



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

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## I POLITICAL CONTEXT

### POLITICAL CHANGE

#### I.1

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

Since the independence of Malta in 1964, two parties have dominated the political system: The Christian Democratic Nationalist Party and the Labour Party. Malta was governed between 2004 and 2013 by the Nationalist Party under Prime Minister Lawrence Gonzi and since 2013 by the Labour Party under Prime Minister Joseph Muscat. Malta has joined the EU on 1 May 2004 and the Eurozone on 1 January 2008.

The Maltese government under the guidance of Lawrence Gonzi (Nationalist Party) lost its one-vote majority at the end of 2012, when a dissenting Member of Parliament did not want to vote for the budget bill. This was not directly related to Eurocrisis measures, but to reforms in the transport sector. Government wanted to confer the management of Malta's bus service to a German company, a decision this MP did not agree with.<sup>1</sup> Thereupon, Prime Minister Gonzi announced the dissolution of the House of Representatives on 7 January 2013 and new elections took place on 9 March 2013. The elections were won by the Labour Party which received 39 seats in the Maltese Parliament, while the Nationalist Party got 30. No other party received enough votes to enter Parliament. The election period is five years.

Malta's political discussion was – amongst others – dominated by the state aid to Air Malta which is a state owned airline.<sup>2</sup> In 2013, the government (Labour Party) plans to rescue the national energy company 'Enemalta' by allowing a Chinese electricity producer (owned by the Chinese state) to become a minority shareholder.<sup>3</sup> This plan is also criticised by referring to the argument that Malta would lose its energy sovereignty.<sup>4</sup> On 12 November 2013 Malta has adopted an amendment of the 'Maltese Citizenship Act' which allows individuals to

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<sup>1</sup> See the report 'Malta government falls after PM Gonzi loses majority' in BBC, 10 December 2012, <http://www.bbc.co.uk/news/world-europe-20672774>; see also the report 'Government collapses as budget rejected' in The Malta Independent, 10 December 2012, <http://www.independent.com.mt/articles/2012-12-10/news/government-collapses-as-budget-rejected-519012353/?archive=20121210000000>

<sup>2</sup> See for example the report 'Air Malta halves operating losses, annual losses down to €30.9 million' in Malta Today, 30 October 2013, <http://www.maltatoday.com.mt/en/businessdetails/business/businessnews/Air-Malta-halves-operating-losses-annual-losses-down-to-30-9-million-20131030>

<sup>3</sup> See the report 'Malta secures China cash injection deal for Enemalta' in Malta Today, 11 September 2013, <http://www.maltatoday.com.mt/en/newsdetails/news/national/New-Chinese-agreement-to-see-direct-cash-injection-in-Enemalta-20130910>

<sup>4</sup> See the report 'Government selling energy sovereignty – Busuttil', in Malta Today, 16 September 2013, <http://www.maltatoday.com.mt/en/newsdetails/news/national/Government-selling-energy-sovereignty-Busuttil-20130916>

receive the Maltese citizenship under a special 'individual investor programme'.<sup>5</sup> It seems as if Malta tries to generate money by selling Maltese citizenship, whereas international criticism seems to be stronger than at the national level.<sup>6</sup>

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<sup>5</sup> See the 'Maltese Citizenship (Amendment) Act' (Act XV of 2013) which entered into force on 15 November 2013, <http://www.parlament.mt/file.aspx?f=44746>

<sup>6</sup> See the report 'Widespread criticism of Malta's citizenship sale' in Times of Malta, 14 November 2013, <http://www.timesofmalta.com/articles/view/20131114/local/Widespread-criticism-of-Malta-s-citizenship-sale.494583>

## II CHANGES TO THE BUDGETARY PROCESS

### BUDGETARY PROCESS

#### II.1

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

The Maltese Constitution contains several provisions concerning the budgetary process in its articles 102 to 108. The Finance Minister of Malta has to present estimates of the revenues and expenditure of Malta in front of the Parliament. He has to present them in the actual year, before or not later than 30 days after the commencement of each financial year. Parliament has to adopt the revenues and expenditures in an appropriation bill. Therefore, the usual parliamentary procedure is used, which contains three reading stages, including a commission stage as part of the second reading and the report stage. The law is published as a 'Budget Measures Implementation Act'.

The Constitution also contains the obligation to create an Auditor General who shall be an officer of the House of Representatives. He has the competence to audit all accounts annually.

### GENERAL CHANGE

#### II.2

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

No information known. A new Fiscal Responsibility Act has been announced, but there has been no proposal yet (see question IX.4).

### INSTITUTIONAL CHANGE

#### II.3

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

No information known.

### CHANGE OF TIME-LINE

#### II.4

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

No information known.

## MISCELLANEOUS

*II.5*

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

Not applicable.

### III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

#### NATURE NATIONAL INSTRUMENTS

##### III.1

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

Euro-crisis instruments are adopted by ordinary legislation. The only exception is the approval of the amendment of Article 136 (3) TFEU which is based on an order of the Prime Minister and is classified as subsidiary legislation (see question V.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, but see question VII.2 on a proposal to write a new fiscal clause into the Constitution.

#### CONSTITUTIONAL CONTEXT

##### III.3

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

No such rules exist in the Constitution of Malta.

#### PURPOSE CONSTITUTIONAL AMENDMENT

##### III.4

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

Not applicable.

#### RELATIONSHIP WITH EU LAW

##### III.5

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

Not applicable.

## ORGANIC LAW

III.6

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

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?*

There was no specific discussion about the appropriate legal framework for Euro-crisis law. However, the attempt of the government to adopt the Fiscal Compact by an order of the Prime Minister was not accepted by Parliament. This is why the government decided to ratify the Fiscal Compact by the ordinary legislative procedure to adopt statutory law. The discussion shows that Parliament is eager to be adequately involved in the ratification procedure.

## MISCELLANEOUS

III.9

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

Not applicable.

## IV. EARLY EMERGENCY FUNDING

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

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

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

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

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

## NEGOTIATION

IV.1:

*WHAT POLITICAL/LEGAL DIFFICULTIES DID MALTA 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?*

No discussion in the negotiation of the EFSF known.

## 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 MALTA AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?*

The Maltese Parliament passed an Act of Parliament, named 'Participation and Guarantees under the European Financial Stability Facility Act' (Act XIV of 2010; Chapter 505<sup>7</sup>), after a very fast parliamentary procedure<sup>8</sup> on 14 July 2010 by unanimous vote. The Act entered into

<sup>7</sup> <http://www.parlament.mt/file.aspx?f=23395>

<sup>8</sup> See the overview under <http://www.parlament.mt/billdetails?bid=55&legcat=7>



force on 3 August 2010. The Act refers directly to the EFSF Framework Agreement by guaranteeing every financial instrument or financial arrangement of the EFSF up to a sum of Euro 398.44 million. This sum was increased by Bill 86 of 2011<sup>9</sup> (which became the ‘Participation and Guarantees under the European Financial Stability Facility and the Government Borrowing and the Granting of Loans to the Hellenic Republic (Amendment) Act (Part 1 & Part 2)’ or Act XVIII of 2011<sup>10</sup>) to Euro 704.33 million, passed by the House of Representatives on 10 October 2011 by unanimous vote. The procedure at the House of Representatives comprises five stages (three readings by the House, one Committee stage and one Report Stage<sup>11</sup>) and the parliamentary procedure is completed by the assent of the President of Malta. The commencement of an act depends on the publication of the act in the Public Gazette. Act XVIII of 2011 entered into force on 18 October 2011.

