



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: SPAIN

Mireia Estrada-Cañamares (Mireia.Estrada@EUI.eu)/ Germán Gomez Ventura (German.Gomez@EUI.eu)/ Leticia Díez Sánchez (Leticia.Diez@EUI.eu)

Mireia Estrada-Cañamares studied Law at the University of Barcelona (2007-2011). She is currently a 4th year PhD Candidate at the European University Institute (Florence). She is interested in EU external relations law. In particular, her PhD focuses on the difficult relationship between the security-development nexus approach to the developing world, and the complex structure of EU external relations law.

Germán Gómez Ventura is a PhD candidate in European Law at the European University Institute (EUI). In his thesis he analyses the interplay between the principles of economic efficiency and fairness under the perspective of economic analysis of law. He holds a Bachelor's Degree in Law from the Universidad Complutense de Madrid (Spain), an LLM in Comparative, European and International Law from the EUI and a Master in European and International Studies from the University of London. He has been a Visiting Scholar at the University of Wisconsin (USA) and a trainee at the European Parliament, and is currently working as a Legal Consultant at Jefferies International Ltd in London.

Leticia Díez Sánchez is a PhD researcher in European Law at the European University Institute. Her thesis analyses the way in which the European Court of Justice deals with conflicts that entail redistribution among different actors. She holds a Bachelor's Degree in Law from the University of Granada (Spain), an LLM in European Legal Studies from the University of Bristol and a Master in Politics and Government in the EU from the London School of Economics. She has interned at the European Parliament as well as Amnesty International, and is currently a participant of the programme FutureLab Europe operated by the European Policy Centre.

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I POLITICAL CONTEXT

POLITICAL CHANGE

I.1

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

Spain's political system: brief explanation

Spain's political system is based on a parliamentary system, where the Government is designated by the Parliament and is accountable to it. The Head of Government is the *Presidente del Gobierno* (currently, Mariano Rajoy Brey) and the Head of State is the King (currently, Juan Carlos I). The Parliament is officially called *Cortes Generales* and it consists of two different houses, the *Congreso de los Diputados* and the *Senado*. Both the *Congreso* and the *Senado* represent the Spanish people (the *Senado* also represents the Spanish territory) and have legislative, budgetary and political control functions. However, the *Congreso de los Diputados* is clearly the more important of the two houses. Just to mention some examples: the most important members of the Government are members of the *Congreso* (e.g. the Head of the Government and his/her Ministers); the Head of the Government only appears in the *Congreso* to explain the agreements reached in Brussels (i.e. Eurogroup, European Council) and, in case an act is adopted by the *Congreso* and vetoed or amended by the *Senado*, the *Congreso* can still reject these vetoes or amendments by voting again (and attaining an absolute majority). The elections to the *Congreso* and the *Senado* are held (together) every four years. Since the electoral system is different (because the *Senado* includes territory representation considerations) the outcome of the elections is also different. However, for instance, the *Partido Popular* currently has an absolute majority in both houses. The political parties, and the *grupos parlamentarios* (parliamentary groups) that the former constitute, which are currently represented in the *Congreso de los Diputados* are the ones listed below. It is important to highlight that the *grupos parlamentarios* consist of a minimum of 15 members (in the case of the *Congreso*) or 10 members (in the case of the *Senado*). It is also important to take into account that there are two essential dimensions in Spanish politics: (1) left/right wing, and (2) regional nationalism.

- *Partido Popular* (PP)/ *Grupo Popular* – Right wing¹
- *Partido Socialista Obrero Español* (PSOE)/ *Grupo Socialista* – Centre left
- *Convergència I Unió* (CiU)/ *Grupo Catalán* – Centre right. Catalan nationalism

¹Notice that this is only a tentative classification of the political ideology of the different parties in the *Congreso* in order to be able to contextualise the parliamentary debates mentioned and explained throughout the questionnaire.

- *Izquierda Unida/ Izquierda Plural* – Left wing
- *Iniciativa per Catalunya Verds (ICV)/ Izquierda Plural* – Left wing. Green party
- *Amaiur/ Grupo Mixto* – Left wing. Vasc nationalism
- *Partido Nacionalista Vasco (PNV)/ Grupo Vasco* – Centre. Vasc nationalism
- *Unión Progreso y Democracia (UPyD)/ Grupo UPyD* – Centre
- *Esquerra Republicana de Catalunya (ERC)/ Grupo Mixto* – Left wing. Catalan nationalism
- *Bloque Nacionalista Gallego/ Grupo Mixto* – Left wing. Galician nationalism
- *Coalición Canaria, Nueva Canaria y Partido Nacionalista Canario/ Grupo Mixto* – Centre right. Canarian nationalism
- *Compromís/ Grupo Mixto* – Left wing. Nationalism from Valencia
- *Foro de Ciudadanos/ Grupo Mixto* – Centre right. Regionalism from Asturias
- *Geroa Bai/ Grupo Mixto* – Centre left. Vasc nationalism

Elections to the Spanish Parliament

(1) In March 2008, the PSOE (*Partido Socialista Obrero Español*) won the elections to the *Congreso de los Diputados*.² The PSOE got 169 seats, the PP (*Partido Popular*) got 153 seats, and the rest of the parties represented in the *Congreso* got 27 seats in total: *Convergència I Unió* (11), *Partido Nacionalista Vasco* (6), *Esquerra Republicana de Catalunya* (3), *Izquierda Unida* (2), *Bloque Nacionalista Gallego* (2), *Coalición Canaria* (2), *Unión Progreso y Democracia* (2) and *Nafarroa Bai* (1). The PSOE decided to govern alone, which forced it to negotiate with other parties in order to be able to adopt important measures.

(2) In November 2011, the PP (*Partido Popular*) won the elections to the *Congreso de los Diputados*.³ The PP got 186 seats, the PSOE got 110 seats and the rest of the parties represented in the *Congreso* got 54 seats in total: *Convergència I Unió* (16), *Izquierda Unida* (11), *Amaiur* (7), *Partido Nacionalista Vasco* (5), *Unión Progreso y Democracia* (5), *Esquerra Republicana de Catalunya* (3), *Bloque Nacionalista Gallego* (2), *Coalición Canaria, Nueva Canaria y Partido Nacionalista Canario* (2), *Compromís* (1), *Foro de*

²See the results of the 2008 General Elections, as published in the *Boletín Oficial del Estado* (BOE), in: <http://www.boe.es/boe/dias/2008/04/17/pdfs/A20322-20377.pdf>

³See the results of the 2011 General Elections, as published in the *Boletín Oficial del Estado* (BOE), in: http://www.juntaelectoralcentral.es/jelect/2011/GENERALES_2011_Resultados.pdf

Ciudadanos (1) and *Geroa Bai* (1). The PP obtained absolute majority. This is very important in the context of the crisis governance, because it allows the Government to continuously adopt urgent anti-crisis measures and then to ratify them in the Parliament without needing the support of other parties. In this sense, the opposition has repeatedly criticised the Government for its lack of will to reach agreements.⁴

Economic and Financial Crisis Governance in Spain (January 2008- November 2012)

(1) In March 2008, the *PSOE* (*Partido Socialista Obrero Español*) won the elections to the Spanish Parliament. Although it was already evident that the inflation was accelerating, the unemployment was rising and the consumption of families was falling, the Government refused to speak about “crisis” and only admitted an economic “*desaceleración*”.⁵ In this context, social measures like the *cheque bebé*⁶ were maintained and new ones were introduced, like the refund of 400 Euros to IRPF taxpayers.⁷

(2) In June 2008, Zapatero admitted that Spain was in a very difficult situation and adopted an austerity plan with the major aim of reducing public spending in the public administration. Some of the measures of this plan were: a major reduction of public job offers for 2009 (in relation to 2008), and the freezing of salaries of high positions in the public administration.⁸ The Government emphasised that only the salaries of high positions would be frozen, because of its commitment to keep the agreements with the syndicates of the public administration.

(3) In August 2008, the Government adopted a plan consisting of 24 economic measures mainly affecting the following sectors: transport, energy, telecommunications, environment, housing and financing of small and medium enterprises. From the point of view of social rights, it is important to highlight the introduction of measures to facilitate the financing for the acquisition of subsidised housing.⁹

(4) In November 2008, the Government announced a new plan to activate the economy,

⁴See, for example, an article published in *El País* (03/07/2012):

http://politica.elpais.com/politica/2012/07/03/actualidad/1341339765_422675.html

⁵Solves, the Minister of Economy, preferred to speak about a “significant deceleration” than about a “crisis” in 2008:

http://elpais.com/diario/2008/06/03/economia/1212444007_850215.html

⁶ The “cheque bebé” was an amount of 2500 euros that was given to families for every child born or adopted in Spain. It was introduced in 2007 and it disappeared in 2011:

<http://www.rtve.es/noticias/20100512/jose-luis-rodriguez-zapatero-dice-adios-cheque-bebe-medida-estrella-politica-social/331041.shtml>

⁷ The IRPF is the Spanish income tax. To read about the introduction of the measure visit: http://www.cincodias.com/articulo/economia/gobierno-aprueba-devolucion-400-euros-mitad-abonara-junio/20080523cdscdseco_2/

⁸Read the press release of this austerity plan in the website of the Government: <http://www.lamoncloa.gob.es/ActualidadHome/2008/230608CES.htm?galv2r=0>

⁹Read the press release of this plan in the website of the Government:

<http://www.lamoncloa.gob.es/ActualidadHome/2008/140808-enlacereformas.htm>

consisting of 11000 million Euros for public investment, 8000 of which to be destined to town halls to finance public works (*Fondo estatal de inversión local*).¹⁰ With this plan, Zapatero hoped to create 300000 jobs in 2009.

(5) In January 2009, the Government presented the *Plan E (Plan español para el estímulo de la economía y el empleo)*,¹¹ which consisted of 82 economic measures basically in four different fields: aid to families, promotion of employment, modernisation of the economy and support to the financial sector. From the point of view of social rights, the most important measures are: the creation of a *Fondo estatal de inversión local*¹² and the promotion of subsidised housing.

(6) In September 2009, the Government announced the increase of the *IVA* (VAT) and the abolition of the refund of 400 euros to *IRPF* taxpayers, introduced in March 2008.¹³

(7) In May 2010, the Government announced a reduction of 15000 million Euros in social spending.¹⁴ The cuts mainly affected the salaries of public officials (-5% on average), the retirement pensions (freezing in 2010), the abolition of the *cheque-bebé* (introduced in 2007) and the *Ley de la Dependencia*.¹⁵ These cuts also had an important impact on the healthcare system and on the education system.

(8) In September 2010, the Government presented a labour market reform.¹⁶ This reform reduced the cost of dismissals and introduced new instruments to better control the unemployed.

(9) In June 2011, a reform of the retirement pensions system was adopted. The main

¹⁰ See the regulation adopting the measures of this plan in the *BOE (Boletín Oficial del Estado)*: <http://www.boe.es/buscar/doc.php?id=BOE-A-2008-19432>

And the news regarding the plan in *El País*:

http://elpais.com/diario/2008/11/28/economia/1227826801_850215.html#despiece1

¹¹ See the news on the *Plan E* in *El País*:

http://elpais.com/diario/2009/01/13/economia/1231801205_850215.html

¹² Notice that this measure had already been adopted in November 2008. However, it was considered to be part of the *Plan E*

¹³ See the news on these measures in *RTVE*:

<http://www.rtve.es/noticias/20090926/gobierno-sube-dos-puntos-iva-general-elimina-deduccion-400-euros/294000.shtml>

¹⁴ See the regulation adopting these measures in the *BOE*:

<http://www.boe.es/boe/dias/2010/05/24/pdfs/BOE-A-2010-8228.pdf>

And the news about it in *El País*:

http://elpais.com/diario/2010/05/13/espana/1273701601_850215.html

http://elpais.com/elpais/2010/05/12/actualidad/1273652221_850215.html

¹⁵ The *Ley de Dependencia* had the aim of promoting the care and the personal autonomy of dependent people. See this regulation, as adopted in 2006, in:

<http://www.boe.es/buscar/doc.php?id=BOE-A-2006-21990>

¹⁶ See the regulation adopting this labour market reform in:

http://www.cincodias.com/5diasmedia/cincodias/media/201009/18/economia/20100918cdscdseco_1_Pes_PDF.pdf

And the news about it in *La Vanguardia*:

<http://www.lavanguardia.com/economia/noticias/20100909/54000612374/el-gobierno-logra-sacar-adelante-definitivamente-su-reforma-laboral-sin-las-enmiendas-de-la-oposicio.html>

innovation of the reform was the change of the retirement age from 65 to 67 years.¹⁷

(10) In February 2012, the recently elected Government of the PP (*Partido Popular*) presented a new labour market reform.¹⁸ The reform reduced the costs of dismissals, allowed for collective dismissals of public officials and gave more freedom to employees to modify working days, salaries, timetables and positions.

(11) In April 2012, the Government announced a 10000 million Euros cut¹⁹ affecting the healthcare system²⁰ and the education system.²¹ In relation to the healthcare system (7000 million Euros cut), the most important of the measures introduced was the *copago* (co-payment) of medicines, which would vary depending on the income of the citizens. For instance, pensioners (who did not have to pay for medicines before) will now generally pay 10% of the price of medicines. On the other hand, employed citizens whose annual income is below 18000 Euros will generally pay 40% of the price of medicines (which they were already doing), while those annually earning between 18000 and 100000 Euros will now have to pay 50% of the price of medicines. Finally citizens with incomes above 100000 per year will pay 60% of the price. Among the most important measures affecting the education system, it is important to highlight the increase of the maximum number of students per class and the increase of the amount of class hours per teacher.

(12) In May 2012, the Spanish Government rescued Bankia, the fourth largest bank of the country, injecting more than 23000 million Euros on this operation. By the end of May, Spain's risk premium rose to 530 points,²² and the EU warned the Government that it should reduce public spending in order to control its public deficit.²³

(13) In June 2012, in particular on the 9th of June, the Spanish Government publicly announced its intention to ask for European financial assistance to recapitalise banks, and it

¹⁷ See the regulation adopting this reform in the *BOE*:

<http://www.boe.es/boe/dias/2011/08/02/pdfs/BOE-A-2011-13242.pdf>

¹⁸This labour market reform was adopted in June 2012. See the regulation in the *BOE*:

http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-9110

¹⁹See the news about “*el mayor recorte al Estado del Bienestar*” (The biggest cut to the Welfare State) in *El País*:

http://politica.elpais.com/politica/2012/05/17/actualidad/1337245957_222091.html

²⁰ See the regulation adopting the healthcare system reform in the *BOE*:

<http://www.boe.es/boe/dias/2012/04/24/pdfs/BOE-A-2012-5403.pdf>

And the news about it in *La Vanguardia*:

<http://www.lavanguardia.com/salud/20120420/54284664222/gobierno-luz-verde-recortes-para-ahorrar-7-000-millones-sanidad.html>

²¹ See the regulation adopting the education system reform in the *BOE*:

<http://www.boe.es/boe/dias/2012/04/21/pdfs/BOE-A-2012-5337.pdf>

And the news about it in *El País*:

http://sociedad.elpais.com/sociedad/2012/05/19/actualidad/1337450845_829383.html

²² See the news about Spain's risk Premium in June 2012 in *El País*:

http://elpais.com/elpais/2012/06/01/inenglish/1338558583_391652.html

²³ See, for instance, the document “Following in-depth reviews, Commission calls on Member States to tackle Macroeconomic Imbalances”, MEMO/12/388, 30 May 2011 in:

http://europa.eu/rapid/press-release_MEMO-12-388_en.htm?locale=en

stressed the fact that the Eurogroup had responded positively to this intention in its meeting held on the same day.²⁴ Later, on the 25th of June, the Spanish Government officially requested financial assistance for the banking sector. The European Commission, together with the ECB, the European Banking Authority (EBA) and the IMF assessed and concluded that Spain fulfilled the eligibility conditions. Therefore, they negotiated and eventually agreed with the Spanish authorities the specific financial-sector policy conditions attached to the financial assistance, which resulted in a Memorandum of Understanding on Financial-Sector Policy Conditionality and a Financial Assistance Facility Agreement.²⁵ As stated in the Memorandum, the main objective of the bailout is “to increase the long-term resilience of the banking sector as a whole, thus, restoring its market access”. Therefore, the key component of the bailout is to strengthen the weak segments of the Spanish financial sector. However, the text also stresses the fact that “there is a close relationship between macroeconomic imbalances, public finances and financial sector soundness”. This is the reason why Spain is compelled to ensure the attainment of deficit targets of 6.3% of GDP for 2012, 4.5 of GDP for 2013 and 2.8 of GDP for 2014. Moreover, the Memorandum “invites” Spain to introduce modifications in concrete fields such as its taxation system (so that it is “more supportive to growth”) and to implement the labour market reforms.

(14) In July 2012, in particular on the 13th of July, the Government announced a new set of measures.²⁶ The most important reforms are the increase of the IVA (VAT), the increase of the *Impuesto de Sociedades* (Corporate Income Tax), the reduction of housing assistance, the cut of unemployment benefits, the modification of the *Ley de Dependencia*, and the reduction of public spending in public officials (e.g. the extra pay of December is abolished).

(15) In August 2012, the Government withdrew the *tarjeta sanitaria* to irregular immigrants, which means that their access to the healthcare system is now limited to very specific cases (i.e. maternity, emergency care). This measure is one of the reforms to the healthcare system adopted in April 2012.²⁷

(16) From September to November 2012, the Spanish press continuously reported about the “imminent” second bailout for Spain, in this case not for its banking sector, but for the

²⁴ See the news about the intention of the Spanish Government to request financial assistance in the official website of the Government:

http://www.lamoncloa.gob.es/ServiciosdePrensa/NotasPrensa/MinisterioEconomiaCompetitividad/2012/11061_2tesoro.htm

²⁵ See the 23th of July 2012 Memorandum of Understanding on Financial Sector Policy Conditionality and the 24th of July 2012 Financial Assistance Facility Agreement in (respectively):

http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf

http://www.efsf.europa.eu/attachments/efsf_spain_ffa.pdf

Also, see these agreements, as published in the 10th of December 2012 *Boletín Oficial del Estado* (BOE) in:

<http://www.bde.es/f/webbde/SJU/normativa/BOE-A-2012-14945.pdf>

²⁶ See the regulation adopting these reforms in the *BOE*:

<http://www.boe.es/boe/dias/2012/07/14/pdfs/BOE-A-2012-9364.pdf>

And the press release about the measures in the website of the Government:

<http://www.lamoncloa.gob.es/ConsejodeMinistros/Resumenes/2012/130712-consejo.htm>

²⁷ See the news about it in *El País*:

http://politica.elpais.com/politica/2012/08/31/actualidad/1346438706_297231.html

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Spanish public debt.²⁸ On 26 October 2012 the Government announced the creation of a Commission to undertake a reform of the public administration to better manage public services and to avoid unnecessary bureaucracy and duplicities. Moreover, the Government adopted the regulation allowing for collective dismissals in the public administration, which is an implementation of the labour market reform of February 2012.²⁹

²⁸See the news about the second bailout in September:

<http://www.lavanguardia.com/economia/20120925/54351805414/rescate-espana-bruselas-gobiernos.html>

http://economia.elpais.com/economia/2012/09/08/actualidad/1347122589_255164.html

In October:

<http://www.elmundo.es/elmundo/2012/10/03/economia/1349255442.html>

<http://www.expansion.com/2012/10/26/economia/1351242765.html>

http://politica.elpais.com/politica/2012/10/31/actualidad/1351678526_422326.html

And in November:

<http://www.elmundo.es/elmundo/2012/10/31/espana/1351668733.html>

²⁹See the press release of these announcements in the website of the Government:

<http://www.lamoncloa.gob.es/ConsejodeMinistros/Resumenes/2012/261012-consejo.htm>

And the news about the measure allowing for collective dismissals of public officials:

http://economia.elpais.com/economia/2012/10/30/actualidad/1351588770_264660.html

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

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

Article 32 of the *Ley 47/2003, de 26 de Noviembre, General Presupuestaria*³⁰ defines the *Presupuestos Generales del Estado* (State's general budget) as the numeric and systematic expression of the rights and duties to be settled during the year by the organs and entities that constitute the State's public sector. In this sense, it is important to stress that Article 2 of the same Instrument lists the entities, which are considered to be part of the State's public sector to the effects of the State's general budget. Besides, given the decentralised character of the Spanish State, the general budget coexists with the budgets of the Autonomous Communities, as well as those of the local governments.

As for the legal framework, the four essential instruments regarding the budgetary process are: the Spanish Constitution; the *Ley 47/2003, de 26 de Noviembre, General Presupuestaria*; the legislation on budgetary stability, mainly the *Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera*;³¹ and the yearly *Orden* of the Ministry of Economy and Competitiveness regarding the rules for the elaboration of the general budget of the State, currently the *Orden HAP/981/2013, de 31 de mayo, por la que se dictan las normas para la elaboración de los Presupuestos Generales del Estado para 2014*.³² As for the budgetary cycle, it consists of four main phases:

(1) Elaboration. It starts with the decision on the limit of the non-financial spending for the following year. In this phase, multiple negotiations take place between members of the Ministry of Finance and Public Administration and the rest of ministries and organs of the State.

(2) Debate and adoption by the Parliament. Before the 1st of October, the Government must send the budget and its accompanying documents to the Parliament. If there is no agreement on a new budget in the Parliament, the one of the year before is extended to the following year.

