criteria for the second instalment, as laid down in the memorandum, were considered to be broadly fulfilled or not applicable in view of the larger-than-expected deterioration in the economic situation.
- The Commission carried out the second review mission in cooperation with the IMF staff from 2 to 14 December 2009 to assess progress made with respect to the specific conditions attached to the third instalment of the EU assistance, which amounts to EUR 0.5 billion. Based on the findings of the Commission mission, a Compliance Note sent by the authorities on 11 December 2009 and in consultation with the Economic and Financial Committee, the economic policy criteria for the third instalment, as laid down in the MoU and the Supplemental MoU are considered to be broadly fulfilled.
- New specific conditions:
 - in consultation with international organisations and the National Tripartite Cooperation council, extend the job (position) catalogue including local government and ensure that wages of local government do not exceed upper limits of the public sector wage grid;
 - specify how to implement the September 2009 recommendations by the State Audit Office regarding the assessment of the implementation of the 2008 State budget and budgets of local governments;
 - preparation for the 2011 budget should be started in the first half of 2010. Technical proposals producing savings or additional revenues, based on structural reforms in key sectors, for a total amount significantly larger than the fiscal consolidation needed in 2011 shall be submitted to the European Commission and IMF;
 - prepare a policy report on long-term tax reform;
 - prepare changes into the pension system;
 - review the social insurance benefits system;

- put into place effective sanction procedures for individual misuses of public funds;
- prepare a strategy on how to integrate the institutions and human resources management experts in charge of management and planning of human resources within the public administration;
- by the end of 2010 prepare a new Fiscal Responsibility Law;
- improve the analytical methodology and perform an analysis of all functions and services provided by the public institutions and their respective costs;
- the restructuring plan of Parex Bank should be spelled out in further quantitative details and submitted to the European Commission;
- a debt restructuring strategy compatible with fiscal constraints will be launched, while continuing to work on market-based approaches to restructuring;
- a comprehensive action plan for implementation of the medium-term strategy for the Mortgage and Land Bank should be adopted, after consultation with the European Commission and IMF;
- strengthen the capacities of the State Employment Agency;
- in 2010 demonstrate efficient expenditure of at least 66 million EUR from the ESF, 185 million EUR under the Cohesion Fund and 291 Million EUR under the ERDF;
- within the framework of the 2011 budget law, commit enough budgetary resources for implementation of the planned Structural Funds co-financed programmes;
- take measures to improve the effectiveness and scope of public procurement;
- adopt measures for tackling the grey economy and undeclared work;
- take measures to approve all the regulations for the ERDF financing RTD activities for the full period until 2013;
- review state and local government-owned companies and their subsidiaries against the criteria set in the Latvian State Administration Law with a view to a possible restructuring;
- take steps to improve the business environment.[\[85\]](#)

Supplemental Memorandum of Understanding (third addendum) (Third addendum MoU) signed by the European Commission on one side and Latvia represented by the Prime Minister, Minister of Finance, Governor of the Bank of Latvia and the Chairwoman of the Financial and Capital Market Commission) on the other side[\[86\]](#):

- The fourth instalment shall be released subject to the signature of this third Supplemental Memorandum of Understanding. The Commission services carried out the third review mission in cooperation with the IMF staff from 25 May to 7 June 2010 to assess progress made with respect to the specific conditions attached to the fourth instalment of

the EU financial assistance, as laid down in the second Supplemental Memorandum of Understanding, which amounts to EUR 0.2 billion. Based on the findings of the mission, a Compliance Note sent by the authorities on 14 May 2010 and in consultation with the Economic and Financial Committee, the specific economic policy criteria were considered to be broadly fulfilled. Since the previous review mission, the 2010-2011 macroeconomic outlook has improved, supporting compliance with the policy programme, including the 2010-2012 fiscal consolidation path to achieve a deficit of below 3% of GDP by 2012.[\[87\]](#)

- Conditions for the fifth instalment relate to consolidating the gains made thus far while setting the stage for fulfilling the Maastricht criteria by 2012:

- Concerning budgetary consolidation, the Latvian authorities are committed to achieving a 2010 deficit target of no more than 8.5% per cent of GDP in ESA95 terms and a fiscal deficit of no more than 6 % of GDP in ESA95 terms in 2011.

- As regards expenditure cuts, the authorities are considering options that would enable the new government to rationalize expenditure while protecting the poorest in society, building among other things on the recommendations of a recent World Bank public expenditure review.

- In other areas of the programme, measures are to be taken to strengthen fiscal governance, increase transparency and improve public financial management including by strengthening the budget formulation process, reinforcing the Ministry of Finance's spending controls, and making operational the medium-term budget framework. Financial sector measures should aim at guaranteeing wider banking sector stability in the medium to longer term, and at facilitating insolvency procedures and a quick implementation of rehabilitation plans. The fixed (narrow band) exchange rate will remain the anchor for monetary policy until adoption of the euro. The economic policy programme includes structural reform measures, with a view to improving the management and the performance of the public administration, accelerating EU fund absorption, strengthening public procurement, supporting active labour market and lifelong learning policies, improving the business environment and supporting export promotion measures

- The outlook regarding external financing suggests that international medium-term financial assistance envisaged in the programme is sufficient and there may be no need to draw from some of the loans by bilateral lenders. The improved economic and financial situation is creating conditions for the central government to gradually return to international capital markets under reasonable terms.[\[88\]](#)

- A new point in the SMoU states: "For Latvia, the Supplemental Memorandum shall become effective after completion of internal procedures required under the Laws of Latvia. The Supplemental Memorandum may be amended upon mutual agreement of the parties in the form of an Addendum. Any such Addendum will be an integral part of the Memorandum and become effective according to the same procedures as the Memorandum."[\[89\]](#)

- Conditions:

§ The general government budget deficit targets for 2010, 2011 and 2012 in ESA95 terms

are set at no more than 8.5%, 6% and below 3% of GDP, respectively.

§ All significant Cabinet decisions or other decisions with a fiscal impact, including on social security or any guarantee scheme, shall be announced and undertaken after discussions with the EC and the IMF.

§ Any additional revenue or savings achieved relative to deficit targets should be used to achieve a lower-than-targeted budget deficit or, after consultation with the EC and IMF, to accelerate EU funds expenditure within the budgetary deficit targets set above or increase funding for active labour market and social safety net measures.

§ By end-October 2010, technical proposals producing savings or additional revenues, based on structural reforms in key sectors, for a total amount significantly larger than the fiscal consolidation needed in 2011 shall be submitted to the EC and IMF.

§ After preparing proposals for changes in the pensions system by end-June 2010, in consultation with the EC and the IMF, submit to the Parliament by end-November 2010 concrete proposals to be implemented in 2011 in order to preserve future sustainability and adequacy of the three pillars of the pension system.

§ After reviewing the social insurance benefit system by end-June 2010, submit to international lenders by end-September 2010 concrete proposals aiming at streamlining the social insurance benefits system

§ By end-September 2010, submit to the Parliament a new Fiscal Responsibility Law complying with and supplementing the EU fiscal commitments and framework.

§ Improve the management and performance of human resources in the public administration

§ By end 2010, submit to international lenders an assessment of options as regards possible restructurings, transformation into state agencies, or privatizations of part of state and local government-owned companies and their subsidiaries, against the criteria set in the Latvian State Administration Law.

§ By end-December 2010, with advice from an independent consultant, develop proposals for optimization of the system of development financial institutions and integrate, as appropriate, different development institutions operating on behalf of the government.[\[90\]](#)

Supplemental Memorandum of Understanding (fourth addendum) (Fourth addendum MoU) signed by the European Commission on one side and Latvia represented by the Prime Minister, Minister of Finance, Governor of the Bank of Latvia and the Chairwoman of the Financial and Capital Market Commission) on the other side[\[91\]](#):

- The commission staff carried out the fourth review mission in cooperation with the IMF from 5-15 April 2011. The specific economic criteria were considered to be broadly fulfilled. Since the previous review mission, further budgetary and structural measures, supported by an improved macroeconomic outlook (the economy bottomed out in 2010 and GDP is expected to expand by 3.3% in 2011 and 4% in 2012), ensured compliance with the policy

programme.

- Budget deficit targets for 2011 and 2012 no more than 6% and 3%, respectively.
- by mid-August identify options for deficit-reducing measures to be included in the 2012 budget.
- agree on the substance of the draft of the Fiscal Responsibility Law with the Commission and the IMF.
- evaluate the efficiency and effectiveness of existing taxation allowances;
- continue implementing measures for fighting grey economy;
- publish and make operational the “white list” of companies;
- review sanctions for illicit and abusive trade;
- submit to international lenders proposals for the reform of the scope and financing of the social safety net program for 2012 and beyond;
- implement State Audit Office recommendations regarding necessary improvements in the administration of the Social Safety Net Strategy;
- Appoint an official to deal with the Mortgage and Land restructuring process;
- implement the sales and work-out strategies for Citadele Bank and Parex Bank;
- develop a strategy for optimization of the system of development of financial institutions and integration;
- allocate sufficient budget resources for EU fund support;
- improve the quality of evaluations to assess how the EU funds support is contributing to achievement of expected results and to use the evaluation results for optimizing and planning of the 2014-2020 period;
- take action to reallocate funds away from activities, which did not have Cabinet Regulations approved by the end of 2010;
- sign all contracts for the first call for tender within the ERDF activity “Development of Research Infrastructure”;
- create conditions for independent experts;
- ensure conformity of national financial engineering instruments’ operations with the appropriate EU regulations;
- prepare an action plan for further centralizing management and planning of human resources within the public administration;
- the State Chancellery should identify administrative decisions (currently taken by the

Cabinet of Ministers) which could be adopted by delegation to either individual ministers or senior public officials;

- promote more efficient use of energy and natural resources (fully transpose EU legislation, submit legislation to implement the National Renewable Energy Action Plan, apply new rates of the natural resource law, adopt a comprehensive second National Energy Efficiency Plan);
- prepare proposals to the Commission for re-allocating sufficient additional funding within EU Structural Funds for active labour market measures;
- introduce a monitoring system of training providers;
- continue reforms in vocational education;
- adopt a strategy setting good governance principles for state owned companies;
- submit to international lenders an assessment of options regarding possible restructurings, (partial) privatizations, and management structure of government and municipality-owned companies;
- develop recommendations for further state real estate management optimization;
- strengthen training activities for public officials involved in procurement activities;
- review the efficiency of current Electronic Procurement System;
- submit legal proposals on making centralized municipal procurements compulsory;
- establish a working group for devising administrative responsibility/penalties for violations in public procurement processes;
- submit the amendments to sector-specific legislation within the context of transposition of the Services Directive;
- ensure that the electronic Point of Single Contact is operation;
- prepare a draft state program for promotion of new production capacities;
- submit the plan to the Cabinet of Ministers to reduce the administrative burden;
- ensure a wider application of e-governance services;
- ensure significant progress related to the Rail Baltica construction.[\[92\]](#)

Supplemental Memorandum of Understanding (fifth addendum) (Fifth addendum MoU) signed by the European Commission on one side and Latvia represented by the Prime Minister, Minister of Finance, Governor of the Bank of Latvia and the Chairwoman of the Financial and Capital Market Commission) on the other side[\[93\]](#) :

- The fourth review mission had concluded that further funding from international

financial assistance was not necessary, therefore, no funds were released after the fourth review and there are no plans to release additional funds.[\[94\]](#)

- The draft Fiscal Discipline Law (FDL) has been discussed with the programme partners. That together with draft amendments to the Constitution to ensure higher standing of the FDL were adopted by the Government and submitted to the Parliament.[\[95\]](#)

- Key measures to be taken with the 2012 budget include improving tax compliance, broadening the VAT base, broadening the real estate tax base, strengthening of the presumptive taxation of small and micro enterprises, increase in the financial stability levy, keeping the public sector wage bill at the level of 2011, creating incentives for local government to reduce spending, while safeguarding social safety net and investments, capping other expenditure.[\[96\]](#)

- Key measures to be taken in 2012 with effect from 2013 include[\[97\]](#):

- selling of EU emission trading permits (LVL 25 million);

- by Sep 2012, adoption of comprehensive reform of the state family benefits and social assistance system to improve targeting to the poorest families;

- reforming the social safety net system to protect the poor, improve incentives to work and reduce poverty traps;

- continuing limiting of the maximum amount of maternity, paternity, parental, unemployment and sickness benefits until the end of 2014;

- submitting a proposal to the Parliament to continue capping the replacement rate of maternity and paternity benefits at 80% from 2013;

- keeping in place the ceilings on social contributions for high income earners beyond 2014.

The reforms foreseen also included inter alia ensuring fiscal discipline, fighting the grey economy and tackling illicit trade, ensuring adequate financing for social needs and a transparent and cost-efficient delivery of social assistance[\[98\]](#) and other measures.

MISSIONS

X.7

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

There were no special debates concerning review missions and post-programme surveillance and no legal changes were introduced to accommodate the missions as such.

For every IMF recommendation the responsible implementation institution and deadline were determined. The pace of the implementation was supervised in the IMF missions.[\[99\]](#) At the end of every supervisory mission the Government sent a letter of intent to the IMF and concluded the supplemental MoU. From the side of the Cabinet of Ministers, the

fulfilment of commitments was controlled through the Strategic Development Plan of Latvia.[\[100\]](#) The supervisory missions were coordinated among the lenders to avoid overlapping and increase inefficiency.[\[101\]](#)

In general after a mission the Ministry of Finance prepared an informative report which explained the main statement made by the mission, their suggestions and established what should be done in this regard. So, for example, a Report from August 2010 states that the mission positively evaluated what has been done so far concerning the fiscal discipline, long-term stability reserves etc. The mission indicated some urgent tasks - amend the budgetary process, improve budget implementation and control mechanism, prepare a Draft Law on Fiscal Discipline, improve the wage system, rationalize the use of budgetary means especially in the transport sector.[\[102\]](#)

Accordingly the Report contained as well a time framework for implementing particular recommendations (when should appropriate laws or regulations be proposed before the Government and when suggested to the Parliament). Also, the Report indicated two recommendations, which the Ministry of Finance has decided not to implement (in this case they were a suggestion to implement classification of budgetary resources and the introduction of three level structure for budgetary programmes).[\[103\]](#)

There have not been relevant debates concerning the implications of these missions for sovereignty, constitutional law or the budgetary process.

CASE LAW INTERNATIONAL INSTRUMENTS

VIII.8

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

For the full analysis concerning the judgment please see the link provided in question VIII.8.

There have not been any direct legal challenges against the financial assistance instruments. However case No. 2009-43-01 to some extent can be seen as an indirect challenge. In this case which concerned pension cuts the Constitutional Court inter alia stated that the general decision on receiving international loans and their conditions is an important and significant national and societal issue which, according to the order established by the Constitution, had to be decided by the legislature.[\[104\]](#)

The Constitutional Court argued that Art 35 and 36 of the Law on Budget and Financial Management contain the general framework for loans and credits, which the Finance Minister is allowed to issue and accept on behalf of the state. This authorization is sufficient when loans without any specific preconditions capable of significantly and in long-term influencing the state economy are considered. However there are cases when the loan contains specific conditions as it was the case with the loan from international lenders amounting to 7.5 billion EUR about which discussions started in 2008. The receipt of this loan is connected with political promises, loan agreements concluded with different actors and the necessity to carry out reforms in the areas of economic, monetary and social

policy. The powers of the Cabinet of Ministers are limited by the principle of separation of powers. In accordance with this principle the Constitution allocates the legislative rights, rights most important for the life of the state, to the Parliament and, in some cases, even directly to citizens.[\[105\]](#)

The Constitutional Court stated that the obedience of the principle of separation of powers is especially important but that in light of the necessity to ensure the effective exercise of the state power, derogation from the demand that the legislator fully decides all issues is possible. This efficiency is ensured, if the legislator decides the most important questions but delegates the detailed questions and implementation to the Cabinet of Ministers. In this case, however, the general? decision should have been decided by the legislator. Even though the Parliament adopted the economic stabilisation programme and 2010 budget, these decisions according to the Constitutional Court could not replace the rights and obligations under the Constitution to decide all significant issues concerning these international loans, including the decision to authorize the Cabinet of Ministers.[\[106\]](#)

CASE LAW IMPLEMENTING MEASURES

X.9

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

For the full analysis concerning the judgment please see the links provided for each case.