## GUARANTEES

### IV.3

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

The Maltese Parliament has authorized the government to issue Guarantees to the EFSF in the ‘Participation and Guarantees under the European Financial Stability Facility Act’ (see question IV.2). There is no additional parliamentary procedure. Malta issues a guarantee of Euro 704 million for the EFSF. The guarantee contains the obligation that the Minister for Finance, on behalf of the Maltese government, signs the payment and the money comes from the Maltese treasury. There will be no payment via bank guarantee, but via government guarantee. Malta’s statistics on the public debt contain an “EFSF Credit Line Facility” with a debt of Euro 4.5 million.<sup>12</sup>

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<sup>9</sup> <http://www.parlament.mt/file.aspx?f=23614>

<sup>10</sup> <http://www.parlament.mt/file.aspx?f=23426>

<sup>11</sup> See for an overview of the significance of the respective stages David Joseph Attard, *The Maltese Legal System*, Volume I, 2012, p. 54-55

<sup>12</sup> Budget Speech 2013 by the Minister for Finance Tonio Fenech, 28 November 2012, p. 11, [http://www.finance.gov.mt/image.aspx?site=MFIN&ref=2013\\_Budget\\_Speech\\_EN](http://www.finance.gov.mt/image.aspx?site=MFIN&ref=2013_Budget_Speech_EN)

## ACTIVATION PROBLEMS

### IV.4

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

During the reading of the original EFSF-Act, there was no in-depth discussion in Parliament. Since the Maltese government, led by Prime Minister Lawrence Gonzi and his Nationalist Party, did not have much time to adopt the law, parliament supported this by a very speedy adoption procedure.

Discussions took place during the parliamentary procedure of the amendment bill ('Participation and Guarantees under the European Financial Stability Facility (Amendment) Bill') (see question IV.2). The leader of the opposition, Joseph Muscat (Labour Party), criticised during the second reading in the plenary session on 5 October 2011, that the government has not given enough information about the on-going euro-crisis and the rescue mechanism.<sup>13</sup> He criticised that the "old" countries did not have to fulfil such strict obligations like the new countries. In particular in the case of Greece, the slack control was mentioned and the fact that German and French banks were engaged in Greece which is seen as having generated efficient control. In addition, the big Member States France and Germany had infringed the Maastricht criteria without any consequences. Another point of criticism, mentioned by Joseph Muscat (Labour Party), was the fact, that the European governments do not have any plan for economic growth, which is seen as the sole possibility to stop the negative development in crisis countries.<sup>14</sup> Helena Dalli, member of the Labour Party, confirmed this point of view and emphasised that all austerity measures had negative effects on the citizens of those countries, which had received financial support and had been obliged to pass certain austerity measures, in particular Greece.<sup>15</sup>

An important point of discussion raised during the Committee Stage concerned the procedure for the enactment of the first EFSF-Act. The records of the parliament did not contain the original agreement between the Member States concerning the EFSF, which was seen by Alfred Sant (Labour Party) as a fundamental procedural failure and which would make the law void.<sup>16</sup> The amendment bill refers to the original Maltese EFSF-Act and Alfred

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<sup>13</sup> Transcript of Sitting 389 of the Plenary Session of the House of Representatives on 5 October 2011, p. 509 et seq., <http://www.parlament.mt/file.aspx?f=20585>

<sup>14</sup> Transcript of Sitting 389 of the Plenary Session of the House of Representatives on 5 October 2011, p. 509 et seq., <http://www.parlament.mt/file.aspx?f=20585>

<sup>15</sup> Transcript of Sitting 389 of the Plenary Session of the House of Representatives on 5 October 2011, p. 520 et seq., <http://www.parlament.mt/file.aspx?f=20585>

<sup>16</sup> Transcript of Sitting 389 of the Plenary Session of the House of Representatives on 5 October 2011, p. 536 et seq., <http://www.parlament.mt/file.aspx?f=20585>

Sant was not of the opinion that such a reference is permissible if the original EFSF-Act is not valid. However, the parliamentary notes about the respective debate about the original Maltese EFSF-Act contain indications that the agreement was put on the table of the House of Representatives. Since Alfred Sant was not convinced of these indications, he demanded a ruling of the chairman of the House of Representatives. The chairman has this competence as part of the parliamentary procedure and he can interpret the Standing Orders of the House of Representatives. However, these rulings do not have the force of law, but members of the House of Representatives must obey them.<sup>17</sup> In this case, the ruling contained the reasoning that the House of Representatives should continue with the parliamentary procedure because the question whether a law is void or not can only be answered by the Maltese courts.<sup>18</sup> However, the ruling could not end the discussion and the House of Representatives adjourned the discussion onto the next sitting five days later. The discussion about the parliamentary procedure, which continued on 10 October 2010, led to the question, which procedural step the House of Representatives was making (Ratification or Implementation of the amended EFSF-agreement). It was not clear which of these steps parliament was discussing. Alfred Sant demanded a further ruling by the chairman and the ruling made it clear that a Parliamentary Act which authorizes the Government to borrow, lend and provide guarantees is an implementation act which implicitly contains the ratification of the EFSF-agreement. It is not necessary to pass two separate laws for these legally distinguishable steps.<sup>19</sup>

Furthermore, the government was criticised for not giving sufficient information to the Parliament and to enter into obligations without prior discussion in Parliament. The opposition (Labour Party) had demanded that the government should explain in more detail how the specific rescue mechanisms work and what was the position of the government in the Council of the European Union. However, government gave detailed information only some hours before the discussion in parliament began, which made an adequate preparation for the opposition (Labour Party) nearly impossible. In general, many members of the Labour Party criticised that the discussion does not face reality very much, on the national as well as on the European level. Based on this need to face reality, opposition in parliament (Labour Party) emphasised that budgetary sovereignty will not be the same as it is today. The countries lending money to others will demand that they have some kind of influence about the spending policy of other countries.

Moreover, Labour Party (opposition at this time) argued for the introduction of Eurobonds on the European level. These bonds are seen as a more adequate mechanism to solve the specific situation of crisis countries. Another point, which was mentioned and needed

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<sup>17</sup> See <http://www.parlament.mt/parliamentaryprocedures#>

<sup>18</sup> Transcript of Sitting 389 of the Plenary Session of the House of Representatives on 5 October 2011, p. 540, <http://www.parlament.mt/file.aspx?f=20585>

<sup>19</sup> Transcript of Sitting 390 of the Plenary Session of the House of Representatives on 10 October 2011, p. 588, <http://www.parlament.mt/file.aspx?f=20586>

clarification, was the fact that the EFSF lends money to Member States with an interest rate between 3.5 and 4 %. However, if the guarantees are needed Member States have to borrow money from the financial market with an average rate of 5 %. This could lead to a loss every Member States has to bear.

It was also emphasised that the Maltese economy is mainly based on financial services and internet gambling, while other sectors such as tourism or construction work are losing their importance in the national economy. Malta must protect the financial sector as an important economic sector for the country, but must keep in mind that financial services can become a threat to the national financial stability. A further point was that there are some plans about new taxes or taxation harmonisation, which could endanger the highly important financial sector in Malta.

Also during the Committee Stage, the Labour Party (parliamentary opposition) proposed that the discussion should be continued next day, because they would like to prepare for the discussion properly. There were some changes to the law and its interpretation which had to be examined in detail. The government rejected this proposal by referring to the fact that international media are waiting for the approval of Malta (as one of the last countries) and it would endanger the credibility of the ratification process in the Eurozone and in Malta, if there would be a further postponement. The Labour Party accepted this, but emphasised its criticism with such fast ratification procedures.

The third and final reading passed the House of Representatives without any discussion. All parties agreed on the fact that it is necessary to show some solidarity with the European partner countries. This is why the bill was passed unanimously.

## CASE LAW

### IV.5

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

No such judgment exists on the (constitutionality of) the EFSM or EFSF.

## IMPLEMENTATION

### IV.6

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

In the framework of the EFSF the Maltese government decides about the disbursement of money. The parliament passed the law containing the amount of money up to which the Maltese government can issue guarantees ('Participation and Guarantees under the European Financial Stability Facility Act', see question IV.2). The Maltese Parliament only has

the right to pose questions about the behaviour of the Maltese representative in the EFSF, but does not have to approve any measures in the application of EFSF.

## IMPLEMENTING PROBLEMS

### IV.7

#### *WHAT POLITICAL/LEGAL DIFFICULTIES DID MALTA ENCOUNTER IN THE APPLICATION OF THE EFSF?*

The Maltese House of Representatives discussed the financial situation in Spain after their application for financial assistance for the Spanish banking sector in a plenary session on 19 June 2012.<sup>20</sup>

Alfred Sant (member of the then in opposition Labour Party) asked whether there are any reliable instruments to measure crisis phenomena, in particular occurring problems in the banking sector.<sup>21</sup> The European-wide stress tests for banks had identified that Spanish banks have problems, but not that there will be a complete breakdown. He also asked which criteria Maltese banks, in particular the Bank of Valletta, will have to fulfil to pass successfully the next stress test. Furthermore, he also demanded more clarification about the impact of the Spanish banking breakdown on the Maltese banking sector and further clarification of the government's position on the financial transaction tax plans.