(3) Execution. Once the Parliament has adopted the budget, it becomes a *Ley* (*Ley de*

³⁰ See the *Ley 47/2003, de 26 de Noviembre, General Presupuestaria* (General Budget Law) in: <http://www.boe.es/buscar/pdf/2003/BOE-A-2003-21614-consolidado.pdf>

³¹ See the *Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera* (Budget Stability and Financial Sustainability Law) in: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-5730

³² See the *Orden HAP/981/2013, de 31 de mayo, por la que se dictan las normas para la elaboración de los Presupuestos Generales del Estado para 2014* (rules for the development of the State's General Budget for 2014) in: <http://www.boe.es/boe/dias/2013/06/04/pdfs/BOE-A-2013-5870.pdf>

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Presupuestos Generales del Estado), which enters into force on the 1st of January.

(4) Parliamentary, Judicial and Administrative Control. This phase coexists in time with the third one, on the execution of the budget.

GENERAL CHANGE

II.2

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

The budgetary process has gone through an enormous amount of legal changes since the beginning of the Eurozone crisis. In fact, many articles of the *Ley 47/2003, de 26 de Noviembre, General Presupuestaria*, which constitutes the cornerstone of the Spanish budgetary system, have been modified since 2008.³³ The novelties affect a variety of issues, for instance: the rules on the budgetary programming and on the elaboration of the budget (Articles 26 and 36, respectively); the administrative control system by the *Intervención General de la Administración del Estado* (Articles 144, 151, 159); and the financial operations with the EU (Article 83). Besides, a new law on budgetary stability, the *Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera*,³⁴ has been adopted as a result of the Constitutional reform of Article 135, which introduced the balanced budget rule in the Spanish Constitution.³⁵ Moreover, this new *Ley Orgánica* has already been modified by *Ley Orgánica 4/2012, de 28 de septiembre, por la que se modifica la Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera*.³⁶ Furthermore, the *Ley Orgánica 6/2013, de 14 de noviembre, de creación de la Autoridad Independiente de Responsabilidad Fiscal*,³⁷ has created an independent body for fiscal responsibility (a fiscal council), which shall guarantee that the balanced budget rule is respected throughout the whole budgetary process.

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?

See answer to questions VII.5 and VII.12.

³³ See the link to *Ley 47/2003, de 26 de Noviembre, General Presupuestaria*, as subsequently modified, in: <https://www.boe.es/buscar/act.php?id=BOE-A-2003-21614>

³⁴ See the link to this *Ley Orgánica* in note 31.

³⁵ See more on this constitutional reform in the answer to Questions IX.4-IX.5.

³⁶ See the *Ley Orgánica 4/2012, de 28 de septiembre, por la que se modifica la Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera* (Law modifying the Budget Stability and Financial Sustainability Law) in:

<http://www.boe.es/boe/dias/2012/09/29/pdfs/BOE-A-2012-12192.pdf>

³⁷ See this *Ley Orgánica* in: <https://www.boe.es/boe/dias/2013/11/15/pdfs/BOE-A-2013-11935.pdf>

Regarding the creation of this fiscal body, see the answer to Question VII.4.

CHANGE OF TIME-LINE

II.4

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

See answer to question VII.8.

MISCELLANEOUS

II.5

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

See the answers to the questions on to the six-pack, in particular questions VII.7 and VII.15.

III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

NATURE NATIONAL INSTRUMENTS

III.1

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

The range of legal instruments adopted in Spain in order to implement Euro-crisis law has been very broad and diverse. It has included constitutional amendments (e.g., Article 135 of the Spanish Constitution), the approval of different organic laws, royal-decree laws, decree-laws, ordinary laws, decisions, etc., and most importantly, the crisis and the critical financial situation have led to a different approach towards the way of legislating, having a much more coral and integrative vision of Spain within the European Union.

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?

On September 2011, Article 135 of the Spanish Constitution (*Constitución Española*) on public debt, was amended, setting in the text the concept of "budget stability" while introducing the absolute priority of debt and interest repayment. The Spanish Government approved a law in congress to amend the Constitution to require a balanced budget at both the national and regional level by 2020.

The detailed process of adoption of the amendment is stated when answering Question VI.2.

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?

Most of the relevant elements concerning Euro-crisis constitutional law in Spain (e.g., amendment of Article 135 CE; Organic Law 2/2012 of 27 April; on Budgetary Stability and Financial Sustainability; the creation of the National Commission for Local Administration (CNAL), etc.) have been developed in response to the crisis and were not contained in the law before the start of the financial crisis in Europe.

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

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

For 33 years the Spanish Constitution had been considered untouchable by the ruling parties, only amended once in order to adapt the country's legislation to the European Union's legal framework. However, on August 2011, in a span of two weeks since Prime Minister Zapatero announced that he was planning an amendment, a new article was added in a bid to reassure international markets that Spain was serious in cutting its deficit.³⁸

The main purpose of new Article 135 of the Constitution is to subject all public administrations to comply with the principle of budgetary stability, forbidding them to incur a deficit position above the thresholds defined in the Stability and Growth Pact. The political agreement set a maximum structural deficit of 0.4% of GDP to be achieved by 2020, which was distributed at the rate of 0.26% for the State and the remaining 0.14% for the Autonomous Communities. Soon later, Organic Law 2/2012 resolved that no administration may incur into structural deficit, so that 0.4% is only allowed when the deficit is the result of structural reforms to be made and when having long-term budgetary impact. The idea of constitutional limits on debt levels was broached at the July 21 European Summit, when European Union leaders approved a new loan package for Greece and encouraged member states to implement fiscal discipline. Germany has already included this stipulation in its constitution, while France and Italy were working on it.

Article 135 is embedded in Part VII of the Spanish Constitution ("Economy and Finance", Articles 128-136). Title VII deals with the organization and distribution of national wealth, although this also appears on more articles.³⁹

Article 128 establishes that the Tax Office shall be subordinated to the general interest and public initiative. Participation in private and public sectors (e.g., Social Security) is established in Article 129. Attention to the modernization and development of the economic sectors, especially the most disadvantaged is given in Article 130. Economic planning is allowed (Art.131), as well as the creation of local tax offices (Art.133). Article 132 determines which the goods under public property domain are. This will enable the funding mechanisms of the autonomous communities (Article 156) and Territorial Compensation Fund (*Fondo de Compensación Territorial*) contained in Article 158 of the Constitution. Article 134 says that State expenditure must be submitted through official budget presented by the Government in order to be approved later by Parliament. In addition, the Government may issue public debt and may get credit (Art.135). Finally, Article 136 expresses that all expenses and income, and the economic management of the State will be audited by the

³⁸ See http://elpais.com/elpais/2011/08/26/inenglish/1314336041_850210.html

³⁹Spanish Constitution, Part VII, Economy and Finance:

http://www.lamoncloa.gob.es/IDIOMAS/9/Espana/LeyFundamental/titulo_septimo.htm

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Court of Auditors (*Tribunal de Cuentas*).

Title VII should be interpreted in light of international treaties.

RELATIONSHIP WITH EU LAW

III.5

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

The reform of Article 135 of the Spanish Constitution of September 27, 2011, the second that has been made since the adoption of the Constitution in 1978, meant a profound modification of this provision. The two sections that included this article in its original wording were turned into six, which gives an idea of the depth and relevance of the amendment carried out.⁴⁰

The deal followed calls by Germany and France for Spain and other states at the sharp end of the euro zone debt crisis to set binding limits on their deficits to regain the trust of investors.

As stated in the Article 135 Preamble, the reason for the amendment was to meet Spain's commitments acquired when joined the European Monetary Union, a framework in which fiscal stability acquires structural value, conditioned to the ability for financial performance by the public administrations. Fiscal stability is conceived as essential to the maintenance and development of the Welfare State as proclaimed in Article 1.1 of the Spanish Constitution. Accordingly, it comes included in the constitutional text, therefore granting fiscal stability the maximum regulatory status possible within the Spanish legal system.

This is another proof of what constitutes already a reality in Spain (worsened since the beginning of the current crisis), a reality which, among others Prof. Óscar Alzaga clearly expressed:⁴¹ the guidelines on economic policy coming from Brussels are increasingly accurate, so that the sovereign authority to prepare the State Budget will be heavily conditioned by the European economic governance policy. In short, the constitutional reform consecrated a new allocation of powers under the Constitution, required to continue the construction of the European Union.

The new Article 135 begins by establishing a principle of conduct for all public administrations in their actions: the budgetary stability principle. Moreover, paragraph 2 of the same article admits the existence of a structural deficit of the State and the Autonomous Communities, which in no case shall exceed the margins set by the European Union.

As for public debt, the amendment kept the content of former Article 135 in the new

⁴⁰ See new Article 135 Const. Synopsis:
<http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=135&tipo=2>

⁴¹ *Reforma Constitucional* (Constitutional reform) explained (ES)::
<http://pendientedemigracion.ucm.es/info/sistema/textos/reforma.htm>

paragraph 3, establishing that the issue of debt must be authorized by law, and also the payment of term loans for satisfying public debt. It introduced an important new feature consisting in linking the total public debt for all public administrations, measured in relation to the GDP reference value set in the Treaty on the Functioning of the European Union (TFEU), particularly in Article 126, which is set at 60% of GDP. This represents another feature of the increasing relation between national and European constitutional law in Spain.

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?

On the changes of organic laws, see in particular Question VI.2.

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?

Organic Law 2/2012, of April 27, on Budgetary Stability and Financial Sustainability,⁴² is the law that develops the amendment of Article 135 of the Constitution, which also experienced a rapid process of parliamentary approval, responding to bipartisan agreement to reduce the deficit public and meet the new European legal framework enshrining the "golden rule" of balanced budgets (see Question VI.2).

It is the very own wording of new Article 135, which provides the mandate to develop the content of this article in organic law before June 30, 2012. With the approval of Organic Law 2/2012 on Budgetary Stability and Financial Sustainability for the Public Administration it is given full compliance to the constitutional mandate.

The reference to the rules of European stability, both in the Constitution and in LO 2/2012, is constant, being Spain one of the first countries to incorporate the European economic governance package to its domestic law. In addition, LO 2/2012 gives effect to the European Fiscal Stability Treaty (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union; also referred to as TSCG) of March 2, 2012, ensuring a continuous and automatic adaptation to European standards.

Organic Laws in Spain

Under the current Spanish Constitution of 1978, an Organic Law has an intermediate status between that of an ordinary law and of the constitution itself. It must be passed by an

⁴²*Boletín Oficial del Estado* No. 103, of 30 April 2012:
<http://www.boe.es/boe/dias/2012/04/30/pdfs/BOE-A-2012-5730.pdf>

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absolute majority of the Congress of Deputies. The Spanish Constitution specifies that some areas of law must be regulated by this procedure, such as the laws developing fundamental rights and freedoms recognized in the first section of Chapter Two of Title I of the Constitution, as well as the laws that approve the Statutes of Autonomy of the Autonomous Communities of Spain, among others. Prior to the 1978 constitution, this concept had no precedent in Spain, but was inspired by the similar concept in the current French Constitution of 1958.

Notice that, as established in Article 81 of the Spanish Constitution, the adoption of a *Ley Orgánica* requires the absolute majority of the *Congreso de los Diputados* (which, together with the *Senado*, constitutes the Spanish Parliament) in the final voting of the law.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

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

The economic crisis exposed the inadequacy of the national mechanisms of discipline on Budget laws and economic governance to control deficit, to ensure adequate funding of the public sector and to provide security to investors about the ability of the Spanish economy to grow and meet its national and international commitments. It also did not suit the path taken by the European Union seeing the need to advance the economic integration process, looking for achieving greater coordination and fiscal accountability of the Member States, and aiming towards greater economic and fiscal surveillance of them, with the consequent transfer of sovereignty.

In the medium and long term, in order to strengthen economic and fiscal policy that would allow ensuring permanent economic growth and the creation of jobs, according to the legislators, it was needed to ensure fiscal stability, which would help to strengthen the confidence in the Spanish economy and raise finance on better terms. Thus the Constitution introduced a fiscal rule limiting the structural public deficit and restricted public debt reference to the reference value of the Treaty on the Functioning of the European Union, being Spain pioneer in this regard.

Once analysed the legislation that has been developed in Spain to address the European crisis, the resulting perception is that Spanish legislators have been implementing national constitutional law, but in an increasingly integrated and complementary way with the “Euro-crisis law”.

MISCELLANEOUS

III.9

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

No other relevant information.

IV EARLY EMERGENCY FUNDING

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

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

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

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

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

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

(http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf and http://www.efsf.europa.eu/attachments/faq_en.pdf)

NEGOTIATION

IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SPAIN ENCOUNTER IN THE NEGOTIATION OF THE EFSF AND THE EFSM, IN PARTICULAR IN RELATION TO (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The EFSF and the EFSM were agreed at the Eurogroup extraordinary meeting of 7-9 May 2010. It must be kept in mind that Spain held the Presidency of the EU at the time. This resulted in an agreement between the then governing party, *Partido Socialista Obrero Español* and the other major political parties (*Partido Popular*, *Convergencia I Unió* and *Partido Nacionalista Vasco*) setting the priorities of the Spanish Presidency as well as the duty to support the Spanish Government in pursuing them⁴³. In this light, it is not a surprise that the EFSF and the EFSM found little political or legal difficulty when debated in the Spanish Parliament.

Under the Spanish legislative framework, accounts on the EU legislative agenda and the position of the Spanish government thereof are to be given before a parliamentary

⁴³*Diario de Sesiones del Congreso de los Diputados* No. 131 of 15 December 2009: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_131.PDF.

commission⁴⁴. Explanations from the President vis-à-vis the *Congreso de los Diputados* (lower chamber) in plenary session are given *ex post* when requested by the President himself⁴⁵. Previous consent from the *Congreso de los Diputados* as well as the *Senado* (upper chamber) is only needed in case of the ratification of international treaties. Therefore, most of EU legislation is briefly discussed at the Parliamentary Joint Commission for the European Union before being passed and debated afterwards in front of the *Congreso de los Diputados*, while often omitting discussion at the *Senado*.

Since neither the EFSM nor the EFSF were dealt with during the meetings of the Parliamentary Joint Commission for the European Union on the weeks preceding the Eurogroup meeting of 7-9 May 2010⁴⁶, little information exists surrounding the negotiation of these instruments and the difficulties arisen in the process, if any. The only statements in this regard were voiced by President José Luis Rodríguez Zapatero at the *Congreso de los Diputados* a month before the adoption of the EFSM and the EFSF, when he stated that “member states are taking the steps needed at the national level in order to contribute towards a support mechanism. (...) This is the position that the Spanish government defended from the first moment, because it is the only one truly consistent with a monetary union”⁴⁷. Mariano Rajoy, head of *Partido Popular* (the main party of the opposition at the time) replied that Spain could not really afford to go into more debt yet he supported the measures⁴⁸ in order to defend the Euro.

Few days after the establishment of the EFSM and the EFSF, President José Luis Rodríguez Zapatero appeared before the *Congreso de los Diputados* in order to inform about the Eurogroup extraordinary meeting that had just taken place⁴⁹. Zapatero exposed that Spain, as the rotating president of the EU, had contributed to the creation of the European stabilisation mechanisms, which included “the mobilisation of €750,000 million, 250,000 of which were to be provided by the IMF, 60,000 by the Commission and the rest through a financial instrument guaranteed by all the eurogroup”. Mr Mariano Rajoy received with caution the measures approved by the European Union while recognising that “in the short term will help to bring stability to the markets, as shown by the large increase in the stock-market today after last week's downfall.” Mr Rajoy then added that the most important is that Europe has sent its members the message that “they will not let them drop”. Yet the rescue of the

⁴⁴This Parliamentary Commission is the “*Comisión Mixta para la Unión Europea*”, which comprises members from both the *Congreso de los Diputados* and the *Senado*.

⁴⁵Article 203 of the *Reglamento del Congreso de los Diputados* (Regulation of the Congress): http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/reglam_congreso.pdf.

⁴⁶*Diario de Sesiones del Congreso de los Diputados* No. 107 of 11 March 2010, http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_107.PDF and *Diario de Sesiones del Congreso de los Diputados* No. 113 of 13 April 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_113.PDF.

⁴⁷*Diario de Sesiones del Congreso de los Diputados* No. 156, of 21 April 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_156.PDF.

⁴⁸ Rajoy did not mention the measures he referred to, although in the context it is understood he referred to the EFSF as this is the one funded by the member states.

⁴⁹*Diario de Sesiones del Congreso de los Diputados* No. 162, of 12 May 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_162.PDF.

economies that could be in danger involves the imposition of "homework" by Brussels to the member states as well as the monitoring of their evolution. "Now he (Zapatero) has to deliver what Europe says", said Rajoy. "We will help with what Zapatero wants because that's what we have been asking for the last two years," he concluded. In the same parliamentary sitting, Josu Erkoreka from *Partido Nacionalista Vasco* stated that the creation of these instruments could be understood as circumstantial measures linked to the Greek crisis, but also as the embryo of a common fiscal policy. Erkoreka saw the latter as a positive step, given that he hoped for a fiscal federalist structure for Europe that could avoid similar crises in the future.

Since the EFSF was considered as an international agreement under Spanish national law, it needed the approval of the *Congreso de los Diputados* as well as the *Senado*. As such, after the Foreign Affairs Parliamentary Commission produced a report on the EFSM, the text was submitted to both *Congreso* and *Senado* for its authorization on 28 June 2010⁵⁰. In both sittings of the *Congreso* and the *Senado* there was no parliamentary discussion surrounding the voting of the EFSM. Only at the *Congreso* did Gaspar Llamazares (from the left-wing party *Izquierda Unida*) voice its intention to vote against the instrument⁵¹. The voting outcome was 343 votes in favour, 2 against and 4 abstentions at the *Congreso de los Diputados*⁵². At the *Senado*, no vote was needed as the ratification of the EFSM was unanimously authorised⁵³.

Following the approval of the agreement establishing the EFSF in both chambers⁵⁴, the text of the agreement was published in the Official State Bulletin on 11 July 2011⁵⁵. The immediate implications of the EFSF at national legislative level was the approval of *Real Decreto Ley* (Royal Decree-Law) 9/2010, of 28 May, which authorizes the Government to grant guarantees to certain financing transactions under the EFSF of the Eurozone Member States.⁵⁶ The object of this *Real Decreto Ley* was the authorization by the Government for guaranteeing, up to a maximum of €53,900 million, the financial obligations arising from financing operations carried out by the EFSF since its inception and until December 31, 2013. Again, only Mr Llamazares Trigo from *Izquierda Unida* expressed his intentions to

⁵⁰*Boletín Oficial de las Cortes Generales, Senado*, Serie IV, No. 190 (a), of 28 June 2010: http://www.congreso.es/public_oficiales/L9/SEN/BOCG/IV/IV0190A.PDF.

⁵¹*Diario de Sesiones del Congreso de los Diputados, Asuntos Exteriores*, No. 583, of 22 June 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/CO/CO_583.PDF.

⁵²*Diario de Sesiones del Congreso de los Diputados*, No. 176, of 22 June 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_176.PDF#page=52, pp. 52.

⁵³*Diario de Sesiones del Senado*, No. 86, of 6 July 2010: http://www.congreso.es/public_oficiales/L9/SEN/DS/PL/PS0086.PDF (pp. 4634-4635).

⁵⁴*Boletín Oficial de las Cortes Generales, Congreso de los Diputados*, Serie C, No. 237-4, of 29 June 2010: http://www.congreso.es/public_oficiales/L9/CONG/BOCG/C/C_237-04.PDF#page=1, *Boletín Oficial de las Cortes Generales, Senado*, Serie IV, No. 190 (c), of 12 July 2010: http://www.congreso.es/public_oficiales/L9/SEN/BOCG/IV/IV0190C.PDF.

⁵⁵*Boletín Oficial del Estado* No. 164, of 11 July 2011: <http://www.boe.es/boe/dias/2011/07/11/pdfs/BOE-A-2011-11824.pdf>.

⁵⁶*Diario de Sesiones del Congreso de los Diputados* No. 172, of 10 June 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_172.PDF.

vote against the mechanism during the voting session.⁵⁷

The use of a policy instrument such as the *Real Decreto Ley* deserves some remarks. The *Real Decreto-ley* is a legal norm with the full force of law that emanates from the Government and it can only be promulgated in case of extraordinary and urgent necessity. In order to avoid misuse by the Government, the *Real Decreto Ley* has got three limitations: (a) it can only be used in case of “urgent need” (although the Government is the one deciding when such need exists), (b) its content cannot affect the State institutions, citizens’ rights and freedoms, the configuration of the Spanish regions or the electoral law, and (c) the existence of the “urgent need” behind the *Real Decreto Ley* needs approval from the *Congreso de los Diputados* within a maximum of thirty days in order to be converted into law, otherwise the *Decreto Ley* expires⁵⁸. The *Congreso* cannot modify the text of the *Real Decreto Ley*, only approve it or reject it as a whole. This makes the process much faster while substantially avoiding parliamentary debates. In the case of the EFSM, the Government at the time appreciated that the situation of volatility and uncertainty in the financial markets required the implementation of urgent measures that would allow restoring the confidence of financial agents in the economies of the Eurozone. The use of the *Real Decreto Ley*, while restricting the ability of the MPs to discuss its content, ultimately allowed the implementation without delay of the EFSF.

Additionally, the approval of the EFSF followed implications for the budgetary process. It resulted in the need to amend Article 54.1 and 54.2 of Law 26/2009, of 23 December⁵⁹ on the State Budget for 2010 (and in conformity with Article 114 of Law 47/2003, of 26 November on General Budget) in order to increase the maximum amount of the guarantees to be granted by the Government for the fiscal year 2010 (from €42,000 million originally established to the €53,900 million required by the EFSM to Spain for its 12,24% share).