From 2009 to July 2012 there have been quite many cases at the Constitutional court arisen in the context of the national measures adopted in relation to the MoU and the Supplemental MoU or which have been connected with the implementing measures:

1. The case concerning refusal to index the pensions in 2009 (Case No 2009-08-01).[\[107\]](#) In this case 20 MPs challenged changes in the Law on State Pensions which cancelled the indexation of pensions on 1st April 2009 and 1st October 2009. The applicants argued that these changes are not compatible with the principles of legitimate expectations and proportionality, which are covered by Art 1 of the Constitution (Satversme), as well as with the principle of a socially responsible state and the right to social guarantees as provided by Art 109 of the Constitution.[\[108\]](#)

The Constitutional court admitted that the aim of the norm - to balance the revenue and expenditure of special budget for state pensions in order to guarantee the right of other persons to social guarantees - is legitimate. The court stated that there are other means to achieve this aim but if they were applied the consequences would be even more unfavourable. The court stressed that the law has not created a reduction in the amount of pensions already granted. As well the consequences have been mitigated by the temporal character of the measures (namely the indexation was foreseen to continue in 2010). Hence the court ruled that the changes in the Law on State Pensions are compatible with the Constitution.[\[109\]](#)

2. The case concerning reduction of pensions (No 2009-43-01).[\[110\]](#) The joined cases

were initiated to challenge reductions of age and retirement pensions by 10% and the reductions of age and retirement pensions of working pensioners by 70% introduced due to the economic crisis. In these cases the Constitutional court in general dealt with two questions:

- Is there a breach of the right to social guarantees?
- Is there a breach of the principle of legitimate expectations?[\[111\]](#)

The court in essence stated that the amount to which the right to social guarantees is ensured can change, if the financial capacity of the state changes, e.g. it is possible to reduce the social guarantees, if the financial resources of the state decrease. The Constitution does not guarantee a concrete and invariable level of social security. However, independently from the economic situation in the country, the legislator has to respect the fundamental rights as provided by the Constitution.[\[112\]](#)

The court further argued that the pension system has to be sustainable. The economic situation in the country has influenced the stability of the special social budget and endangered this sustainability. The reduction of pensions carried out by the Parliament and the Government had a legitimate aim - to solve the problems faced by the social budget. The court considered the measures taken to be appropriate for achieving this aim.[\[113\]](#)

When further assessing the compatibility with the principle of proportionality, the Constitutional court observed the fact that reduction of pensions is connected with the requirements posed by international lenders. However, the court stated that the international obligations cannot per se serve as an argument for restricting fundamental rights. Additionally, the Government could not be allowed to enter into these obligations without a proper Parliamentary mandate. In this particular case the international lenders had stated general demands, e.g. to reduce the expenditure of the special budget. However, the choice of means had been left to the Latvian legislator. Therefore, requirements of international lenders cannot serve as a justification.[\[114\]](#)

The court stated as well that the materials before it show that the social budget has not been properly planned and several inconsiderate and rushed decisions have been made. Further, the court analysed whether the least restrictive measure was chosen and whether the possible alternatives have been evaluated appropriately. The Parliament and Government had both argued that the alternatives did not need to be considered due to the international character of obligations. The court rejected this argument by stating that an international agreement neither proves nor disproves the constitutionality of the provisions challenged. Additionally, the court indicated the lack of consultations with experts.[\[115\]](#)

By taking that all into account, the Constitutional court decided that such practice is not compatible with the Constitution and the changes in law had been introduced without properly analysing the consequences the law has for various groups of pensioners. Additionally, the legislator has not taken into account that pensioners are a group which needs special protection. The state has to ensure a minimal level of social protection. This means that the Parliament had to introduce special measures for protection of those

pensioners who do not receive a sufficient social security and who might need to request a social aid (help) as a result of the cuts introduced.[\[116\]](#)

Because the legislator has not considered the alternatives and has not chosen the least restrictive measure, the challenged norms are not compatible with the Constitution.[\[117\]](#)

Concerning legitimate expectations the court stated that this principle does not protect the person from every disappointment and does not exclude a possibility to introduce changes in legislation. However, a reasonable transitional period or compensation has to be provided. A fair balance between the interests of society and the interests of concrete pensioners in this case has not been found.[\[118\]](#)

Therefore, the Constitutional court upheld the actions and concluded that the norms are incompatible with Art 1 and 109 of the Constitution.[\[119\]](#)

Already before the changes in law and the judgment the Ombudsman expressed an opinion that reduction by 70% of the salaries of working pensioners is disproportionate.[\[120\]](#) The reflection of the judgment in media was mostly positive due to the fact that already before there existed quiet a lot of pressure from society (especially pensioners) directed towards the Constitutional court in favour of a repeal of the amendments. The participants in the case, however, expressed some disappointment with the transitional period determined by the court for repaying the unpaid pensions.[\[121\]](#)

The judgment in this case has been seen as a positive example when compared with the judgment concerning salaries of judges (where the court decided that freezing of the salaries of judges and prosecutors is anti-constitutional).[\[122\]](#) While the judgment regarding the salaries of judges was mostly seen as grounded in judges' response to their own wage cut, the pensions' judgment was seen as finally protecting a socially less privileged group during the crisis.[\[123\]](#)

3. The case concerning the payment of benefits for working parents amounting to 50% of the benefit which was granted originally (No 2009-44-01 et al.).[\[124\]](#) In these joined cases the norms challenged provided that the benefits for working parents or self-employed parents from 1st July 2009 to 2nd May 2010 will be reduced to 50% of the amount granted when the benefit was originally awarded.[\[125\]](#)

The Constitutional court considered the compatibility of the norms with the principles of legitimate expectations and proportionality (under Art 1 of the Constitution), principle of equality (Art 91 of the Constitution) and the obligation of the state to support family and children established by Art 110.[\[126\]](#)

The court concluded that the aim of the benefit is to compensate for the income a person loses due to taking care of a child and to support families with children. Concerning the principle of equality the court decided that working parents are not in the same or comparable situation with parents who do not work (are unemployed). Therefore, a differentiated benefit is acceptable.[\[127\]](#)

The obligation to support families and children under Art 110 is accomplished already by

not denying a parent who works and has a child under the age of one the benefit as such.[\[128\]](#)

The court stated that a restriction on legitimate expectations can be acceptable, if it is beneficial to the society. The fact that the benefit is paid without any limitations as well to persons who are working is not compatible with the essence of social insurance (the benefit originally was introduced as a type of social insurance but without introducing any additional payments into the budget) and creates essential expenditure in the social budget. In 2009 when the legislator excluded the possibility for working parents to receive the benefit it as well provided for a transition period during which the benefit is reduced by 50%.[\[129\]](#)

Therefore the court decided that the contested provision maintains the balance between legitimate expectations of concrete persons and the right of society to a sustainable system of state social insurance and balanced state budget and is compatible with Art 1, 91 and 110 of the Constitution.[\[130\]](#)

The judgment received a mostly negative response from the general public. Such organisations as the Mothers Club strongly disagreed with changes in the law and were planning to bring a claim before the Constitutional court already at the time when the Parliament still had not taken the decision.[\[131\]](#) In the media the case was compared to the Pensions case (where the court declared the cuts to pensions anti-constitutional) and it was not understood why the outcome was different.[\[132\]](#)

4. The case concerning cuts to the retirement pensions of employees of the Ministry of Interior (No 2009-76-01).[\[133\]](#) The contested measure provides that from 1st July 2009 to 31st December 2012 for a recipient of retirement pension who on 1st July 2009 was a socially insured person (employee or self-employed) the retirement pension will be recalculated and reduced by 70% from the estimated amount of the retirement pension. The amount of retirement pension has to be updated starting with the first day of the month following the month when the person lost the status of a socially insured person.

The court stated that the retirement pension is an additional social guarantee for people who in the interests of the state have carried out special functions under specific circumstances. It stated that in circumstances when the pay for people serving in the Interior system has been substantially reduced a reasonable reduction of the amount of retirement pensions is acceptable. However, in this situation the reduction has been very essential - it amounted to more than two thirds of previous pension and, additionally, the overall income of socially insured persons was not taken into account.

Therefore, the court ruled that the contested provision is not compatible with Art 1 (principles of legitimate expectations and proportionality) and Art 109 (the right to social guarantees).[\[134\]](#)

5. Case concerning the retirement pension cuts by 10% for those militaries who have reached the age for allocation of Age pension (No 2009-88-01).[\[135\]](#) The Constitutional court stated that persons who have reached the age for allocation of the Age

pensions constitute a special social group because, with the termination of paid labour, the income of these persons as well as the possibility to take part in various processes of social life will inevitably be reduced.

The regulation concerning retirement pensions of the military had been in force since 1998 and, even though it has changed over time, the changes had always been beneficial for persons affected. Therefore, the court considered the regulation to be sufficiently determined and as such it could have created legitimate expectations. By reducing the pension and not providing any compensating mechanisms, the legitimate expectations had not been obeyed and the principle of proportionality had been breached.

Thus, the court concluded that the contested provision is incompatible with Art 1 and 109 of the Constitution.[\[136\]](#)

6. Case concerning changes in terms of payment of benefit for loss of ability to work (No 2010-17-01).[\[137\]](#) The case concerned:

- not paying the benefit for loss of ability of work, if the ability to work has been lost for 10-24%;
- not paying the benefit, if a person received a pension exceeding the amount of the benefit;
- paying the benefit only in so far as it exceeds the pension;
- paying the benefit to persons who receive Age pension amounting to 80% of the amount awarded;
- not paying the benefit during the period when a person is receiving unemployment benefit;
- not paying the benefit for losing a breadwinner during the period when a person is receiving unemployment benefit.

The Constitutional court stated that the reduction of the benefit for loss of the ability to work does not per se mean that the person loses the fundamental right to social guarantees in case such risk arises. The court argued that Art 109 of the Constitution does not require the state to provide social security explicitly in the form of payment of such a benefit. Concerning situations in which a person receives various social payments (e.g. benefit for the loss of ability to work and unemployment benefit at the same time), the court emphasized the importance of the principle of ensuring a social security system, which foresees that one and the same loss of income from employment is not reimbursed repeatedly.

Concerning legitimate expectations, the court stated that in this case a reasonable transition period was ensured.

The Constitutional court therefore ruled that the contested provisions were in conformity with the Constitution.[\[138\]](#)

7. Case concerning changes in the Law On State Funded Pensions (No 2010-21-01).[\[139\]](#) The contested provisions provided for cuts to the anticipated amount of contributions to the occupational pension scheme. The Parliament in its response has pointed out the danger to the social budget resulting from the economic crisis and to the necessity to balance the income and expenditure of the social budget as reasons behind the cuts.

The Constitutional court stated that cuts to the funding of occupational pension schemes can be allowed only in special circumstances and for a short period of time. Likewise the court concluded that the established pension scheme has created legitimate expectations. It further argued that even in especially hard economic circumstances the amount of social insurance contributions for occupational pensions can be reduced only so far that the pension scheme would still be able to ensure retirement savings. The occupational pensions system is closely connected with the trust of people in the pension system in general and their interests to pay taxes. Therefore, the legislator has to choose a regulatory framework which is able to ensure sustainability of the system.

At the same time the court stated that with the help of the challenged norms the threat to the pension system created by the economic crisis has been mitigated. It took into account that the contested provisions create a unitary regulation and that it keeps in mind the aim of establishing a system for pensions. The amount of contributions is such as originally was considered minimal for creating savings (2 %). Additionally, the increase of contributions has been foreseen in the future.

Therefore, the court concluded that the contested provisions are compatible with Art 1, 105 and 109 of the Constitution.[\[140\]](#)

8. Case concerning salaries of judges (2009-111-01).[\[141\]](#) There were various cases which in general concerned freezing of salaries, cuts and the introduction of ceiling for salaries (the changes in law provided that the highest salary of any judge cannot exceed the salary of the Prime Minister of Latvia). These cases might be interesting to compare with the ones concerning general cuts. However, one of interest and one where crisis measures were more considered was Case No 2009-111-01.

This case dealt with cuts to the salaries of judges and the court decided that a reduction by 15% is disproportionate and breaches the principles of legitimate expectations, solidarity and the separation of powers. However, the repeal of the contested provisions would endanger the stability of the budget and welfare of society. At the same time the court decided that the legislator would need time to deal with imperfections in the law and, since according to the judgment in case No 2009-11-01 the provisions concerning the freezing of salaries of judges expire and the salaries will again be determined with the help of calculation by using the coefficient stated by the law, such a percentage of reduction can be considered solidary. Thus the court ruled that the reduction of salaries is compatible with the Constitution, if starting from 1 January 2011 the salaries of judges will be calculated according to the Law On Judicial Power in conformity with the judgment in case No 2009-11-01.

When considering the ceiling of salaries imposed by the assimilation of salaries to the salary of the Prime Minister, the court argued that both the term of office and the salary of the Prime Minister can be a question of political choice and such, only on political observations based determination of salaries of judges, breaches the principles of separation of powers and independence of the judiciary.[\[142\]](#)

9. Case concerning Credit Institutions Law I (No 2010-60-01).[\[143\]](#) The challenged norms introduced the rules according to which a credit institution transitions into other person's property or use. The norms inter alia provide that a permit for credit institutions changing owners has to be obtained from the Financial and Capital Market Committee[\[144\]](#) and that in some cases the transition cannot be declared void. The law as well introduces restrictions to the property rights of minority shareholders by defining the procedure for increasing the equity capital of credit institutions.[\[145\]](#) These changes in law were introduced in light of the events surrounding the state taking over the Parex Bank. The MPs who submitted the claim argue that the only objective of the law amendments is to give the credit institution an opportunity to avoid fulfilling its commitments.

The Constitutional Court ruled that the challenged norms are compatible with the Constitution (Articles 1, 90, 92 and 105). The court concluded that the provisions introduced by this law did not envisage alienation of property without compensation.[\[146\]](#)

The court argued that concerning the principle of legitimacy, even though there was no transition period when the law was amended, at the time no transfers of a credit institution were taking place. Therefore more important was the protection of significant interests of society. Also the right to information has not been breached because the law has been adopted and announced in the process in accordance with the law. The norms are not unclear because with the help of interpretation their content is sufficiently clear.

The rule that the transfer of a credit institution cannot be declared void is necessary in order to protect third persons and to ensure welfare of society. The rule ensures that the credit institution which is in trouble is transferred into hands of an institution which will be able to ensure the former's solvency and does not allow returning to the previous situation. At the same time in case of a breach nothing precludes going to the court and exercising the right to compensation and damages. The provisions do not provide for taking a property without compensation and do not provide that either transferee or overtaking institution could avoid any commitments.[\[147\]](#) The aim of restriction providing that the transfer cannot be pronounced void aims at protecting rights of other persons and public welfare. Therefore the Court held that these provisions are compatible with the Constitution.[\[148\]](#)

Concerning the procedure for increasing the equity capital, the Constitutional Court argued that the public benefit of this provision is connected with salvaging one or several credit institutions of systematic importance and ensuring the public welfare and persons' rights. However, since the restrictions to the shareholders' fundamental rights not only affected the rights of persons who submitted the constitutional complaint but as well would create doubts among potential international investors about whether Latvia is favourable for safe

investments, the Court held that the provision is disproportionately restrictive and incompatible with Art 105 Constitution.^[149]

BOND PURCHASES ECB

X.10

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

There is no information concerning the ECB buying Latvian bonds on the secondary market.

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?

There is no information concerning the ECB buying Latvian bonds on the secondary market.

MISCELLANEOUS

X.12

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

The three year international loan programme for Latvia was successfully closed in the end of 2011. The initial intended amount was planned to be 7.5 billion EUR. Since the economic and financial situation improved, Latvia did not need the full amount and used altogether only 4.4 billion EUR. Since 2008, budget consolidation in the amount of 2,3 billion LVL has been carried out with the fiscal influence of 17% GDP (including both reduction of expenses and increasing revenues). Latvia in June 2011 and February 2012 returned to the international financial markets by issuing respectively ten-year bonds worth 500 million and five

[1] The Central Elections Commission of Latvia, Vēlēšanas Latvijā. Available under: <http://web.cvk.lv/pub/public/27093.html> (last visited 2 Nov 2012) (last visited 24 June 2013)

[2] <http://www.apollo.lv/zinas/godmanis-pazino-par-demisiju-papildinats-15-54-foto/401524>. In general the reasons for his resignation were partly definitely related to the unstable situation created by the crisis and as well likely the lack of support among the coalition partners for his plans for overcoming the deficit.

[3] Samuel Dahan, 'The EU/IMF Financial Stabilisation Process in Latvia and Its Implications for Labour Law and Social Policy', ILJ 41(3), pp. 305-327, p. 310.

[4] Ibid.

[5] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11

CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 355.

[6] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[7] A lot of people as a form of protest for inadequate political offer for the elections voted with an empty envelope (without a ballot in it). Such an approach and form of protest was greatly popularized before the elections. This scores ???

[8] F. Ozols, 'The math of the parliamentary elections in Latvia', 6 October 2010. Available under: <http://www.euinside.eu/en/analyses/math-of-the-parliamentary-elections-in-latvia> (last visited 24 June 2013)

[9] Andrew Ward (2010a), "Latvian Voters Back Government's Austerity", Financial Times, October 2. Available under:

<http://www.ft.com/intl/cms/s/0/d6d968b8-ce15-11df-a156-00144feab49a.html#axzz2B0s0D5hH> (last visited 2 Nov 2012)

[10] Ibid.