Moreover, at the end of his intervention, he criticised that there seems to be no proportionality requirement for the lending procedure to Spain, because it is the fourth biggest economy in Europe and the Eurogroup will have to help Spain in order to avoid the complete collapse of the Eurozone. This puts a big country like Spain in a better position than small countries. He clarifies his argument by the example of the loan of Malta to the state-owned airline 'Air Malta' of about Euro 52 million. It took a lot of time to convince the European Commission that this financial support is necessary and the Commission obliged Malta to combine the lending with certain conditions in order to comply with the European state aid rules. In November 2010 the European Commission granted the Maltese government temporary permission to lend Air Malta € 52 million (rescue aid).<sup>22</sup> This loan is based on the 'Government Borrowing and Granting of Loans to Air Malta plc Act' (Act XVIII of 2010).<sup>23</sup> In May 2011 the Maltese government notified the European Commission of a € 130 million capital increase in order to restructure Air Malta. The European Commission had doubts that the restructuring plan is in conformity with the EU Rescue and Restructuring Guidelines, but approved the restructuring plan after an in-depth investigation in June

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<sup>20</sup> Transcript of Sitting 491 of the Plenary Session of the House of Representatives on 19 June 2012, p. 482 et seq., <http://www.parlament.mt/file.aspx?f=32221>

<sup>21</sup> Transcript of Sitting 491 of the Plenary Session of the House of Representatives on 19 June 2012, p. 486 et seq., <http://www.parlament.mt/file.aspx?f=32221>

<sup>22</sup> See the press release IP/10/1509 of the European Commission from 15 November 2010, [http://europa.eu/rapid/press-release\\_IP-10-1509\\_en.pdf](http://europa.eu/rapid/press-release_IP-10-1509_en.pdf)

<sup>23</sup> <http://www.parlament.mt/file.aspx?f=23399>

2012.<sup>24</sup> Malta had to demonstrate its capacity to ‘rescue’ Air Malta by generating money through the sale of land, subsidiaries and other assets. In contrast to this difficult procedure for Malta, the lending of money to Spain of a remarkably higher sum was – following the argumentation of Alfred Sant – made over night. This is not seen as a fair treatment of small countries such as Malta.

A further point of discussion concerned the way of lending to Spain. Finance Minister Tonio Fenech (Nationalist Party) had to make clear that the Maltese contribution is not increased by helping Spain because all the loans are made via the EFSF and the ESM. George Vella, member of the Labour Party (opposition), asked whether financial assistance to Spain will be given through the same procedure as in the case of the Greek loans. The Finance Minister Fenech answered that he is not exactly sure how the lending will be made, but assures that Malta’s contribution to the ESM and the EFSF will not be increased by this decision. In addition, Fenech emphasises that the lending of money to Greece via bilateral loans had to be done because there was no mechanism for such a case and since there are new mechanisms (ESM and EFSF), there is no necessity to help Spain via bilateral loans.<sup>25</sup>

Concerning the aid package for Ireland, Maltese Finance Minister Tonio Fenech (Nationalist Party) explained in the House of Representatives in a plenary session on 29 November 2010 that the package consists of 85 billion euro.<sup>26</sup> Amongst other sources, 22.5 billion come from the EFSM and 17.7 billion from the EFSF. Charles Mangion, member of the Labour Party, which was in opposition at this time, asked why there is an interest rate of 5.8 %.<sup>27</sup> Malta had provided a loan to Air Malta with a similar interest rate and he said that the risk of loss is greater in the case of Ireland than with Air Malta. On the other side, Ireland will probably not be able to pay such a high interest rate. Furthermore, he required clarification about the procedure on the European level to authorize the respective tranches of the € 85 billion loan, in particular whether the European rescue institutions can influence the disbursement of the next tranche and whether this decision has to be made unanimously by the board of governors. In addition, Alfred Sant, member of the Labour Party, criticised that the Irish people have to suffer because of the austerity measures, while the reason for the financial problems of Ireland was the gambling of the banks.<sup>28</sup> Finance Minister Fenech (Nationalist Party) answered that the banking sector is too much linked with other financial

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<sup>24</sup> See the press release IP/12/702 of the European Commission from 27 June 2012, [http://europa.eu/rapid/press-release\\_IP-12-702\\_en.pdf](http://europa.eu/rapid/press-release_IP-12-702_en.pdf)

<sup>25</sup> Transcript of Sitting 491 of the Plenary Session of the House of Representatives on 19 June 2012, p. 489 et seq., <http://www.parlament.mt/file.aspx?f=32221>

<sup>26</sup> Transcript of Sitting 290 of the Plenary Session of the House of Representatives on 29 November 2010, p. 498 et seq., <http://www.parlament.mt/file.aspx?f=16877>

<sup>27</sup> Transcript of Sitting 290 of the Plenary Session of the House of Representatives on 29 November 2010, p. 499-500, <http://www.parlament.mt/file.aspx?f=16877>

<sup>28</sup> Transcript of Sitting 290 of the Plenary Session of the House of Representatives on 29 November 2010, p. 500-501, <http://www.parlament.mt/file.aspx?f=16877>

institutions, so that it would not be politically acceptable to let these banks go bankrupt.<sup>29</sup>

## BILATERAL SUPPORT

### IV.8

*IN CASE MALTA 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?*

Malta has given bilateral loans to Greece. These loans had to be approved by parliament, since they do not fall under the EFSF where parliamentary approval of individual disbursements is not required (see also question II.6).

The first law is Act III of 2010 ('Government Borrowing and Granting of Loans to the Hellenic Republic Act')<sup>30</sup>, which authorised and regulated the raising of loans for the Hellenic Republic. The sum was limited to Euro 30 million (Article 3 (1) of Act III of 2010). The Minister for Finance is authorised to borrow the money under the conditions of the 'Local Loans (Registered Stock and Securities) Ordinance'<sup>31</sup> (Article 3 (2) of Act III of 2010). In cases of urgency, the Minister is also allowed to use temporarily money from the Consolidated Fund. The Maltese Parliament has passed the law on 12 May 2010 and the Act came into force on 18 May 2010.

This Act was amended by the 'Government Borrowing and Granting of Loans to the Hellenic Republic (Amendment) Act' (Act III of 2012).<sup>32</sup> The new Act contains the reference to the amended loan facility agreement of the lending countries and the Hellenic Republic entered into in Brussels on 27 February 2012. The amended lending agreement forms part of the Act and contains amendments for the 'Grace Period', the 'Term' and the lowering of the interest rate. This amendment did not concern the new Euro 100 billion loan to Greece as part of the second aid package, but simply ratified the amendments to the first loan facility agreement from 8 May 2010. The bill was passed on 26 March 2012 by Parliament<sup>33</sup> and entered into force on 30 March 2012.

A first reading of a new bill took place on 13 May 2013<sup>34</sup> which amends the national 'Government Borrowing and Granting of Loans to the Hellenic Republic Act'. The aim of this bill is to implement the amendments of the Loan Facility Agreement Contract between Greece and the lending countries entered into in Brussels on 19 December 2012. Part of the Bill is the amended lending agreement. The House of Representatives passed the bill on 25 June 2013 and it entered into force on 28 June 2013 as 'Government Borrowing and

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<sup>29</sup> Transcript of Sitting 290 of the Plenary Session of the House of Representatives on 29 November 2010, p. 502 et seq., <http://www.parlament.mt/file.aspx?f=16877>

<sup>30</sup> <http://www.parlament.mt/file.aspx?f=23383>

<sup>31</sup> <http://finance.gov.mt/image.aspx?site=TRS&ref=Local%20Loans%20Ordinance%20Chapter%20161>

<sup>32</sup> <http://www.parlament.mt/file.aspx?f=23440>

<sup>33</sup> Transcript of Sitting 460 of the Plenary Session of the house of Representatives on 26 March 2012, p. 953-971, <http://www.parlament.mt/file.aspx?f=25742>

<sup>34</sup> <http://www.parlament.mt/billdetails?bid=429&legcat=13>

Granting of Loans to the Hellenic Republic (Amendment) Act' (Act No VI of 2013).<sup>35</sup>

## MISCELLANEOUS

IV.9

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

The Maltese Parliament discussed the amendment of the EFSF Act (see question IV.2) together with an amendment of the loan facility agreement between the lending countries and Greece from 14 June 2011, which made it necessary to amend the national 'Government Borrowing and Granting of Loans to the Hellenic Republic Act'. This amendment forms part of the Act which ratified the participation in the EFSF and can be found under Article 5 of the 'Participation and Guarantees under the European Financial Stability Facility and the Government Borrowing and the Granting of Loans to the Hellenic Republic (Amendment) Act (Part 1 & Part 2)<sup>36</sup> (for more information see question IV.8).