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 SPAIN AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

Being considered as an international agreement, the procedure followed by the Spanish laws in order to ensure that the EFSF obligations were coming into immediate force was the

⁵⁷*Diario de Sesiones del Congreso de los Diputados, Asuntos Exteriores*, No. 583, of 22 June 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/CO/CO_583.PDF. In order to understand the political context of the Eurozone crisis period in Spain as well as the Spanish political system see Question I.1.

⁵⁸*Boletín Oficial del Estado* No. 175, of 22 July 2011: http://www.congreso.es/constitucion/ficheros/leyes_espa/rdl_008_2011_conv.pdf.

⁵⁹*Boletín Oficial del Estado* No. 309, of 24 December 2009: <http://www.boe.es/boe/dias/2009/12/24/pdfs/BOE-A-2009-20765.pdf>.

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following:

a) It was firstly authorised by the *Consejo de Ministros* (Cabinet or Council of Ministers) in its meeting of 4 June 2010.⁶⁰ The Council authorised the signing of the Framework Agreement and to proceed to its ratification.

b) Once authorised by the *Consejo*, the EFSF Framework Agreement was sent to the Spanish Parliament on 16 June 2010.⁶¹ The *Congreso* commanded a *Dictamen* (Decision) by urgent procedure to the *Comisión de Asuntos Exteriores* (Foreign Affairs Commission). Following the procedures foreseen in Article 97 of the Congress' rules of procedure⁶², the Framework Agreement was published in the Official Journal of the *Cortes Generales* on the same date.⁶³

c) Pursuant Article 94.1 of the Spanish Constitution (which states that the giving of consent of the Government to enter any commitment by means of treaty or agreement shall require prior authorization of the Spanish Parliament), the text was submitted to both *Congreso* and *Senado*⁶⁴ for its authorization, being passed with a vast majority in both chambers.

GUARANTEES

IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN SPAIN? 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 procedure used in Spain in order to issue Guarantees under the EFSF was the amendment of Article 54.1 and 54.2 of Law 26/2009⁶⁵ on the State Budget for 2010 with the purpose of increasing the amount of guarantees that can be granted by the Government.

The new Article 54.1 of the State Budget for 2010 stated that: “The maximum amount of the securities given by the State cannot exceed 95,900 million euro” (own translation). Previously, this maximum amount was 42,000 million euro⁶⁶. Article 54.2 then stated that from this maximum amount “€53,900 million would be to ensure the economic obligations

⁶⁰Referencia del Consejo de Ministros of 4 June 2010: http://www.lamoncloa.gob.es/ConsejodeMinistros/Referencias/_2010/refc20100604.htm#Estabilizacion, pp. 24-25.

⁶¹Boletín Oficial de las Cortes Generales, Congreso de los Diputados, Serie C, No. 237-1, of 16 June 2010: http://www.congreso.es/public_oficiales/L9/CONG/BOCG/C/C_237-01.PDF#page=1.

⁶²http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/reglam_congreso.pdf.

⁶³Boletín Oficial de las Cortes Generales, Serie A, No. 317, of 16 June 2010: http://www.congreso.es/public_oficiales/L9/CORT/BOCG/A/CG_A317.PDF#page=1.

⁶⁴Boletín Oficial de las Cortes Generales, Senado, Serie IV, No. 190 (a), of 28 June 2010: http://www.congreso.es/public_oficiales/L9/SEN/BOCG/IV/IV0190A.PDF.

⁶⁵Boletín Oficial del Estado No. 309, of 24 December 2009: <http://www.boe.es/boe/dias/2009/12/24/pdfs/BOE-A-2009-20765.pdf>.

⁶⁶Boletín Oficial del Estado No. 309, of 24 December 2009: <http://www.boe.es/boe/dias/2009/12/24/pdfs/BOE-A-2009-20765.pdf>.

claimable to the society called *European Financial Stability Facility*.”

Little debate at the Parliament surrounded the modification of the 2010 Budget Law. This is so because as mentioned in Question IV.1 the Budget Law was modified by means of a *Real Decreto Ley*⁶⁷, a legislative instrument reserved for situations of “urgent need”. The *Real Decreto Ley* is enacted by the Executive and enters into force immediately afterwards. Although the *Congreso de los Diputados* must ratify or reject it within thirty days, this applies to the text as a whole: no modifications can be introduced, which often results in a mere voting session. Ultimately, the *Real Decreto Ley* amending the 2010 State Budget was overwhelmingly ratified at both the *Congreso* and the *Senado* (see Question IV.1), with the only significant declaration being that of Gaspar Llamazares (from *Izquierda Unida*) expressing that his group would vote against the *Decreto Ley*⁶⁸.

ACTIVATION PROBLEMS

IV.4

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

The Spanish government did not experience any particular legal or political difficulties in view of the entry into force of the EFSF or the consequent increase of guarantees that needed the 2010 State Budget. Since Spain held the Presidency of the EU at the time and all major political parties closed ranks in order to preserve an image of unity, this lack of criticism hardly comes as a surprise. Most EU measures adopted back then lacked salience in the public discourse, and the recourse to the *Real Decreto Ley* (see Question IV.1) in order to implement the EFSF further discouraged any chance of deep parliamentary discussions.⁶⁹

CASE LAW

IV.5

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

There is no court judgement about the EFSF or the EFSM in Spain.

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

⁶⁷*Boletín Oficial del Estado* No. 131, of 29 May 2010: <http://www.boe.es/boe/dias/2010/05/29/pdfs/BOE-A-2010-8550.pdf>.

⁶⁸*Diario de Sesiones del Congreso de los Diputados, Asuntos Exteriores*, No. 583, of 22 June 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/CO/CO_583.PDF.

⁶⁹ See also “España asume la presidencia de la UE con el reto de impulsar la salida de la crisis”, http://elpais.com/elpais/2010/01/01/actualidad/1262337418_850215.html

APPROVAL BY THE SO-CALLED GUARANTORS, I.E. THE EUROZONE MEMBER STATES?

The role of the Spanish Parliament in the application of the EFSF was two-fold: (i) the ratification of an international treaty (establishing the EFSF) and (ii) the modification of domestic legislation in order to increase the guarantees issued by the State. In both cases, the two Parliament chambers (*Congreso* and *Senado*) had to give their approval.

- (i) Approval of the EFSF: Article 94(d) of the Spanish Constitution establishes that the giving of the consent of the State to enter any commitment by means of treaty or agreement shall require prior authorisation by *Congreso* and *Senado* in cases that imply financial liabilities for the Public Treasury⁷⁰. The EFSF belonged to this category: in order to contribute with 53,900 million euro in guarantees, the Spanish Treasury had to issue bonds over the maximum established in the 2010 Budget Law⁷¹. The 21 April 2010 the Spanish President at the time, José Luis Rodríguez Zapatero, seized its appearance at the *Congreso* to request that the authorisation of this framework agreement be made as quickly as possible given the urgency of the circumstances⁷². Both *Congreso* and *Senado* gave their consent to the signature of the EFSF swiftly, as explained in Question IV.2. An enormous majority of the MPs supported the assistance to Greece for a number of reasons, remarkably the fact that the bail-out was carried out during the Spanish presidency, feelings of solidarity towards Greece⁷³, the perception that the bail-out was ultimately guaranteeing the survival of the Euro⁷⁴ and that the assistance would also render Spain monetary interests (unless Greek default)⁷⁵. Once the EFSF is agreed upon at the national level, the Spanish Parliament does not bear any significant role in its practical functioning (i.e. loan agreements or memoranda of understanding with the assisted countries). At parliamentary effects, these events are treated as ordinary EU legislation and hence the EU Parliamentary Commission and the plenary of the *Congreso* are mainly informed *ex post*⁷⁶.

- (ii) Modification of Spanish legislation: The increase of guarantees that could be issued

⁷⁰ <http://www.congreso.es/consti/constitucion/indice/titulos/articulos.jsp?ini=93&fin=96&tipo=2>.

⁷¹ See the explanations of Rodríguez Zapatero in *Diario de Sesiones del Congreso de los Diputados* No. 156, of 21 April 2010, p. 25: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_156.PDF.

⁷² *Diario de Sesiones del Congreso de los Diputados* No. 156, of 21 April 2010, p. 25: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_156.PDF.

⁷³ Solidarity with Greece was a factor relevant in the discourse of Alonso Surárez from Partido Socialista, see *Diario de Sesiones del Congreso de los Diputados*, No. 156, of 21 April 2010 at p. 21: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_156.PDF.

⁷⁴ The importance of the Greek bail-out for the security of the Euro as a whole was highlighted by Rajoy Brey from Partido Popular, see *Diario de Sesiones del Congreso de los Diputados*, No. 156, of 21 April 2010 at p. 8: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_156.PDF.

⁷⁵ As explained by José Luis Rodríguez Zapatero, see *Diario de Sesiones del Congreso de los Diputados* No. 156, of 21 April 2010 at p. 25: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_156.PDF.

⁷⁶ For instance, the Irish assistance under the EFSF was presented before the EU Parliamentary Commission as a *fait accompli*. The Spanish Parliament did not participate in the taking of decisions regarding aid packages or the conditions settled in the Memorandum of Understanding.

yearly by the Public Treasury needed the modification of the Budget Law of 2010⁷⁷. José Luis Rodríguez Zapatero also informed of this during the *Congreso* sitting of 21 April 2010. This reform was made through a *Real Decreto-Ley*, a measure of immediate effect but that needed later approval from the *Congreso* and the *Senado*. If, in the functioning of the EFSF, the issue of further guarantees were needed from Spain (because the capital of the EFSF were increased), this would most likely result in a similar reform of the yearly budget. Irrespectively of the legislative method used for the budget reform, the approvals from both the *Congreso* and *Senado* would be needed in the process.

IMPLEMENTING PROBLEMS

IV.7

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

The Spanish Government did not encounter any relevant political/legal difficulties in the application of the EFSF since it was supported and approved by a vast majority of the political forces in the Parliament.

BILATERAL SUPPORT

IV.8

IN CASE SPAIN 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?

On May 2010, the Eurogroup agreed to push through an international aid package of 110 billion euro for Greece for the period 2010-2012, with 80 billion euro coming from the Eurozone. The total contribution of Spain to the Greek Loan Facility amounted to 9,794,387,450 euro. Such contribution needed (i) the signature of an agreement between the representatives of the Member States of the eurozone, on the one hand, and Greece, on the other one, and (ii) the implementation of this agreement into domestic law, namely through the reform of the Budget Law of 2010.

- (i) Loan Agreement with Greece: As an international treaty with an impact on public finances (Article 94(d) of the Spanish Constitution), the Spanish participation in the loan needed discussion and approval by the *Congreso* and the *Senado*. The discussion at the Congreso took place on 2 December 2010. In this sitting, Gaspar Llamazares from *Izquierda Unida* criticised the loan for “serving more to feed the markets and the financial speculation against the sovereign debt of the member

⁷⁷*Boletín Oficial del Estado* No. 311 of 23 Dec 2010: <https://www.boe.es/boe/dias/2010/12/23/pdfs/BOE-A-2010-19703.pdf>.

states, than to save these countries”⁷⁸. Nadal Belda from *Partido Popular* announced that his party would vote for the agreement, and added that the loan would help to calm down the markets. At the end of the sitting the vote of the agreement took place: it was approved by 322 votes in favour, 4 against and 2 abstentions. At the *Senado* there was no discussion surrounding the loan agreement, which was approved on 14 December 2010 by assent.⁷⁹

- (ii) Implementation into domestic law: The credit destined to the Greek Loan Agreement needed the increase of the Spanish Budget Law for 2010. The reform of the 2010 Budget Law was made by means of a *Real Decreto-ley*, a legislative instrument enacted by the executive with immediate effect but that needs later approval by the *Congreso de los Diputados* (see Question IV.1). *Real Decreto-ley* 7/2010 of 7 May created a “Fund for Support to the Hellenic Republic” and authorised an extraordinary credit of 9,794,387,450 to this end. According to the same *Decreto-ley*, the Spanish contribution to the Greek loan would be financed by means of governmental bonds⁸⁰. The voting session for the *Real Decreto-ley* 7/2010 that took place on 20 May 2010 was one of intense discussion. Barkos Berruezo from *Nafarroa Bai* expressed her agreement with the Greek bailout, but criticised the harsh conditions that the bailout involved. Fernández Dávila from *Bloque Nacionalista Galego* joined this opinion, adding that the bailout was linked to a major readjustment programme with clear anti-social implications, views also shared by Ridao i Martín from *Esquerra Republicana de Catalunya* and Herrera Torres from *Catalunya Verds*. Remarkably, Pedro Azpiazu from *Partido Nacionalista Vasco* quoted Joseph Stiglitz in noting that the paradox of lending money to Greece in the name of a political union, when a real spirit of solidarity would imply lending Greece the funds at the same rate than the member states obtain it, and not higher. Be that as it may, the *Real Decreto-ley* 7/2010 was approved by 321 votes in favour, 2 against and 3 abstentions.⁸¹

⁷⁸*Diario de Sesiones del Congreso de los Diputados*, No. 209 of 2 Dec 2010: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_209.PDF.

⁷⁹*Diario de Sesiones del Senado*, No. 105 of 14 Dec 2010: http://www.congreso.es/public_oficiales/L9/SEN/DS/PL/PS0105.PDF.

⁸⁰ *Real Decreto-ley* 7/2010, de 7 de mayo, por el que se crea el Fondo de Apoyo a la República Helénica y se autoriza un crédito extraordinario por el importe de 9.794.387.450 euros para su dotación, Art. 2(3), available in *Boletín Oficial del Estado* No. 112, of 7 May 2010: <http://www.boe.es/boe/dias/2010/05/07/pdfs/BOE-A-2010-7327.pdf>.

⁸¹*Diario de Sesiones del Congreso de los Diputados* No. 166, of 20 May 2010: http://movil.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_166.PDF#page=5.

MISCELLANEOUS

IV.9

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

On 25 June 2012 (two years after the creation of the EFSF and half a year after its entry into force) Spain had to request financial assistance in order to restructure and recapitalise the Spanish banking sector. To this end, Spain signed a Memorandum of Understanding on Financial-Sector Policy Conditionality (MoU)⁸² with a number of policy conditions that was formally adopted on 23 July 2012. For further details, see section X of the Questionnaire.

⁸²European Commission, Economic and Financial Affairs website:
http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf.

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 SPAIN ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

At the 16-17 December 2010 European Council, the President of the Spanish Government José Luis Rodríguez Zapatero made the decision, along with the other members of the European Council and following the proposal by the Belgian Government, to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. During the weeks preceding this meeting, López Garrido (Secretary of State for the EU) appeared before the Parliamentary Commission for the EU in order to explain and discuss the position of the Spanish Government thereof⁸³. According to López Garrido, it was Germany who insisted on the reform of article 136 TFEU. While agreeing on the reform of the Treaty, Spain defended a modification as limited as possible, and one that did not entail further transfers of powers vis-à-vis the EU. Perestelo Rodríguez from *Coalición Canaria* supported this position in the understanding that the simplified procedure could not be used to make substantial modifications in a text that had been approved by the Spanish citizenry in referendum⁸⁴. Sabaté Borràs from *Partido Socialista de Cataluña* further added that a new referendum would not be advisable in a context of crisis and euroscepticism.

On 22 December 2010 President Zapatero appeared before the *Congreso* plenary session in order to inform and explain about the European Council meeting held in Brussels a few days before (16-17 December 2010).⁸⁵ In response to Mr Zapatero’s speech, President of the by then opposition party (*Partido Popular*) Mr Mariano Rajoy explicitly expressed his party’s

⁸³*Diario de Sesiones de las Cortes Generales, Comisiones Mixtas para la Unión Europea* No. 160, of 9 Dec 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_160.PDF.

⁸⁴Note that the failed Constitutional Treaty, predecessor of the Lisbon Treaty, was approved by referendum in Spain by a majority of 76.3% of voters with a participation of 42.32% in February 2005 (few months after the French and Dutch negatives).

⁸⁵See *Congreso de los Diputados*, Plenary Session Report No. 205 of 22 December 2010 http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_216.PDF

firm commitment and support of the decision amending Article 136 TFEU and in taking any necessary measures for maintaining the financial stability in the euro-zone. Following this line, Mr Josep Sánchez i Llibre, as spokesman of the Catalan group *Covergència i Unió*, and Mr Gervasio Erkoreka for the Basque Nationalist Party (PNV–*Partido Nacionalista Vasco*), also unambiguously celebrated the resolution taken by the European Council of amending Article 136 TFEU, only regretting that this was not taken before. The decision only took some criticism from minority groups at the camera.

We can conclude that the negotiation of the amendment of article 136 TFEU did not encounter relevant political/legal difficulties during its discussion at the Spanish Parliament.

APPROVAL

V.2

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

The amendment of Article 136 TFEU was dealt under the scope of authorization of international treaties and covenants pursuant article 94.1 of the Spanish Constitution (CE), which states that the provision of consent of the State to enter any commitment by means of a Treaty shall require the prior authorization of the Spanish Parliament.

As a first step for its ratification, the Comisión de Asuntos Exteriores (Foreign Affairs Committee of the Congress) was commanded a ruling on the Decision to amend Article 136(3) TFEU⁸⁶ and its publication on the Boletín Oficial de las Cortes Generales (Official Journal of the Parliament) on 2 March, 2012.⁸⁷ Consequently, the Decision was submitted to discussion and ratification in both chambers of the Cortes Generales (Congreso and Senado). At the Congreso, the amendment of Article 136 TFEU (together with the treaty establishing the ESM⁸⁸) was approved by 292 votes in favour, 17 against and 6 abstentions⁸⁹. At the Senado, it was approved by 234 votes in favour and 1 against⁹⁰. The Treaty amendment was ratified by the Spanish Parliament on 15 June 2012.

⁸⁶ Pursuant Article 43(2) of the Congress Regulation, the Congress can command rulings or reports to the different Committees

(http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/reglam_congreso.pdf).

While not being obliged to do so, the Congress always requests such a report from the Foreign Affairs Committee before ratifying an international treaty.

⁸⁷ *Boletín Oficial de las Cortes Generales*, Serie A, No. 21, of 2 March 2012:

http://www.congreso.es/public_oficiales/L10/CORT/BOCG/A/CG_A021.PDF.

⁸⁸ The treaty amendment and the ESM were discussed at the same parliamentary meeting. Although the discussions addressed them separately, there was no separate vote for each instrument. Both the ESM and the amendment of Article 136 of the TFEU were voted and approved together (see *Diario de Sesiones del Congreso de los Diputados* No. 31, of 17 May 2012:

http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_031.PDF).

⁸⁹ *Diario de Sesiones del Congreso de los Diputados* No. 31, of 17 May 2012:

http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_031.PDF.

⁹⁰ *Cortes Generales, Diario de Sesiones, Senado*, No. 21, of 6 June 2012:

http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_21.PDF (pp.1093-1096).

RATIFICATION DIFFICULTIES

V.3

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

No significant difficulties were encountered during the approval of the 136 TFEU Treaty amendment. During the discussion at the *Congreso*, representatives of the political parties with bigger number of seats (PSOE, PP, CiU, PNV) were all unambiguously in favour of the European Council Decision. Only minority groups such as *Amaiur* (Basque left-wing nationalists) or *Izquierda Plural* raised some criticism and explicitly stated their discrepancy with the measures proposed for ratification concerning financial stability for the euro-zone.

In their speech in front of the Congress, Basque nationalist-separatist political coalition *Amaiur* (with 7 seats in the *Congreso de los Diputados* out of 350) showed their disagreement with the ratification of this Treaty amendment (together with the approval of the ESM). Through their spokesperson in the Congress Mr Larreina Valderrama, *Amaiur* claimed that the European Union is weak in addressing the response to the crisis by its own “improperly” named European Constitution due to its democratic deficit: “A Europe of States has been mounted to the detriment of a Europe of the citizens, a Europe that gives back to its natural spaces, to their peoples. It is the Europe of the lack of solidarity. It is a Europe prisoner of financial speculators, banking interests, particularly German banking interests. The European Union has given up listening and serving to European citizens, indefinitely extending the democratic deficit that prevents giving voice, power of decision and effective control to the citizens. An example of this self-imposed limitation is the role and functions of the European Central Bank.”⁹¹ Additionally, Mr Joan Josep Nuet i Pujols, for the left-wing political coalition *Izquierda Plural* (with 11 seats in the *Congreso*), expressed that the ratification of these mechanisms were in fact ‘emptying out’ the national sovereignty of Spain and that it would mean ‘losing clearly the decision ability to control its economic policy; economic policy that has been decided out of the sovereign parliaments of the various countries that form the Euro-zone and even outside European Parliament, what means giving their back to the citizens in an undemocratic way’.⁹² As explained in Question V.3, these declarations were not obstacle for an overwhelming approval of the treaty amendment at the *Congreso*.

The discussion and ratification did not raise any significant debate. The only speeches given were in favour of the amendment, which was approved almost unanimously.⁹³

⁹¹*Diario de Sesiones del Congreso de los Diputados* No. 31, of 17 May 2012: http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_031.PDF (pp. 80-81).

⁹²*Diario de Sesiones del Congreso de los Diputados* No. 31, of 17 May 2012: http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_031.PDF (pp. 81-82).

⁹³*Cortes Generales, Diario de Sesiones, Senado*, No. 21, of 6 June 2012: http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_21.PDF.

CASE LAW

V.4

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

There is no constitutional court judgement in Spain on the 136 TFEU treaty amendment.

MISCELLANEOUS

V.5

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

No other relevant information.

VI EURO-PLUS-PACT

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

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

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

NEGOTIATION

VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SPAIN 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.