[11] B. Lulle, Vecrīgas grautiņu pašcienas tests. 15 August 2012. Available under <http://nra.lv/viedokli/baiba-lulle/77719-vecrigas-grautinu-pascienas-tests.htm> (last visited 2 Nov 2012)

[12] Deputāti uz delnas, 2009. gada 13. janvāra protesta akcija un grautiņi Vecrīgā. Last updated on 14 August 2012. Available under <http://www.deputatiuzdelnas.lv/notikumu-hronika/sabiedribas-protesti-aktivitates/2009gada-13janvara-protesta-akcija-un-grautini-vecriga.html> (last visited 2 Nov 2012)

[13] EPSU discussion document, The Financial and Economic Crisis. Consequences for the public sector and economy at large, an EPSU response. Available under <http://www.epsu.org/a/4969> (last visited 2 Nov 2012) p. 9

[14] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12

[15] The list of actions and events carried out by the Free Trade Union Association is available under: http://www.lbas.lv/about/history/years_2006_2011?locale=lv (last visited 2 Nov 2012)

[16] TVNET, Valsts iestāžu darbinieki šodien piketēja pie Ministru kabineta. 24 July 2009. Available under http://www.tvnet.lv/zinas/latvija/216167-valsts_iestazu_darbinieki_sodien_piketeja_pie_ministru_kabineta_papildinata_plkst_1200 (last visited 2 Nov 2012)

[17] F. Rajevska, L. Romanovska, Crisis Impact on Social Policy in Latvia. Available under: http://www.nacionalaidentitate.lv/wp-content/uploads/2011/06/Rajevska-Romanovska-Crisis-Impact-on-Social-Policy-in-Latvia_FINAL_paper-presented-at-HPSA1.pdf (last visited 1 Nov 2012) p. 1.

[18] J. Sommers, M. Hudson, Latvia and the disciplines of 'internal devaluation'. 16 September 2011. Available under <http://www.guardian.co.uk/commentisfree/cifamerica/2011/sep/16/latvia-anders-aslund-austerity> (last visited 2 Nov 2012).

[19] F. Rajevska, L. Romanovska, "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of Europe" workshop "National Responses to Financial Crisis". Available under: <http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 12.

[20] R. Bideleux, 'Contrasting Responses to the International Economic Crisis of 2008-10 in the 11 CIS Countries and in the 10 Post-Communist EU Member Countries' (2011) 27 Journal of Communist Studies and Transition Politics 338-363. p. 339.

[21] Ibid.

[22] LETA, Aptauja: 95.5% darbspējīgo netic valsts spējai nodrošināt pietiekamu pensiju. 30 March 2011. Available under <http://www.delfi.lv/news/national/politics/aptauja-955-darbspejigo-netic-valsts-spejai-nodrosinat-pietiekamu-pensiju.d?id=37703421> (last visited 2 Nov 2012)

[23] Ibid. In the survey more than 900 respondents in the age group 15-64 years were interviewed

[24] D. Gailīte, Darba tiesību „diskriminācija” krīzes laikos. Jurista Vārds, Vol. 23 (576), 9 June 2009. Available under <http://www.juristavards.lv/index.php?menu=DOC&id=192899> (last visited 2 Nov 2012).

[25] Ibid.

[26] Ibid.

[27] Ibid. Full research (in Latvian) available under:

http://www.lbas.lv/upload/stuff/201004/dt_dd_petijums_02_04_2009.pdf (last visited 2 Nov 2012)

[28] A. Dimitrovs, Latvijas sociālā atbildība. 17 November 2009. Available under

<http://politika.lv/article/latvijas-sociala-atbildiba> (last visited 2 Nov 2012)

[29] G. Amoliņš, Premjers: Galvenais krīzes pārvarēšanas signāls būs zems bezdarba līmenis. 15 September 2012. Available under <http://www.latvijasradio.lv/zinas/raksts.php?id=49153&gr=0> (last visited 2 Nov 2012)

[30] Rajevska F., Romanovska L. "Crisis Impact on Social Policy of Latvia". Paper presented at the 17th Annual Conference of the Hungarian Political Science Association "Structures and Futures of

Europe” workshop “National Responses to Financial Crisis”. Available under:
<http://www.cps.ceu.hu/sites/default/files/publications/rajevskaromanovska-crisis-impact-on-social-policy-in-latvia.pdf> (last visited 2 Nov 2012) p. 19-20

Annex I.1

Case No 2009-08-01*

Name of the Court:

Constitutional Court (*Satversmes tiesa*)

Parties:

20 MPs (*Andrejs Klementjevs et al.*) v the Parliament (*institution that adopted the contested norm*)

Type of action/procedure:

Abstract control (Article 85 Constitution and Articles 16(1), 17(1)(3) and 28.¹ Constitutional Court Law)

Legally relevant factual situation:

The Law on Pensions 1995 provided that the state pension amount has to be examined every year by taking into account the changes in the consumer prices and the changes in the insurance contribution wage index (this process is called ‘*indexation*’). The amendments from 12 March 2009 provided that in 2009 the state pension amount will not be examined (the Contested Norm). This means that the indexation of pensions was stopped. 20 MPs claimed before the Constitutional court (Court) that the amendments from 12 March 2009 are incompatible with Articles 1 and 109 Constitution.

Article 1 Constitution:

“*Latvia is an independent democratic republic.*”

Article 109 Constitution:

“*Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.*”

Legal questions:

The compliance of the Contested Norm with the principle of legal certainty and the principle of proportionality that follow from Article 1 of the Constitution and the compliance of the Contested Norm with the principle of a socially responsible State that follows from the aggregation of social rights guaranteed in the Constitution as well as the right to social security enshrined in Article 109 of the Constitution.

Arguments of the parties:

Applicants: The applicants argued that the challenged norm breaches the principle of legal certainty. They argued that granting a State pension is an issue of social policy with long-term character. Therefore, legal regulation in this field should be sufficiently stable and unchanging. Even though the principle of legal certainty is not absolute, a transition period

should have been provided. In essence, the Contested Norm has retroactive force, because it concerned the re-consideration for a period of time which has passed (1 October 2008 to 31 March 2009) (para. 2.1).

The applicants argued that the Contested Norm is disproportional. One of the objectives behind the norm was to ‘freeze’ the pensions – a promise given to the international lenders, and from 2010 on to only examine pensions’ compliance with the increase in the consumer prices. The second objective mentioned is the balancing of the state social insurance special budget with revenue. However, the real objective, in spite of the ones mentioned, was to save the state budgetary means. In general this could be legitimate, but not when it happened on behalf of socially unprotected groups, such as pensioners. Alternatives had not been sufficiently considered and the chosen means are not proportional (para. 2.2).

The applicants argued that the challenged norm breaches the principle of socially responsible state. The pensions have not only an economic but as well a social function – to ensure an opportunity for pensioners to preserve a status as full-fledged members of the society. The Applicants indicate that, according to the data of the Central Statistical Bureau of the Republic of Latvia, the subsistence wage in February 2009 was 172.47 LVL. It is indicated in the annotation to the Draft Law that the average pension is 166.72 LVL. The Contested norm cancels indexation of pensions for persons who receive pensions not exceeding 135 LVL planned for February 2009. Consequently, the right of all social groups to an appropriate living standard is not ensured and pensions are not approximated to the real costs (para. 2.3).

Respondent (the Parliament): The Parliament argued that the social rights, including the right to social security, are special and different rights, implementation of which depends on the economic situation and available resources of each state. Latvia undergoes an economic recession. Moreover, Latvia has borrowed international loans. Latvia’s Economic Stabilization and Growth Revival Programme, adopted in December 2009 by the Parliament, served as the ground for granting international funding. When adopting the Contested Norm, the State had not resigned from effective implementation of social rights. Quite the contrary – social area and especially provision of the State pensions shall be regarded as a priority. If compared to other spheres, State pensions have been influenced the least, namely, only their indexation has been cancelled, whilst their amount has not been reduced (para. 3.1). The legitimate objective of the restriction is, first of all, to ensure the interests of the State budget (sustainability). The second objective of the restriction is implementation of the right of other persons to social security, as well as ensuring that the right to social security will be fulfilled as well in the future.

The selected measures are appropriate for reaching the legitimate objective because budget resources by cancelling indexation will be saved up. When assessing the necessity of the established restriction, the Parliament indicated that alternative measures could only be cancellation of other norms favourable to pensioners. Such measures, however, would restrict the rights to a greater extent. The Contested Norm has to be regarded as the most lenient measure also because the amount of pensions would reduce after indexation due to the deflation. The cancelling of indexations avoids such a situation. The Contested Norm complies with the principle of proportionality because it takes into account the current situation in the State and the fact that economic recession has influenced all groups of society. Moreover, other groups of society, for instance, employees of the public sector, have to cope with even greater restrictions.

When assessing compliance of the Contested Norm with the principle of legal certainty, the Parliament indicated that Para 15 of the Transitional Provision of the Law “*On State Pensions*” has been amended several times since its adoption. The procedure for indexation of pensions has been changed several times; therefore it cannot be characterized as constant. Hence, a person was not given grounds to trust that the procedure of examination would stay unchanged. Quite the contrary, individuals during the economic recession could reasonably foresee that indexation of pensions could be cancelled.

Answer by the Court to the legal questions and legal reasoning of the Court:

The Constitutional Court held that arguments of the Applicants regarding non-compliance of the Contested Norm with the principle of a socially responsible State have to be assessed in conjunction with the right to social security enshrined in Article 109 of the Constitution (para. 14).

“The Constitutional Court admits that the amount of social security guaranteed to a person is impacted by the economic situation of the state and available resources. The Constitutional Court, however, has already established the following: “If the legislator, making use of its authority in creation and realization of the social policy as well as in determination of the amount of social rights, has incorporated social rights into the Constitution and has specified the contents of these rights in laws, then they have turned into the rights of an individual. A person may request realization of these rights from the state as well as protect his/her rights at the court” [...]. Consequently, if the legislator has decided to guarantee a certain amount of social security by law, a person is conferred subjective rights to it.” (para. 15)

The Court argued that the duty to regularly examine State pensions follows from international law. For instance, the UN Committee on Economic, Social and Cultural Rights has indicated that States parties must monitor on regular basis whether the amount of social security is sufficient to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. Likewise, old age pensions and disability pensions are regularly examined in all the EU Member States (para. 15).

The restriction of the fundamental rights can only be established by law or based on a law, it must have a reasonable and legitimate objective, as well as it must comply with the principle of proportionality (para. 16).

In this case, the timeframe for submitting suggestions before the second reading in the Parliament, i.e. 15 minutes shall not be regarded as breach of the Rules of Procedure (17.1). It was not testified in the case materials that consultations on the Contested Norm have ever been organized. In a democratic state the process of adopting a normative act restricting the fundamental rights established in the Constitution should make the society trust its lawfulness. In the context of preparing and adopting the Contested Norm, any urgency and the fact that the society has not been informed in advance cannot be considered positive signs. These circumstances infringed the trust of society (para. 17.2). These considerations, however, do not change the fact that the restriction of the right to social security has been established by law.

Balancing of the special budget of social insurance has to be regarded as grounds for guaranteeing sustainability of the budget and confidence that the fulfilment of rights of following generations to social security will be ensured. Consequently, the aim to guarantee

the right of other persons to social security as guaranteed by the Constitution is legitimate (para. 18.1).

“The Applicants maintain that the objective to fulfil liabilities undertaken by the Cabinet of Ministers in front of international creditors cannot be regarded as legitimate because adoption of such a decision falls into the competence of the legislator rather than that of the government. Although the Parliament has not indicated the objective of the Contested Norm, its statements during the discussions show that this was one of the factors that influenced adoption of the Norm. [...] The Parliament agrees with the Applicants that the aim to fulfil international liabilities undertaken by the Cabinet of Ministers, providing that there are no other legitimate objectives, could not be recognized as the grounds for restricting the fundamental rights established in the Constitution” (para. 18).

The Contested Norm should be assessed in the context of the general situation in the State economics and other measures adopted with the purpose to balance incomes and expenses of the State special budget of social insurance. Since the Contested Norm is only one of the elements out of a range of measures, the Constitutional Court regards it as one of the instruments, aim of which is the reduction of expenses (respectively, balancing of incomes and expenses) of the State special budget (para. 20).

The Contested Norm is appropriate for reaching the legitimate objective.

In this case, it is not possible to provide for a more lenient restriction because indexation of pensions on 1 April 2009 would apply only to those persons who receive pension not exceeding 135 lats. The Constitutional Court considered that there are no more lenient measures for reaching the legitimate objective. It concluded that, when it selected the most appropriate measure for reaching the legitimate objective, the legislator has not exceeded the limits of the freedom of action conferred thereto (para. 21).

Finally, the Constitutional Court assessed whether the benefit gained by the society is greater than the detriment to a person. The gravity of the infringement caused by the Contested Norm to recipients of State pensions is reduced by the fact that the restriction of the right to social security has been established only for a definite period of time, which is the year 2009. It is planned to resume indexation of State pensions in summer 2010 (para. 22.1).

Consequently, the Constitutional Court concluded that, as the economic situation in the State deteriorates, the State no more could guarantee the same amount of social security as it was provided during the period of economic growth. Otherwise the ability of the State to implement the right to social security and to guarantee sustainability of social security system would be threatened. Under such circumstances, cancelling the indexation of pensions can be regarded as the most appropriate measure for solving the above mentioned problems. When comparing the necessity by the society of the Contested Norm and the right of a person to social security, it can be concluded that the benefit gained by the society is greater than the infringement of rights of a person (para. 22.3).

The fact that the responsible institution has not yet issued the normative act on indexation of pensions impacts the level of safeguarding of legal certainty, whilst it does not influence the fact that legal certainty would not have been conferred. Taking into account the aforesaid, it can be concluded that persons were given lawful, grounded and reasonable basis to trust that

indexation of pensions on 1 April 2009 will take place in accordance with the procedure established in the normative acts (para. 24).

The Court further stated that a reasonable balance between the necessity to protect legal security and the interests of the society has to be ensured. The Contested Norm was adopted with the purpose to balance incomes and expenses of the State special budget of social insurance. The deviation from the rights to indexation of pensions was committed with the purpose to ensure substantial interests of the society. Consequently, after having compared the importance of the interests of a person with those of the society, it can be concluded that in the case under review the necessity of the Contested Norm compensates the fact that rights, implementation of which persons relied upon, were not ensured. Consequently, the Contested Norm does not infringe the principle of legal security (para. 25).

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced. No law amendments were necessary according to this judgment.

Shortly describe the main outcome of the judgment/decision and its broader political implications:

The Court held that the words “*State pensions shall not be examined in 2009*” of Section 2 of 12 March 2009 Law “*Amendments to the Law “On State Pensions”*” comply with Article 1 and Article 109 of the Constitution of the Republic of Latvia.

In general, this judgment was one of the first giving the ‘*green light*’ to the legislator to carry out austerity measures. Even though the contested norm was adopted in a rush (e.g. 15 minutes for submitting suggestions for the second reading), this case indicated that the Constitutional Court will not try to purposefully stand in the way of austerity measures, even in cases where the process of adopting them has been slightly flawed.

* *The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*

Case No 2009-43-01*

Name of the Court:

Constitutional Court

Parties:

Ilmārs Drēziņš et al. v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Admissibility issues:

The cases concerning both the compliance of Article 2, Paragraph One of the Disbursement Law with Articles 1 and 109 of the Constitution and the compliance of Article 3, Paragraph One of the Disbursement Law with Articles 1, 91, 105 and 109 of the Constitution were declared admissible in the Constitutional Court.

Legally relevant factual situation:

On 16 June 2009 the Parliament of the Republic of Latvia adopted the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 (hereinafter – the Disbursement Law). The purpose of this law is stated in Article 1: „to provide persons with social security within the limits of the available financing according to the laws on State budget for the current year in the period from 1 July 2009 to 2012.”

According to the Disbursement Law, cuts of particular payments from the special budget of social insurance were established for the above mentioned period. Thus, Article 2, Paragraph One of the Disbursement Law stipulates that „in the period from 1 July 2009 to 31 December 2012 the state old-age pensions and service pensions granted according to the by-laws ‘On Service Pensions’ and ‘On the Rank and File and the Unit Commanding Personnel of the Institutions of the Ministry of the Interior Employee Pensions (Employer Pensions)’ are paid in the amount of 90 percent from the pension amount granted in accordance with the legislative acts”.