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<sup>35</sup> <http://www.parlament.mt/file.aspx?f=41154>

<sup>36</sup> <http://www.parlament.mt/file.aspx?f=23426>, p. 62 et seq



## V TREATY AMENDMENT ARTICLE 136(3) TFEU

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

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

### NEGOTIATION

#### V.1

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

The Maltese Prime Minister emphasised in his speech in the Maltese House of Representatives on 4 April 2011<sup>37</sup>, that Malta – together with Cyprus – has added their interpretation of the new Article 136 (3) TFEU in the meeting of the Council. The wording is as follows:

*Joint Declaration by Cyprus and Malta to the minutes of the European Council of 24 – 25 March 2011, concerning the decision amending article 136 of the TFEU with regard to the setting up of the European Stability Mechanism*

*Without prejudice to the provision of article 125 of the treaty on the functioning of the European Union (TFEU), the reference in the proposed amendment of article 136 of the TFEU that “the ESM will be activated by mutual agreement, if indispensable to safeguard the financial stability of the euro area as a whole” does not ipso jure preclude that the mechanism be used to provide financial assistance to any Member State whose currency is the Euro, since financial stability of the euro area as a whole is inextricably linked to its integrity and the financial stability of all its members.*

In addition, Malta added some notes to the minutes of the Council meeting, which made it clear that Malta has a specific interest in its competence to determine national taxes. The statement is as follows:

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<sup>37</sup> Transcript of Sitting 334 of the Plenary Session of the House of Representatives on 4 April 2011, p. 623 et seq., <http://www.parlament.mt/file.aspx?f=18155>

*Declaration of Malta to be attached to the minutes of the European Council of 24-25 March 2011*

*Malta:*

- *Notes that the Heads of State or Government of the Eurozone have agreed that “Developing a common corporate tax base could be a revenue neutral way forward to ensure consistency among national tax systems while respecting national tax strategies” in the Pact for the Euro;*
- *Holds that a common corporate tax base would only be revenue neutral if it respects the comparative and competitive advantage of Member States;*
- *Underlines that the Heads of State or Government of the Eurozone refer to a common corporate tax base and not a common consolidated corporate tax base;*
- *Holds that the Commission’s proposal on a common consolidated corporate tax base would distort the comparative and competitive advantage of Member States and penalise those economies where productivity is relatively high and/or that have moved to higher value-added economic activities and/or where market size is limited.*

## **APPROVAL**

### **V.2**

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

The approval is based on an order of the Prime Minister in the sense of Article 2 (2) of the Maltese European Union Act. The Prime Minister was granted the competence to declare that a (European) treaty or a Decision of the European Council made after the 16<sup>th</sup> April 2003 – which is the day on which the accession treaty of Malta to the EU had been signed – is in conformity with Malta’s ‘European Union Act’. Such a competence is known as ‘Delegated or Subsidiary Legislation’ in the Maltese Legal System.<sup>38</sup> Since the amendment of Article 136 TFEU is based on the Simplified Revision Procedure introduced by the Lisbon Treaty (Article 48 (6) TEU), Malta had to adapt its ‘European Union Act’ (see question V.5).

This order had to be approved by resolution of the Maltese parliament because Article 2 (2) of the Maltese ‘European Union Act’<sup>39</sup> requires that an order can only be made when a draft thereof has been approved by resolution of the House of Representatives. The Order was presented to the House of Representatives on 22 June 2012. Debate in the Foreign and European Affairs Committee (FEAC) took place and the FEAC Chairman sent the report to

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<sup>38</sup> See for further information David Joseph Attard, *The Maltese Legal System*, Volume I, 2012, p. 56 to

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<sup>39</sup> <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8926>

the Parliament on 2 July 2012. Debate in the House of Representatives took place on 2 October 2012. The Order was accepted unanimously as Subsidiary Legislation 460.28 under the title 'European Union Act (Approval of Treaty Amendment Decision) Order'<sup>40</sup> on 3 October 2012. There is no requirement of further assent by Parliament in the Maltese legal system, so that the Order became valid via publication on 9 October 2012.

## RATIFICATION DIFFICULTIES

### V.3

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

The Maltese Parliament required that Clause 3 of the Order, having the following text:

*“For the purposes of article 2(2) of the Act, it is hereby declared that the Specified Decision shall be regarded as one with the Treaty”*

is supplemented by the following words:

*“while stating the Government’s understanding that where the Treaty refers to financial stability of the Euro Area, this should be interpreted to mean the Euro Area as a whole or one of its Member States in isolation, whatever its size.”*

The expression ‘one with the Treaty’ expresses that the Specified Decision which is the European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (Council Decision 2011/199/EU) is in conformity with the European Treaties. The additional words included by the Maltese Parliament after a recommendation of the Foreign and European Affairs Committee were seen as being necessary to make it clear, that the rescue mechanism is not only activated, when the Eurozone as a whole needs support, but also when a single Member State needs assistance to solve fiscal difficulties. For Malta, this is important, because their economic impact on the Eurozone is marginal.

Malta’s position in a (hypothetical) rescue situation, was also the main topic of discussion during the ratification process. At the meeting of the Foreign and European Affairs Committee on 2 July 2012<sup>41</sup>, opposition (Labour Party) demanded that the government (Nationalist Party) ensures that the rescue mechanism must also be activated, if small countries with a very low influence on the whole Eurozone need financial assistance. Opposition (Labour Party), in particular Alfred Sant, was not convinced that the wording ‘Eurozone as a whole and of its Member States’ was clear enough to guarantee that

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<sup>40</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11942&l=1>

<sup>41</sup> Transcript of Sitting 74 of the Foreign and European Affairs Committee on 2 July 2012, p. 4 et seq., <http://www.parliament.mt/file.aspx?f=31661>

also a single Member State, which does not play a central role in the Eurozone, has the right to receive financial assistance. The discussion dealt with the question whether an 'or' would have been more adequate than an 'and'. The Minister of Foreign Affairs (Nationalist Party) reminded the Committee that even if Malta would not receive support under Article 136 (3) TFEU, it would receive financial assistance under Article 122 (2) TFEU. In addition, members of the government emphasised that Cyprus would be in the same situation such as Malta and the situation of small countries was discussed on the European level leading to the conclusion that the new Article 136 (3) TFEU would comprise the right of small Member States to receive financial assistance. Alfred Sant (Labour Party) was not convinced of this argument because countries like Cyprus can rely on the support by closely connected, bigger states such as Greece. In addition, he emphasised, that the assistance clause of the International Monetary Fund explicitly mentions that also single states can request assistance, which is not the case for the Treaty amendment.

In the framework of this discussion, opposition recommended sending a side letter with the ratification which makes the Maltese interpretation of the wording evident. The Maltese Foreign Minister Tonio Borg was not sure whether such a side letter would not place Malta in a weaker position because it could be interpreted as if Malta would have some doubts about its own decision.<sup>42</sup>

Furthermore, it was discussed whether the amount of financial assistance is limited by the amount of the contribution by Malta. The Minister for Finance made it clear that the amount of financial assistance is not bound to the contribution key.