The Euro Plus Pact was agreed at the European Council that took place on 24 and 25 March 2011. A month earlier, on 15 February 2011, Trinidad Jiménez-García Herrera (Minister for Foreign Affairs and member of the *Partido Socialista Obrero Español*) appeared before the Parliamentary Commission for the EU in order to explain Government’s position towards the upcoming European Council⁹⁴. According to Trinidad Jiménez-García, it was at this stage that the negotiations on the specific content of the Euro-Plus-Pact were taking place.⁹⁵

The Minister of Foreign Affairs stated clearly that Spain supported the Euro-Plus-Pact (back then this Pact was referred to as the “pact for competitiveness”). Becerril Bustamante (from *Partido Popular*) agreed with the need to introduce the element of competitiveness into the economic governance of the EU, and remarked that this was done under the leadership of France and Germany. Moscoso del Prado Hernández (from *Partido Socialista Obrero Español*) tackled the issue of salaries being part of the Euro-Plus-Pact. He claimed that productivity and competitiveness depended on a number of factors other than salaries, and that he hoped the Pact fitted the different models of production across the EU.

The discussions at the Parliamentary Commission for the EU evidence that, although linking salaries with productivity was controversial, the Government fully supported the approval of the Euro-Plus-Pact as allegedly presented by France and Germany.

⁹⁴*Diario de Sesiones de las Cortes Generales, Comisiones Mixtas para la Unión Europea* No. 165 of 15 Feb 2011: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_165.PDF.

⁹⁵*Diario de Sesiones de las Cortes Generales, Comisiones Mixtas para la Unión Europea* No. 165 of 15 Feb 2011 at p. 32: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_165.PDF.

On 30 March 2011, once the Euro-Plus-Pact had been approved, President Zapatero appeared before the *Congreso* plenary session in order to inform about the European Council meeting held in Brussels a few days before (24-25 March)⁹⁶. At this meeting President Zapatero expressed unambiguous support, stating his and the Government's conviction about the benefits that the measures taken during the European Council would bring in order to foster competitiveness, foster employment, reinforce financial stability and contribute to the sustainability of public finances in the Eurozone. The main party in the opposition, *Partido Popular*, as well as the Catalan group *Covergència i Unió* and the Basque coalition EAJ-PNV they all joined in support and agreement with the decisions taken at the European Council. One of the main concerns debated in the Parliament was that, being the measures adopted susceptible of being interpreted as unpopular and damaging for the welfare state, that the European Union cannot afford a deficit of democratic legitimacy, so it is necessary for EU citizenship to clearly perceive who takes action, where, when and why. As Mr Duran i Lleida (*Convergencia I Unió*) stated: "It is essential to avoid the feeling, for example, among Spanish citizenship, that four European bureaucrats decide the salary of the Spanish workers, their pensions or their retirement date".

The "setback in labour and social rights" such as the wage cuts for civil servants and their subsequent decreasing purchasing power was a controversial issue brought about by the left-wing coalition in the Parliament. In their view, European economic governance contains serious omissions such as the lack of mention on the rising levels of inequality on wages, the growing gap between executives of large companies and their employees, or the remuneration of bankers and their "colossal appetite" for bonus. Another topic subject of debate was the deteriorating conditions of many employment contracts caused by the growth of precarious work ("flexicurity") in the Eurozone. Mr Jorquera Caselas (*Bloque Nacionalista Galego*) claimed that "the so-called Pact for the Euro is a new twist in this direction, a battery of distinctly antisocial measures that advance the deregulation of economic and labour relations and aim to undermine the redistributive capacity of the state".

MISCELLANEOUS

VI.2

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

Even before that the Euro-Plus-Pact was adopted by the Member States, the Spanish Government had already adopted some of the measures covered by the Pact, such as cuts in public spending, a delay in the retirement age, reform of the pensions system, an increase in VAT, and more significantly, a labour reform linking wages with productivity as the main modification, among some other important measures.

The approval of the Euro-Plus-Pact was followed by a modification of the Law of Budgetary Stability (July 2011) in order to limit the administration's level of public expenditure.

⁹⁶*Diario de Sesiones del Congreso de los Diputados*, No. 236 of 30 May 2011: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_236.PDF.

Likewise, in August 2011 the Government embarked on a modification of the Spanish Constitution so as to include a limitation of public debt and deficit.

(i) The new rule of Government spending in the Law of Budgetary Stability: At his appearance before the *Congreso de los Diputados* on 30 March 2011, President Zapatero detailed the manner in which the Euro Plus Pact would translate into Spanish legislation. When tackling the field of ‘Sustainability of public finances’, he expressed the Government’s intentions to introduce a rule that limited public expenditure in relation with nominal GDP growth⁹⁷ (this rule would only apply to the central and local administrations, as Zapatero did not want to touch upon the competences reserved to the regions). Following Zapatero’s pronouncement, the Real Decreto-ley 8/2011 of 1 July introduced the new ‘Rule of Government spending’ by means of amending the Law of Budgetary Stability⁹⁸. In particular, a new Article 7 of the Law established that spending of public entities may not exceed the rate of growth in the medium term of reference of the Spanish economy. Limiting the levels of public expenditure would in this way reinforce budget stability and limit the possibilities of indebtedness.⁹⁹In this line, article 8 further added that the income derived above the projected would be devoted entirely to reduce the level of public debt. The consequences of non-compliance with these rules were foreseen in Article 10, which stated that breaking the rule of government spending would result in the responsible administration taking extraordinary measures of immediate application that guaranteed the return to levels of expenditure within the limits of Article 7. The preamble of the Real-Decreto-ley 8/2011 justified the modifications introduced as “necessary to anticipate the adoption of some of the measures discussed in the framework of the Euro-Plus-Pact”¹⁰⁰.

(ii) Amendment of the Spanish Constitution: On 22 August President Zapatero unexpectedly announced that the Government and the main opposition party have agreed upon the amendment of the Spanish Constitution in order to limit public debt and deficit¹⁰¹. Note that at his appearance before the *Congreso* on 30 March, he did not mention this measure as part of the agenda of implementation of the Euro-Plus-Pact, although the leader of the opposition Mariano Rajoy had pointed out that the principle of budgetary stability should be armoured against legislative changes such as the amendment of the French and German constitutions¹⁰². Indeed the Euro-Plus-Pact prompted the participating Member

⁹⁷*Diario de Sesiones del Congreso de los Diputados*, No. 236 of 30 May 2011 at p. 7: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_236.PDF.

⁹⁸*Boletín Oficial del Estado* No. 161, of 7 July 2011: <http://www.boe.es/boe/dias/2011/07/07/pdfs/BOE-A-2011-11641.pdf>.

⁹⁹ See J F Bellod Redondo, ‘Techo de gasto y estabilidad presupuestaria’ in *Presupuesto y Gasto Público* 65/2011, p. 101 (article available at http://www.ief.es/documentos/recursos/publicaciones/revistas/presu_gasto_publico/65_06.pdf).

¹⁰⁰ Own translation. Original can be found at *Boletín Oficial del Estado* No. 161, of 7 July 2011: <http://www.boe.es/boe/dias/2011/07/07/pdfs/BOE-A-2011-11641.pdf>.

¹⁰¹ See http://politica.elpais.com/politica/2011/08/23/actualidad/1314128715_080054.html.

¹⁰²*Diario de Sesiones del Congreso de los Diputados*, No. 236 of 30 May 2011 at p. 10: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_236.PDF.

States to make sure that EU fiscal rules are translated into national legislation of a strong and durable nature (e.g. constitution or framework law). It seems, however, that Zapatero's unexpected announcement of a constitutional amendment were provoked by the letter that the ECB had sent him earlier that month¹⁰³ in which, among other instructions, the President was prompted to "take audacious measures that guarantee the sustainability of public finances".

The new Article 135 of the Constitution give constitutional status to the principle of budgetary stability, and precludes all public administrations from incurring a structural deficit above the thresholds set by the European Union (however, this disposition on maximum structural deficit will not enter into force until 2020).¹⁰⁴ The process followed for this constitutional amendment has been the "simplified procedure" set out in Article 166 of the Constitution, reserved to those reforms that do not affect the Preliminary Title, the second section of Title I (on fundamental rights and freedoms), or Title II (on the Crown). The simplified procedure requires the initiative to be endorsed by two parliamentary groups or one-fifth of the Deputies, and the text of amendment to be approved by three fifths of MPs at both *Congreso* and *Senado* (or, failing that, a simple majority at the *Senado* and two-thirds at the *Congreso*). A referendum only takes place if requested by one tenth of the MPs¹⁰⁵.

The amendment proposal was made on August 23, 2011 by the President of the Government. On 26 August 2011 the Socialist and Popular parliamentary groups in the *Congreso* jointly presented the proposal of reform for Article 135. Both parties requested that the amendment be processed by the emergency procedure and approved in a single reading. The Plenary of the *Congreso* mostly agreed with the use of the emergency procedure and the approval by single reading in its meeting held on 30 August 2011¹⁰⁶. Those MPS who voted against included members of nationalist and regionalist parties (the *Partido Nacionalista Vasco*, *Esquerra Republicana de Catalunya*, *Nafarroa Bai* and *Bloque Nacionalista Galego*), who were primarily concerned with maintaining their regional authority vis-à-vis Spain and other global actors. Other dissenting voices came from the left-wing parties *Izquierda Unida* and *Iniciativa per Catalunya Verds*, as they considered the reform to represent a threat for the welfare state. Finally, *Union Progreso y Democracia* and one deputy of the *Partido Socialista*, Antonio Gutiérrez (ex-general secretary of the *Comisiones Obreras* trade union) also voted against the amendment. The centre-right Catalan nationalist group *Convergencia I Unió* abstained.

¹⁰³ Letter available at <http://ep00.epimg.net/descargables/2013/11/27/2b10649fe77a0775a23fb7eb465ab974.pdf>.

¹⁰⁴ The full text of the amended Article 135 is available at <http://www.congreso.es/consti/constitucion/indice/titulos/articulos.jsp?ini=128&fin=136&tipo=2>.

¹⁰⁵ In contrast, the ordinary amendment procedure entails the dissolution of the Parliament and the celebration of general elections. The new *Congreso* and *Senado* must approve the reform by a two-thirds majority, and approval by referendum must follow.

¹⁰⁶ *Diario de Sesiones del Congreso de los Diputados* No. 269, of 30 August 2011: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_269.PDF.

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When the reform process started at the *Congreso*, twenty-four amendments were presented: ten by the *Grupo Parlamentario Mixto* (one by the Galician Nationalist Bloc, two by the Basque coalition *Nafarroa*, two by the Canary Coalition, five by *Union Progreso y Democracia*) four by the Catalan-Republican-Left-Greens, two by the Basque Parliamentary Group and eight by *Convergencia I Unió*. These amendments were discussed at the plenary meeting on 2 September 2011. They were all rejected and only a grammatical correction was admitted in the third paragraph of Article 135(3). With this small correction, the new Article 135 was approved by 316 votes in favour and 5 against.¹⁰⁷

Later at the *Senado*, 29 amendments were presented: eight by the Catalan party *Convergencia i Unió*, four by the Parliamentary Group of Nationalist Senators, two by the Mixed Parliamentary Group and fifteen by the Catalan left-wing coalition *Entesa Catalana de Progrés*. The Constitution's Committee rejected the amendments and gave a positive report to the text submitted by the *Congreso*, albeit with four dissenting votes¹⁰⁸. On 7 September 2011 the plenary of the *Senado* debated the positive report of the Constitution's Committee. The report (and therefore the constitutional amendment) was approved by 233 votes in favour and 3 against¹⁰⁹.

As explained above, after approval from the *Congreso* and *Senado* a referendum only takes place if requested by one-tenth of the MPs of any of the chambers. As both the governing party (*Partido Socialista*) and the main opposition party (*Partido Popular*) supported the reform and they made more than 90% of the MPs, the constitutional amendment did not require a referendum. The amended Article 135 was published in the Official Bulletin of the State on 27 September 2011¹¹⁰. The reforming process has been called the “express amendment”, as it took only thirty-two days from the submission of the proposal.

¹⁰⁷*Diario de Sesiones del Congreso de los Diputados* No. 270, of 2 September 2011:

http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_270.PDF.

¹⁰⁸*Boletín Oficial de las Cortes Generales, Senado*, No. 108, of 8 September 2011:

http://www.congreso.es/public_oficiales/L9/SEN/BOCG/2011/BOCG_D_09_108_704.PDF.

¹⁰⁹*Cortes Generales, Diario de Sesiones, Senado*, No. 130, of 7 September 2011:

http://www.congreso.es/public_oficiales/L9/SEN/DS/PL/DS_P_09_130.PDF.

¹¹⁰*Boletín Oficial del Estado* No. 233, of 27 September 2011:

<http://www.boe.es/boe/dias/2011/09/27/pdfs/BOE-A-2011-15210.pdf>.

VII SIX-PACK

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

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

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

NEGOTIATION

VII.1

WHAT POSITIONS DID SPAIN 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?

Although the ‘Six Pack’ entered into force on 13 December 2011, discussions regarding the reform of the Stability and Growth Pact started around a year earlier in the Council.¹¹¹ On 27 October 2010 the Secretary of State for the European Union (López Garrido) appeared before the Parliamentary Commission for the EU in order to explain the Government’s position vis-à-vis the upcoming European Council meeting¹¹². At this meeting he announced that the “task force” under the coordination of Van Rompuy was about to present a report on economic governance. After examining this report, stronger fiscal discipline and closer coordination of economic policies would follow.

López Garrido then expressed the German preference for automatic sanctioning in case of non-compliance with the Stability and Growth Pact as opposed to France, who preferred to make it conditional to a decision by the Council. The Spanish Government did not position itself clearly along one line or another. However, López Garrido was blunt regarding the consequences of non-compliance with the Stability and Growth Pact: the Government was against the suspension of voting rights as it would imply a reform of the Treaties and a violation of the national sovereignty of the Member States. Sabaté Borrás (from *Entesa*

¹¹¹ On the discussions during the negotiation of the six-pack, see: ‘Spain poses six-pack rules challenge’, <http://www.ft.com/cms/s/0/ed753e7a-4cfa-11e1-8741-00144feabdc0.html#axzz2XuMW6QoT>, and Fernández Llera, Roberto. 2013. “El control sobre las previsiones económicas como clave para la instrumentación de objetivos presupuestarios y financieros”: http://www.ccuentas.es/encuentros/documentos/grupo3/G3_6%20Roberto%20Fdez%20Llera.pdf

¹¹² *Diario de Sesiones de las Cortes Generales, Comisiones Mixtas para la Unión Europea* No. 151 of 27 October 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_151.PDF.

Catalana de Progrés) agreed with the Government and prompted to undertake the reforms as soon as possible. Casa i Bedós from *Convergència i Unió* added that these reforms should have been made long ago, and that he hoped once made the markets would recover their trust. Becerril Bustamante (from *Partido Popular*) also agreed with the strengthening of fiscal discipline, but remarked that everybody had to be aware of the enormous budgetary efforts that would be demanded from Spain in the upcoming months in order to comply with these objectives.

On 9 December 2010, the same Parliamentary Commission discussed the precise instruments conforming the Six Pack¹¹³. The discussions focused particularly in determining whether the Regulations respected the subsidiarity and proportionality principles. The EU Parliamentary Commission was unanimous in stating the appropriateness of the measures. Moscoso del Prado Hernández from *Partido Socialista* stated: “We are all aware that the advance in the economic component of the monetary and economic union is a key element for ensuring a proper stabilisation of the European economy, a way out of the crisis and the put into practice of the economic policies necessary for reforming the growth model”. Some days later, on 22 December 2010, the President of the Government appeared before the Congress in order to inform on the European Council meeting of 16-17 December 2010. President Zapatero informed on the advances that were taking place in terms of economic coordination and fiscal discipline. All the major political parties supported the conclusions of the European Council, with Mariano Rajoy from *Partido Popular* celebrating that fiscal discipline would again be applied after the Spanish government had neglected it for so long. On the other side of the spectrum, Ridao i Martín from *Esquerra Republicana* expressed his concerns regarding the recipes of adjustment coming from the EU, which were source of social unrest and followed the will of the markets. He also remarked the transfer of sovereignty “in favour of the euro without a real European economic governance, which results in capital doing his own thing”.

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)?

Directive 2011/85 entered into force in December 2011, a month after Mariano Rajoy’s *Partido Popular* had won the general elections. The implementing measures were thus taken under Rajoy’s centre-right mandate. Below is a list of the different instruments fulfilling the

¹¹³*Diario de Sesiones de las Cortes Generales, Comisiones Mixtas para la Unión Europea* No. 56 of 6 Dec 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_160.PDF.

duties of Directive 2011/85, followed by a detailed account about the manner in which the chapters Directive have been translated into Spanish legislation:

- Organic Law 2/2012 on Budgetary Stability and Financial Sustainability¹¹⁴: This has been the main legal instrument for implementing Directive 2011/85. The Organic Law 2/2012 entered into force in May 2012, derogating the previous Law on Budgetary Stability of 2001¹¹⁵. Its preamble declares that the main objective of the law is to recover the route to budgetary stability and the compliance with the commitments of Spain to the EU¹¹⁶. The main novelties of the Organic Law 2/2012 have been the increase of surveillance mechanisms for all levels of government (namely through the creation of the Independent Authority for Fiscal Responsibility), more detailed corrective measures in case of non-compliance with the budgetary objectives, the introduction of strict sanctions if non-compliance persists (including the appropriation of the regional taxation competences by the central government) and the establishment of a bail-out system for those regions in need of financial assistance.
- Ministerial Order HAP/2105/2012 developing the obligation of providing information foreseen in the Organic Law 2/2012 on Budgetary Stability¹¹⁷: Passed on 1 October 2012, this Ministerial Order detailed the frequency at which the sub-sectors of government had to submit economic and financial information to the central government (regions submit monthly reports on the state of their budget and their capacity or need of funding, whereas the local administrations do so every three months).
- Royal Decree-law 636/2014 establishing the Central of Economic and Financial Information of the Public Administrations and regulating the information by the Bank of Spain and the financial entities to the Ministry of Finance¹¹⁸: This Royal-Decree law was passed on 25 July 2014, and it created a centralised institution for the coordination and publicising of the relevant economic and financial information of all the public administrations (including regional and local governments), as well for ensuring the homogeneity of the methodologies used in the elaboration of all these data.

¹¹⁴*Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹¹⁵ General Law on Budgetary Stability 18/2001, *Boletín Oficial del Estado* No. 198 of 13 Dec 2001: <http://www.boe.es/boe/dias/2001/12/13/pdfs/A46819-46825.pdf>; and Law 5/2001 complementing the General Law on Budgetary Stability 18/2001, *Boletín Oficial del Estado* No. 299, of 14 Dec 2001: <http://www.boe.es/buscar/act.php?id=BOE-A-2001-23632>.

¹¹⁶ Preamble of the Organic Law 2/2012 on Budgetary Stability, *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹¹⁷*Boletín Oficial del Estado* No. 240, of 5 October 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12423.

¹¹⁸*Boletín Oficial del Estado* No. 184, of 30 July 2014: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-8133.

- Organic Law 6/2013 creating an Independent Authority for Fiscal Responsibility¹¹⁹: Passed on November 2013, this Law implemented the obligation of Directive 2011/85 to have an independent fiscal council with functional autonomy from the executive. The competences of the Independent Authority are mainly consultative, as it issues prescriptive reports on issues like the general lines of the central and regional budgets or the annual Stability Programme, but these reports are not binding (see Question VII.4).
- Royal Decree-law 21/2012 on measures of liquidity of the Public Administrations and on the financial sector¹²⁰: Passed on July 2012, this Decree-law establishes a mechanism of financial assistance to those regions in need of liquidity that request it. The Fund of Regional Liquidity (“*Fondo de Liquidez Autonómica*”) was initially set for 18.000 million euro coming from state bonds. As in the EU, access to credit entails strict conditionality for the regions, and was subject to interest rates of 5,65% in 2012 and 5,5% in 2013¹²¹.
- Royal Decree-law 515/2013 regulating the criteria and the procedure to determine and demand the responsibilities for breach of EU Law¹²²: Passed on July 2013, this Decree-law regulates the mechanism by which every public administration (including regional and local governments) can be requested pecuniary responsibility to compensate the damages that Spain suffers as a consequence of being condemned for breach of EU Law. Before this Decree-law, the legislation on the matter was dispersed and focused on the consequences for mismanagement of EU funds. The Additional Disposition no. 1 explicitly states that if Spain is subject to an excessive deficit procedure, the different administrations that contributed towards this deficit will be made responsible according to the provisions of the Decree-law.
- Organic Law 9/2013 on the control of commercial debt in the public sector¹²³: Passed on December 2013, this law aims to ensure compliance with the Stability and Growth Pact by means of controlling the commercial debt of the administration (meaning the debt contracted with private contractors and suppliers). The Organic Law 9/2013 establishes that Public Administrations must pay their providers within the limits

¹¹⁹*Boletín Oficial del Estado* No. 274 of 15 Nov 2013: <http://www.boe.es/boe/dias/2013/11/15/pdfs/BOE-A-2013-11935.pdf>.

¹²⁰*Boletín Oficial del Estado* No. 168, of 14 July 2012: http://www.boe.es/diario_boc/txt.php?id=BOE-A-2012-9365.

¹²¹ Ministerio de Hacienda y Administraciones Públicas, ‘Mecanismo de Pago a Proveedores y CCAA’, <http://www.minhap.gob.es/Documentacion/Publico/GabineteMinistro/Notas%20Prensa/2013/CONSEJO%20D%20MINISTROS/15-11-13%20Presentaci%C3%B3n%20Endeudamiento%20Proveedores.pdf>.