Whereas Article 3, Paragraph One of the Disbursement Law prescribes that "in the period from 1 July 2009 to 31 December 2012 the recipients of state old-age pensions and service pensions granted according to the by-laws ‘On Long Service Pensions’ and ‘On the Rank and File and the Unit Commanding Personnel of the Institutions of the Ministry of the Interior Employee Pensions (Employer Pensions)’ are paid in the amount of 30 percent from the pension amount granted in accordance with the legislative acts starting with the first date of the month following the month when the recipient of pension has become a person subject to mandatory social insurance (employee or self-employed) in accordance with the Law on State Social Insurance" (hereinafter Article 2, Paragraph One and Article 3, Paragraph One of the Disbursement Law jointly – the impugned provisions).

Legal questions:

Whether Article 2, Paragraph One of the Disbursement Law is compatible with Articles 1 and 109 of the Constitution and Article 3, Paragraph One of the Disbursement Law with Articles 1, 91, 105 and 109 of the Constitution?

Arguments of the parties:

Applicants: They pointed out that several basic legal principles follow from Article 1 of the Constitution – the principle of protection of legitimate expectations, the principle of proportionality, the principle of the rule of law, the principle of social state, the principle of good governance and the principle of social solidarity. The legislator, by adopting the impugned provisions that prescribe a 10 percent cut of old-age pension granted for life for unemployed pensioners and 70 percent cut for employed pensioners, has violated these principles.

Recipients of old-age pension are a special group of society because the granted pension is predominantly the only source of income for them. Therefore, there is no doubt that persons who qualify for old-age pension have relied upon the legal order for calculation and granting of old-age pension, and this reliance has been lawful, reasonable and justified. The legal order was in force for a long period of time and it was sufficiently stable and unchanging. Although the economic situation in the country has deteriorated, the principle of protection of legitimate expectations still has a major role in the existence of a state governed by the rule of law. The state has an obligation to provide judicial stability, whereas persons have the right to rely upon the state fulfilling its obligation in good faith. The situation when a decision crucial for the state is adopted urgently in two-day time is also unacceptable. The legislator has not envisaged the obligation to compensate or repay the deducted reduction of state pensions to the recipients of old-age pension. On the contrary – the Parliament has rejected the proposal that envisaged the procedure for repaying the deducted share of pensions (para. 2.1).

The Applicants proceeded that, when determining compliance of the impugned provisions with the principle of proportionality, one should bear in mind that benefit for the society from adopting a certain legal provision or legal order should be greater than detriment to legal interests of a person. Furthermore, the legislator should assess the influence of the legal provision to be adopted on each group of persons who are affected by the provision. The Applicants admitted that the economy of the state budget funds could by itself be the legitimate end of the impugned provisions; however, the economy of the state budget funds at the expense of such an unprotected group of society, namely, the recipients of old age pensions, is unacceptable (para. 2.2).

Lack of consultations with experts during preparation of the draft law was also considered as its substantial drawback by the applicants. Thus, the fiscal effect of the provision has not been duly assessed; moreover, it can even be disputed. Likewise, there is no substantiation as to why the legislator has included the particular amount of pension disbursement decrease in the impugned provisions, i.e. 70 percent. The Applicants also dispute the allegation that the impugned provisions have been adopted because the international creditors – the European Commission and the IMF had required so (para. 2.3). According to the Applicants, Article 3, Paragraph One of the Disbursement Law disproportionately restricts the property rights of a person since the calculated pension remains the same, whereas only 30 percent from the calculated pension is disbursed. Thus the essence of property rights is violated and further trust to the whole pension system is diminished (para. 2.3).

The Applicants asked the Constitutional court to declare Paragraph One of Article 2 of the Disbursement Law incompatible with Articles 1 and 109 of the Constitution and Paragraph One of Article 3 as incompatible with Articles 1, 91, 105 and 109 of the Constitution as well as to declare both impugned provisions invalid as of the moment of their adoption.

Respondent (the Parliament): When determining the conformity of the impugned provisions with the Constitution, factors related to the economic situation in the country and resources of the State budget of Latvia cannot be ignored. Since 2008, economic development has considerably deteriorated. The drop in Gross Domestic Product in the second quarter of 2009 was 19.6 percent in comparison with the same period of the previous year. Therefore, more efficient steps to prevent the decline of the state economy were required. In accordance with the Declaration of the Intended Activities of the Cabinet of Ministers issued on 11 March 2009, the government has undertaken to achieve reduction of the budget deficit. The need for such a reduction followed both from the commitments to the European Commission and IMF as well as from determination to stop the economic recession in the country. The sharp decline in economic activity caused the considerable decline in the state budget revenues as well. Therefore a substantial reduction of expenditure in the budgets of ministries and central state institutions was planned in the Law Amendments to the Law On State Budget 2009 – in order to achieve budget consolidation for the amount of 500 million lats. The Disbursement Law has been prepared in view of the situation in the State budget (para. 3.1).

The principle of protection of legitimate expectations following from Article 1 of the Constitution does not restrict the legislator's rights to deviate from the previous practice, even if it has been stable. Such a deviation is not only acceptable but also necessary in the cases when a more suitable and obviously more appropriate solution has to be chosen (para. 3.2).

Paragraph One of Article 3 of the Disbursement Law complies with Article 91 of the Constitution, since the purpose of social security benefits is to guarantee means for living to persons when they cannot be actively involved in employment legal relationships due to various reasons and thus to provide means for living by themselves. Whereas employed pensioners and able-bodied persons in active employment are not in an equal and comparable situation in accordance with Paragraph One of Article 3 of the Disbursement Law; therefore, there are no grounds for analyzing whether Paragraph One of Article 3 of the Disbursement Law prescribes different treatment and whether such a different treatment has objective and reasonable grounds (para. 3.3).

Also, the impugned provisions do not violate Article 109 of the Constitution since social rights are special and different rights. The implementation of these rights depends on the economic situation in each country and the available resources (para. 3.5).

Taking into account the above, the Parliament pleaded the Constitutional Court to declare Paragraph One of Article 2 of the Disbursement Law as conformable with Articles 1 and 109 of the Constitution as well as to declare Paragraph One of Article 3 of the Disbursement Law as conformable with Articles 1, 91 105 and 109 of the Constitution.

Answer by the Court to the legal questions and legal reasoning of the Court:

In the area of social rights it is crucial whether the State with its affirmative action can guarantee the satisfaction of a person's individual needs resultant from a particular

fundamental right. At the same time, one should take into account that the provisions of the Constitution basically do not grant persons the rights to a specific amount of social security, and the State should refrain from excessive interference with the financial relations of its citizens. Therefore, the amount of social security granted by the State may vary depending on the amount of funds at the disposal of the State. However, the fundamental rights of persons established by the Constitution are binding to the legislator irrespective of the economic situation in the State (para. 24).

The Disbursement Law restricts the fundamental rights of persons granted by Article 109 of the Constitution (para. 25). The restriction of fundamental rights is established by law, namely, it is included in the Disbursement Law adopted by the Parliament on 16 June 2009 and announced by the President of the State on 30 June 2009. The Case does not contain any materials that would call into question the legitimacy of the adoption of the impugned provisions. At the same time, it should be pointed out that haste in the context of preparation and adoption of the impugned provisions, as well as the fact that society was not duly and timely informed prior to the adoption of these provisions, should be viewed negatively (para. 26).

The Constitutional Court could not regard as justified the opinion of the Applicants – i.e. that the impugned provisions do not have a legitimate end, for the necessary economy is planned solely at the expense of persons with low income. The decrease of budget expenditures reached by means of the impugned provisions is approximately 17.4 % or one-sixth of the total decrease of the State consolidated budget. No doubt, such a decrease has also affected the other positions of the budget along with the branches of activity of the State and national economy. If the amount of pensions had not been reduced, even more significant reductions in the other budget positions would have been in order. The impugned provisions have a legitimate end – securing the sustainability of the social insurance budget by means of balancing its revenues and expenditures, thus ensuring the welfare of society (para. 27).

The principle of proportionality prescribes that, in the cases when a public authority restricts the rights and lawful interests of persons, a reasonable degree of proportionality between the interests of persons and the interests of the State or society should be attained (para. 28). The Constitutional Court agreed that the impugned provisions were directly related to the urgent need to balance the State budget, including the social insurance special budget, in order to diminish the influence of the economic recession on the balance of revenues and expenditures as well as to ensure the sustainability of the pension system. In certain cases, economic crisis can develop to the point when the freedom of action must be granted to the legislator to enable the implementation of remedial measures – even if the latter would infringe the fundamental rights established by the Constitution. In the situation of extremely limited financial resources of the State, the latter has freedom of action to change the conditions for pension disbursement – with the aim of sustaining a just social insurance system. The planned social insurance budget economy in this context is commensurate with the consequences of economic recession – the deficit in the State budget and the overall decline of economic activity in Latvia compared to the showings for 2008. The Constitutional Court had no grounds to call into question the fact that the impugned provisions had helped reduce the expenditures of the State social insurance special budget, correspondingly facilitating the balancing of revenues and expenditures. Therefore, the impugned provisions can help achieve the legitimate end (para. 29).

The Constitutional Court established that the original documents related to the receipt of international loans do not contain information that could be associated with the adoption of the impugned provisions. At the same time, in Sub-paragraph 7.2 of the Supplementary Memorandum of Understanding between the European Community and the Republic of Latvia of 13 July 2009, Latvia pledged to reduce the outlays of pensions by 10 % for non-employed pensioners and by 70% for employed pensioners. With reference to the commitment between the IMF and the Republic of Latvia, the same pledge is included in the Economic Stabilisation and Growth Revival Programme for Latvia adopted by the Parliament on 16 June 2009. However, the fact that the above documents contain the pledge of the Cabinet of Ministers to adopt the impugned provisions does not mean that the international creditors have stipulated these particular conditions. Although the international creditors, within their terms of reference, prescribe for the State the main objectives to be achieved, such as, e.g., the reduction of the State budget for the amount of 500 million lats, including the reduction of the social insurance special budget expenditures, the choices of the most suitable and appropriate means for the attainment of these objectives as well as the possible alternatives are left at the State's own discretion. The Constitutional Court has not received any information attesting that the international creditors stipulated the adoption of the impugned provisions as a prerequisite for granting the loan. The Cabinet of Ministers has indicated that during the negotiations the international creditors repeatedly took notice of the possibility that the sustainability of the social budget would be endangered even in the case of freezing the indexation of pensions. Yet, no evidence of this assertion – for instance, negotiation minutes – have been submitted to the Constitutional Court. It follows from the previous IMF reports that the sustainability of the social budget is endangered and the fiscal risk is caused, for example, by the excessively generous parental allowances (children benefits) and the inconsiderately regulated sickness benefits; moreover, the outflow of large amounts of the social security funds to those social groups that cannot be deemed as disadvantaged or low-income is observable.

Besides, the principle of separation of powers delimits the authority of the Cabinet of Ministers. In accordance with this principle, the Constitution confers the law-making powers – namely, the powers to decide the most important matters for the state – to the Parliament in particular, and, in individual cases, to full-fledged citizens of the Republic of Latvia. The other branches of power are obliged to implement these laws in practice. Determining the relations of the areas of authority of the Parliament and the Cabinet of Ministers, it was admitted that the requirement for the legislator to decide by itself all the matters of the State through legislation has become unrealistic in the complicated living conditions of the present-day society. In order to ensure that the State power be exercised more effectively, it is permissible to deviate from the requirement that the legislator decides all the matters wholly by itself. The optimum effectiveness is achieved when the legislator decides the most important matters through legislation, while delegating to the Cabinet of Ministers the drafting of more detailed regulations and the development of provisions necessary for the implementation of the law in practice.

Although the Cabinet of Ministers is entitled to adopt regulatory enactments, the latter are not permitted to contain such provisions that cannot be deemed as aids for the implementation of the provisions of the law. Thus, it is permissible to delegate the drafting required for the implementation of a law in practice to the Cabinet of Ministers, whereas the Parliament is obliged to decide all the most important matters of the State and public life by itself through legislation. Furthermore, the first part of Article 68 of the Constitution prescribes that all international agreements, which settle matters that may be decided by the legislative process,

shall require ratification by the Parliament. In order to establish whether the Parliament's argumentation for the infringement of the rights of persons can be upheld, one should consider whether the Cabinet of Ministers was entitled to decide without the authorisation from the Parliament the matters pertaining to the international loans, or else the respective commitments are to be taken as settling the matters that had to be decided through legislation and, accordingly, needed the Parliament's approval.

The Constitutional Court could not agree with the statements concerning receipt of the loan found in the letter of the Minister for Justice to the European Commission, namely, that all the approvals and authorisations required for the receipt of the loan have been obtained and that the Agreement does not violate any provision of national legislation, and that the enactment of the Agreement will not violate the requirements of any Latvian legislative act, and that its lawfulness, validity and enactment will not be impugned in the court or any other institution. The Constitutional Court maintained that the conceptual decision with respect to the receipt of the international loan and terms and conditions thereof is to be deemed as an important and significant matter of State and public life, and that, in compliance with the procedure established by the Constitution, it had to be decided by the legislator itself. Although the Parliament has adopted the Economic Stabilisation and Growth Revival Programme for Latvia, has carried out decisions concerning changes to the State budget for 2009 and has adopted the State budget for 2010, these decisions cannot replace the rights established by the Constitution and also the duty to decide on all the substantial matters relating to the aforementioned loans, including the matters concerning the possible authorisation for the Cabinet of Ministers. Therefore, the international commitments assumed by the Cabinet of Ministers cannot by themselves serve as an argument for the restriction of the fundamental rights established by Article 109 of the Constitution (para. 30.1).

The Constitutional Court pointed out that the Agreement of 11 June by itself neither confirms, nor excludes the legitimacy or constitutional compliance of the impugned provisions. Also, the participation of individual organisations or public partners of the government in the preparation of the aforementioned Agreement is not indicative of the constitutional compliance or – just the opposite – non-compliance. The Agreement of 11 June cannot be considered as a legitimate precondition for the adoption of the impugned provisions; rather, it may be viewed a quasi-political pledge signed for different reasons by the individual organisations and public partners of the government along with the political parties constituting the government. The fact of the Agreement is relevant to this Case only insofar as possible alternatives to the impugned provisions have been considered during its preparation. In addition, contrary to the opinion expressed in the replies of the Parliament, the letter of the Cabinet of Ministers and the annotation to the Disbursement Law Draft, the Constitutional Court deemed that the participation of organisations and public partners of the government in the preparation of the Agreement of 11 June was just formal (para. 30.2.1).

The Constitutional Court concluded that the proposed alternatives to the impugned provisions cannot be regarded as viable and accepted, for it was simply impossible to draft adequate alternative proposals in such a short period of time. Likewise, it was impossible to give careful and detailed consideration to such major issues as the potential economic effect and social consequences of these alternative solutions within a few days. Consequently, the Constitutional Court had no grounds for deeming the alternative solutions – which lack the necessary justification and analysis of economic and social consequences – as sufficiently well-considered alternatives to the impugned provisions.

Due to haste and insufficient involvement of experts, the legislator could not duly consider alternative solutions and work out a lenient transition. Among other things, the fact that the Disbursement Law had to be corrected urgently is also indicative of the legislator's inconsiderate action. That is, the disbursement restrictions included in the Disbursement Law pertained to old-age and service pensions. As a consequence, those persons, who had reached the retirement age while still receiving disability pension, received it in full amount, whereas those persons, who had been granted old-age pension instead of disability pension, received it in restricted amount. In other words, the Disbursement Law provided obviously different treatment for persons who were the recipients of disability pension on the one hand (the reduction of pension not applied), and persons who received old-age pension instead of disability pension on the other hand (the reduction of pension applied). Also, with respect to those persons who are subject to Article 2, Paragraph One of the Disbursement Law, the Constitutional Court could not confirm that the legislator has chosen the least restricting means for the attainment of the legitimate end. That is to say, the deduction from pension in the amount of 10 % is applied to all pensioners irrespective of the amount of their pension. As a result of the application of this provision, a pensioner may become a deprived person compelled to apply for social aid. In adopting the impugned provisions, the legislator has not considered with sufficient care the alternatives to these provisions and has not envisaged a more lenient solution. Therefore, the impugned provisions do not comply with Article 109 of the Constitution (para.30.2.2).

Adjudicating whether a reasonable balance has been maintained between the need to protect legitimate expectations of persons and the need to secure public interests, one should consider whether the planned transition to the new legal order is sufficiently lenient. The Constitutional Court has previously established that such a lenient transition may be expressed in the form of setting a reasonable transitional period or granting compensation. Having regard of the duty to protect persons' reasonable confidence in the permanence of legal order ensuing from the principle of legitimate expectations, the State has not only rights; it also has a duty to counter the situations when public interests are seriously jeopardised. If legal order is changed for the common good of society, then such an action is permissible. On this account, a temporary reduction of pension disbursement amount is justified if it is carried out in fair balance with persons' legitimate expectations concerning a specific pension disbursement amount. The ECtHR has also repeatedly drawn attention to the need of ensuring fair balance and commensurate compensation. In the context of this Case, it means that the reduction of pensions could have been implemented only if a legal provision concerning later reimbursement of the deducted money had been simultaneously adopted. In other words, planning such a temporary reduction, the legislator is obliged to ensure its fair reimbursement at a later time. More than that, the State, in proportion to the overall interests of society, had to define the groups of pensioners who would be exempt from this reduction, or to whom a different reduction amount would be applied. The impugned reduction of pensions does not allow a differentiated approach and does not provide either for a later compensation for the deductions, or for an adequate transitional period. Therefore, the impugned provisions do not comply with Article 1 of the Constitution (para. 32).