In addition, the Foreign and European Affairs Committee discussed whether the treaty amendment is intended to be a fund or whether the term 'mechanism' allows for more diverse arrangements. The Maltese Minister of Finance Tonio Fenech (Nationalist Party) said that the new Subsection 3 of Article 136 TFEU allows different arrangements such as a fund or a bank. At the moment, only the ESM is intended to be installed, but the amended version of the Treaty also allows for other arrangements.

## CASE LAW

V.4

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

No constitutional judgment on the 136 TFEU amendment exists.

## MISCELLANEOUS

V.5

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

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<sup>42</sup> Transcript of Sitting 74 of the Foreign and European Affairs Committee on 2 July 2012, p. 14 et seq., <http://www.parlament.mt/file.aspx?f=31661>

Malta had to modify its 'European Union Act', which is the national legal act allowing Malta to join the European Union, in order to make Article 2 (2) European Union Act applicable to the New Simplified Revision Procedure introduced by the Treaty of Lisbon. The old wording was:

*"If the Prime Minister by order declares that a treaty specified in the order being a treaty entered into by Malta after the 16th April, 2003 is to be regarded as one with the Treaty as herein defined, the order shall be conclusive that it is to be so regarded."*

The amended version goes as follows:

*"If the Prime Minister by order declares that a treaty specified in the order being a treaty entered into by Malta after the 16th April, 2003, or that a decision specified in the order, being a decision that amends the Treaty, is to be regarded as one with the Treaty as herein defined, the order shall be conclusive that it is to be so regarded:"*

This amendment became necessary, because the prior version simply referred to the wording 'Treaty', which would not completely meet the legal nature of the Simplified Revision Procedure. This is why Malta decided to amend its 'European Union Act' by the 'European Union Amendment Act' (Act VII of 2012)<sup>43</sup>. The amended Act entered into force on 22 June 2012.

## VI EURO-PLUS-PACT

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

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

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

### NEGOTIATION

#### VI.1

*WHAT POLITICAL/LEGAL DIFFICULTIES DID MALTA 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.*

No information known.

### MISCELLANEOUS

#### VI.2

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

Not applicable.

## VII SIX-PACK

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

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

*([http://ec.europa.eu/economy\\_finance/economic\\_governance/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/index_en.htm))*

### NEGOTIATION

#### VII.1

*WHAT POSITIONS DID MALTA 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.*

No information known.

### 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)?*

Malta is planning to write a new fiscal clause into its Constitution.<sup>44</sup> This clause will be a combination of the Stability and Growth Pact rule coupled with the application of an expenditure rule in good times which is interrupted in bad times through escape clauses.<sup>45</sup> However, there is no proposal in Parliament until today.

Malta's government plans to introduce a rolling three-year medium-term budgetary

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<sup>44</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 66, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

<sup>45</sup> Maltese Ministry for Finance, Malta's National Reform Programme under the Europe 2020 Strategy, April 2013, p. 167, [http://ec.europa.eu/europe2020/pdf/nd/nrp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2013_malta_en.pdf)

framework for expenditure commitments.<sup>46</sup> The spending total target shall be set in compliance with the operative fiscal rules (which is called 'top down-approach'). This approach shall be complemented by the Comprehensive Spending Review which is being conducted at each Ministry level, to serve as a platform for medium-term public finance forecasts (called 'bottom up-approach'). The combination of these approaches shall help to identify funding gaps. Furthermore, the government plans to set up a Contingency Reserve Fund (CRF) which shall build up a reserve over a period of three years by making an annual contribution.

## IMPLEMENTATION DIFFICULTIES

### VII.3

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

The Directive has not been implemented until now.

## 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)?*

Since Malta does not have an independent fiscal council at the moment, the Ministry for Finance makes the macroeconomic projections. These projections are sent to the independent National Audit Office (NAO). The NAO concluded in a report that the methodology adopted by the Ministry for the budgetary forecast for 2014 was sound, that the assumptions were plausible and that growth forecasts were prudent.<sup>47</sup> At the moment, Malta uses this procedure to generate reliable macroeconomic and budgetary forecasts.

## FISCAL COUNCIL

### VII.5

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

At the moment, Malta does not have such an independent Fiscal Council. In the report of

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<sup>46</sup> Maltese Ministry for Finance, Budget Document 2014, 4 November 2013, p. 18 to 19, [http://mfin.gov.mt/en/The-Budget/Documents/The\\_Budget\\_2014/Budget2014\\_Document.pdf](http://mfin.gov.mt/en/The-Budget/Documents/The_Budget_2014/Budget2014_Document.pdf)

<sup>47</sup> Maltese Ministry for Finance, Budget Document 2014, 4 November 2013, p. 18, [http://mfin.gov.mt/en/The-Budget/Documents/The\\_Budget\\_2014/Budget2014\\_Document.pdf](http://mfin.gov.mt/en/The-Budget/Documents/The_Budget_2014/Budget2014_Document.pdf)



Malta on the update of the Stability Programme 2013-2016 from April 2013, the Maltese Government was considering five different policy options for the implementation of this requirement. However, there was no favoured model at that moment, but the government assured that there will be an independent Fiscal Council at the end of 2013.<sup>48</sup> The Maltese Government highlights that this Council will have to be granted the competence to evaluate Government's fiscal projections in order to increase transparency and prudence. The Fiscal Council must be accountable to the Maltese Parliament and the Maltese Constitution. At the same moment, the Maltese Government emphasised, fiscal policy is and must remain a political process which makes an important role of the Ministry for Finance indispensable. In the view of the government, the establishment of the Fiscal Council must be accepted by a two third majority in Parliament, because economic judgments are fundamental for the political process and therefore it is seen as being necessary to have the political support of such a majority in order to broadly accept the role of such an institution.<sup>49</sup> The two third majority is no legal (or even constitutional) prerequisite, but rather a political recommendation.

In the Budget Programme for 2014 from November 2013, the government concretised their plans to set up an independent Fiscal Council.<sup>50</sup> This independent institution shall be embedded within the National Audit Office (NAO) which is itself an independent institution tasked with the auditing of the Government finances. The government emphasises that the NAO is established by the Constitution of Malta, but they do not reveal whether the independent Fiscal Council will be created on the basis of a constitutional provision. However, there is no legislative proposal at the moment and the Government only plans to set up the independent Fiscal Council in 2014.

## **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 MALTA ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?*

No information known.

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<sup>48</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 68, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

<sup>49</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 68, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

<sup>50</sup> Maltese Ministry for Finance, Budget Document 2014, 4 November 2013, p. 18, [http://mfin.gov.mt/en/The-Budget/Documents/The\\_Budget\\_2014/Budget2014\\_Document.pdf](http://mfin.gov.mt/en/The-Budget/Documents/The_Budget_2014/Budget2014_Document.pdf)

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

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

### MTO PROCEDURE

#### VII.7

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

The Maltese Government wants to implement a rolling three-year budget framework. The medium term budget shall distinguish between cyclical expenditure, statutory expenditure commitments, debt service payments, capital expenditure and ministerial allocation<sup>51</sup> (see also question V.2).

### EUROPEAN SEMESTER

#### VII.8

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

No information known.

### MTO DIFFICULTIES

#### VII.9

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

Malta has published a declaration in reaction to the recommendations of the Commission, which – amongst others – highlights that Commission's recommendations on the wage indexation in Malta is too specific and does not comply with the competence in article 121 TFEU, because this article only allows broad guidelines.<sup>52</sup>

### 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)?*

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<sup>51</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 69, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

<sup>52</sup> Declaration by Malta on the Country Specific Recommendations, 3 July 2012, <http://www.parlament.mt/file.aspx?f=21416>

The medium term budgetary targets are presented in Malta's annual Stability Programme, but such targets are currently non-binding and subject to subsequent annual budgetary processes. Malta wants to reform this in order to be in conformity with EU law.<sup>53</sup> This has not been done until today.