¹²²*Boletín Oficial del Estado* No. 161, of 6 July 2013: http://www.boe.es/diario_boc/txt.php?id=BOE-A-2013-7385.

¹²³*Boletín Oficial del Estado* No. 305, of 21 Dec 2013: <http://www.boe.es/boe/dias/2013/12/21/pdfs/BOE-A-2013-13425.pdf>.

imposed by the Law of Defaulting. In addition, every administration must publish its average payment time and must also include its commercial debt within the spending limits settled by the Organic Law 2/2012 on Budgetary Stability.

- Law 19/2013 on transparency, access to public information and good governance¹²⁴: Passed on December 2013, this law particular emphasis is put on the duty for all levels of government to facilitate budgetary, statistical and financial information as well as “their degree of compliance with the objectives of budgetary stability and financial sustainability of the Public Administrations” (Article 8, my own translation). The Law on Transparency also complements the disciplinary regime of the Organic Law 2/2012 on Budgetary Stability: pursuant Article 30, if a Public Administration commits to carry out expenditures without sufficient credit for it or does not use the budget surpluses for the compensation of public debt, the sanctions include the dismissal of the person responsible and the obligation to compensate the Public Treasury.

The Spanish regions have been called to implement similar duties to those contained in the Law 19/2013 on Transparency. Galicia¹²⁵, Balearic Islands¹²⁶, Navarra¹²⁷ and Extremadura¹²⁸ already had the relevant legislation in force; the rest of the regions are in the process of passing their own Laws on Transparency.

- Law 27/2013 on the rationalisation and sustainability of the Local Administration¹²⁹: Passed on December 2013, this law sought the application of the principle of budgetary stability to the local government sub-sectors. This Law makes the autonomy of the local government conditional to the legislation on budgetary stability and financial sustainability¹³⁰. Budgetary stability must be one of the aims of the coordination between the different local administrations¹³¹, and must be taken into account in the assessment of the public services provided by the local

¹²⁴Boletín Oficial del Estado No. 295, of 10 Dec 2013: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-12887.

¹²⁵ Law 4/2006, of 30 July, on transparency and good practices at the Galician public administration (regional law), *Diario Oficial de Galicia* No. 136 of 14 July 2006: http://www.xunta.es/dog/Publicados/2006/20060714/Anuncio1622E_es.html.

¹²⁶ Law 4/2011, of 31 March, on Good Administration and Food Governance of the Balearic Islands (regional law). *Boletín Oficial del Estado* No. 103 of 30 April 2011: <http://www.boe.es/boe/dias/2011/04/30/pdfs/BOE-A-2011-7709.pdf>.

¹²⁷ Law 11/2012, of 21 June, on Transparency and Open Government (regional law). *Boletín Oficial de Navarra* No. 125 of 28 June 2012: https://www.navarra.es/home_es/Actualidad/BON/Boletines/2012/125/Anuncio-0/.

¹²⁸ Law 4/2013, of 21 May, on Open Government of Extremadura (regional law), *Diario Oficial de Extremadura* No. 99 of 24 May 2013: <http://doe.juntaex.es/pdfs/doe/2013/990o/13010006.pdf>.

¹²⁹Boletín Oficial del Estado No. 312, of 30 Dec 2012: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-13756.

¹³⁰Article 1(1) of the Law 27/2013 of rationalisation and sustainability of the Local Administration.*Boletín Oficial del Estado*, No. 312 of 30 Dec 2013: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-13756.

¹³¹Article 10 of the Law 7/1985 regulating the Basis of the Local Regime, as amended by the Law 27/2013.*Boletín Oficial del Estado* No. 80, of 30 April 1985: <https://www.boe.es/buscar/act.php?id=BOE-A-1985-5392>.

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government. Other mechanisms for the rationalisation of local finances include limits on the personnel employed at the local governments and their salaries. The Law 27/2013 has meant the amendment of the Law 7/1985 regulating the Basis of the Local Regime.¹³²

Below is a detailed account on the manner in which Directive 2011/85/EU is implemented within the Spanish legal framework:

Accounting and statistics (Chapter II of Directive 2011/85)

Article 6 of the Organic Law 2/2012 on Budgetary Stability sets the duty for all Public Administrations to present accounts with enough and sufficient information in order to assess their actual financial situation¹³³. Moreover, pursuant Article 27 the different Administrations will facilitate the data needed to equate their budgets to the ESA 95 standard, “given that this is the information forwarded to Europe in order to verify the compliance with budgetary commitments”¹³⁴. Article 7 makes the Ministry of Finance responsible for the publicising of the financial and economic information of the different public administrations.

Article 3(2) of Directive 2011/85 detailed specific frequencies at which the different levels of government must publish cash-based fiscal data. This publicising of fiscal data, foreseen in Article 28 of the Organic Law 2/2012 on Budgetary Stability, has been developed by the “Ministerial Order HAP/2105/2012 on the obligations of supply of information foreseen in the Organic Law 2/2012”¹³⁵. The Order¹³⁶ sets the duty for the regions to forward monthly reports to the Central Government on the state of their budget and their eventual need or capacity of funding (Article 14)¹³⁷. The regions must also forward yearly (i) reports on their

¹³² *Boletín Oficial del Estado* No. 80, of 3 April 1985: <https://www.boe.es/buscar/act.php?id=BOE-A-1985-5392>.

¹³³ *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>. Previously, Article 5 of the Law 18/2001 on Budgetary Stability also established that the budgets needed to contain sufficient information so as to verify compliance with the objective of budgetary stability and with the European legislation on accountability. However, in the Organic Law 2/2012 explicit responsibility is attributed to the Ministry of Finance for the publicising of relevant financial and economic information as well as of the methodologies and assumptions applied. Likewise, the current Article 6 of Law on Budgetary Stability emphasises the duties for all the public Administrations to submit the information needed for the central government to have proper accounting.

¹³⁴ Preamble of the Organic Law 2/2012 on Budgetary Stability (my own translation), Spanish version available at *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹³⁵ *Boletín Oficial del Estado* No. 240, of 5 October 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12423.

¹³⁶ Ministerial orders are issued by any of the Ministers of the Government. Their status is that of a regulation, subordinate to Laws and Royal Decrees.

¹³⁷ This is consistent with Art. 3(2) (a) of Directive 2011/85, in which cash-based fiscal data is to be provided “monthly for central government, state government and social security sub-sectors”. Previously, the regions needed to submit this information either yearly or every three months (Article 6 of the Law 5/2001 complementing the Law 18/2001 on Budgetary Stability, *Boletín Oficial del Estado* No. 299, of 14 Dec 2001: <http://www.boe.es/buscar/act.php?id=BOE-A-2001-23632>).

forecasts of indebtedness before 31 March “according to the rules of the Protocol on Excessive Deficit” (Article 13, own translation), (ii) reports on their spending limits for the following year before 31 August, and (iii) the general lines of their budget for the following year in agreement with the European legislation before 31 October. Local governments are to forward yearly reports on their expected spending and budget lines (Article 15). Information on the state of their budget and their need or capacity of funding is to be provided every 3 months¹³⁸.

The economic and financial information of the different public sectors is coordinated and published by the “Central Unit of Economic and Financial Information of the Public Administrations”, created by the Royal Decree 636/2014 of 25 July¹³⁹. The management of the Central Unit is ascribed to the Ministry of Finance. Likewise, the economic and financial information in question is published on the website of the same Ministry.

Forecasts (Chapter III of Directive 2011/85)

Article 15 of the Organic Law 2/2012 on Budgetary Stability establishes that objectives of budgetary stability and public debt shall be based on the economic situation that is forecasted within the different time frames to which these objectives would apply. The article further details that these forecasts shall comprise, among other variables, the forecast of GDP growth, output gap, the output growth reference rate and the cyclical deficit. These provisions on macroeconomic forecasts already existed in very similar terms in the Law on Budgetary Stability of 2001 as amended in 2006¹⁴⁰; however, the Organic Law 2/2012 on Budgetary Stability foresees for the first time the inclusion of cyclical deficit in the calculations, not only of all the public Administrations together but also distributed among the different subsectors.

Numerical Fiscal Rules (Chapter IV of Directive 2011/85)

Although limits on public deficit and debt existed since 2001¹⁴¹, they were not deemed sufficient by the Spanish government for ensuring the effective compliance demanded by Directive 2011/85. The measures taken by Spain so as to ensure compliance with numerical fiscal rules included legislation in the following areas:

- *Debt, Deficit and Spending*: The Organic Law 2/2012 on Budgetary Stability develops the principle of budgetary stability introduced in the amended Article 135

¹³⁸Also consistent with Art, 3(2) (a) of Directive 2011/85, where fiscal data of the local government sub-sector must be published quarterly. Previously, this information was to be submitted yearly (Article 21 of the Law 18/2001 on Budgetary Stability, *Boletín Oficial del Estado* No. 298 of 13 Dec 2001: <http://www.boe.es/boe/dias/2001/12/13/pdfs/A46819-46825.pdf>).

¹³⁹*Boletín Oficial del Estado* no. 184, of 13 July 2014: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-8133.

¹⁴⁰ Article 1(6) of the Law 15/2006 reforming the Law 18/2001 on Budgetary Stability; *Boletín Oficial del Estado* No. 126 of 27 May 2006: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2006-9293.

¹⁴¹ Law 18/2001 on Budgetary Stability, *Boletín Oficial del Estado* No. 298 of 13 Dec 2001: <http://www.boe.es/boe/dias/2001/12/13/pdfs/A46819-46825.pdf>

of the Spanish Constitution¹⁴². As with the constitutional amendment, the provisions of the Law on Budgetary Stability will enter into full force in 2020 (in the meantime, other transitory provisions are foreseen so as to reach these budgetary commitments).

The Organic Law 2/2012 precludes the Public Administrations from entering into structural deficit except in the situations strictly delimited by Article 11: natural disasters, serious economic recession or situations of emergency that escape the control of the Public Administrations. The Organic Law 2/2012 also limits the levels of debt of the Administrations, set at 60% of GDP and details what percentage corresponds to each level of governance: 44% for the Central Administration, 13% for all the regions and 3% for the local authorities (Article 13). In addition, the Law reproduces the Rule of Spending already introduced by Zapatero¹⁴³, which limits the expenditure of public administrations in relation with GDP growth (see Question VI.2). However, and very importantly, this time all the limits over debt, deficit and spending are also imposed on the Regions (*Comunidades Autónomas*). This has raised doubts as to the constitutionality of the Law under the understanding that it affects the competences reserved to the Regions (see Question VII.2).

In order to allow unforeseen and indispensable expenses while respecting budgetary stability, the Organic Law 2/2012 on Budgetary Stability regulates the creation of “contingency funds” whose amount will be set by each administration¹⁴⁴. A contingency fund for the central government has existed since 2003¹⁴⁵, but the Organic Law 2/2012 extends the creation of contingency funds to regional and local governments.

- *Commercial debt*: In order to ensure the sustainability of public finances, indebtedness of the public administration vis-à-vis its suppliers (“commercial debt”) is also regulated and limited through the Organic Law 9/2013 on the control of commercial debt in the public sector¹⁴⁶. This Law establishes that Public Administrations must pay their providers within the limits imposed by the Law of Defaulting. In addition, every administration must publish its average payment time

¹⁴²It must be noted that budgetary stability (understood as budgetary balance or surplus) was already compulsory for all Public Administrations in the Law of Budgetary Stability of 2001. After the amendment of the Constitution in 2011, the principle of Budgetary Stability acquired constitutional status for the first time.

¹⁴³ Article 3 of the Royal Decree-law 8/2011 of 1 July on measures of support to the mortgagors, on control of public spending and cancellation of credits incurred by the public administration with business and freelancers, on the promotion of business activities and for administrative rehabilitation and simplification. *Boletín Oficial del Estado* No. 161, of 7 July 2011: <http://www.boe.es/boe/dias/2011/07/07/pdfs/BOE-A-2011-11641.pdf>.

¹⁴⁴ Article 31 of the Organic Law 2/2012 on Budgetary Stability, *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹⁴⁵ Article 50 of the General Budgetary Law 47/2003, *Boletín Oficial del Estado* No. 284 of 27 Nov 2003: <https://www.boe.es/buscar/act.php?id=BOE-A-2003-21614>.

¹⁴⁶*Boletín Oficial del Estado* No. 301, of 21 Dec 2013: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-13425.

and must also include its commercial debt within the spending limits settled by the Organic Law 2/2012 on Budgetary Stability.

- *Surveillance*: In compliance with Article 6(1) (b) of Directive 85/2011, the Spanish government has created an independent body for the monitoring of the fiscal rules. The Organic Law 6/2013¹⁴⁷ establishes the “Independent Authority for Fiscal Responsibility”, explained in more detail in Question VII.4.
- *Preventive measures*: If public debt raises above 95% of the limits established in the Organic Law 2/2012 for the different levels of government, no more operations of indebtedness will be allowed but those of the public treasury. Adjustments to the social security system, if needed, will be made through norms with the status of a law (Article 18 of the Organic Law 2/2012 on Budgetary Stability).
- *Corrective Measures*: In case of non-compliance of the budgetary objectives by the central government, the Government will need to draft an Economic and Financial Plan to put the administration back on track, and this plan will need approval from the Spanish Parliament (Article 25(2) of the Organic Law 2/2012 on Budgetary Stability, which already existed in similar terms in Article 14(1) of the Law 18/2001 on Budgetary Stability¹⁴⁸). If a region exceeds its limits of deficit, debt or expenditure, the region in question is precluded from entering into more debt unless authorised by the Central Government¹⁴⁹. Likewise the region must present an Economic and Financial Plan that needs approval from the Council of Fiscal and Financial Policy¹⁵⁰ prior report of the Independent Authority for Fiscal Responsibility (Article 20 of the Organic Law 2/2012 on Budgetary Stability, also drafted in similar terms in the Law 5/2001¹⁵¹ but for the necessity of a report from the Independent Authority). Non-compliant local administrations must follow similar procedures¹⁵², although if the Region in which they are located bears the

¹⁴⁷ *Boletín Oficial del Estado* No. 274, of 14 Nov 2013: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-11935.

¹⁴⁸ Respectively, *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>. and *Boletín Oficial del Estado* No. 298 of 13 Dec 2001: <http://www.boe.es/boe/dias/2001/12/13/pdfs/A46819-46825.pdf>.

¹⁴⁹ In the regime of 2001, the budgetary situation of the region was “taken into account” when considering the authorisation of credit operations (Article 7 of the Law 5/2001 complementing the Law 18/2001 on Budgetary Stability, *Boletín Oficial del Estado* No. 299, of 14 Dec 2001: <http://www.boe.es/buscar/act.php?id=BOE-A-2001-23632>).

¹⁵⁰ The Council of Fiscal and Financial Policy is an institution created in 1980 in order to coordinate the finances of the regions with those of the Central Government. This Council is composed by the Minister for Finance and the regional Ministers (“Consejeros”) for Finance of every region.

¹⁵¹ Article 8 of the Law 5/2001 complementing the Law 18/2001 on Budgetary Stability, *Boletín Oficial del Estado* No. 299, of 14 Dec 2001: <http://www.boe.es/buscar/act.php?id=BOE-A-2001-23632>.

¹⁵² The Law 7/1985 regulating the Basis of the Local Regimen has needed modification in order to include the eventual suppression of local competences in case of non-compliance. This was done through Article 1(30) of the Law 27/2013 of rationalisation and sustainability of the Local Administration at Article 1(30).

competence for local surveillance, their Economic and Financial Plans are subject to the approval from their Region.

- *Sanctions*: If the region fails to present an economic and financial plan or to comply with it, the measures imposed by the central government can amount to the appropriation of the regions' taxation competences "when needed to comply with the objectives of fiscal consolidation to the EU" (Article 25 of the Organic Law 2/2012 on Budgetary Stability¹⁵³, own translation). This is an unprecedented move of the central government and one that has raised controversy (see Question VII.2).

Other sanctions for non-compliance have been detailed in another piece of law, the Law 19/2013 on Transparency¹⁵⁴. If a Public Administration commits to carry out expenditures without sufficient credit for it, or does not use the budget surpluses for the compensation of public debt, the sanctions listed in Article 30 include the dismissal of the person responsible and the obligation to compensate the Public Treasury.

Another interesting issue is that of determining responsibilities when the budgetary framework of Directive 2011/85 is breached because of the actions of the local and regional administrations. Article 8 of the Organic Law 2/2012 on Budgetary Stability establishes that every public administration that causes or contributes towards a breach of EU legislation on budgetary stability must assume its corresponding liability. This has been developed by the Royal Decree-law 515/2013 on the regulation of the criteria and the procedure to determine and demand the responsibilities for breach of EU law¹⁵⁵.

- *Financial assistance to regions and local governments*: Additional Disposition No. 1 of the Organic Law 2/2012 on Budgetary Stability establishes for the first time a "bail out scheme" for those regions and local governments that request extraordinary access to credit. The financial aid granted is subject to an adjustment plan whose assessment is competence of the Ministry for Finance. The Law 4/2012¹⁵⁶ has partly reformed the Organic Law 2/2012 on budgetary Stability in order to establish more stringent obligations of information from the regions subject to a bailout plan, including monthly reports on the state of compliance of the adjustment measures. In addition, the Royal Decree-law 21/2012 on Liquidity Measures for the Public Administrations¹⁵⁷ details the conditions of access to

¹⁵³Organic Law 2/2012 on Budgetary Stability, *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹⁵⁴*Boletín Oficial del Estado* No. 295, of 10 Dec 2013: <http://www.boe.es/boe/dias/2013/12/10/pdfs/BOE-A-2013-12887.pdf>.

¹⁵⁵*Boletín Oficial del Estado* No. 161, of 6 July 2013: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-7385.

¹⁵⁶*Boletín Oficial del Estado* No. 235, of 29 Sept 2012: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12192.

¹⁵⁷*Boletín Oficial del Estado* No. 168, of 14 de July de 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-9365.

financial assistance for regions. A “Fund for Regional Liquidity” with a credit of 18.000 million euro is created in order to carry out the bail outs. This fund is managed by the Official Institute of Credit, which in turn is within the competences of the Ministry for Finance. To date, the regions that have resorted to the Fund for Regional Liquidity are Andalusia, Castile-La Mancha, Catalonia, Canary Islands, Valencia, Asturias, Balearic Islands, Cantabria and Murcia.

Medium-Term Budgetary Frameworks (Chapter V of Directive 2011/85)

Organic Law 2/2012 on Budgetary Stability lists the “principle of multi-annuality” among one of its guiding principles (Article 5). In Article 7 the Law states that all the policies of public spending must be made within a framework of medium-term budgetary planning. However, these articles are not a novelty given that both the “principle of multi-annuality” and the duty to draft the budget within a medium-term scenario were already foreseen in the Law 18/2001 of Budgetary Stability¹⁵⁸.

Transparency (Chapter VI, Article 14 of Directive 2011/85)

Transparency is enshrined as one of the principles of the Law on Budgetary Stability 2/2012. Chapter V develops this principle and sets the duty for every Public Administration to give information over the general lines of its budget before it is approved “with the purpose of complying with the requirements of EU legislation, in particular with those contained in Directive 2011/85/EU”¹⁵⁹. In addition, transparency has been the specific subject of the Law 19/2013 on Transparency, Access to Public Information and Good Governance. The Law 19/2013 partly gathers legislation on access to information that existed before¹⁶⁰. However, this time particular emphasis is put on the duty for all levels of government to facilitate budgetary, statistical and financial information as well as “their degree of compliance with the objectives of budgetary stability and financial sustainability of the Public Administrations” (Article 8, my own translation).

The Spanish regions have been called to implement similar duties to those contained in the Law 19/2013 on Transparency. Galicia¹⁶¹, Balearic Islands¹⁶², Navarra¹⁶³ and

¹⁵⁸ *Boletín Oficial del Estado* No. 299, of 14 Dec 2001: <http://www.boe.es/buscar/act.php?id=BOE-A-2001-23632>.

¹⁵⁹ Preamble of the Organic Law 2/2012 on Budgetary Stability (my own translation), *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹⁶⁰ Preamble of the *Law 19/2013, of 9 December, on Transparency, Access to Public information and Good Governance* (own translation, Spanish version available at <http://www.boe.es/boe/dias/2013/12/10/pdfs/BOE-A-2013-12887.pdf>).

¹⁶¹ Law 4/2006, of 30 July, on transparency and good practices at the Galician public administration (regional law), *Diario Oficial de Galicia* No. 136 of 14 July 2006: http://www.xunta.es/dog/Publicados/2006/20060714/Anuncio1622E_es.html.

¹⁶² Law 4/2011, of 31 March, on Good Administration and Food Governance of the Balearic Islands (regional law). *Boletín Oficial del Estado* No. 103 of 30 April 2011: <http://www.boe.es/boe/dias/2011/04/30/pdfs/BOE-A-2011-7709.pdf>.

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Extremadura¹⁶⁴ already had the relevant legislation in force. The rest of the Regions are currently in the process of passing their legislative drafts.¹⁶⁵

Comprehensive Scope of Budgetary Frameworks (Chapter VI, Articles 12 and 13 of Directive 2011/85)

Pursuant Article 12 of Directive 2011/85, the measures taken shall be consistent across all sub-sectors of government. This was a particularly challenging task for a decentralised polity like Spain, and has involved important legislative reforms at regional and local level. The inclusion of the principles of “responsibility” and “institutional loyalty” in the Organic Law 2/2012 on Budgetary Stability support this new dimension of budgetary commitments binding not only the central government but also the regional and local administrations. Indeed, the principle of responsibility means that those Public Administrations who do not comply with the Law and contribute to the breach of the commitments contracted under EU or international law must accept their proportional share of the consequent penalties. Additionally, the principle of institutional loyalty means that every Administration must ponder the financial impact that his actions may have over the other Administrations.