In view of the aforesaid and the circumstance that, in addition to current expenditures, more than ten million lats per month will still be needed for the restoration of full pension disbursement amounts, as well as the fact that pensions are calculated and disbursed for calendar months, the Constitutional Court maintained that the deductions from pensions made on the basis of the impugned legal provisions are terminable not later than from 1 March 2010 (para. 35.2).

The Court declared Paragraph One of Article 2 and Paragraph One of Article 3 of the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 as incompatible with Articles 1 and 109 of the Constitution of the Republic of Latvia and invalid as of the moment of their adoption, stipulated that the deductions from pensions established in accordance with Paragraph One of Article 2 and Paragraph One of Article 3 of the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 shall be discontinued not later than from 1 March 2010 and ordered the Parliament to establish a reimbursement procedure for deductions made in accordance with Paragraph One of Article 2 and Paragraph One of Article 3 of the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012 not later than by 1 March 2010.

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced. This judgment required changes in law.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

Since the Court declared the challenged amendments to Disbursement Law unconstitutional, the legislator had to change the law and reimburse the deductions from the pensions for the persons affected. In general, this was probably the most influential judgment of the Constitutional Court dealing with austerity measures and inter alia led to changes in the procedure how international loans have to be approved (now this procedure involved as well an approval by the Parliament in significant cases).

Case No 2009-44-01*

Name of the Court:

Constitutional Court

Parties:

Raimonds Priede-Baņģieris et al. v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Legally relevant factual situation:

On 8 November 2007, the Parliament adopted amendments to the Law "On Maternity and Sickness Insurance" that came into force on 1 January 2008 (the Benefit Law). The Benefit Law provided for a new type of allowance – parental benefit. Parental benefit is allocated and disbursed to a socially insured person for childcare up to the age of one year if these persons are insured on the date of granting the allowance and: 1) is on childcare leave or cannot gain income as a self-employed person due to the childcare; 2) is employed during the child care period but is not on childcare leave or gains incomes as a self-employed person during the childcare period. Parental benefit is granted at the amount of 70 percent of the average wage subject to social insurance payments of the recipient but no less than 70 percent of parental benefit of the double amount of State social security benefit effective as on the date of claiming the benefit. On 16 June 2009, the Parliament adopted the Law "On State Pension and Benefit Disbursement from 2009 to 2012" (the Disbursement Law). According to the Disbursement Law, cuts of particular payments from the special budget of social insurance were established for the above mentioned period. Thus, Section 5 (1) of the Disbursement Law provided that a person gaining income as an employee or a self-employed person during the childcare period, parental benefit established in the Law "On Maternity and Sickness Insurance" granted for childcare of a child born before 2 May 2010 shall be disbursed at the amount of 50 percent of the benefit amount granted" (the Contested Norm).

Legal questions:

Compliance of the First Part of Section 5 of the Law "On State Pension and Benefit Disbursement from 2009 to 2012" with Article 1, Article 91 and Article 110 of the Constitution.

Arguments of the parties:

Applicants: Parental benefit is an integral part of the family protection system. The benefit was related at the time of introduction with the policy for improving the demographic situation in the State; therefore it was necessary to introduce changes in the system by taking into account interests of a child and family. However, these interests have not been observed when adopting the Contested Norm. When establishing the restriction for receiving the benefit of the statutory parental benefit in full, the Contested Norm denies the rights

guaranteed in Article 110 of the Constitution and the rights concretized in normative acts on social and economic protection of family in the case of child birth for a person who is employed and who has already been granted such benefit and the disbursement has been initiated. The Applicants hold that the Contested Norm does not comply with the principle of legal certainty that follows from Article 1 of the Constitution. According to the Applicants, the parental benefit granted to persons before the date of coming into force of the Contested Norm could not be reduced because these persons could lawfully confide in receiving such benefit, and this legal certainty should be protected. Reduction of the benefit could only be applied to those persons who did not yet have the right to receive parental benefit at the date when the Contested Norm came into force. The Applicants hold that the Contested Norm neither complies with the principle of proportionality that follows from Article 1 of the Constitution. The Contested Norm does not comply with the principle of equality guaranteed in Article 91 of the Constitution (para. 4).

Respondent: The Parliament maintained that the purpose of the Contested Norm is not only to ensure interests of the State budget during economic recession when it is necessary to reduce budget expenses and balance incomes and expenses of the State special budget of social insurance, but also to exercise the rights of persons to social security in accordance with Article 116 of the Constitution. Consequently, the Contested Norm was necessary for ensuring substantial interests of the society and the State. Moreover, the measures selected for reaching the above mentioned aims are adequate because adoption of the Contested Norm ensures saving of budget resources and balances interests of all recipients of the State social security.

Answer by the Court to the legal questions and legal reasoning of the Court

According to Section 5 (1) of the Disbursement Law adopted by the Parliament on 16 June 2009, during the period from 1 July 2009, namely, the date when this law comes into force, to 2 May 2010 a person who is deemed to be a socially insured person (an employee or a self-employed person) during the child care period in accordance with the Law “On State Social Insurance”, parental benefit established in the Benefit law has to be disbursed at the amount of 50 percent of the benefit granted at the first date of the month that follows the month when a person has become a socially insured person (an employee or a self-employed person) in accordance with the Law “On State Social Insurance”. Consequently, the Contested Norm provided for a transitional period of 306 days to adjust disbursement of parental benefit in accordance with the effective social insurance system of the State (para. 10).

Unemployed parents and employed ones do not enjoy equal and comparable circumstances because parental benefit is meant for different aims: in the first case – substituting of lost income and provision of support for a family with a child aged up to one year, and in the second case – provision of support only for families with children aged up to one year. Consequently, establishment of different amount of benefit to employed parents and unemployed ones is permissible. Establishment of equal amount of benefit for these groups would contradict the principle of equality established in Article 91 of the Constitution unless such establishment has reasonable and objective grounds. Since the Contested Norm provides for a different attitude to persons who do not enjoy equal and comparable conditions, it does not breach Article 91 of the Constitution (para. 14).

Even during economic recession it is necessary to ensure the payment of established State benefit. In case it is reduced, it is necessary to observe proportionality, i.e. the State does not

have the right to refrain from what it has promised by thus causing an unfavourable situation for a person and thus infringing the trust of persons to State support in a non-proportional manner. However, when performing the proportionality assessment, the Court has the duty to take into account interests of the society, including the interest of other groups of the society into sustainability of the social insurance system (para. 16).

The Contested Norm was adopted during economic recession in Latvia when incomes to the State budget reduced, unemployment rate increased and expenses of the social insurance budget increased. In the second quarter of 2009, Latvia underwent the most rapid reduction of economic activities in the entire European Union. For instance, the revenues of the State consolidated budget during the first six months of 2009 were for 15 percent lower than those of the corresponding time period in 2008. At the same time, the expenditures of the State consolidated budget during the first six months of 2009 were for 7.2 percent higher than those of the corresponding time period in 2008. The Gross Domestic Product drop in comparison to the first six months of 2008 was 18.7 percent. The drop persisted also in the third quarter of 2009, reaching 18.4 percent. During this time, the financial deficit of the State consolidated budget reached 449.9 million lats or approximately 3.5 percent from the Gross Domestic Product, and the prognosis was that the deficit may reach 1.3 milliard lats or approximately 9.5 percent from the Gross Domestic Product by the end of 2009. As a consequence, both the performance of the functions of the State and the possibility of the economic activity renewal in the foreseeable future would be put in danger.

The Constitutional Court has already concluded that during economic recession or other extraordinary situation the principle of legal certainty requires balancing of legal trust of persons with interests of the society. In such a case, a decisive role is played by the fact whether the principle of proportionality has been observed (para. 20).

During economic recession, when assessing compliance of the Contested Norm with the Constitution and general legal principles, the main criterion is the fact whether the solution selected by the legislator is a socially responsible one. A socially responsible solution is such a solution, in the result of which legal interests of certain persons are balanced with those of the society. Therefore, it is necessary to assess measures selected by the legislator to ensure a lenient transitional period in conjunction with the necessity to ensure balance between economic possibilities of the State and welfare of the entire society. A socially responsible state under the particular circumstances could be based not only to provision of a lenient period for the transition to the new legal regulation but also on the fact that along with the amendments to normative acts, a person is given the possibility to implement the rights once conferred by the State, all this being based on financial possibilities of the State. By means of the Contested Norm, adjustment of the social insurance system (and also the social insurance budget) has been initiated. Endangered sustainability of the social insurance budget, which is of great importance for the State to be able to ensure disbursement of pensions and social insurance benefit in the long term. In the result of the Contested norm, it was possible to accumulate savings in the State social insurance budget (1.7 million lats each month), which in total constituted about 10 million lats in the time frame from 1 July 2009 to 1 January 2010. Moreover, in the result of the Contested Norm, the planned amount of savings in this time period was 3.3 million lats. Moreover, the Contested Norm also ensures a transitional period (306 days) to adjust the social insurance system. Consequently, measures selected by the State are aimed at reaching of the legitimate objective (para. 22).

The fact that the State has decided to cease disbursing the State social insurance benefit to employed parents and to pay a reduced amount of benefit during the transitional period, shall be regarded as a measure for reduction of consequences of infringements caused to the rights of persons. Consequently, during the transitional period, the State has to ensure families an adequate amount of support for it to fulfil its functions (para. 23).

If amendment of the legal regulatory framework serves the benefit of the society, then restriction of the legal trust of persons is permitted. The Contested Norm has been adopted with the purpose to balance revenues and expenses of the State special budget of social insurance. The economic recession denied the possibility for the State to guarantee such amount of social security that was established during the period of economic growth of the State. If no measures were taken to solve the situation, this would have influenced the possibility of the State to ensure the right of persons to social security and to guarantee sustainability of the social security system. This would not comply with the principle of a socially responsible State. The restriction of the right of employed parents to receive parental benefit at full extent during the transitional period has been established with a view to ensure substantial interests of the society. In the result of this, a fair balance between restriction of legal security of a person and the right of the society to a sustainable State social insurance system and balanced State budget was ensured. *After having compared the importance of the particular interests of persons and those of the entire society, it can be concluded that in the case under review the necessity for the Contested Norm is counterbalanced by the fact that the rights, into which persons had the right to confide, are ensured at a restricted extent. The Contested Norm does not infringe the principle of legal certainty and complies with Article 1 of the Constitution* (para. 24).

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

Since the Constitutional Court held that the Contested Norm is compatible with the Constitution, no legal amendments were necessary. This was, however, one of the judgments called out for being in favour of harsh austerity measures without taking due account of social protection interests.

* *The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*

Case No 2009-76-01*

Name of the Court:

The Constitutional Court of the Republic of Latvia

Parties:

Uldis Mugurevičs v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Legally relevant factual situation:

On 16 June 2009, the Parliament adopted and on 30 June 2009 the State President proclaimed the Law „Amendments to the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks”. The Law came into effect on 1 July 2009. This law supplemented the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” by Para 20 (hereinafter – the Contested Norm) in the following wording:

“From 1 July 2009 to 31 December 2012, the long-service pension for a socially insured person (an employee or a self-employed person) as from 1 July 2009 shall be recalculated and reduced by 70% based on the estimated amount of the long-service pension. The amount of the long-service pension shall be restored as from the first date of the month proceeding the month when the status of a socially insured person is lost.”

Legal questions:

The compatibility of the Contested Provision with Article 1 Constitution (principles of legitimate expectations and proportionality) and Article 109 Constitution (the right to social guarantees)

Arguments of the parties:

Applicant: It was indicated in the application that disbursement of pension at the amount of 30% in fact deprives the respective person of social security. The Applicant denies that exercise of social rights in the State would depend on the economic situation and available resources. Legal norms on long-service pensions regulating the procedure of granting the respective pension have remained unchanged. The Contested Norm restricts only application of these norms during a certain period of time.

The social security measures fulfil not only an economic function, which is to compensate loss of income, but also a social function, namely, to ensure persons a possibility to preserve the status of a full-fledged member of the society. The Contested Norm does not fulfil the latter function. Although the Norm has been adopted with the purpose to solve financial problems of the state, save budget resources, and balance the interests of all beneficiaries of

State social security, this norm, however, is aimed at creating circumstances that make a pensioner quit paid labour. Although the Contested Norm is a temporary measure, consequences thereof are, in fact, irreversible because it is rather unlikely that a pensioner having once quit paid labour would be able to resume working after the expiry of the term of the Contested Norm, namely, after 31 December 2012.

According to the Applicant, the Contested Norm does not comply with the principle of proportionality. When establishing restriction of the fundamental rights of a person in the Contested Norm, the Parliament has failed to assess whether the society would gain any benefit in the result of substitution of employed pensioners by other persons. However, the aim set, i.e. saving of budget resources, cannot even be reached by the Contested Norm because the majority of working pensions who receive long-service pensions prefer terminating their labour relations. The Parliament has neither assessed impact of the Contested Norm, nor the possibility that a part of pensioners receiving long-service pensions could continue working and be paid an envelope wage, which means that no taxes would be paid and budget income would only decrease. Moreover, the Contested Norm could cause a partial destruction of the pensions system because it could raise distrust of the society into the system.

The Respondent: It has been indicated in the reply of the Parliament that, when assessing compliance of a contested norm with the Constitution, it is necessary to take into account independent factors related with the economic situation of the State and possibilities of the Latvian State budget under circumstances of decline of economic activities. The rapid fall of economic activities has caused substantial reduction of State budget incomes. The revenues of the State consolidated budget were 2052 million lats, which is 363.4 million lats or 15 percent less than those of the corresponding time period in 2008. During the six months of 2009 the financial deficit of the State consolidated budget has reached 449.9 million lats.

Under the above mentioned circumstances, the Parliament had to take effective measures with a view to prevent economic recession in the state, preserve a functioning financial system, and balance wishes of the society with the possibilities of implementing them. Moreover, in accordance with the Declaration of the Intended Activities of the Cabinet of Ministers issued on 11 March 2009, the government has undertaken to achieve reduction of the budget deficit. The need for such a reduction followed both from the commitments to the European Commission and IMF as well as from determination to stop the economic recession in the country. The budget consolidation measures were based on the agreement signed by the political parties constituting the government, the Free Trade Union Confederation of Latvia, the Employer's Confederation of Latvia, the Latvian Association of Local and Regional Governments, the Latvian Chamber of Commerce and Industry and Latvian Pensioners' Federation on 11 June 2009.

The Parliament emphasized that the principle of functioning of the special social insurance budget is self-financing, which means that normative acts on social insurance establish a close link between social insurance payments and social insurance services. As a result of the crisis in Latvia, labour incomes of employed persons have reduced, whilst unemployment rates has increased. As a result of this, revenues into the special budget have reduced, these revenues being formed mainly by social insurance payments. According to the prognosis of incomes and expenses of the social insurance special budget as well as planned expenses of the following years, it is possible to conclude that accumulation in the State special budget

would be used within a couple of years unless the Parliament would have taken the respective measures.

The Contested Norm does comply with Article 109 of the Constitution because social rights are special and different rights. Exercise of these rights depends on the economic situation and available resources of each state. Economic growth and employment are preconditions for a higher level social protection system.

The Applicant argued that the Contested Norm provides for a temporal reduction of the amount of long-service pensions. This should be assessed in the light of amelioration or deterioration of the economic situation. Restrictions included in the Contested Norm have a legitimate objective, namely, it is aimed not only at protection of the interests of special budget, but also the constitutional value enshrined in Article 116 of the Constitution, which is welfare of other persons, and to ensure the duty of the State to disburse State pensions and provide other social services in the future. This objective cannot be reached by other measures that were at the disposal of the Parliament or the Cabinet of Ministers and that would restrict the rights of a person at a lesser extent. Increase of incomes by increasing payment rates for employers and employees could serve as a hypothetical alternative to reduce expenses of the Special budget. Such alternative, however, would cause a number of negative consequences that would, in the long term, have a negative impact on State social insurance payments.

The Parliament argued that the selected measures for reaching the above mentioned aims are appropriate because the Contested Norm ensures saving of budget resources and allows balancing of interests of all beneficiaries of social security. The Contested Norm shall be regarded as proportional and appropriate for reaching the above mentioned objective because the benefit gained by the society is greater than the detriment caused to the rights of a person.