## CURRENT MTO

### VII.11

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

In Malta, the general Government deficit ratio is expected to decrease from 3.3 per cent of GDP in 2012 to 0.8 per cent in 2016.<sup>54</sup> The structural balance will be reduced from 3.0 in 2012 to 1.0 in 2016.<sup>55</sup> GDP growth is expected to exceed potential growth with the output gap closing gradually by 2015.<sup>56</sup>

## ADOPTION MTO

### VII.12

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

The Medium-term Budgetary Objective (MTO) is generated by the Ministry for Finance and under the scrutiny of the National Audit Office (see question VII.4). However, there is no legal procedure for the adoption and incorporation of the MTO at the moment. Malta wants to reform this national procedure.<sup>57</sup>

**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 MALTA ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR*

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<sup>53</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 69, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

<sup>54</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 21, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

<sup>55</sup> Maltese Ministry for Finance, Budget Document 2014, 4 November 2013, p. 17, [http://mfin.gov.mt/en/The-Budget/Documents/The\\_Budget\\_2014/Budget2014\\_Document.pdf](http://mfin.gov.mt/en/The-Budget/Documents/The_Budget_2014/Budget2014_Document.pdf)

<sup>56</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 22, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

<sup>57</sup> Maltese Ministry for Finance, Malta: Update of Stability Programme 2013-2016, April 2013, p. 69, [http://ec.europa.eu/europe2020/pdf/nd/sp2013\\_malta\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/sp2013_malta_en.pdf)

MALTA

*ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?*

No information known.

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

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

### **SANCTIONS**

*VII.14*

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

No information known.

### **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?*

The Maltese Budgetary Act will have to be amended. The exact changes are not known until today because there is no proposal for a new Budgetary Act in Parliament.

### **MISCELLANEOUS**

*VII.16*

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

Not applicable.

## 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 MALTA 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.*

For the Maltese Government, it was important to make sure that even a small and economically less important country such as Malta will be able to receive financial assistance in the case of financial difficulties. This is why the Maltese government in collaboration with the government of Cyprus had introduced an interpretation of Article 136 (3) TFEU in the meeting of the Council of the European Union (see question V.1).

## RATIFICATION

### VIII.2

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

The ESM Treaty has been ratified by an Act of Parliament (Act XII of 2012; Chapter 523<sup>58</sup>) on 6 July 2012 by unanimous vote, published on 17 July 2012. It entered into force the same day.<sup>59</sup> The title of the Act is 'Participation and Granting of Financial Stability Support under the European Stability Mechanism Act'. Annexed and forming part of the law is the European Council Decision of 17 December 2010, the draft of the European Council Decision on amending Article 136 TFEU, the Eurogroup Statement of 28 November 2010, the Statement by the Heads of State or Government of the Euro Area and the EU Institutions (Annexed to the European Council Presidency Conclusions of 16/17 December 2010), the European Council Decision of 25 March 2011, the Euro Plus Pact, the Term Sheet on the ESM, the ESM-Treaty and the letter of the European Commission on the Interpretation of

<sup>58</sup> <http://www.parlament.mt/file.aspx?f=23449>

<sup>59</sup> See Legal Notice 232 of 2012, <http://www.doi-archived.gov.mt/en/legalnotices/2012/07/LN%20232.pdf>

Article 3 ESM-Treaty.

## RATIFICATION DIFFICULTIES

### VIII.3

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

The discussion, in particular during the second reading of the bill in a plenary session of the House of Representatives on 27 June, 2 July and 4 July 2012<sup>60</sup>, about the ESM Treaty was linked to the discussion about the amendment of Article 136 (3) TFEU. The political and legal difficulties mentioned there are also valid for the discussion about the ESM Treaty (see question V.3).

In addition, Alfred Sant, member of the Labour Party, then in opposition, emphasised that the involvement in the ESM created doubts whether this would lead to a higher influence from economically powerful countries such as Germany, which could be able to put pressure on Malta changing its system of taxation. This would result in the destruction of the significantly important financial sector in Malta.<sup>61</sup>

Furthermore, it was discussed whether Malta will get some financial assistance in case of need, which does not seem to be clear, because of its low importance for the Eurozone. Charles Mangion from the then in opposition Labour Party emphasised the fact that the four biggest countries (France, Germany, Italy and Spain) can adopt every decision they want to in the Board of Governors and in the Board of Directors of the ESM because they possess more than two thirds of the voting rights.<sup>62</sup> This is seen as a threat to the Maltese interest. He relativises his statement by saying that the decision about financial aid to one of the ESM members cannot be made by the majority voting, but he made it clear that the 72%-majority of these countries allows them to adopt important decisions within the ESM. The government did not react to this statement. Several members of the Labour Party (opposition) emphasised that there is the fear that the sovereignty of the parliament will be annulled. The interpretation, that the ESM has to grant financial assistance to a country, even if only this single country and not the whole Eurozone has difficulties of financial stability, is laid down in Article 4 of Act XII of 2012. The Act also contains the interpretation of the Commission DG ECFIN of Article 3 ESM contained in a letter of 3 July 2012 which reads as follows:

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<sup>60</sup> See Transcript of Sitting 495 of the Plenary Session of the House of Representatives on 27 June 2012, p. 687 et seq., <http://www.parlament.mt/file.aspx?f=32225>; Transcript of Sitting 496 of the Plenary Session of the House of Representatives on 2 July 2012, p. 734 et seq., <http://www.parlament.mt/file.aspx?f=36398>; Transcript of Sitting 498 of the Plenary Session of the House of Representatives on 4 July 2012, p. 828 et seq., <http://www.parlament.mt/file.aspx?f=36400>

<sup>61</sup> Transcript of Sitting 495 of the Plenary Session of the House of Representatives on 27 June 2012, p. 687 et seq., <http://www.parlament.mt/file.aspx?f=32225>

<sup>62</sup> Transcript of Sitting 495 of the Plenary Session of the House of Representatives on 27 June 2012, p. 697, <http://www.parlament.mt/file.aspx?f=32225>

*“The Commission services have drafted and negotiated the text of the ESM Treaty (in liaison with the EFSF) and are therefore in a position to explain its content and rationale. The reference in several sections of the Treaty (Article 3, 12 and 13) to the need that the financial stability of the ‘euro area as a whole and of its member states’ is at stake to warrant an intervention from the ESM is to be interpreted as allowing ESM actions both in case of difficulties affecting the euro area as a whole or one of its Member States in isolation, whatever its size. This wording aims specifically at allowing the coverage by the ESM of countries like Malta, whose case has been repeatedly mentioned in the discussions.”*

Moreover, the opposition (Labour Party) is not convinced that all the different rescue mechanisms and early warning systems work as promised by the ‘European elites’. There is a general mistrust against the actions of the European anti-crisis policy. Amongst others, the lack of transparency and accountability is criticised.

In order to guarantee sufficient influence from the Maltese parliament, the Act contains a clause which says, that:

*“The persons appointed by the Government of Malta to represent it on the governing and administrative organs of the European Stability Mechanism shall appear at least once a year and preferably during the month of March before the Public Accounts Committee or before another committee of the House of Representatives which from time to time may be tasked with the economic and financial scrutiny of Government for the purpose of rendering account of the workings of that Mechanism and of the European Financial Stability Facility insofar as this is in conformity with their duties and with the obligations of Malta.”*

This shall make sure that the executive predominance can be restricted and effectively controlled by the legislative organ.

The government (Nationalist Party) emphasised that the potential burden of Malta decreased in comparison to the EFSF from Euro 700 million to Euro 512 million.<sup>63</sup>

## CASE LAW

### VIII.4

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

No such Court judgment exists with reference to the ESM Treaty.

## CAPITAL PAYMENT

### VIII.5

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<sup>63</sup> See the report in Times of Malta, ‘ESM: Malta’s €58m bill’, 28 June 2012, <http://www.timesofmalta.com/articles/view/20120628/local/ESM-Malta-s-58m-bill.426293>

*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?*

The parliament authorised the Maltese government to disburse all the payments laid down in the ESM Treaty in an Act of Parliament ('Participation and Granting of Financial Stability Support under the European Stability Mechanism Act', see question VIII.2). There is no further participation of the Parliament in the payment process.

## **APPLICATION & PARLIAMENT**

### *VIII.6*

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

The Government of Malta makes the disbursement via the Public Treasury.