Other specific novelties at regional and local level worth noting are the following:

- *Regional government:* The Organic Law 2/2012 on Budgetary Stability precludes regional governments from entering into structural deficit, and for the first time it

¹⁶³ Law 11/2012, of 21 June, on Transparency and Open Government (regional law). *Boletín Oficial de Navarra* No. 125 of 28 June 2012: https://www.navarra.es/home_es/Actualidad/BON/Boletines/2012/125/Anuncio-0/.

¹⁶⁴ Law 4/2013, of 21 May, on Open Government of Extremadura (regional law), *Diario Oficial de Extremadura* No. 99 of 24 May 2013: <http://doe.juntaex.es/pdfs/doe/2013/990o/13010006.pdf>.

¹⁶⁵ Andalusia has recently passed its Law on Transparency, text available at <http://www.juntadeandalucia.es/boja/2014/124/1>. Cantabria and Castile-La Mancha are currently drafting their own Laws. Murcia is doing the same while gathering opinions from practitioners and individuals (<http://www.asambleamurcia.es/ley-de-transparencia-y-buen-gobierno>). Castile and Leon have just finished its period for feedback from the citizenry and the draft is expected to be concluded soon (<http://participa.jcyl.es/forums/209344--2014-06-futura-ley-de-transparencia-y-gobierno-a>). Catalonia has started the procedures for debating the Law at its parliament (http://noticias.lainformacion.com/politica/partidos/el-parlamento-catalan-admite-a-tramite-la-ley-de-transparencia-y-la-gestionara-por-el-proceso-de-urgencia_RNXc04F4cUawCIE2BalUr1/). At similar stages are the Law on Transparency of the Basque Country (draft available at https://www.irekia.euskadi.net/assets/attachments/2329/Anteproyecto_Ley_Transparencia_Propuestas.pdf?1340787717), the Law on Transparency of the Community of Valencia (draft available at http://www.cortsvalecianas.es/cs/Satellite/Layout/Page/1260974742398/Proposicionley.html?lang=es_ES), the Law on Transparency of Asturias (draft available at http://www.asturias.es/webasturias/GOBIERNO/TRANSPARENCIA/anteproyecto_ley_transparencia.pdf), the Law on Transparency of Aragón (draft available at <http://www.aragon.es/estaticos/GobiernoAragon/Temas/Transparencia/Documentos/ANTEPROYECTO%20D E%20LEY%20a%20Consejo%20de%20Gobierno-1.pdf>), the Law on Transparency of Canarias (draft available at http://www.gobiernodecanarias.org/openems8/export/sites/cpji/ripc/participacionciudadana/contenido/Construyendo_Ciudadania/Contenido_bloque_basico/Textos_legislativos/Ley_de_Transparencia/Borrador_Ley_de_Transparencia.pdf) and the Law on Transparency of La Rioja (draft available at <http://www.parlamento-larioja.org/files/58-4670-boletin/77a.pdf>).

quantifies the percentage of public debt (13%) that corresponds to the regional governments altogether. Regional contingency funds are also compulsory so as to face unexpected and inevitable expenses. Another novelty has been the limitation of regional public spending in proportion to the national GDP, budgetary surpluses (if any) being destined to reduce indebtedness. In order to ensure compliance with the budgetary objectives of public debt and budgetary stability, the regions are compelled to forward monthly reports on the realisation of their budget, as well as the headlines of the draft regional budget so it can be assessed before it is approved (see Question VII.8). In the same line, the attempts to make the public administration more transparent through the Law 19/2013 on Transparency have resulted in a cascade of regional legislation establishing the duty of publicising relevant financial and economic information.

Perhaps the most controversial side of controlling regional finances has been the inclusion of stringent sanctioning measures and the implementation of an European-like stability mechanism for regions in the Organic Law 2/2012 on Budgetary Stability. The sanctions for non-compliance include the appropriation of regional tax competences by the central government, a measure whose constitutionality is doubted as explained in Question VII.2. The bailout mechanism for regions in need of assistance, on the other hand, has led nine regions to request financial help and to accept the conditionality imposed from the Ministry of Finance. The political dimension of the bailout scheme has been big, as Catalonia has received the biggest assistance by far amidst claims that the central government would seize the opportunity to re-centralise the Catalan finances¹⁶⁶.

It must be remarked that the amendment of Article 135 of the Spanish Constitution (giving constitutional status to the principle of budgetary stability) allows the central government to affect the regional spheres of power in an unprecedented manner. This is so because for the first time all levels of government are subject to deficit and debt limits in virtue of the Constitution regardless of the specific division of competences between central, regional and local government. In addition, as Albertí Rovira states, the central government is now able to use Article 162.1 of the Spanish Constitution for the suspension of regional legislation deemed against the now constitutional principle of budgetary stability¹⁶⁷.

- *Local government:* As with the regions, the percentages of public debt that corresponds to local governments (3%) is also quantified and limited. Local administrations must also submit reports to the central government every three months on the state of their budget. Notably, the application of the principle of budgetary stability to the local government sub-sectors has been made through the

¹⁶⁶ See A Piñols, “Cataluña pide el rescate con urgencia”, published at *El País* on 28 Aug 2012: http://ccaa.elpais.com/ccaa/2012/08/28/catalunya/1346151532_719745.html.

¹⁶⁷ E Alberí Rovira, “El Impacto de la Crisis en el Estado Autonómico Español”, *Revista Española de Derecho Constitucional* No. 98, May- August 2013 at p. 69.

enactment of the “Law 27/2013 of rationalisation and sustainability of the Local Administration”¹⁶⁸. This Law guarantees the autonomy of the local government “with strict subjection to the legislation on budgetary stability and financial sustainability”¹⁶⁹. The duty to guarantee budgetary stability is one of the aims of the coordination between the different local administrations¹⁷⁰, and must be taken into account in the assessment of the public services provided by the local government. Other mechanisms for the rationalisation of local finances include limits on the personnel employed at the local governments and their salaries.

IMPLEMENTATION DIFFICULTIES

VII.3

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

The Spanish legislation based on budgetary stability has been perceived by local and regional governments as a violation of the political and financial autonomy of regions and municipalities. Medina Guerrero states that sanctioning non-compliant regions with the appropriation of their taxation competences by the central government can be unconstitutional¹⁷¹. This is so because the Spanish constitution entitles the regions to have their own taxes and fees, as well as to exercise the taxation competences transferred by the State¹⁷² (once transferred, these competences are detailed in the Statutes of Autonomy of every region, which also enjoy constitutional status). Moreover, limiting the regional spending ceilings and compelling the regions to use surpluses for the compensation of public debt¹⁷³ strongly affects their budgetary autonomy. The spending ceilings have had important effects on regional competences such as healthcare, education and social assistance¹⁷⁴.

¹⁶⁸ *Boletín Oficial del Estado*, No. 312 of 30 Dec 2013: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-13756. This Law reforms some of the articles of the Law 7/1985 regulating the Basis of the Local Regime (*Boletín Oficial del Estado* No. 80, of 3 April 1985: <https://www.boe.es/buscar/act.php?id=BOE-A-1985-5392>).

¹⁶⁹ Article 1(1) of the Law 27/2013 of rationalisation and sustainability of the Local Administration (own translation), *Boletín Oficial del Estado*, No. 312 of 30 Dec 2013: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-13756.

¹⁷⁰ Article 10 of the Law 7/1985 regulating the Basis of the Local Regime, as amended by the Law 27/2013. *Boletín Oficial del Estado* No. 80, of 30 April 1985: <https://www.boe.es/buscar/act.php?id=BOE-A-1985-5392>.

¹⁷¹ Article 25 of the Organic Law 2/2012 on Budgetary Stability, *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>. M Medina Guerrero, “El estado autonómico en tiempos de disciplina fiscal”, *Revista Española de Derecho Constitucional* No. 98, May-August 2013.

¹⁷² Article 197 of the Spanish Constitution: <http://www.congreso.es/consti/constitucion/indice/titulos/articulos.jsp?ini=143&fin=158&tipo=2>.

¹⁷³ Respectively, Articles 12 and 32 of the Organic Law 2/2012 on Budgetary Stability, *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹⁷⁴ E Albertí Rovira, “El impacto de la crisis financiera en el Estado autonómico español”, *Revista Española de Estudios Constitucionales* No. 98, May- August 2013.

Lastly, the bailout scheme for regions in need of liquidity¹⁷⁵ entails strict conditionality, which can also be used to jeopardise the regional spheres of power. Catalonia, the largest recipient of these bailout funds since 2012, has increased its mistrust towards the central government under the belief that the government would seize the opportunity to re-centralise the Catalan finances.

While debates on the impact of budgetary stability over the regional autonomy are now a hot topic, in truth these controversies date back to 2001 when the first Law on Budgetary Stability¹⁷⁶ established that regional and local budgets had to be guided by the principles of budgetary stability, multi-annuality, transparency and efficiency in the allocation of public resources¹⁷⁷. As the allocation of competences between State and the regions is framed in the Spanish constitution, the Parliament of Catalonia brought an action of unconstitutionality (“*recurso de inconstitucionalidad*”) before the Spanish Constitutional Court against the 2001 Law of Budgetary Stability. The Constitutional Court delivered the judgement on July 2011¹⁷⁸. It dismissed all the claims of Catalonia, stating that Article 149.1 of the Constitution confers the central government the competence on the basis and the coordination of the general planning of the economy, which in turn enables the government to ensure general budgetary stability across all levels of government.

In addition to the action lodged by the Parliament of Catalonia, other regional governments (that of Catalonia¹⁷⁹, Asturias, Aragón and Castile-La Mancha) as well as the *Partido Socialista* (which was the main opposition party back in 2001) also brought actions of unconstitutionality against the Law 18/2001 of Budgetary Stability and its complementary Law 5/2001. The novelty is that this time the amendment of article 135 of the Spanish Constitution (giving constitutional status to the principle of budgetary stability) had already entered into force when the Constitutional Court delivered its judgements¹⁸⁰. Again the Court dismissed the actions of unconstitutionality on the same grounds than in the previous Catalan case, with the additional remark that the “standard of constitutionality” had been changed while the case was resolved. According to the Court, the new Article 135 enshrined the principle of budgetary stability not as a competence of the central government, but as a duty that all the public administrations had to respect.

Within the eurozone crisis, reactions against the new legislation on budgetary frameworks have included (i) a “*recurso de amparo*” (action of infringement of fundamental rights) from *Izquierda Unida* against the amendment of Article 135 of the Spanish Constitution, (ii) an

¹⁷⁵ Additional Disposition No. 1 of the Organic Law 2/2012 on Budgetary Stability, *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

¹⁷⁶ *Boletín Oficial del Estado* No. 299, of 14 Dec 2001: <http://www.boe.es/buscar/act.php?id=BOE-A-2001-23632>.

¹⁷⁷ As stated in the Preamble, the Law of Budgetary Stability of 2001 had also been passed in implementation of EU legislation, in this case the Stability and Growth Pact of 17 June 1997.

¹⁷⁸ *Sentencia del Tribunal Constitucional* 134/2011 of 20 July.

¹⁷⁹ The executive of Catalonia had brought its own action of unconstitutionality in addition to that of the Parliament of Catalonia.

¹⁸⁰ *Sentencias del Tribunal Constitucional* 157/2011, 185 – 189/2011, 195- 196/2011, 199/2011, 203/2011.

action of unconstitutionality from the Government of Canarias against the Organic Law 2/2012 of Budgetary Stability, (iii) an action of unconstitutionality from Andalusia, Navarra and Extremadura against the Law 27/2013 of Rationalisation and Sustainability of the Local Administration.

- (i) Action against the amendment of Article 135 of the Spanish Constitution: On 28 September 2011, a number of MPs from the parliamentary coalition *Esquerra Republicana - Izquierda Unida – Iniciativa per Catalunya Verts* filled an action at the Constitutional Court for the invalidation of parliamentary resolutions that approved the amendment of Article 135 of the Constitution. In their view, the disposition of Article 135 that guarantees the absolute priority of the payment of public debt¹⁸¹run against fundamental rights. As an example, they stated that effective judicial protection can be jeopardised, as funding for the administration of justice is subject to the priority payment of public debt and its interests. Since the new Article 135 had potential effects on the sections devoted to fundamental rights and freedoms, the claimants understood that the reform should not have been made through the simplified procedure, but through the ordinary one¹⁸². The Constitutional Court declared the action inadmissible on the grounds that the connection of Article 135 with the other sections of the Constitution could not be deduced from the literal reading of the constitutional text, from the constitutional jurisprudence or from the academic doctrine¹⁸³.
- (ii) Action of unconstitutionality against the Organic Law 2/2012 on Budgetary Stability: The action was lodged on 26 February 2013 by the Government of Canary Islands¹⁸⁴. The grounds of the action were the prominence of the central government in the configuration of the Law to the detriment of the regional competences¹⁸⁵. Among others, the government of Canary Islands mentioned Article 16 that confers the Central Government the task of determining the objectives of budgetary stability and public debt for each region. The action of unconstitutionality is still pending of resolution by the Constitutional Court.

Action of unconstitutionality against the Law 27/2013 of Rationalisation and Sustainability of the Local Administration: The action of unconstitutionality was brought by the

¹⁸¹ The literal reading of the sentence is “the credits for the payment the interests and the capital of the public debt of the Administrations will always be understood as comprised in the state of expenses of the budget and its payment will enjoy absolute priority” (own translation).

¹⁸² Pursuant Article 168 of the Spanish Constitution, the ordinary revision involves the dissolution of the Spanish Parliament and the celebration of general elections, after which the new Parliament must ratify the constitutional amendment and celebrate a referendum. In contrast, the simplified procedure only needs approval by qualified majority of the *Congreso* and the *Senado* (a referendum only takes place if requested by 1/10 of the MPs).

¹⁸³ The resolution is available at <http://www.cepc.gob.es/docs/dossieres-tematicos/texto.pdf?sfvrsn=0>.

¹⁸⁴ *Boletín Oficial del Estado* No. 59 of 9 March 2013: <http://www.boe.es/boe/dias/2013/03/09/pdfs/BOE-A-2013-2603.pdf>.

¹⁸⁵ The text of the report in which the action of unconstitutionality was based can be found here: <http://dcc.consultivodecanarias.org/2013/0049.pdf>.

governments of Andalusia¹⁸⁶, Catalonia¹⁸⁷, Asturias¹⁸⁸, and Canarias¹⁸⁹, as well as the Parliaments of Andalusia¹⁹⁰, Navarra¹⁹¹, Extremadura¹⁹², Catalonia¹⁹³ on the grounds that the new measures for the rationalisation of the local administration jeopardise the regional competence on these matters¹⁹⁴. Fifty members of the Spanish Parliament, lodged an action of unconstitutionality against the same Law¹⁹⁵ on the basis that some of the precepts not only jeopardised the regional competences on local matters, but also the competences of the local administrations guaranteed by Articles 137, 140 and 142 of the Spanish Constitution. The Constitutional Court admitted this action of unconstitutionality in May 2014¹⁹⁶. Lastly, about 3000 municipalities presented an action of unconstitutionality for breach of local competences (*conflicto en defensa de la autonomia local*), action that was admitted on 10 September 2014¹⁹⁷. The municipalities base their claims on the reconfiguration of local social services carried out by the Law (some precepts foresee that in municipalities of less than 20,000 inhabitants, the management of social services can be transferred to the council of the province). The actions of unconstitutionality for breach of local competences can only be brought by 1,160 municipalities representing at least one-sixth of the Spanish population (about 7,8 million inhabitants), having been the first time that a sufficient number of local governments manage to lodge such an action¹⁹⁸. Notably, about 850 of these 3000 municipalities are from Catalonia¹⁹⁹. All the recourses against the Law 27/2013 of Rationalisation and Sustainability of the Local Administration are pending of resolution by the Spanish Constitutional Court.

¹⁸⁶Boletín Oficial del Estado No. 132, of 31 May 2014: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-5723.

¹⁸⁷Boletín Oficial del Estado No. 132, of 31 May 2014: <https://www.boe.es/boe/dias/2014/05/31/pdfs/BOE-A-2014-5729.pdf>.

¹⁸⁸Boletín Oficial del Estado No. 132, of 31 May 2014:

¹⁸⁹Boletín Oficial del Estado No. 132, of 31 May 2014: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-5730.

¹⁹⁰Boletín Oficial del Estado No. 132, of 31 May 2014: <https://www.boe.es/boe/dias/2014/05/31/pdfs/BOE-A-2014-5728.pdf>.

¹⁹¹Boletín Oficial del Estado No. 132, of 31 May 2014: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-5726.

¹⁹²Boletín Oficial del Estado No. 132, of 31 May 2014: <https://www.boe.es/boe/dias/2014/05/31/pdfs/BOE-A-2014-5722.pdf>.

¹⁹³Boletín Oficial del Estado No. 132, of 31 May 2014: <https://www.boe.es/boe/dias/2014/05/31/pdfs/BOE-A-2014-5725.pdf>

¹⁹⁴ The text of the report in which the action of unconstitutionality from Canary Islands was based can be found here: <http://dcc.consultivodecanarias.org/2014/0172.pdf>.

¹⁹⁵Text available at <http://www.nuevatribuna.es/media/nuevatribuna/files/2014/03/28/registro-recurso-tc-ley-27-2013-de-27-de-diciembre.pdf>.

¹⁹⁶Boletín Oficial del Estado No. 132, of 31 May 2014: <https://www.boe.es/boe/dias/2014/05/31/pdfs/BOE-A-2014-5727.pdf>

¹⁹⁷Tribunal Constitucional, Providencia of 11 September 2014: http://www.tribunalconstitucional.es/es/salaPrensa/Documents/NP_2014_068/P%204292-2014.pdf.

¹⁹⁸http://politica.elpais.com/politica/2014/02/06/actualidad/1391715117_831086.html.

¹⁹⁹<http://www.rtve.es/noticias/20140630/unos-3000-ayuntamientos-recurren-reforma-local-ante-tribunal-constitucional/963947.shtml>.

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)?

Pursuant Article 15(5) of the Organic Law 2/2012 on Budgetary Stability, macroeconomic and budgetary forecasts must be set in a report whose preparation is a competence of the Ministry of Economy and Competitiveness, after consulting the Bank of Spain and taking into account the provisions given by the European Central Bank and the European Commission.

Evaluation of the forecasts is carried out by the Independent Authority on Fiscal Responsibility (*Autoridad Independiente de Responsabilidad Fiscal*, AIRF: see Question VII.5).

FISCAL COUNCIL

VII.5

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

In Spain there were already a number of fiscal bodies, but none with the functional autonomy demanded by Directive 2011/85. The Spanish Government therefore proceeded to create a new “Independent Authority on Fiscal Responsibility” (IAFR hereinafter), through the approval of the Organic Law 6/2013 on the creation of an Independent Authority of Fiscal Responsibility²⁰⁰.

Pursuant Article 1 of the Law, the IAFR has got the legal condition of a public body with legal personality and full public and private capacity. It performs its duties with autonomy and functional independence: neither the President nor the personnel seek or take instructions from any public or private entity (Article 7). Its adscription to the Ministry for Finance and Public Administration is only for budgetary purposes (meaning that the resources allocated to the IAFR are inserted in the state budget as an item within the budget of the Ministry for Finance). Article 11 guarantees the IAFR economic and human resources enough to carry out its functions, and adds that apart from the funds assigned from the general budget, the IAFR will have its own patrimony.

²⁰⁰*Boletín Oficial del Estado* No. 274, of 15 Nov 2013: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-11935

The main function of the IAFR is consultative. It issues prescriptive reports as to macroeconomic forecasts; methodologies used for the calculation of expected revenues and spending; the annual Stability Programme; analyses on the state of the budget, public debt and spending; the objectives of budgetary stability and public debt set for each region; the economic and financial plans and plans of rebalancing of the central and regional administrations; the general lines of the budget of the public administrations; and the existence of the exceptional circumstances mentioned in the Law of Budgetary Stability that exempt the Administration from complying with the numerical fiscal rules of debt, deficit and spending established by default. The IAFR can issue discretionary opinions on the follow-up of the execution of the budget, the long-term sustainability of public finances and any other matter established by law.

The Law is silent as to the legal effects of the reports issued by the IAFR. From the reading of Article 14, (“the stability programme shall indicate if it has been approved by the IAFR”), it is understood that the IAFR does not enjoy veto powers and its reports are not binding. Only in one circumstance does the report entail consequences: if the IAFR determinates that the macroeconomic forecasts are strongly biased, the State shall take the measures to correct it and will make them public (yet the Law is silent as to the consequences of an eventual non-compliance of the State).

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 SPAIN 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?

Regulation 1176/2011 was debated at the Parliamentary Commission for the EU on 9 December 2010²⁰¹. At this meeting, Moscoso del Prado Hernández from *Partido Socialista* presented his report on whether the Regulation complied with the principles of subsidiarity and proportionality. Moscoso del Prado Hernández explained that, in his view, the Regulation proceeded in the right direction as to the reinforcement of the fiscal and economic component of the EU. He continued saying: “we are all aware that the advancement in the economic and monetary union is the key element to ensure a correct stabilisation of the European economy, a way out of the crisis and the put into practice of the measures of economic policy needed to reform the growth model”.