Answer by the Court to the legal questions and legal reasoning of the Court

The Constitutional Court has already concluded in several of its judgments that in 2009, under the conditions of economic recession, the Latvian State was under the necessity to substantially cut budget expenses, these measures also including the general cut of wages in budget funded institutions. It is not necessary to reassess whether it was urgently necessary to reduce the State basic budget and State social budget expenses when adopting the Contested Norm. The Constitutional Court has also emphasized that “*the State has not only the right but also the duty to coordinate its liabilities in the field of social rights with its economic possibilities. Otherwise execution of other duties of the State could be hampered, including implementation of other social rights*”. The amount of social security granted by the State may vary depending on the amount of funds at the disposal of the State. The State has the right to restrict disbursement of benefits if it is counterbalanced by interests of the society and the right of other persons to receive financial support from the State.

The Constitutional Court referred to the fact that it has already indicated that during economic recession the action of the legislator should be as fast, coordinated and decisive as possible with a view to prevent possible negative consequences. To fulfil the respective duties, the legislator should be conferred a reasonable freedom of action. However, the economic situation of the State or the necessity to reduce the budget deficit provided that there are no other legitimate objective cannot serve as a general justification for the fact that the State refrains from the rights once conferred to persons. The fundamental rights of

persons established by the Constitution are binding on the legislator irrespective of the economic situation in the State. Consequently, adoption of the Contested Norms under the particular economic circumstances does not per se testify their constitutionality.

In the case under review, the right to social security at least at the minimum level is not infringed. Article 109 of the Constitution does not guarantee the right to certain kinds of pensions, including the long-service pension that is calculated based on certain criteria or provided at a certain amount. However, if the State has established a certain kind of pension by law, then Article 109 of the Constitution requires that all further activities of the State would comply with the principles of a law-governed State. The compliance of the Contested Norm with the principle of legal security and that of proportionality should be assessed in conjunction with Article 109 of the Constitution.

A person who has been in service in the interior system for a particular term was not granted legal certainty regarding a certain amount of pension; however, he or she had the right to rely that the amount of the long-service pension would be reasonably bound to the contribution of the person into the service and the correspondent economic situation. Under the circumstances of general inflation and increase of wages, such persons would have the right to expect a respective recalculation of pensions. Likewise, under the circumstances when wages of the interior system employees are substantially cut, reduction of the amount of long-service pensions based on certain criteria would be permissible. However, the Contested Norm provided for reduction of pension at a considerable rate, i.e. by two thirds. A person had the right to confide in the fact that disbursement of a pension would not be related with such unforeseeable factor. Consequently, the Contested Norm has materially infringed legal certainty of persons. However, the Constitutional Court has reiterated that prevention of infringement of substantial interests of the society should have priority over the principle of legal certainty.

During harsh economic conditions in the State, a situation when the State would provide, within the limits of its possibilities, minimum existence possibilities for as much persons as possible, might arise. However, consequences of these circumstances should equally touch all inhabitants of the State. The Constitutional Court has already concluded that no equal approach towards all persons regarding reduction of funds to be disbursed from the State budget was ensured. Under such circumstances, an undifferentiated reduction of long-service pension by 70% cannot be regarded as compliant with the principle of proportionality. Consequently, the Contested Norm does not comply with Article 109 of the Constitution in conjunction with Article 1 of the Constitution.

Having assessed the economic situation of the State and possibilities of the State budget, the deducted part of the pension withheld based on the Contested Norm shall be fully disbursed according to procedure established by the State and no later than before 1 July 2015.

The Court held:

1. Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” does not comply with Article 1 and 109 of the Constitution of the Republic of Latvia and shall be null and void as from the date of adopting it.

2. Deductions from long-service pensions established in Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” shall be terminated no later than by 1 June 2010.

3. No later than by 1 June 2010, the Parliament shall be committed to establishing procedure for disbursing the deductions from the long-service pensions made in accordance with Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks”.

Legal effects of the judgment/decision

The operative part of the judgment becomes a law once announced. This judgment required amendments of law.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

This was one of the maybe less important and less famous cases where the Court declared changes in law introduced to carry out austerity measures unlawful. As one of the pension cases this case served for protection of the pensions system from cuts.

** The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*

Case No 2009-88-01*

Name of the Court:

The Constitutional Court of the Republic of Latvia

Parties:

Vēsma Vilka v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Admissibility issues:

The Applicant was granted long service pension of a military person, and she was also employed and thus was a socially-insured person. When submitting the application, the Applicant had already terminated her legal employment relationship. It follows from the application that the long term pension of the Applicant was reduced by 70%, namely, under Para 17 of the Transitional Provisions of the Long Service Pension Law the amount of long service pension shall be restored as from the first date of the month proceeding the month when the status of a socially insured person is lost. According to the information provided by the Ministry of Defence, some persons who terminated their legal labour relations from 1 July 2009 were disbursed long service pensions erroneously deducted 70% of the estimated amount because, after coming into force of the Contested Norms, not all data on persons who have ceased their legal labour relations before coming into force of the Contested Norms were received. It follows from the case materials that this mistake was corrected and sums erroneously deducted were disbursed. Consequently, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law do not directly infringe the rights of the Applicant.

Article 29 Paragraph 3 of the Constitutional Court Law provides that judicial proceedings of a matter may be terminated until pronouncement of the judgment at the decision of the Constitutional Court if the Constitutional Court establishes that a decision regarding initiation of a matter does not comply with the requirements of Section 20, Paragraph five of this Law. However, Article 20 Paragraph 5(3) of the Constitutional Court Law provides that, in examining applications, the Division shall be entitled to refuse to initiate a matter if the application does not comply with the requirements specified in Section 19² of the Constitutional Court Law. If a Constitutional Court panel, when deciding on initiation of the case, has any doubts regarding existence of any particular infringement, the above mentioned issue is being solved during preparation and examination of the case. In the frameworks of the case under review, the Constitutional Court shall have the right to assess reduction of long service pensions for military persons insofar as it applies to the Applicant, namely, to assess Para 14 of the Transitional Provisions of the Long Service Pension law (hereinafter – the Contested Norm).

Legally relevant factual situation:

On 16 June 2009, the Parliament adopted the Law “Amendments to the Law on Long Service Pensions of Military Persons”. It came into effect on 1 July 2009. The Law supplemented the Long Service Pension Law by paras 14, 16 and 17 of the Transitional Provisions (hereinafter – the Contested Norms).

Para 14 of the Transitional Provisions of the Long Service Pensions Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pension of beneficiaries who have been granted the long service pension before 30 June 2009, shall be recalculated and reduced by 10 percent based on the estimated amount of the long-service pension. The Ministry of Defence shall recalculate long service pensions of military persons before 3 July 2009.”

Para 16 of the Transitional Provisions of the Long Service Pension Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pension of beneficiaries who, as on 1 July 2009, is a socially insured person (an employee or a self-employed person), shall be recalculated and reduced by 70% based on the estimated amount of the long service pension. The amount of the long-service pension shall be restored as from the first date of the month proceeding the month when the status of a socially insured person is lost. If the beneficiary of the long service pension is not, as on 1 July 2009, a socially insured person (an employee or a self-employed person), he or she shall have the duty to inform the Ministry of Defence on it, as well as on the loss of the status of a socially insured person within three working days from the date of the loss of the status.”

Para 17 of the Transitional Provisions of the Long Service Pension Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pensions for beneficiaries, who become socially insured persons (an employee or a self-employed person) on the first date of the month proceeding the month when the beneficiary of the long service pension has become a socially insured person, shall be recalculated and reduced by 70% based on the estimated amount of the long service pension. The amount of the long-service pension shall be restored as from the first date of the month proceeding the month when the status of a socially insured person is lost. The duty of the beneficiary of the long service pension is to inform the Ministry of Defence on the loss or acquisition of the status of a socially insured person within three working days from the date of the loss or acquisition of the status.”

Legal questions

The compliance of Para 14, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law with Article 1, Article 91 and Article 109 of the Constitution. Para 14 of the Transitional Provisions of the Long Service Pension Law established reduction of long service pensions for military persons by 10% based on the estimated amount of the pension. However, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law provides for reduction of long service pension by 70% based on the estimated amount of it for employed recipients of the pension.

Arguments of the parties:

Applicant: The Applicant holds that the Contested Norms do not comply with Article 1, Article 91 and Article 109 of the Constitution of the Republic of Latvia and asks the Court to recognize these norms as null and void as from the moment of adoption. The Legislator, when adopting the contested norms that establish reduction of long service pensions by 10%

for non-employed recipients of long service pension and by 70% for employed recipients of long service pensions has breached these principles. The Contested Norms have been adopted with a view to solve financial problems of the State, to save budget resources, and to balance interests of all beneficiaries of social security.

These norms are also aimed at creating such circumstances that make recipients of long service pension to abandon their jobs. When adopting amendments in the field of social rights, it is necessary to guarantee a certain period for persons to be able to get prepared for the changes. In the case under review, such preparatory period constituted only two weeks. Disregarding the fact that application of the Contested Norms is temporary, consequences caused by them are, in fact, irreversible because it is rather unlikely that the Applicant who has terminated her labour relations will be able to restore them after the expiry of the term of the restriction established in the Law, namely, after 31 December 2012.

According to the Applicant, the Parliament, when establishing restrictions to the fundamental rights of persons, has failed to assess whether the society would gain any benefit when recipients of long service pension would be replaced by other persons. However, the aim of the norms, i.e. saving of budget resources, cannot be reached by means of the Contested Norms if the majority of recipients of long service pension prefer terminating their legal labour relations. The Parliament has neither assessed the fact that a part of recipients of long service pensions would continue working and receive “an envelope salary”, which means that they would not pay taxes and thus reduce incomes into the State budget.

Respondent: It has been indicated in the reply of the Parliament that, when assessing compliance of the Contested Norms with the Constitution, it is necessary to take into account factors related with the economic situation of the State and possibilities of the State budget of Latvia under circumstances when the conditions have considerably reduced. The fall of the GDP in comparable prices was 18% in the first quarter of the year, and 19.6% in the second quarter of the year. The economic recession resulted in a considerable cut of State budget expenses. During the first six months of 2009, the financial deficit of the State consolidated budget reached 449.9 million lats. Therefore the Parliament had to take effective measures to cease economic recession in the State, to preserve a functioning financial system, and balance wishes of the society with the possibilities to implement them. Moreover, under Declaration of 11 March 2009 regarding planned activities of the Cabinet of Ministers, the government had undertaken to achieve reduction of budget deficit. This followed from both liabilities in front of the European Commission and the International Monetary Fund, and from the determination to cease economic recession of the State.

The Parliament indicated that the Law “Amendments to the Law on the State Budget 2009” that came into effect on 1 July 2009 provided for a considerable cut of expenses from the budget of ministries and other central authorities in order to achieve budget consolidation for the amount of 500 million lats. The Contested Norms ensure saving of the basic budget resources and those of the special budget.

It has been maintained in the reply that the Contested Norms do not contradict Article 109 of the Constitution because social rights are of a special and different character. Exercise of these rights depends on the economic situation of each state and resources available thereto. Economic development and employment serve as preconditions for social protection system of the highest level. From 2002 to 2008, when the State was experiencing economic growth and also incomes into the special budget, the amount of old age pensions and long service

pensions has considerably increased. The Parliament argued that the cut of long service pensions should be assessed in the context of economic recession. The restriction included in the Contested Norms was established as a temporary solution. The restriction included in the Contested Norms had a legitimate objective, namely, to protect not only the interests of the special budget but also the constitutional value mentioned in Article 116 of the Constitution, i.e. welfare of other persons, taking into account the duty of the State to ensure State pensions and other social services in the future. This aim could not be reached by other measures at the disposal of the Parliament and the Cabinet of Ministers that would restrict the rights of a person at a lesser extent. The measures selected for reaching the above mentioned objectives were appropriate because the Contested Norms ensured saving of budget resources and balanced interests of all beneficiaries of social security. They should be regarded as proportional and appropriate for reaching the objective because the benefit gained by the society is greater than the detriment caused to the rights of a person.

Answer by the Court to the legal questions and legal reasoning of the Court

The amount of state guaranteed social rights depends on the resources at the disposal of the State. In certain cases, economic crisis can develop to the point when the freedom of action must be granted to the legislator to enable the implementation of remedial measures – even if the latter would infringe the fundamental rights established by the Constitution. In the situation of extremely limited financial resources of the State, the latter has freedom of action to change the conditions for pension disbursement – with the aim of sustaining a just social insurance system. Under the conditions of economic crisis social solidarity means that every citizen assumes a proportional responsibility for eliminating the harsh consequences of the crisis. The measures for combating crisis and restrictions of rights of persons related thereto should comply with certain criteria - they should be carried out on the basis of thorough assessment and principles of a law-governed state should be observed.

Under circumstances of economic recession and crisis, it is necessary to ensure disbursement of State granted long service pensions but, when reducing them, it is necessary to observe the principle of proportionality, which means that the State cannot cease fulfilling liabilities undertaken by it and cause considerably less beneficial situation for a person by thus infringing the trust of a person in receipt of the stipulated long service pension. The Contested Norm is not aimed at changing the social security system. It provides that, during a certain period, i.e. from 1 July 2009 to 31 December 2012, granted long service pensions shall be disbursed at the amount of 90%. The measure established in the Contested Norm, the aim of which is to solve financial problems, is an exception of the long service pension system for military persons established in the State. By failing to disburse long service pension granted according to a certain procedure, the fundamental rights of the Applicant established in the Constitution are infringed.

The Applicant was conferred legitimate trust in receipt of long service pension at a certain amount. The Constitutional Court has already indicated that under circumstances of economic recession or in other extraordinary situation, the principle of legal certainty requires balancing legitimate trust of persons with interests of the society. In this case, observance of the principle of proportionality plays a decisive role. Deduction of 10% is applied to long service pensions of all military persons disregarding the amount of pension and age of these persons. The Constitutional Court has already concluded that reduction of the long service pension does not apply to the right to social security at least at the minimum level. The Contested Norm was adopted with a view to balance incomes and expenses of the State

budget. Economic recession denied the State the possibility to guarantee such amount of long service pension established during the period of economic growth. If no measures were carried out to solve the situation, this would influence the possibility of the State to ensure the right of other persons to receive services of the social security system and thus it would fail to protect welfare of the society. This would contradict the principle of a socially responsible state.

The Contested Norm restricted the rights of the Applicant once conferred to her; moreover, she could count on these rights for an extended period of time. When adopting the Contested Norm, the legislator failed to provide a lenient transition to the new legal regulation, namely, it did not establish a transitional period or elaborated regulation providing compensation to persons. Since no compensation for deductions from pension or any other measures that would be aimed at ensuring of a fair balance between legal interests of the Applicant and those of the society has been established, the Contested Norm is not proportional. Consequently, the Contested Norm does not comply with the principle of proportionality.

The Court held:

1. Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons”, insofar as it applies to persons who have received the age of granting old age pension established in the Law “On State Pensions” does not comply with Article 1 and Article 109 of the Constitution of the Republic of Latvia and shall be regarded as null and void as from the moment of adoption thereof.

2. Accordingly deductions of long service pensions of military persons who have reached the age of granting of old age pension established in the Law “On State Pensions” made under Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons” shall be terminated no later than by 1 June 2010.

3. The Parliament shall be committed to establishing, no later than by 1 June 2010, a procedure for disbursing deductions from long service pensions of military persons who have reached the age of granting of old age pension established in the Law “On State Pensions” made under Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons”.

4. Proceedings regarding compliance of Para 16 and Para 17 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons” with Article 1, Article 91 and Article 109 of the Constitution shall be terminated.

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced. The judgment required further changes in law by the legislator.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

This was one of the maybe less important and less famous cases where the Court declared changes in law introduced to carry out austerity measures unlawful. As one of the pension cases this case served for protection of the pensions system from cuts.

* *The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*

Case No 2009-111-01*

Name of the Court:

Constitutional Court

Parties:

Dace Ābele et al. v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Admissibility issues:

No

Legally relevant factual situation:

The Salary of judges was reduced by 15%. On 16 June 2009 the Parliament adopted the Law “Amendments to the Law “On Judicial Power””, with which the period of time for functioning of the mechanism for calculating the salary with transitional character was extended till the end of 2010. It was established: “*Starting with the day of the Amendments to the Law “On the State Budget for the Year 2009”, adopted in June 2009, till 31 December 2010 the remuneration of judges and judges of Land Register Offices shall be set as 85 % of the remuneration set in accordance with Paragraph 7 and 17 of these Transitional Provisions*” (the contested second sentence of Paragraph 20).

On 1 December 2009 the Parliament adopted the Law “Amendments to the Law “On Judicial Power””, which came into force on 1 January 2010. With these amendments the period of time for functioning of the mechanism for calculating salary envisaged in the second sentence of Paragraph 7 of the Transitional Provisions was extended till the end of 2011 (the contested second sentence of Paragraph 7). It was as well set: “*From 1 January 2010 till 31 December 2011 the amount of the remuneration of judges and judges of Land Register Offices is set in the amount of 73 % of the remuneration, which is set in accordance with Paragraph 7 and 17 of these Transitional Provisions, but without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions in 2009*” (the contested third sentence of Paragraph 20).