Parliament only has to approve by resolution any participation and stability assistance granted by the Maltese Government beyond the purpose specified in Article 3 (2) Act XII of 2012.<sup>64</sup> Article 3(2) contains the purpose of the ESM which is to provide stability support under strict conditions, appropriate to the financial assistance instrument chosen, to a Member of the European Stability Mechanism which is experiencing or is threatened by severe financial problems, for which support is indispensable to safeguard the financial stability of the euro area as a whole and of its Members States – a purpose which is also laid down in Article 12 ESM-Treaty. Therefore, Article 3 (2) of Act XII of 2012 only makes it clear that the approval of the Maltese Parliament goes as far as laid down in this Act of Parliament (there is no carte blanche for the government).

However, Parliament has the right to demand answers to questions sent to the government and the newly established Standing Committee on Economic and Financial Affairs (for more information on this new Committee see question IX.3) can request that the representative of Malta at the ESM Council appears before the Committee and answers questions of its members.

## **APPLICATION DIFFICULTIES**

### *VIII.7*

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

See the answer given to question II.7, in particular concerning Spain.

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<sup>64</sup> Article 5 of Act XII of 2012



## 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?*

No information known.

## MISCELLANEOUS

VIII.9

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

Not applicable.

## IX FISCAL COMPACT

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

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

### NEGOTIATION

#### IX.1

*WHAT POLITICAL/LEGAL DIFFICULTIES DID MALTA 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 Maltese Government, represented by Prime Minister Lawrence Gonzi (Nationalist Party), was in favour of a Fiscal Compact with the participation of all 27 Member States of the European Union, not only 25.<sup>65</sup> The government did not want to conclude an agreement creating a fiscal union which has the power to determine what kind of economic measures are taken in the Member States, but preferred a cooperative approach said Finance Minister Tonio Fenech (Nationalist Party).<sup>66</sup> Fenech (Nationalist Party) emphasised that Malta's position in the negotiations on the European level was always in favour of more coordination, but has never agreed on limiting fundamentally the budgetary autonomy. In addition, Malta did not agree on a European-wide financial transaction tax.<sup>67</sup>

### RATIFICATION

#### IX.2

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

The Maltese Government initially wanted to ratify the Fiscal Compact by an order of the Prime Minister (and bypass parliament).<sup>68</sup> The plan was to use the competence of the Prime Minister to declare a (European) treaty as forming part of the Maltese 'European Union

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<sup>65</sup> Transcript of Sitting 432 of the Plenary Session of the House of Representatives on 10 December 2011, p. 478-479, [http://www.parlament.mt/filebank/HORIndex/Leg11\\_2008/Debates/20111210\\_432d\\_par.doc](http://www.parlament.mt/filebank/HORIndex/Leg11_2008/Debates/20111210_432d_par.doc)

<sup>66</sup> Transcript of Sitting 507 of the Plenary Session of the House of Representatives on 10 October 2012, p. 360, <http://www.parlament.mt/file.aspx?f=36409>

<sup>67</sup> Transcript of Sitting 510 of the Plenary Session of the House of Representatives on 17 October 2012, p. 449, <http://www.parlament.mt/file.aspx?f=36412>

<sup>68</sup> See the report 'EU Fiscal Compact: government wants to bypass parliament' on Maltastart.com, 7 February 2012, <http://maltastar.com/dart/20120207-eu-fiscal-compact-government-wants-to-bypass-parliament>

Act'<sup>69</sup> (see question V.3 and V.5) which would have avoided the usual parliamentary procedure for the adoption of Acts of Parliament. After some criticism, the government decided to ratify the Fiscal Compact by the usual parliamentary procedure for the ratification of international treaties and introduced Motion No. 294 on 5 March 2012.<sup>70</sup> The ratification of international treaties is regulated in the Maltese 'Ratification of Treaties Act' (Act V of 1983; Chapter 304)<sup>71</sup> which requires in its Article 3 (3) that an Act of Parliament is necessary to make a provision of an international treaty become part of the law of Malta.<sup>72</sup>

The first out of three readings began on 3 October 2012. All parliamentary groups agreed on the procedure to discuss the Treaty paragraph by paragraph (including the preamble) which lasted between 3 October and 5 November 2012<sup>73</sup> without even finishing the first reading of the law. Parliament discussed the preamble and Articles 1 to 3 of the Fiscal Compact. The opposition (Labour Party) was in favour of voting for the resolution, but emphasised that they did so with the greatest reluctance.<sup>74</sup> After the government (Nationalist Party) had lost the support of parliament at the end of 2012, the ratification procedure could not continue. Elections for a new parliament took place on 9 March 2013, which were won by the Labour Party for the first time since the Maltese accession to the Eurozone (see for more information question 85). The new government introduced a motion to ratify the Fiscal Compact on 7 May 2013.<sup>75</sup> This motion was discussed in the House of Representatives on 11 June 2013. The new Finance Minister Edward Scicluna (Labour Party) explained the Treaty and Tonio Fenech as the representative of the opposition (Nationalist Party) made it clear that his party will support the ratification.<sup>76</sup> Both parties referred to the intensive discussions about the ratification of the Fiscal Compact in the prior (eleventh) legislature and this is why the motion was passed unanimously without intensive discussion the same day.<sup>77</sup> Malta's participation in the Fiscal Compact has entered into force on 1 July 2013.

## RATIFICATION DIFFICULTIES

### IX.3

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<sup>69</sup> This competence is laid down in Article 2 (2) of the Maltese 'European Union Act'

<sup>70</sup> Resolution on the Ratification of the Stability Treaty, Coordination and Governance - Presented by the Minister of Finance, the Economy and Investment, Motion No. 294, 5 March 2012, <http://www.parlament.mt/file.aspx?f=23206>

<sup>71</sup> <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8783>

<sup>72</sup> For more details on the relation between Maltese law and public international law see David Joseph Attard, *The Maltese Legal System*, Volume I, 2012, p. 75 et seq

<sup>73</sup> <http://www.parlament.mt/motiondetails?mid=298&l=1&legcat=7>

<sup>74</sup> Transcript of Sitting 504 of the Plenary Session of the House of Representatives on 3 October 2012, <http://www.parlament.mt/file.aspx?f=36406>

<sup>75</sup> Motion No. 35 - Ratification of the Treaty on Stability, Coordination and Governance made in Brussels on 2 March 2012 - Presented by the Minister for Finance (<http://www.parlament.mt/file.aspx?f=35929>)

<sup>76</sup> Transcript of Sitting 29 of the Plenary Session of the House of Representatives on 11 June 2013, p. 459, <http://www.parlament.mt/file.aspx?f=43511>

<sup>77</sup> Transcript of Sitting 29 of the Plenary Session of the House of Representatives on 11 June 2013, p. 468, <http://www.parlament.mt/file.aspx?f=43511>

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

During the first reading of the Bill to ratify the Fiscal compact on 3 October 2012 Alfred Sant, member of the opposition (Labour Party), criticised that the Fiscal Compact applies to all countries with the same rules which does not reflect reality, because every country has different problems.<sup>78</sup> In particular, the fact that Malta is a very small country is not taken into account. In addition, he criticised that because of the 'one size fits all'-approach the Treaty introduces a plan-led economic governance through law and through diplomatic fiat.<sup>79</sup>

Alfred Sant also mentioned that parliament wants to have more information about the position of the government when discussing such treaties in the future. The fact that parliament can now only agree or disagree with the Treaty, but cannot change a single word, makes the debate about the Treaty partly redundant. Opposition wanted to know the main guidelines of the government before negotiating on the European level.<sup>80</sup>

The opposition, represented by Alfred Sant (Labour Party), demanded clarification from the government concerning the role of the European Commission on the adoption of the national budget. They wanted to make it clear that if the European Commission proposes Malta to change certain expenditures on the basis of the Fiscal Compact, the Maltese government cannot simply implement these proposals, but has to discuss the proposed changes by the European Commission in parliament.<sup>81</sup> In this context, it was discussed that the Commission has strong competences, if a country is under an excessive deficit procedure. However, Finance Minister Tonio Fenech (Nationalist Party) could not anticipate how the European Commission will behave in such a case under the new legal regime.<sup>82</sup>

In addition, Alfred Sant (Labour Party), then in opposition, also criticised that it is within the competence of the European Court of Justice to decide whether a country has infringed the balanced budget rule. This is seen as a task of national courts.<sup>83</sup>