²⁰¹*Boletín Oficial del Estado, Comisiones Mixtas para la Unión Europea* No. 160, of 9 Dec 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_160.PDF.

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Spain was identified as one of the states needing an in-depth review²⁰². The reason given for an in-depth analysis was the adjustment period that Spain was experiencing in the aftermath of large internal and external imbalances caused by the housing bubble and the credit boom.

The In-depth Review concluded that Spain is experiencing very serious macroeconomic imbalances that had to be urgently addressed²⁰³. The Commission argued that Spain had been affected by large and closely interconnected external and internal imbalances. Strong capital inflows during the boom years had contributed to the accumulation of large net external liabilities and spurred a large housing and construction bubble. When this bubble burst as a result of the financial crisis, the exposure of the banking sector to doubtful real estate and construction assets endangered the financial stability of the country.

As the adjustment of the imbalances derived from the housing bubble started to take place new imbalances arose in the labour market and in public finances. A great part of the workers on the construction sector lost their employments. Public debt increased rapidly due to stimulus measures and the loss of tax revenue also linked to the construction sector. The banks, burdened with loan losses, saw their lending capacity further constrained by difficult access to finance. This, in turn, limited access to credit by producers of goods and services and held back the structural adjustment of the economy.

Although to date the policy response from the Spanish government had been far reaching, the report pointed out a challenging roadmap for the future. It called for “policies aimed at increasing competitiveness and enlarging the export base of the Spanish economy, strengthening competition in product and service markets, further restructuring of the banking sector with a strong focus on trouble asset disposal, completing the adjustment of the housing sector and enhancing the scope of reforms in the labour market”.²⁰⁴

REGULATION No 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS

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

²⁰² First Alert Mechanism Report available at http://europa.eu/rapid/press-release_MEMO-12-104_en.htm.

²⁰³ Review available at http://ec.europa.eu/europe2020/pdf/nd/idr2012_spain_en.pdf.

²⁰⁴ See also: “EU warns Spain, Slovenia pose biggest economic risks”, <http://www.eubusiness.com/news-eu/economy-eurozone.nvj>; “Brussels warns on Spanish and Slovenian ‘imbalances’”, <http://www.bbc.co.uk/news/business-22089641>; “Spain and Slovenia told to reform economies now or risk financial crisis”, <http://www.theguardian.com/business/2013/apr/10/spain-slovenia-told-reform-economies>; European Commission, Economic and Financial Affairs, European Economy, Occasional Papers: http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/op134_en.htm.

The Law 18/2001 on Budgetary Stability already foresaw the yearly preparation of a medium-term budgetary objective covering a three-year period²⁰⁵. The new Organic Law 2/2012 on Budgetary Stability²⁰⁶ has not introduced significant changes on the rules for the elaboration of the MTO: as in 2001, the MTO is drafted by the Council of Ministers, based on a proposal from the Ministry for Finance and following the reports submitted by the Financial Council of the Regions (FFCR) and the National Commission for Local Administrations (NCLA). Also in similar terms the draft of the Council of Ministers needed approval from the *Congreso* and the *Senado*. However some changes introduced in 2012 are worth noting:

- (i) Allusions to EU recommendations and opinions: Article 15 of the Organic Law 2/2012 on Budgetary Stability introduces a paragraph stating that for the establishment of the MTO the recommendations and the opinions on the Stability Programme issued by the EU will be taken into account, as well as any other pronouncement issued as a consequence of the EU supervision mechanisms.

- (ii) More strict conditions of approval at the Parliament: In the 2001 Law on Budgetary Stability if the *Senado* rejects the draft of the MTO, the *Congreso* could approve it by simple majority²⁰⁷. In the new 2012 Law on Budgetary Stability, if any of the chambers rejects the text, the Government must present a new MTO within a month²⁰⁸.

Strict consequences of non-compliance by the regions: Both the Laws of 2001²⁰⁹ and 2012²¹⁰ foresaw that those regions breaching the MTO set for them would need to elaborate an economic and fiscal plan. However, in 2012 new consequences are added if a region does not present or does not follow its economic and fiscal plan: pursuant Article 25 of the Organic Law 2/2012 on Budgetary Stability the region can no longer issue credits and must establish a fund in the Spanish Central Bank for the value of 0.2% of its GDP so as to guarantee compliance with the budgetary objectives. Further, when needed to ensure compliance with the commitments of fiscal consolidation to the EU, the regional competences on taxation will be appropriated by the central government. If the region did not comply with any of these measures, Article 26 grants the government to execute them by

²⁰⁵ *Boletín Oficial del Estado* No. 298 of 13 Dec 2001: <http://www.boe.es/boe/dias/2001/12/13/pdfs/A46819-46825.pdf>.

²⁰⁶ *Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

²⁰⁷ Article 8 of the Law 18/2001 on Budgetary Stability as reformed by the Law 15/2006 (*Boletín Oficial del Estado* No. 126, of 27 May 2006: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2006-9293).

²⁰⁸ Article 15 of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>).

²⁰⁹ Article 8 of the Law 5/2001, complementary to the Law 18/2001 on Budgetary Stability (*Boletín Oficial del Estado* No. 299, of 13 Dec 2001: <http://www.boe.es/buscar/act.php?id=BOE-A-2001-23632&b=9&tn=1&p=20011214#a8>).

²¹⁰ Article 20 of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>).

force²¹¹. All these measures curtail significantly the budgetary room of manoeuvre of the regions and have been pointed out as unconstitutional²¹².

EUROPEAN SEMESTER

VII.8

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

The European Semester has resulted in the inclusion of a specific budgetary timeline in the Organic Law 2/2012 on Budgetary Stability²¹³, further developed by the Ministerial Order HAP/2105/2012²¹⁴. As a result, the budgetary timeline is as follows:

- (i) Medium term objectives of **budgetary stability** and **public debt**: Pursuant Article 13 of the Ministerial Order HAP/2105/2012, the regions must submit their forecasts on indebtedness to the central government **before 31 March**. Pursuant Article 15 of the Organic Law 2/2012 on Budgetary Stability, **before 1 April** the Ministry for Finance submits his proposal on budgetary stability and public debt for the following three years to the Council of Fiscal and Financial Policy of the Regions (CFFPR) as well as to the National Commission of Local Administrations (NCLA). The CFFPR and the NCLA must issue back their own reports **within 15 days**. After reading the reports and taking into account the proposal of the Ministry of Finance, the Council of Ministers must set the objectives of budgetary stability and public debt **within the first half of the year**. The proposal of the objectives of budgetary stability and public debt must be approved by the *Congreso* and the *Senado*. If any of them rejects the proposal, the government must submit a new one **within one month**²¹⁵.

- (ii) Limits on **non-financial spending**: Once the objectives of budgetary stability and public debt are set, the limits on non-financial spending of the Administrations must be set coherently with such objectives (Article 30 of the Organic Law 2/2012 on Budgetary Stability). **Before 1 August** each year the Ministry for Finance must inform the CFFPR the limits of non-financial spending set for the

²¹¹Boletín Oficial del Estado No. 103, of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

²¹²See M Medina Guerrero, “El Estado autonómico en tiempos de disciplina fiscal” in *Revista Española de Derecho Constitucional* No. 98, May- August 2013, and E Albertí Rovira “El impacto de la crisis financiera en el Estado autonómico español” in *Revista Española de Derecho Constitucional* No. 98, May-August 2013.

²¹³Boletín Oficial del Estado No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

²¹⁴Boletín Oficial del Estado No. 240 of 5 October 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12423.

²¹⁵ Article 15 of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>).

State Budget. Likewise, **before 1 August** the Regions must submit to the CFFPR information on the limits of non-financial spending that each of them has approved²¹⁶.

- (iii) **Approval of the State Budget:** The timeline of the elaboration of the State Budget by the central government has not experienced significant changes due to the European Semester, since the government was already compelled by law to submit the draft of the State Budget to the Parliament before **1 October** and to have it passed **before the end of the year** (Articles 34 and 37 of the General Budgetary Law 47/2003²¹⁷). As a novelty, the Independent Authority for Fiscal Responsibility will now assess whether the draft budget complies with the objectives of budgetary stability, public debt and spending ceilings by **15 October** (Article 17(1) of the Organic Law 2/2012 on Budgetary Stability²¹⁸). Furthermore, a specific allusion to the European Semester is made in the Ministerial Order 981/2013 setting the rules for the preparation of the 2014 State Budget, which states in the preamble that “the 2014 budget will also take into account the recommendations of the Council of the European Union delivered both within the European Semester and the excessive deficit procedure to which Spain is subject”²¹⁹.

In addition, relevant changes have been introduced so as to ensure that regions and local administrations share their budgetary plans within specific dates: pursuant Articles 13 and 15 of the Ministerial Order 2105/2012 the regions and local administrations must submit the headlines of their budgets to the central government **before 1 October**²²⁰. The Independent Authority for Fiscal Responsibility then issues a report on **15 October** assessing the compatibility of the local and regional budgetary plans with the objectives of budgetary stability, public debt and limits on public spending (Article 17(4) of the Organic Law 2/2012 on Budgetary Stability²²¹).

²¹⁶ Article 30 of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>).

²¹⁷ *Boletín Oficial del Estado* No. 284 of 27 November 2003: <http://www.boe.es/buscar/doc.php?id=BOE-A-2003-21614>.

²¹⁸ *Boletín Oficial del Estado* No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

²¹⁹ Preamble of the *Orden Ministerial* HAP/981/2013 establishing the norms for the approval of the 2014 State budget (my own translation), Spanish version available at *Boletín Oficial del Estado* No. 133, of 4 June 2013: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-5870.

²²⁰ *Boletín Oficial del Estado* No. 240 of 5 October 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12423.

²²¹ *Boletín Oficial del Estado* No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

(iv)**Monitoring:** Before **1 April**, the Independent Authority for Fiscal Responsibility will forward the Government a report on the state of compliance with the objectives of budgetary stability and public debt that were foreseen in the budgets of the central, regional governments and local budgets (Article 17(2) of the Organic Law 2/2012 on Budgetary Stability). By **15 April**, the Ministry of Finance will forward the government a report of compliance with the objectives of budgetary stability, public debt and spending ceilings of the previous economic period, together with information on the evolution of the economy and the deviations from the initial forecasts (Article 17(3) of the Organic Law 2/2012 on Budgetary Stability). The Article adds that this report will be elaborated on the basis of the information that needs to be forwarded to the European authorities.

In addition, regional governments and local administrations must submit periodic reports on the realisation of their budget. These reports are **monthly** for the regions (Article 14 of the Ministerial Order HAP/2105/2012 on the duties of providing information foreseen in the Organic Law 2/2012 on Budgetary Stability) and **every three months** for the local governments (Article 16 of the same Ministerial Order).²²²

MTO DIFFICULTIES

VII.9

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

When the introduction of the European Semester was discussed at the Spanish Parliament, the main political parties seemed to agree on the transformation that it would entail for the budgetary process, but this was not perceived as negative for most of the MPs. At the meeting of the Parliamentary Commission for the EU, Moscoso del Prado Hernández from *Partido Socialista* stated that the European Semester would transform the manner in which Member States elaborate their economic policies with a different timeline, different preparation of the budget and strong supervision²²³. Soledad Becerril from *Partido Popular* claimed that the European Semester would make everything more relaxed and predictable, as it would allow Member States to observe progressively whether they reach the budgetary objectives and hence eventual policy recommendations from the Commission would be more expectable.

²²²Boletín Oficial del Estado No. 240 of 5 October 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12423.

²²³ Diario de Sesiones de las Cortes Generales, Comisión Mixta para la Unión Europea, Boletín Oficial del Estado No. 160 of 9 Dec 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_160.PDF.

The main political or legal difficulties that Spain encountered, if any, have been related with a stronger control of the budgetary timelines of the regions, including more stringent duties of providing economic information to the central government (see Question VII.8). However to date the regions have not taken legal actions against the rules derived from the European Semester.

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)?

Article 15(7) of the Organic Law 2/2012 on Budgetary Stability states that once approved the MTO by the Spanish Parliament, the bill of the State Budget for the Public Administration must accommodate to these objectives. Likewise Article 29 of the same Law states that the MTO must be included within the corresponding Stability Programme. The Organic Law 2/2012 on Budgetary Stability is not conclusive on the consequences of non-compliance: pursuant Article 29(4) every modification or deviation from the medium-term budgetary plan will have to be explained, but no further consequences are foreseen²²⁴.

CURRENT MTO

VII.11

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

On July 2014, the new MTO for 2015 – 2017 established that a structural deficit of 1.1% is to be reached by 2017 (until then, the deficit will be progressively reduced: 2.9% in 2015 and 2.2% in 2016)²²⁵. The MTO is revised yearly by the Council of Ministers.

ADOPTION MTO

VII.12

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

The medium-term objectives of budgetary stability and public debt are drafted by the Council of Ministers every June²²⁶. For this, the Ministry of Finance forwards a proposal for budgetary stability and public debt to regional and local governments before 1 April. The

²²⁴ *Boletín Oficial del Estado* No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>.

²²⁵ Text available at <http://www.sepg.pap.minhap.gob.es/sitios/sepg/es-ES/Presupuestos/NormativaPresupuestaria/Documents/NORMATIVA%20DE%20ELABORACION/ACM%202015.pdf>.

²²⁶ Article 15 of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 240, of 5 Oct 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12423).

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Fiscal and Financial Council of the Regions (FFCR)²²⁷ and the National Commission for Local Administrations (NCLA)²²⁸ then submit their own reports on the matter within 15 days. Taking into account the proposal for budgetary stability and public debt drafted by the Ministry of Finance and after receiving the reports from the FFCR and the NCLA, the Council of Ministers sets the proposal for MTO for all the public administrations as a whole and also for its different sub-sectors. The Organic Law 2/2012 on Budgetary Stability specifies that in establishing the medium-term budgetary objectives, the Council of Ministers must take into account the recommendations and opinions issued by the EU on the Stability Programme of Spain or as a consequence of other supervisory mechanisms²²⁹.

The proposal of MTO drafted by the Council of Ministers is accompanied by a report that evaluates the economic situation that is forecasted for each of the years of the MTO. This report is made by the Ministry of Economy after consulting the Spanish Central Bank and taking into account the forecasts of the European Central Bank and the European Commission²³⁰.

Both the proposals of MTO and the report elaborated by the Ministry of Economy are submitted to the *Congreso* and the *Senado* for approval. If the *Congreso* or the *Senado* reject the medium-term objectives, the Government (understood as the Council of Ministers) must submit a new MTO for approval within one month²³¹. The MTO for the period 2014 – 2017 was agreed at Council of Ministers on 27 June 2014²³², approved at the *Congreso* on 8 July 2014²³³ and at the *Senado* on 9 July 2014²³⁴.

Article 29 of the Organic Law 2/2012 on Budgetary Stability states that the medium-term budgetary plan must be included in the Stability Programme. In practice, both the Stability and the National Reform programmes contain the MTO released the previous year: for

²²⁷This commission is composed by a number of representatives of the local administrations and an equal number of representatives of the central government. Its function is to establish collaboration between the local and the central administrations (Articles 117 to 119 of the Law 7/1985 regulating the Basis of the Local Administration, *Boletín Oficial del Estado* No. 80, of 3 April 1985: <https://www.boe.es/buscar/act.php?id=BOE-A-1985-5392>).

²²⁸The NCLA guarantees the coordination of financial activities between the regions and the central finances. It is composed by the Minister for Finance and by the regional Ministers for Finances of every region (Article 3 of the Organic Law on the Financing of the Regions, *Boletín Oficial del Estado* No. 236, of 1 October 1980: <https://www.boe.es/buscar/act.php?id=BOE-A-1980-21166>).

²²⁹ Article 15(4) of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 240, of 5 Oct 2012: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-12423)

²³⁰ Article 15(5) of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>).

²³¹ Article 15(6) of the Organic Law 2/2012 on Budgetary Stability (*Boletín Oficial del Estado* No. 103 of 30 April 2012: <https://www.boe.es/buscar/act.php?id=BOE-A-2012-5730>).

²³²Text available at <http://www.sepg.pap.minhap.gob.es/sitios/sepg/es-ES/Presupuestos/NormativaPresupuestaria/Documents/NORMATIVA%20DE%20ELABORACION/ACM%202015.pdf>.

²³³*Diario de Sesiones del Congreso de los Diputados* No. 201 of 8 July, available at 2014 http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/DSCD-10-PL-210.PDF.

²³⁴*Diario de Sesiones del Senado* No. 120 of 9 July 2014, available at http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_120.PDF.

instance, the Stability Programme for 2014 includes the MTO for the period 2014 – 2017 that had been released in July 2013²³⁵, and the same can be said about the National Reform Programme for 2014.²³⁶ The Stability Programme and the National Reform Programme are elaborated every April by the Council of Ministers, although in this case no approval from the Parliament is needed.

REGULATION NO 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

([http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF))

EDP DIFFICULTIES

VII.13

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

Regulation 1177/2011 was briefly discussed by the Parliamentary Commission for the EU on 9 December 2010²³⁷. Miguel Arias Cañete, from *Partido Popular* and president of the parliamentary committee at the time, stated that the intervention of the EU was adequate and justified by the interdependence among the Member States as a result of the monetary union. Following the report drafted by Jordi Xuclá from *Convergencia I Unió*, Arias Cañete prompted his colleagues to consider that the Regulation was indeed respectful of the subsidiarity principle. This was so because the economic and budgetary policies taken on each Member State could have financial and economic consequences on all the eurozone, which justified that the EU established common standards to all the Members. All the MPs of the Parliamentary Commission supported the report stating the compliance of the Regulation with the subsidiarity principle, which was approved by unanimity.

²³⁵ Within the section “Macroeconomic Perspectives”, see http://www.mineco.gob.es/stfls/mineco/comun/pdf/Estabilidad_2014_2017.pdf at p. 13.

²³⁶ See the National Reform Programme for 2014: http://www.mineco.gob.es/stfls/mineco/prensa/noticias/2014/Programa_Reformas_2014.pdf

²³⁷ *Diario de Sesiones de las Cortes Generales Comisiones Mixtas para la Unión Europea, Boletín Oficial del Estado* No. 160, of 9 Dec 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_160.PDF.

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REGULATION NO 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

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

SANCTIONS

VII.14

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

Political discussions on Regulation 1173/2011 took place on 9 December 2010 at the Parliamentary Committee for the EU²³⁸. The debate was brief and focused on determining whether the Regulation complied with the principles of subsidiarity and proportionality. Juan Manuel Albendea Pabón from *Partido Popular* presented his report, which concluded that both subsidiarity and proportionality were respected by Regulation 1173/2011. Albendea explained that uniform sanction mechanisms were needed in order to safeguard the Stability and Growth Pact in the Eurozone, and this justified that the EU took action in the matter. The other parliamentarians of the Committee refused to do any more declarations after the intervention of Albendea. The positive report was unanimously approved.

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?

Ley Orgánica (Organic Law) 2/2012, of April 27, on Budgetary Stability and Financial Sustainability, being the law that develops the amendment of Article 135 of the Constitution and being approved on 2012 (so, after the adoption of the Six-Pack rules) is the current piece of legislation covering most of the budgetary process in Spain, and it was drafted in order to comply with all the new measures introduced by the Six-Pack. Since it has been widely developed above (see Question VI.2) we can conclude that no further changes have had to be made in order to comply with the Six-Pack rules, apart from the ones already explained before.

MISCELLANEOUS

VII.16

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

No other relevant information

²³⁸*Boletín Oficial del Estado, Comisiones Mixtas para la Unión Europea* No. 160, of 9 Dec 2010: http://www.congreso.es/public_oficiales/L9/CORT/DS/CM/CM_160.PDF.

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 SPAIN 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.

On 30 March 2011 the then President of the Spanish Government (José Luís Rodríguez Zapatero) explained to the *Congreso de los Diputados*²³⁹ the agreements reached by the European Council on the 24-25 March 2011²⁴⁰. Regarding European economic governance, the President highlighted: (1) the revision of the Stability and Growth Pact; (2) the adoption of the Euro-Plus-Pact; and (3) the compromise to modify Article 136 TFEU so that the ESM could be set, and become the main regional net of financial security in the world. In relation to the ESM, he briefly explained to the *Congreso* the purpose of this new mechanism. Besides, the President stressed the importance of the compromises reached in order to overcome the Eurocrisis and safeguard the Welfare State in Europe. In the same parliamentary sitting, Mariano Rajoy Brey, the Head of the *Partido Popular* (the main party of the opposition at the time), expressed his agreement with the measures adopted by the European Council, and criticised the (Spanish) Government for having disregarded earlier proposals presented by the *Partido Popular* in the same direction. As regards the rest of the parties in the *Congreso*, it is important to stress the positions of Josu Iñaki Erkoreka Gervasio (member of the *Partido Nacionalista Vasco*) and Ana María Oramas González-Moro (member of *Coalición Canaria*). As for the former, Erkoreka expressed the support of his party to the instruments adopted. However, he made two criticisms to European economic governance: (1) there are so many instruments in place that the picture is complex and difficult to understand; (2) the EU only moves forward after crises. This is so because, according to Erkoreka, as a result of the Greek bailout, the Union created the European

²³⁹Notice that during the negotiation process of the ESM Treaty, the relevant parliamentary debates took place in the *Congreso* (and not in the *Senado*), since it is to the former that the President of the Spanish Government gives account of the European Council and Eurogroup meetings. In this sense, see Question I.1.

²⁴⁰See *Diario de Sesiones* of the *Congreso de los Diputados*, 30 March 2011, in: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_236.PDF

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Financial Stability Mechanism; and as a consequence of the Irish bailout, the EU proposed to create the ESM. Moreover, the MP added that the ESM is not an instrument to prevent future crises, so other instruments of a preventive character should also be put in place. On the other hand, Ana Oramas strongly criticised the ESM because, according to her, it is not a mechanism of shared responsibility, since money will not be lent but loaned with market interest rates.