Legal questions:

The compatibility of the contested second sentence and the contested third sentence with Article 1, 83 and 107 of the Constitution.

Arguments of the parties:

Applicants: A situation, when officials of public administration, who prepare administrative acts or control their legality, have higher remuneration than judges, who control the work of these officials, indicates that the amount of judges' remuneration is not commensurate. Disproportionate decreasing of judges' salaries also makes this office unattractive for highly qualified lawyers (2.1). Judges are especially affected by changes in remuneration, because they have very few possibilities to find another way of earning money. If a judge's career is temporarily suspended, the office is not preserved and the career of a judge must be built anew. The Applicants indicate that judges were not given sufficient time for adjusting to the decrease of remuneration, i.e., to re-plan their everyday life, which is linked with the satisfaction of their own and their family members' basic needs, and to review the commitments that they had undertaken.

The Applicants emphasize that the contested provisions also violate the principle of legal stability. The amendments to the procedure for calculating the salary set in the Law "On Judicial Power" deprive the Applicants of the opportunity to found their future activities on valid acts of legislation and effectively plan their income and expenditure (para. 2.2).

Under the conditions of a crisis the remuneration must be commensurate with the responsibility, required qualification, dignity of the profession, prestige and the restrictions connected to the office. A situation when the state decreases judges' remuneration to the extent that a judge, who has assumed financial commitments commensurate with remuneration, becomes insolvent or that his independence comes under threat is inadmissible.

The principle of the division of powers demands observing a balance between all three branches of state power, therefore, when deciding upon the financing of the judiciary, several criteria must be abided by. The legislator should have listened to the representatives of the judiciary, assess their arguments, as well as to provide arguments in case the opinion of the representatives of the judiciary is not taken into consideration. In adopting the contested provisions, the legislator did not comply with these criteria; therefore the principle of the division of power has been violated (para. 2.4).

Respondent: The Parliament in its written response indicated that the adoption of the contested provisions was connected with the economic recession, which is not over yet. To compensate for the lack of finances, Latvia took on international loans. In order to obtain and to use them a number of conditions were set for Latvia, including ones applicable to the decrease of remuneration in the institutions financed from the state budget, as well as ensuring proportionality of remuneration in all fields of employment (para. 3).

The Parliament simultaneously indicated that the principle of the independence of courts cannot be linked only with the amount of judges' remuneration set in the legislation. A complex and systemic assessment of compliance with this principle is needed. The independence of the system of courts (the institutional dimension) and the independence of judges (the individual dimension) is said to follow from numerous criteria: absence of direct interference of other powers (executive and legislative) in the administration of justice, sufficient funding to the system of courts for fulfilling its organisational and administrative functions, guaranteed social security and activities to the judges (selection of candidates for the office of judge, irrevocability and immunity of a judge), impartial allocation of cases, the reviewing of the court judgements according to the procedure set out in the legislation, etc.

The Parliament emphasized that at present the remuneration for judges' work is

commensurate with the nature of the job, the skills needed for performing the job and the responsibility, conforms with the requirements and restrictions set in the law, and, moreover, is balanced with the status and the remuneration of other officials of the judicial system, as well as with the general level of salaries in the state. Therefore a breach of Article 107 of the Constitution cannot be identified (para. 3.1). The Parliament further argued that the setting of the remuneration falls within the sphere of social rights, which is inseparably linked with the state's financial possibilities. Therefore the legislator, in regulating the aforementioned legal relationship, has been granted a wide discretion and as strict requirements as with regard to the ensuring of other human rights cannot be set for the legislator (para. 3.2). The Parliament did not agree to the Applicants' opinion that the contested provisions are inconsistent with the principle of legal certainty. The principle of legal certainty is one of the corner-stones of a democratic state; however, it does not prohibit introducing amendments, conforming to certain requirements, to the existing legal regulation (para. 3.3).

Answer by the Court to the legal questions and legal reasoning of the Court:

Several constitutional courts, dealing with the issues linked with judges' remuneration, have noted that the levelling of remuneration in various branches of power should not be set as an aim. The Constitutional Court has already established that there were no grounds to question the legislator's decision to set the Prime Minister's monthly salary as the highest within the public administration. Several laws contain such a restriction. However, at the same time such a restriction has not been applied to the remuneration of the members of the Parliament, as well as to the remuneration of the officials of several independent institutions and state companies. The Constitutional Court already established that this restriction did not ensure a different treatment of judges of different level courts and with different qualifications, i.e., of persons, who are in different circumstances. Such a levelling of remuneration, as well as the mechanical levelling of remuneration in various branches of power, does not have impartial and reasonable grounds. ***Thus, the restriction included in the contested third sentence of Paragraph 20 – i.e., that judges' remuneration may not exceed the Prime Minister's remuneration, which is set in accordance with the Law on the Remuneration of the Officials and Employees of State and Municipal Institutions, - is incompatible with the principles of equality and division of power.***

For judges the right included in Article 107 of the Constitution to receive commensurate remuneration for the work done, assessing it in interconnection with the requirement of independence included in Article 83 of the Constitution, are restricted. To assess the proportionality of the restriction, both the fact that the right included in Article 107 of the Constitution is a social right, and the fact that the requirement to set appropriate (commensurate) remuneration for a judge follows from Article 83 of the Constitution, must be taken into consideration. Thus, the Constitutional Court has to verify, whether the decrease of judges' remuneration can be considered reasonable and fair, i.e., whether the Parliament, in adopting the contested provisions, complied with the restrictions set for the legislator's discretion – whether it has abided by the principles following from the Constitution. The decrease in percentage of judges' remuneration is admissible, if a similar decrease in percentage to the decrease of remuneration for employees in the other branches of power is applied and is calculated, taking as the basis such remuneration for judges, upon which they could lawfully rely. As a result of the decrease in percentage of judges' remuneration the coefficient applied in calculating a judge's salary is lowered from 4.5 to 1.7. Thus, the remuneration for work, upon which judges could lawfully and justifiably rely upon, actually is decreased by 62 percent. ***Thus, the decrease in percentage of judges' remuneration set by***

the contested provisions, even though is temporary, cannot be regarded as proportional and does not comply with the principle of legal certainty.

The Constitutional Court in its Judgement of 18 January 2010 established that also under the conditions of economic recession the financing can be decreased only and solely by abiding by the constitutional principles, including the principle of solidarity. When adopting the contested provisions, which envisage a decrease in percentage of judges' remuneration, neither the legislator, nor the executive power evaluated or substantiated the amount of decrease for each group of employees working in the public sector, nor the treatment of different social groups was compared and evaluated. At the court hearing the representatives of the ministries provided information on the evaluation, which has been performed. Namely, the provided comparison is only information about the results of the decrease in remuneration and only about the average salary. It does not take into consideration the fact indicated in the Judgement of January 18, 2010, that during the recent years prior to adoption of the contested provisions, the remuneration for public sector employees was considerably increased, but the salary of judges, in turn, was frozen for several years. ***Thus the comparison of changes in remuneration noted by the Ministries is not justified. The use of average salary as a criterion is not appropriate either.***

The Constitutional Court already in its Judgement of 18 January 2010 established: “*When deciding upon a decrease of salary, which would meet equality and solidarity criteria, not only the amount of remuneration of concrete persons, but also the scope of work, different functions, requirements and restrictions set for the office in all branches of power – judges, the representatives of the legislative and executive power, as well as independent institutions should be taken into consideration, moreover, the option of giving up certain functions or the possibility of decreasing the number of positions should be considered.*” Solidarity has not been observed in the decrease of salaries, if it applies to all employees of the public sector, but the amount of decrease has not been assessed and substantiated separately for each group working in the public sector. ***The decrease of salaries was not performed solidary.***

The case materials and the information provided at the court hearing show that the legislator was aware of the risks existing in connection with the contested provisions and was informed about the objections of the judiciary, however, did not assess the respective situation – neither the actual conditions, nor the legal arguments. A situation, when the legislator does not treat the risk forecasts, expressed by experts, with sufficient seriousness and does not take timely measures to prevent the risks, is inadmissible in a judicial state. If the risks are not prevented timely, the judicial system can be weakened even to the extent that reviving of its normal functioning would take longer time and require much larger resources. Moreover, doubts can arise, whether the state in general is judicial. ***Thus, by adopting the contested provisions, the legislator did not respect the principle of the division of power.***

In 2009 judges' remuneration was decreased in percentage, moreover, it was applied to judges' monthly salary, which had been frozen already since 2007 and which the Constitutional Court in its Judgement of 18 January 2010 declared incompatible with Article 83 of the Constitution. The Constitutional Court concluded that the total decrease was disproportionately large and that in setting it the principle of legal certainty was violated. With regard to the principles of solidarity and legal certainty the Constitutional Court concluded that in the adoption of the contested provisions the procedure had been violated. ***The legislator has failed to respect the limits of its discretion; the contested total decrease in***

percentage of judges' remuneration is not proportional and is incompatible with Article 107 of the Constitution in interconnection with Article 83 of the Constitution.

The Constitutional Court held:

- 1) To declare the second sentence and the words of the third sentence “from 1 January 2010 till 31 December 2011 judges’ remuneration shall be set in amount of 73% percent of the remuneration of work, which has been set in accordance with Paragraph 7 of these Transitional Provisions” of Article 20 of the Transitional Provisions of the Law “On Judicial Power” compatible with Article 1, 83 and 107 of the Constitution of the Republic of Latvia, if starting with 1 January 2011 the remuneration is set and paid in accordance with Article 119¹ of the Law “On Judicial Power”, i.e., in compliance with Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01.
- 2) To declare the words of the third sentence of Paragraph 20 of the Transitional Provisions of the Law “On Judicial Power” “without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions” incompatible with Article 1 of the Constitution of the Republic of Latvia and invalid from 1 January 2011.
- 3) To close proceedings in the part regarding the compatibility of the second sentence of Paragraph 7 of the Transitional Provisions of the Law “On Judicial Power” with Article 1, 83 and 107 of the Constitution of the Republic of Latvia.

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced. The Court declared the Contested Norms void starting with 1 January 2011, therefore, the legislator had time to adapt.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

The Court declared the cuts to the wages of the judges unlawful. This had broader implications because one of the demands of the international lenders was to create a united wage system in the public sector and the way it was done was to put all positions in a wage system with the Prime Minister at the top. This judgment had implications on the possibility to incorporate the judges within this system.

* *The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*

Case No 2010-21-01*

Name of the Court:

Constitutional Court of the Republic of Latvia

Parties:

Eduards Ikvilds v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Legally relevant factual situation:

On 29 April 2009, the Parliament adopted the Law “Amendments to the Law on State Funded Pensions” that came into force on 1 May 2009. The above mentioned Law provided the following wording of Section 4 (2) of the Funded Pension Law:

“The contribution rate in the funded pension scheme shall be six per cent of the contribution object specified in the Law on State Social Insurance”.

Para 2 of Transitional Provisions of the Law acquired the following wording:

“The rate determined in Section 4, Paragraph two of this Law shall come into force on 1 January 2012.”

Para 3 (4) of Transitional Provisions now has the following wording:

“as of 1 May 2009 2 per cent of the contribution object determined in law. The rate shall be applied to contributions which are registered from 1 May 2009 in the account of a participant of a funded pension scheme, except adjusted contributions for the time period until 31 December 2008”

Moreover, Para 3 of Transitional Provisions was supplemented by indent 5 with the following wording:

“as of 1 January 2011 not less than 4 per cent of the contribution object determined in law.”

The summoned person, the Cabinet of Ministers, informed that in the Memorandum of Understanding signed on 18 December 2008 and addressed to the International Monetary Fund (hereinafter – the IMF), readiness to implement short-term and long-term measures in order to receive international loan and thus to stabilize the national economy has been expressed. The Memorandum of Understanding also included determination to restrict budget expenses up to the amount of 40 percent of the Gross Domestic Product (GDP). However, in July 2009, the GDP continued to drop; therefore it was evident that the established fiscal deficit would not be achieved. Consequently, receipt of the loan was threatened. The Cabinet of Ministers emphasizes that the IMF will grant another loan only if determinations expressed in the Memorandum of Understanding are implemented. In order to prevent failure by the State to fulfil liabilities, the Memorandum of Understanding dated with 27 July 2009 was prepared and the Latvia’s Economic Stabilization and Growth Revival Programme was also supplemented. The above mentioned Memorandum of Understanding included a determination to elaborate, before 1 July 2010, pension reform in order to ensure sustainability of the three levels of the pension system. International creditors have not

stipulated reducing the contribution rate of the State funded pension scheme. The Cabinet of Ministers emphasizes that, when discussing the terms of the international loan and considering the plan for reducing budget deficit, no substantial cut of funding for the social field has been planned.

Legal questions:

The compliance of the Contested Norms with the principle of legitimate expectations that follows from Article 1 of the Constitution. Likewise, the Applicant asks to assess compliance of the Contested Norms with the principle of a socially responsible State that follows from the body of social rights guaranteed in the Constitution, as well as compliance with the property right enshrined in Article 105 of the Constitution and the right to social security established in Article 109 of the Constitution.

Arguments of the parties

Applicant: The Applicant indicates that, pursuant to case-law of the Constitutional Court, the right to disbursement of pension irrespective of the source of funding pertains to the content of Article 105 of the Constitution. The right to social security, however, has been infringed by the fact that the State has amended, without any legitimate aim, the legal regulatory framework that concretizes the fundamental rights established in Article 109 of the Constitution; the legislator has also breached principles of a law-governed State – the principle of legitimate expectations, the principle of proportionality, and that of a socially responsible State.

When adopting amendments to the Funded Pension Law, the legislator has failed to establish any transitional period for persons to be able to adapt to the new regulatory framework; neither has it established any compensation mechanism. Consequently, according to the Applicant, the Parliament, when adopting the Contested Norms, has breached the principle of legitimate expectations.

The Applicant holds that the ill-considered procedure of adoption of the Contested Norms shows that the aim of these norms is covering of the State budget deficit rather than balancing of incomes and expenses of the State social insurance special budget (hereinafter – social budget). Consequently, the Contested Norms do not have any legitimate objective. The aim put forth by the legislator, which is balancing of social budget, cannot be reached by means of the Contested Norms. The Parliament has failed to make an exhaustive assessment of financial benefit for social budget and consequences caused by the Contested Norms to persons who would use their right to retire. When adopting the Contested Norms, the legislator has not analysed and considered measures to be applied in order to ensure sustainability of social budget. Absence of such measures and unwillingness to elaborate and implement them proves that existence of social budget is endangered. Measures selected by the legislator cannot be regarded as proportional because social impact of the Contested Norms has not been assessed when adopting them.

Respondent:

The Parliament indicates that, in 2009, the State economic situation has deteriorated, unemployment rate has increased, and incomes of the inhabitants and those of the social budget have reduced. Under such circumstances, it was necessary to take immediate

measures to solve the situation because the financial reserve accumulated in the social budget as on 1 January 2009 was 951.1 million lats, whilst it was prognosticated that the reserve would reduce to 383.1 million lats by the end of 2010. By reducing contribution rate into the funded pension scheme, it was prognosticated that incomes into the social budget would increase.

The Parliament holds that the shift of the contribution rate from ten to six percent constitutes an optimal distribution between the first and the second pension system level and ensures that the pension system could operate in a long term. The aim of the Contested Norms is to optimize provision of social insurance services by ensuring the ability of the social budget to operate in the long term provided that it is necessary to balance incomes and expenses of the social budget. Consequently, the Contested Norms have a legitimate aim, namely, to ensure sustainable operation of the State social insurance system by reaching the aim enshrined in Article 116 of the Constitution, i.e. welfare of the society.

According to the Parliament, the Contested Norms are the most lenient solution available because, by reducing the contribution rate in the second level of pension system and thus increasing the contribution rate in the first level of the system, the amount of first level pension is, in fact, increased. Thus the hypothetical restriction established by the Contested Norms is lower than the benefit gained by the society from balancing of incomes and expenses of the social budget.

Answer by the Court to the legal questions and legal reasoning of the Court:

The special character of social rights also determines the limits of control executed by the judicial power in this field. Criteria that should be applied when assessing compliance of a legal norm with the right to social security may differ depending on the fact whether the particular norm restricts the rights conferred to the person or obliges the State to implement its positive duty. When adopting the Contested Norms, the legislator had not only changed the contribution rate to be paid into the funded pension scheme, but also extended the term of introduction of the funded pension scheme. The Contested Norms taken as a common regulatory framework have an impact on the scope and content of each norm because, if taken together, they regulate the development of the funded pension scheme. Consequently, the Constitutional Court, when assessing compliance of the Contested Norms with a legal norm of a higher legal status, shall assess them as a single regulatory framework.