Furthermore, the enhanced cooperation on the economic policy level is seen as a critical point, because coordination will lead to harmonisation and this could endanger the strategic

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<sup>78</sup> Transcript of Sitting 504 of the Plenary Session of the House of Representatives on 3 October 2012, p. 200, <http://www.parlament.mt/file.aspx?f=36406>

<sup>79</sup> Transcript of Sitting 507 of the Plenary Session of the House of Representatives on 10 October 2012, p. 365, <http://www.parlament.mt/file.aspx?f=36409>

<sup>80</sup> Transcript of Sitting 510 of the Plenary Session of the House of Representatives on 17 October 2012, p. 450, <http://www.parlament.mt/file.aspx?f=36412>

<sup>81</sup> Transcript of Sitting 510 of the Plenary Session of the House of Representatives on 17 October 2012, p. 462, <http://www.parlament.mt/file.aspx?f=36412>

<sup>82</sup> Transcript of Sitting 510 of the Plenary Session of the House of Representatives on 17 October 2012, p. 464, <http://www.parlament.mt/file.aspx?f=36412>

<sup>83</sup> Transcript of Sitting 516 of the Plenary Session of the House of Representatives on 31 October 2012, p. 762, <http://www.parlament.mt/file.aspx?f=36418>

advantages of Malta in the field of financial services, in particular its location for international banks.<sup>84</sup>

In relation to Article 2 of the Fiscal Compact, Alfred Sant as a member of the opposition (Labour Party) criticised that this Article only mentions European Treaties, but not national law or national constitutions.<sup>85</sup> It is seen as an intrusion into the sovereignty of the Maltese state. Government agreed that by ratifying this treaty, Malta gives additional competences to European institutions.<sup>86</sup> Nonetheless, Finance Minister Tonio Fenech (Nationalist Party) emphasised that no new punitive competences arise from this Treaty and that the European Commission will not have new competences in the field of economic policy.<sup>87</sup>

Finance Minister Tonio Fenech (Nationalist Party) emphasised that he hopes that there will be an ‘Economic and Financial Affairs Committee’ in the future which would be the appropriate place to discuss the modifications of economic governance in the EU.<sup>88</sup> Such discussions have always taken place in the ‘Foreign and European Affairs Committee’ which is no longer seen as the appropriate committee, because this committee mostly deals with implementing directives. The Economic and Financial Affairs Committee was finally established on 23 April 2013 by the amendment of the ‘Standing Orders of the House of Representatives Order’<sup>89</sup>, based on two parliamentary motions.<sup>90</sup> The Committee was explicitly granted the competence to request the appearance of Maltese representatives in the ESM and the EFSF.<sup>91</sup>

## 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*

<sup>84</sup> Transcript of Sitting 516 of the Plenary Session of the House of Representatives on 31 October 2012, p. 776, <http://www.parlament.mt/file.aspx?f=36418>

<sup>85</sup> Transcript of Sitting 517 of the Plenary Session of the House of Representatives on 5 November 2012, <http://www.parlament.mt/file.aspx?f=36419>

<sup>86</sup> Transcript of Sitting 517 of the Plenary Session of the House of Representatives on 5 November 2012, p. 817-818, <http://www.parlament.mt/file.aspx?f=36419>

<sup>87</sup> Transcript of Sitting 517 of the Plenary Session of the House of Representatives on 5 November 2012, p. 819, <http://www.parlament.mt/file.aspx?f=36419>

<sup>88</sup> Transcript of Sitting 510 of the Plenary Session of the House of Representatives on 17 October 2012, p. 450-451, <http://www.parlament.mt/file.aspx?f=36412>

<sup>89</sup> The updated version of this order is available under <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8970>

<sup>90</sup> Motion No. 24 - Motion setting up the Standing Committee for Economic and Financial Affairs - Presented by the Deputy Prime Minister and Minister for European Affairs and the Electoral Manifesto (<http://www.parlament.mt/file.aspx?f=33821>) and Motion No. 25 - Appointment of the Standing Committee for Economic and Financial Affairs - Presented by the Minister for Finance (<http://www.parlament.mt/file.aspx?f=34811>); see also the notice in Times of Malta (<http://www.timesofmalta.com/articles/view/20130419/local/parliamentary-motion.466206>)

<sup>91</sup> Article 120I (1) (b) standing orders of the house of representatives order

*PROCESSES.” HOW IS THE BALANCED BUDGET RULE (INTENDED TO BE) IMPLEMENTED IN MALTA? WILL THERE BE AN AMENDMENT OF THE CONSTITUTION? IF NOT, DESCRIBE THE RELATION BETWEEN THE LAW IMPLEMENTING THE BALANCED BUDGET RULE AND THE CONSTITUTION. IF THE CONSTITUTION ALREADY CONTAINED A BALANCED BUDGET RULE, DESCRIBE THE POSSIBLE CHANGES MADE/REQUIRED, IF ANY.*

The former government led by the Nationalist Party, which fell at the end of 2012, wanted to incorporate the golden rule into the Maltese Constitution.<sup>92</sup> The government had brought a motion containing the amendment of the Constitution into parliament on 1 February 2012<sup>93</sup>, but the parliamentary procedure did not continue after the first reading.<sup>94</sup> However, in the discussion about the Fiscal Compact in October of the same year the Finance Minister Tonio Fenech (Nationalist Party) did not want to make a clear statement, but referred to the expected proposal by the European Commission on how to implement this obligation into the national system.<sup>95</sup>

The new government, led by the Labour Party and in office since March 2013, plans to adopt a ‘Fiscal Responsibility Act’ which shall include the introduction of fiscal rules, and in particular the SGP rule which will bind national fiscal authorities with numerical targets to achieve a balanced budget.<sup>96</sup> At the moment, there is no such proposal in the legislative procedure.

## 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.*

During the discussion of the Fiscal Compact the government refused to make any clear statement in relation to the so-called ‘golden rule’. However, the current government plans to adopt a ‘Fiscal Responsibility Act’ which would include an SGP rule (see question IX.4).

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<sup>92</sup> Declaration of Deputy Prime Minister and Minister of Foreign Affairs Tonio Borg, Sitting 443 of the Plenary Session of the House of Representatives, 7 February 2012, p. 125; see also the report ‘Government wants ‘golden rule’ entrenched in the Constitution’ in Times of Malta, 6 March 2012, <http://www.timesofmalta.com/articles/view/20120306/local/government-wants-golden-rule-entrenched-in-the-constitution.409962> and the report ‘“Golden rule” to be enshrined in Constitution’ in Malta Independent, 10 December 2011, <http://www.independent.com.mt/articles/2011-12-10/news/golden-rule-to-be-enshrined-in-constitution-303004/>

<sup>93</sup> Motion No. 289 Constitution (Amendment) Bill - 1st Reading - Presented by the Prime Minister, <http://www.parlament.mt/motiondetails?mid=293&l=1&legcat=7>; see also the report ‘Prime Minister presents bill to amend Constitution’ in Malta Today, 1 February 2012, <http://www.maltatoday.com.mt/en/newsdetails/news/national/Prime-Minister-presents-bill-to-amend-Constitution-20120201>

<sup>94</sup> <http://www.parlament.mt/motiondetails?mid=293&l=1&legcat=7>

<sup>95</sup> See Transcript of Sitting 517 of the Plenary Session of the House of Representatives, 5 November 2012, p. 833, <http://www.parlament.mt/file.aspx?f=36419>

<sup>96</sup> Maltese Ministry for Finance, Budget Document 2014, 4 November 2013, p. 17, [http://mfin.gov.mt/en/The-Budget/Documents/The\\_Budget\\_2014/Budget2014\\_Document.pdf](http://mfin.gov.mt/en/The-Budget/Documents/The_Budget_2014/Budget2014_Document.pdf)

## 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)?*

No information known.

## CASE LAW

IX.7

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

No.

## NON-EUROZONE AND BINDING FORCE

IX.8

*HAS MALTA 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?*

Malta is a Eurozone Member State.

## MISCELLANEOUS

IX.9

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

Not applicable.

## **X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT**

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

*([http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm))*

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

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

### **CONTEXT**

#### **X.1**

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

Malta has not received this kind of financial assistance.