When adopting the Contested Norms, the legislator has not restricted the right of a person to social security in old age because the right of participants of the funded pension scheme to disbursement of a pension are preserved irrespective of the pension level, to which a person has made contributions. By means of the Contested Norms, allocation of social insurance contributions is changed between the first and the second pension level.

The Constitutional Court has already indicated that the principle of legitimate expectations does not exclude the right of the State to amend the existing regulatory framework. An opposite approach would lead to inability of the State to react to changing living circumstances. The principle of legitimate expectations requires that the State, when amending the normative regulatory framework, would observe a reasonable balance between trust of a person and those interests, in favour of which the regulatory framework is being amended.

Balancing of the special budget of social insurance shall be regarded as the grounds for guaranteeing sustainability of the budget and confidence into the fact that the right of the following generations to social security would be realized. The duty of the State to form a sustainable and balanced policy to ensure welfare of the society follows from the principle of a socially responsible state. The State has to coordinate not only the rights of a person in the social field but also the necessity to ensure welfare of the entire society with its economic possibility, as well as to elaborate such a regulatory framework that would be aimed at sustainable development of the State. The legislator, when introducing amendments into the funded pension scheme, has to elaborate such legal regulatory framework that would be aimed at sustainable development of the funded pension scheme. When Adopting Para 3 (5) of the Transitional Provisions, the legislator established that, as from 1 January 2011, the contribution rate into the funded pension scheme shall be no less than four percent. Consequently, the legislator has established a procedure, according to which operation of the funded pension scheme would be facilitated. Namely, in the Transitional Provisions, the legislator has established a mechanism for balancing contributions between the first and the second pension level for persons to be able to accumulate pension capital. Consequently, reduction of the contribution rate into the funded pension scheme is possible if the meaning and aim of creating this scheme is not threatened, and the gradual increase of contribution rate in accordance with economic possibilities of the State, as established in the Transitional Provisions, is observed. When comparing significance of interests of the Applicant and those of the entire society, it can be concluded that, in the case under review, the Contested Norms compensate the fact that the rights of persons, implementation of which could be counted upon, were restricted. Consequently, the Contested Norms do not infringe the principle of legitimate expectations, and therefore they comply with Article 1 and Article 109 of the Constitution.

The Court held: Article 4(2) of the Law on State Funded Pensions and Para 2 (3), (4) and (5) of Transitional Provisions thereof taken as a single regulatory framework comply with Article 1, Article 105 and Article 109 of the Constitution of the Republic of Latvia.

Legal effects of the judgment/decision

The operative part of the judgment becomes a law once announced.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

Since the Court did not declare the changes in law unlawful, the contribution system was temporarily changed. This was one of the cases where the Court considered temporary austerity measures affecting the social security system to be lawful.

** The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*

Case No 2010-60-01*

Name of the Court:

Constitutional Court

Parties:

20 MPs (*Valērijs Agešins et al.*) v *The Parliament*

Type of action/procedure:

Abstract constitutional control (Article 85 Constitution and Articles 16(1), 17(1)(3) and 28.¹ Constitutional Court Law)

Legal questions:

Whether the Contested Norms comply with the principle of proportionality, the principle of legitimate expectations, the principle of good administration and that of an independent state (Article 1 Constitution) and the right to property (Article 105 Constitution).

Legally relevant factual situation:

On 19 February 2009, 29 October 2009 and 1 April 2010, amendments to the Credit Institutions Law came into force. A regulatory framework regarding transition of credit institution undertaking to ownership or use of another person (hereinafter – transition of a credit institution undertaking) was introduced. The aim of this regulatory framework is to include those norms into the Credit Institutions Law that would regulate transition of a failing credit institution undertaking according to the procedure compliant to its work specificity. The Contested Norm provides:

“Article 59.²

(1) Transition to ownership or use of a another person (hereinafter – transition of a credit institution undertaking) of a credit institution undertaking or a part thereof, including affiliates, body of divisible property or body of standard contracts concluded with clients of the credit institution (hereinafter – credit institution undertaking) shall require permission of the Financial and Capital Market Commission. To receive the permission, the credit institution shall submit to the Financial and Capital Market Commission a proposal to transfer the credit institution, assessment of value of assets and liabilities pertaining to the credit institution undertaking under circumstances of a functioning market attached thereto and performed, 30 days prior to submission of the proposal, by a person that is not included into the list of auditors of property investments. Such transition of a credit institution undertaking that not been granted permission of the Financial and Capital Market Commission shall be regarded as null and void.

(11) The provision of Section 20 (1) of the Commercial Law regarding joint responsibility of person transferring or obtaining the undertaking shall not be applicable to transition of financial service agreements of a credit institution undertaking.

(2) For transition of a credit institution undertaking after receipt of permission of the Financial and Capital Market Commission, it is not necessary to obtain

permission of creditors of a credit institution involved in transfer of a credit institution undertaking and other persons, including permission regarding validity of liabilities of the credit institution undertaking or a part thereof between these persons and obtainer of the credit institution undertaking, as well as permission regarding existence of related liabilities at the moment of transfer of the credit institution undertaking unless the proposal of transfer of a credit institution undertaking establishes otherwise.

(21) In case of transfer of a credit institution undertaking, provision of information to obtainer of the credit institution undertaking on creditors, debtors of the credit institutions and other persons, whose agreements pertain to the transferable credit institution or a part thereof shall not be regarded as non-observance of requirements of law.

(3) Transfer of a credit institution undertaking in respect to property of the credit institution located outside the territory of the Republic of Latvia shall be valid disregarding any other national law applicable to such property or certain articles, rights or liabilities thereof.

(4) Appeal against an administrative act issued by the Financial and Capital Market Committee regarding permission for the transfer of a credit institution undertaking shall not suspend its execution.

Article 593

(1) If pursuant to Section 111 (1) indent 6 of this Law, the Financial and Capital Market Committee has appointed an attorney who has been granted the authority referred to in Section 117 (1) indent 3 of this law, the attorney shall decide on submission of the proposal regarding transfer of a credit institution undertaking to the Financial and Capital Market Commission. The provision of Section 20 (1) of the Commercial Law regarding joint responsibility of the transferor and the obtained of the undertaking shall not be applicable to the obtainer of a credit institution undertaking. In case of such transition, the Financial and Capital Market Commission shall permit executing transfer of a credit institution undertaking provided that the transaction is performed in the interest of security and stability of credit institutions sector or that of credit institution depositors, and Provisions of Section 170 of the Commercial Law regarding bringing an action in favour of the society is not applied to such transfer.

(2) Transfer of a credit institution undertaking based on a decision of the attorney appointed by the Financial and Capital Market Commission shall not be regarded as null and void.

Article 594

(1) A decision regarding transfer of a credit institution undertaking in the frameworks of the procedure of liquidation of the credit institution shall be adopted by the liquidator.

(2) A decision regarding transfer of a credit institution undertaking in the frameworks of the procedure of liquidation of the credit institution shall be adopted by the administrator, and the provision of Section 20 (1) of the Commercial Law regarding joint responsibility of the transferor and the obtained of the undertaking shall not be applicable to the obtainer of a credit institution undertaking.

Article 117

(4) The attorney shall have the right to the following to execute his or her duties:

1) to issue binding orders to all structural units and employees of the credit

institution;

2) not to observe restrictions established in articles of associations, bylaws and regulations of the credit institution (in policy, procedure descriptions and other functioning instruments);

3) to submit a proposal to the Financial and Capital Market Commission regarding transfer of a credit institution undertaking, to perform expropriation or transfer of property, tangible or intangible property, agreements and liabilities of the credit institution, provided that the purpose of the above mentioned actions is to ensure repayment of investments made into the credit institution;

4) on behalf of the credit institution administration, to draw and confirm financial accounts of the credit institution.

Article 173

(4) Transition of the credit institution undertaking performed based Section 593 or the second pa of Article 54(9) of this Law cannot be regarded as null and void.

Article 185

1) The basic purpose of the bankruptcy procedure is to gain maximum income from sale of assets and property of the credit institution by thus ensuring utter satisfaction of claims of creditors.

(11) The purpose of this section can be reached by the administrator by performing transfer of a credit institution undertaking pursuant to the procedure established in the present Law.”

Arguments of the parties:

Applicants: The norms regulating legal status of the credit institution undertaking transfer institution and characteristic features of application thereof fail to comply with norms of the Constitution. The Applicants indicated that the Contested Norms have been adopted in haste; therefore the consequences were not properly assessed. The sole aim of the norms was to give an opportunity to the credit institution to avoid fulfilment of a part of its liabilities and avoid the principle *pacta sunt servanda*. Haste and insufficient involvement of experts has prevented the legislator to properly assess alternative solutions and establish a more lenient transition to the new regulatory framework.

By introducing the institution of transfer of a credit institution undertaking, the legislator has taken over the terms “undertaking” and “transfer”; however, it has conferred the terms another content that differs from the one mentioned in the Commercial Law. Neither has the legislator applied the principle of joint responsibility to this transfer period. Introduction of such regulatory framework that can be applied only to the process of transfer of a credit institution undertaking contradicts Article 1 of the Constitution because all share owners, creditors and clients of credit institutions had reasonable ground to trust the fact that, in a democratic state, the general legal principles would be applied when introducing a new regulatory framework.

In the norms of Article 593(2) and Article 173(4) of the Credit Institutions Law, the irreversible character of the administrative decision has been enshrined. The above mentioned norms do not provide a possibility either to appeal or contest the decision adopted by the attorney. Such procedure fails to comply with Article 92 of the Constitution because persons have no possibility to defend their rights and legal interests by applying effective legal remedies. The Applicants hold that the Contested Norms do not provide the possibility for shareholders or creditors of the credit institution to participate in preparatory and decision-

making process of the transfer of the credit institution. The Contested Norms provide a possibility, by implementing transfer of a credit institution undertaking in a procedure of one or several stages, to reduce the actual value of assets and cause losses to persons. According to the Applicant, the Contested Norms fail to establish clear criteria for inclusion of assets and liabilities into a credit institution undertaking.

Respondent (the Parliament): By means of transfer of a credit institution undertaking, it is possible, by transferring liabilities of one bank towards depositors to another bank, to timely prevent a payment crisis in respect of the above mentioned depositors in a short term, to preserve a positive balance of payments in the long term, as well as to facilitate development and stability of financial and capital markets. Consequently, the restriction included in the Contested Norms does have a legitimate aim – protection of the rights of other persons and assurance of welfare of the society.

The Parliament indicated that, when assessing the restriction of the property right of shareholders, it is necessary to take into account the fact that usually shareholders themselves and their attorneys (for instance, board or council) would adopt a decision regarding application of the Contested Norms. Consequently, in many cases no rights would be restricted because the decision is taken by the owners themselves. The Contested Norms permit restructuring of a credit institution without prohibiting shareholders to implement their rights following from shares owned by them. Reduction in value or failure to regain their property (for instance, shares or sold capital) follows from the fact that the credit institution has certain financial difficulties. Although the law does not confer creditors the right to appeal or interfere with receipt of permission to execute transfer of a credit institution undertaking, the Parliament still holds that it neither deprives persons of the right to address the court according to a claim procedure and ask assurance or recovery of losses in case their legal interests are threatened and liabilities are not performed. Consequently, the Contested Norms do not contradict Article 92 of the Constitution. The Parliament rejected the argument of the Applicant regarding non-compliance of the Contested Norms with the principle of legitimate expectations. Article 1 of the Constitution does not prohibit the legislator to introduce a new legal regulatory framework and the institution to apply it to new legal relations in order to ensure adoption of decisions substantial for welfare of the society.

Answer by the Court to the legal questions and legal reasoning of the Court:

Article 16 of the Constitutional Court Law provides that the Constitutional Court shall adjudicate matters on compliance of other regulatory enactments or parts thereof with the norms (acts) of a higher legal force. Assessment of mutual conflicts between norms of equal legal force does not fall within jurisdiction of the Court. Consequently, the argumentation of the Applicants regarding non-compliance of the Contested Norms with the Commercial Law or the Civil Law does not need to be assessed. In the frameworks of the present case, the Constitutional Court assessed the compliance of the Contested Norms with legal norms of a higher force only, namely, with norms of the Constitution.

The transitional regulatory framework of the Credit Institutions Law was introduced on 19 February 2009 and amended on 29 October 2010. During adoption and coming into force of the Contested Norms, no credit institution undertakings were in the transfer process. Likewise, none of the creditors exercised the right to claim, based on the second sentence of Section 20 (1) of the Commercial Law, in respect to a credit institution undertaking that would have already been overtaken. Consequently, the Contested Norms are not appropriate

for such transfer of credit institution undertaking that would have taken place or initiated based on Section 20 of the Commercial Law. The new regulatory framework permits deviating from joint responsibility regulated in the Commercial Law and other rights of creditors before a credit institution undertaking is transferred. Persons had legitimate trust into an anticipated right rather than an already acquired one. Such expectations have to be protected; however, the extent of protection is less than the one in case the right would have already been acquired, namely, in case the transfer of a credit institution undertaking would have already been executed.

A transitional period was established for introduction of the Contested Norms. However, at the time of their adoption, no transfer of a credit institution undertaking took place, neither the conditions for exercise of the right to claim of creditors had set in as a result of transfer of a credit institution undertaking. ***Consequently, the legislator did not have the necessity to establish a transitional period for persons to be able to get adapted to the new situation.***

The Contested Norm constitutes no infringement of the principle of legitimate expectations and therefore complies with Article 1 of the Constitution.

It has been erroneously stated in the application that the Contested Norms provide a prohibition to appeal against the administrative act adopted by the Commission in case of transfer of a credit institution undertaking is not executed in accordance with law. Norms included into the contested law regulate general issues of transfer of a credit institution undertaking, including the issue regarding appeal against an administrative act adopted by the Commission, namely, permission to transfer a credit institution undertaking by only establishing that appeal against the administrative act shall not suspend execution thereof. However, in such cases, the administrative act issued by the Commission shall be appealed against pursuant to the provisions of Article 59.²(4) of the Credit Institutions Law. The regulatory framework included into the Credit Institutions Law provides a possibility to appeal against the administrative act, by means of which the Commission would permit transfer of a credit institution undertaking. ***Consequently, the Contested Norms do not cause infringement of the principle of good administration.***

Possible reduction of property value of shareholders or creditors of subordinate liabilities follows from the fact that a credit institution undergoes financial difficulties, and the likelihood of loss of all invested resources is directly related with commercial risk. However, the State does not guarantee the right of a person involved in a risky business activity to be protected from commercial risk. This principle is reflected in Article 195 of the Credit Institutions Law, according to which claims of shareholders of a failing credit institution are satisfied the last. Consequently, the State is not committed to undertake responsibility for such relationship.

The Contested Norms do not provide for denial of property right without compensation or deprivation of any guaranteed income from any category of persons subject to law referred to in the application. The Constitutional Court has already concluded that reduction of property of shareholders and creditors of subordinate liabilities follows from the fact that a credit institution undergoes financial difficulties. Consequently, ***it is not possible to establish a causal relationship between the Contested Norms and possible negative property consequences of an individual. Consequently, the Contested Norms do not restrict the property right and do not contradict Article 105 of the Constitution.***

The Contested Norms prohibit recognizing a transaction as null and void. Namely, they prohibit the right to a certain legal remedy, namely, restoration of legal status of a concerned person by litigation by means of recognizing a transaction as null and void. *Consequently, the Contested Norms restrict the right of persons to a fair court. The restriction does have a legitimate aim, i.e. finitude of transfer of a failing credit institution undertaking, which protects rights of other persons and welfare of the society. The measure selected by the State is appropriate for reaching the legitimate aim, which is protection of the rights of other persons and assurance of welfare of the society. The Constitutional Court agrees that finitude of transfer of a credit institution cannot be assured by applying an alternative solution, it being equally effective and permitting reaching of the legitimate aim at the same quality.*

The Court held:

1) proceedings in respect to compliance of Article 59.²(3) of the Credit Institutions Law with Article 1 of the Constitution of the Republic of Latvia regarding the principle of an independent democratic state shall be terminated;

2) proceedings in respect to compliance of Article 59.², 59.³, 59.⁴, Article 117(4)(3), Article 173(4) and Article 185(1) Prim of the Credit Institutions Law with Article 91 of the Constitution of the Republic of Latvia shall be terminated;

3) Articles 59.², 59.³, 59.⁴, Article 117(4) indent 3, Article 173(4) and Article 185(1) Prim of the Credit Institutions Law do comply with Article 1, Article 90, Article 92 and Article 105 of the Constitution of the Republic of Latvia.

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law one announced.

Shortly describe the main outcome of the judgment/decision and its broader political implications.

In general this case dealt with the formalization of the procedure on how to take over banks in case of crisis. When the Government overtook the Parex Bank, no clear procedure existed on how to do that and therefore the legislator amended the laws accordingly for future situations.

* *The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*