Months later, on 27 July 2011, Rodríguez Zapatero explained to the *Congreso* the main aspects of the 21st of July meeting of the Eurogroup in Brussels.²⁴¹ Regarding the ESM, the treaty of which had been signed on the 11th of July by the finance ministers of the Eurogroup MS, the President merely reminded to the House the advantages of the new mechanism (mainly, its permanent character). As for the parliamentary debate on the ESM, the only noteworthy interventions were those by Pedro María Azpiazu Uriarte (member of the *Partido Nacionalista Vasco*) and Gaspar Llamazares Trigo (member of *Izquierda Unida*). Both MP considered the measures adopted by the Eurogroup (among which the ESM) as short term/stop-gap solutions, and they criticised the lack of a purely European public finance system.

Finally, on 8 February 2012, after the signing of the second version of the ESM Treaty, Rajoy (the newly appointed President of the Spanish Government) appeared before the *Congreso* to expound the conclusions of the 30th of January 2012 meeting of the European Council.²⁴² According to Rajoy, the ESM is an essential complement to the institutional design of the Eurozone, and it makes it possible to ensure liquidity to those MS that fulfil their fiscal duties. Besides, Alfredo Pérez Rubalcaba (member of the *Partido Socialista Obrero Español*, the main party of the opposition) highlighted the fact that the ESM should be endowed with 750.000 million Euros right from the beginning, and he criticised the fact that “Europe likes doing things by halves”. From a similar perspective, Erkoreka (member of the *Partido Nacionalista Vasco*) stressed the need for the ESM to be endowed with more resources from its launch. Both Erkoreka and Rosa María Díez González (member of *Unión Progreso y Democracia*) stressed that the measures undertaken were not enough. For instance, Díez claimed that the measures adopted were not really attacking the real causes of the crisis and she asked for further reforms, mainly regarding a greater political and fiscal Union.

RATIFICATION

VIII.2

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

After ESM Treaty was signed, on 2 February 2012, the Spanish Government asked the

²⁴¹See the 27th of July 2011 *Diario de Sesiones* of the *Congreso de los Diputados* in: http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_267.PDF

²⁴²See the 8th of February 2012 *Diario de Sesiones* of the *Congreso de los Diputados* in: http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_007.PDF

Parliament to give its consent for the ratification of the treaty following the procedure of Article 94(1) of the Constitution (i.e. authorisation by a simple majority of both the *Congreso* and the *Senado*).²⁴³ On 28 February 2012 the Board of the *Congreso* requested a Report from its *Comisión de Asuntos Exteriores* (External Affairs Commission) on the ESM Treaty and established a deadline for tabling amendments on the Treaty.²⁴⁴ In this sense, there were two veto proposals, one by *Unión Progreso y Democracia*, and the other by *Grupo Mixto*.²⁴⁵ On 12 April, the ESM Treaty (including the proposals for veto) was debated in a plenary session of the *Congreso*.²⁴⁶ Moreover, the vetoes were voted together at the end of the session, the result being: 12 votes in favour, 302 against and 13 abstentions (out of 350 potential votes).

Later, on 17 May, and also in a plenary session, the *Congreso* discussed the Report by the *Comisión de Asuntos Exteriores* and voted the ESM Treaty. The outcome of the voting was: 292 votes in favour, 17 against, and 6 abstentions (out of 350 potential votes).²⁴⁷ It is important to highlight that the ESM Treaty was voted together with the Decision to modify Article 136 TFEU²⁴⁸.

As for the same procedure in the *Senado*, on 21 May the Board of the *Senado* requested a Report from its *Comisión de Asuntos Exteriores* on the ESM Treaty and established a deadline for tabling amendments.²⁴⁹ Finally, on 6 June, the ESM Treaty, including the

²⁴³According to the Spanish Constitution, the conclusion of an international treaty assigning the exercise of competences that derive from the Constitution to an international organisation/institution requires the authorization of the Spanish Parliament through a *Ley Orgánica* (Article 93 of the Constitution). In the rest of cases, a distinction is made between two different situations: (a) if the international treaty covers certain matters specified in Article 94(1) (e.g. military issues and public finance responsibilities), it requires the authorization of the Parliament, (b) otherwise, the Parliament will only be informed of the conclusion of the agreement [Article 94(2)]. Notice that, while the adoption of a *Ley Orgánica* requires, together with the requirements for any ordinary law, absolute majority of the *Congreso* in a final voting (Article 81 of the Constitution), the authorization of an international treaty by the Parliament [in the sense of Article 94(1) of the Spanish Constitution] only requires simple majority in the *Congreso* and the *Senado*. In this sense, it is essential to highlight that in Spanish Constitutional Law in order to reach simple majority it is necessary to obtain, out of the effective votes, more positive ones than negative ones. Very differently, an absolute majority is only attained when, out of all the potential votes (e.g. 350 in the case of the *Congreso*), half of these votes plus one are obtained (i.e. 176 votes).

²⁴⁴See the document by the Board of the *Congreso* in:

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/C/C_008-01.PDF

²⁴⁵On the political context of the Eurozone crisis period in Spain see Question I.1. See the two veto proposals to the ESM Treaty in the *Congreso* in:

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/C/C_008-02.PDF

²⁴⁶See *Diario de Sesiones* of the *Congreso de los Diputados*, 12 April 2012, in:

http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_026.PDF#page=13

²⁴⁷See: (a) the debate regarding the ESM Treaty in the *Comisión de Asuntos Exteriores*, (b) the Report of the latter on the ESM Treaty, and (c) the 17th of May 2012 *Diario de Sesiones* of the *Congreso*, where the ESM Treaty was voted in (respectively):

http://www.congreso.es/public_oficiales/L10/CONG/DS/CO/CO_075.PDF#page=4

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/C/C_008-03.PDF

http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_031.PDF#page=80

²⁴⁸Regarding the modification of Article 136 TFEU, see Questions 9-13

²⁴⁹See the document by the Board of the *Senado* in:

http://www.congreso.es/public_oficiales/L10/SEN/BOCG/2012/BOCG_D_10_54_444.PDF

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Report by the *Comisión de Asuntos Exteriores*, was discussed and voted in a plenary session of the *Senado*.²⁵⁰ No amendments/vetoes were proposed in the *Senado*. The outcome of this voting was: 234 votes in favour and 1 against (out of 265 potential votes), the negative vote being from *Entesa pel Progrés de Catalunya*.

Lastly, Article 63(2) of the Spanish Constitution establishes that the King/Head of State (Juan Carlos I) shall manifest the consent of the State to enter into international obligations such as international treaties. In this sense, on 21 June 2012 the King passed and ratified the ESM Treaty through the final *Instrumento de Ratificación* (Ratification Instrument).²⁵¹ The Treaty entered into force in Spain on 27 September 2012.²⁵²

RATIFICATION DIFFICULTIES

VIII.3

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

As explained in VIII.2, on 12 April 2012 the ESM Treaty was debated in a plenary session of the *Congreso de los Diputados*.²⁵³ The debate started with the defence of the ESM Treaty by José Manuel García Margallo, the Spanish Minister of External Affairs and Development Cooperation. According to Margallo, while the economic dimension of the European integration process may be able to subsist without a solidarity mechanism (like the ESM), the same does not hold true for the political aspect of such process.

Later, the parliamentary groups that had presented veto proposals on the ESM Treaty explained them to the *Congreso*. First, Irene Lozano Domingo, member of *Unión Progreso y Democracia* defended the veto of her parliamentary group. In her view, with the creation of the ESM, Spain will transfer competences to a new international organisation. Therefore, the issue touches upon the sovereignty of the State and should therefore be approved through a *Ley Orgánica*, according to what is established in Article 93 of the Constitution.²⁵⁴ Lozano highlighted the fact that the ESM Treaty is not EU law and she added that it is harmful to Spanish interests, since the voting rights are linked to the contribution of each MS. The MP

²⁵⁰Notice that no amendments/vetoes were presented in the *Senado*. See: (a) the document of the Board of the *Senado* announcing that there are no amendments/vetoes, (b) the Report by the *Comisión de Asuntos Exteriores*, and (c) the 6th of June 2012 *Diario de Sesiones* of the *Senado*, where the ESM Treaty was voted in (respectively):

http://www.congreso.es/public_oficiales/L10/SEN/BOCG/2012/BOCG_D_10_59_462.PDF

http://www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG_D_10_63_506.PDF

http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_21.PDF

²⁵¹See the *Instrumento de Ratificación* of the ESM Treaty by the King in:

<http://www.boe.es/boe/dias/2012/10/04/pdfs/BOE-A-2012-12378.pdf>

²⁵²Notice that no referendum was required for the ratification of the ESM Treaty in Spain. This is so because Article 91 of the Spanish Constitution establishes that political decisions of particular relevance might be subject to consultative referendum. Therefore: (1) referendums are in no case a Constitutional imperative, (2) referendums will in no case be binding.

²⁵³Regarding the links to the plenary sessions mentioned in this question and also general information relevant to the present question (e.g. voting outcomes) see the answer to Question VIII.2.

²⁵⁴In this sense, see Question VIII.2.

concluded by claiming that the EU has a coherence problem, because it fights against tax havens and then it creates a mechanism that will have its money in Luxembourg. After Lozano, Alfred Bosch I Pascual, member of the *Grupo Mixto*, defended the veto proposal of his parliamentary group. According to Pascual, the ESM Treaty should not only refer to MS' sovereign debt, but also to sub-sovereign debt or regional debt; and he highlighted that Spain should not criticise the fact that other countries have more important voting rights since, from his point of view, this is only logical.

Once the defence of the two veto proposals finished, the different parliamentary groups explained their positions regarding the ESM Treaty. In this sense:

1. Joan Josep Nuet Pujals, member of *Izquierda Plural*, expressed that his parliamentary group would vote against the ESM Treaty, because it is only beneficial to banks and lobbies.
2. Immaculada Riera I Reñé, member of *Convergència I Unió*, expressed the support of her parliamentary group not only to the ESM Treaty, but also to the compromise that it symbolises in order to reinforce the European project.
3. Ignacio Sánchez Amor, member of *Grupo Parlamentario Socialista*, expressed the support of his parliamentary group to the ESM Treaty. Moreover, he stressed that the Government would always find the support of his group in European issues.
4. José María Beneyto Pérez, member of *Grupo Popular* (the group in the Government), explained that the ESM Treaty is an international treaty, simply because it was more convenient to adopt it this way, and he highlighted the fact that the ESM will apply EU law, and not international law. To this, the Minister of External Affairs and Development Cooperation added that the creation of the ESM Treaty is not about the attribution of competences to a new intergovernmental organisation, but simply about a treaty imposing fiscal duties on MS, and thus it is to be adopted under Article 94 of the Constitution.

About a month later, the *Congreso* debated and finally voted the ESM Treaty. As for the debate, the only relevant interventions were the following ones:

1. Rafael Larreina Valderrama, member of *Amaiur*, stressed the fact that the ESM does not go to the root of the problems that have given place to the Eurocrisis. Moreover, he criticised the EU for being a Europe of a lack of solidarity, a Europe of the banking sector, and in particular of the German banks.
2. Joan Josep Nuet Pujals, member of *Izquierda Plural*, claimed that with the ESM Spain loses its sovereignty, since the mechanism entails a loss of control over Spain's economic policy.

Regarding the same proceedings in the *Senado*, the ESM Treaty was discussed and voted in a plenary session held on 6 June, and the only relevant intervention was that of Joan Lerma

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Blasco, member of *Grupo Socialista*. The MP highlighted that, due to the relevance of the ESM Treaty, a long and detailed parliamentary debate should have been carried out in its regard. He therefore referred to the fact that the debate should have been conducted under Article 93 of the Constitution. Besides, in his opinion, the European Central Bank should be in charge of the functions that will be attributed to the ESM (for example, because the ECB would be able to act much faster).

CASE LAW

VIII.4

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

There is no judgement/pending judgement by the Constitutional Court or by any other Spanish Court on the ESM Treaty.

CAPITAL PAYMENT

VIII.5

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

According to Article 41 of the ESM Treaty, the first instalment of paid-in capital shall be paid within fifteen days of the date of entry into force of the Treaty (i.e. in the case of Spain, either in late September or in October 2012). The remaining instalments shall be paid on the coming anniversaries of the first instalment. As for the first payment, however, no reference can be found to this issue in the parliamentary debates that took place between late September and October 2012, or in the earlier negotiation and ratification processes of the ESM Treaty. The same applies for the parliamentary debates of September-October 2013, which should coincide with Spain's second instalment. Besides, Spain's contribution to the ESM was introduced in the State's Budget Law for 2013 and also in the draft of the State's Budget Law for 2014.²⁵⁵ However, none of the amendments presented to these laws in the Parliament concerned Spain's contribution to the ESM.

Finally, linked to this issue, it is interesting to highlight that during the negotiation and ratification process of the ESM Treaty, some MP expressed their dissatisfaction regarding Spain's voting rights in the ESM, given what the State would pay to the institution. In this sense, for instance, see the intervention of Irene Lozano Domingo, member of *Unión Progreso y Democracia*, in the plenary session of the *Congreso* of 12 April 2012.²⁵⁶

²⁵⁵ See the *Ley 17/2012, de 27 de diciembre, de Presupuestos Generales del Estado para el año 2013* (General Budget Law for 2013) and the *Proyecto de Ley de Presupuestos Generales del Estado para el año 2014* (General Budget Law Project for 2014) in (respectively): <http://www.boe.es/buscar/pdf/2012/BOE-A-2012-15651-consolidado.pdf>

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-63-1.PDF

²⁵⁶ See the link to the plenary session of the *Congreso* on 12 April 2012 in the response to Question VIII.3.

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?

Since the ESM Treaty is in force in Spain, it is the Government who is responsible for any decision in the context of the new mechanism. In this sense, the role of the Parliament is to politically control the decisions of the Government regarding the ESM.²⁵⁷ In some occasions, it is a member of the Government who (unilaterally) decides to explain to the Parliament issues in relation to the ESM; other times is it a MP who directly asks to the Government (orally or through a written question) whatever query regarding the functioning of the ESM.²⁵⁸

For instance, on 8 February 2013 María de los Ángeles Marra Domínguez, member of *Grupo Socialista* in the *Senado*, presented a written question to the (Spanish) Government²⁵⁹ where she asked the opinion of the Government regarding the fact that the role of Spain in the decisions of the EU is diminishing. In particular, one of the issues she was particularly interested in was the fact that Spain does not have any management position in the ESM. In its response to the question,²⁶⁰ the Government highlighted the appointment of David Vergara as a Deputy Director General of the ESM.

Besides, in his intervention in the plenary session of the *Senado* on 8-9 May 2013,²⁶¹ Francisco Ultrera Mora, member of *Grupo Popular*, referred to an intervention of Alfredo Pérez Rubalcaba, member of *Grupo Socialista*, the same day in the *Congreso* where the latter had asked the Government to spend 30,000 million Euros, and to ask for them to the EU if necessary. Ultrera Mora responded to this that Pérez Rubalcaba should know that Spain is not going to get another 30,000 million Euros from the ESM, and that the money of the Mechanism is only lent for very concrete purposes.

APPLICATION DIFFICULTIES

VIII.7

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

²⁵⁷ According to Title V of the Spanish Constitution, the Government is politically accountable to the *Cortes Generales*.

²⁵⁸ This explanation is also relevant to Questions 49 and 50

²⁵⁹ See the written question presented by María de los Ángeles Marra Domínguez on 8 February 2013 in: <http://www.senado.es/web/expedientdocblobobservlet?legis=10&id=26109>

²⁶⁰ See the written response of the Government to the two questions presented by María de los Ángeles Marra Domínguez on the 8th of February 2013 in: <http://www.senado.es/web/expedientdocblobobservlet?legis=10&id=36054>

²⁶¹ See the *Diario de Sesiones* of the *Senado* of 8-9 of May 2013 in: http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_64.PDF

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On 11 February 2013 Jesús Alique López, member of *Grupo Socialista* in the *Senado*, presented two written questions to the (Spanish) Government regarding:

- (1) The way in which the first part of Spain's financial assistance programme had been applied (in the past);
- (2) The way in which the second part of Spain's financial assistance programme would be applied (in the future).²⁶²

On 22 February 2013 the Government presented the written response to the abovementioned questions.²⁶³ Essentially, the Government replied by explaining the main elements of the process by which Spain had been granted financial assistance (initially) through the EFSM (e.g. from the agreement of the Eurogroup on 20 July 2012 to the fact that it was agreed that, once the ESM was in place, the assistance would be granted through the newly created Mechanism). The written response also included a description to the two parts in which the financial assistance programme was divided, and an assessment on both. As for the description of the steps followed in the first part of the programme, the Government explained that, in December 2012, Spain received 39,468 million Euros, which were used to recapitalise Group 1 of banking institutions in the MoU, and to finance the contribution of the *Fondo de Reestructuración Ordenada Bancaria* (FROB) to the capital of the *Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria* (SAREB). Regarding the second part of the programme, the Government stressed that, in February 2013, the second part of the financial assistance (1,865 million Euros) had been disbursed (from the ESM). As for the assessment of the assistance received, the Government highlighted how important it would be for the Spanish economy, since it would be essential to the flow of credit to companies and families.

Besides, regarding the application of the ESM to Cyprus, it is important to stress that the Spanish Parliament has not discussed any of the decisions of the ESM to provide financial assistance to Cyprus. In this regard, no debate on this issue followed any of the three disbursements of ESM financial assistance to Cyprus (in May, June and September 2013).

²⁶²See the written questions presented by Jesús Alique López on 11 February 2013 in (respectively):

<http://www.senado.es/web/expedientdocblobServlet?legis=10&id=26302>

<http://www.senado.es/web/expedientdocblobServlet?legis=10&id=26303>

²⁶³See the written response of the Government to the two questions presented by Jesús Alique López on 11 February 2013 (to be found in the same document; one response for the two questions) in:

<http://www.senado.es/web/expedientdocblobServlet?legis=10&id=35693>

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?

(1) The *Real Decreto-Ley 21/2012, de 13 de Julio, de medidas de liquidez de las administraciones públicas y en ámbito financiero*,²⁶⁴ in its *Disposición Adicional Quinta*, establishes that in case Spain had to send information to the ESM (and to other institutions listed), in the context of a recapitalisation plan of the financial sector, the information would be exempted from the duty of secrecy enshrined in the *Real Decreto Legislativo 1298/1986, de 28 de junio, sobre adaptación del derecho vigente en material de entidades de crédito al de las Comunidades Europeas*.

(2) The *Ley 9/2012, de 14 de noviembre, de reestructuración y resolución de entidades de crédito*,²⁶⁵ in its Article 30(2), establishes that the payment of acquiring recapitalisation instruments shall be carried out in cash or in securities which are representative of sovereign debt, in securities issued by the EFSM or the ESM, or in securities issued by the Spanish *Fondo de Reestructuración Ordenada Bancaria* (FROB).

(3) The *Ley 17/2012, de 27 de diciembre, de Presupuestos Generales del Estado para el año 2013* (the State's Budget Law for 2013), in its *Décima Cuarta (14th) Disposición Final*, modifies Article 98(3) of the *Ley 47/2003, de 26 de noviembre, General Presupuestaria*, in the sense that any decision authorising the creation of sovereign debt shall include the collective action clauses adopted according to Article 12(3) of the ESM Treaty.

MISCELLANEOUS

VIII.9

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

No other relevant information.

²⁶⁴See the *Real Decreto-Ley 21/2012, de 13 de Julio, de medidas de liquidez de las administraciones públicas y en el ámbito financiero* (liquidity measures of the public administration and in the financial sector) in: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/D/D_135.PDF

²⁶⁵See the *Ley 9/2012, de 14 de noviembre, de reestructuración y resolución de entidades de crédito* (restructuring and resolution of credit institutions) in: <http://www.boe.es/boe/dias/2012/11/15/pdfs/BOE-A-2012-14062.pdf>

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.

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

NEGOTIATION

IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID SPAIN 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 negotiations on the Fiscal Compact started in the European Council meeting of 9 December 2011. From this date to the 2nd of March 2012 (when the Treaty was signed in Brussels) the plenary session of the *Congreso* debated on the Instrument in two occasions: on 8 and on 14 February 2012.²⁶⁶ As for the same debate in the *Senado*, no relevant interventions have been found.

On 8 February 2012 in plenary session of the *Congreso*, there were some interesting references to the Fiscal Compact. For instance, the President of the Government, Mariano Rajoy Brey, appeared in the *Congreso* to explain the conclusions of the 30th of January 2012 European Council meeting. In this sense, since one of the issues debated in this meeting was the Fiscal Compact, he referred to it in his intervention. In particular, Rajoy stressed that the Treaty included elements, which were considered essential by the Spanish Government in order to set a strong basis for the eurozone, and to foster a healthy economic growth. Moreover, he expressed his satisfaction with the fact that the Fiscal Compact imposed on the MS the obligation to introduce the balanced budget rule in the national legal order, which Spain had already done in the summer of 2011. Besides, Alfredo Pérez Rubalcaba, Head of the *Partido Socialista Obrero Español*, criticised the fact that, despite its title, the Treaty on the Fiscal Compact was only about “stability”. In this sense, he asked for other measures to foster economic growth.²⁶⁷ Moreover, the MP stressed that, from reading the Fiscal Compact, one could easily understand that MS do not trust each other (e.g. MS can take other MS before the ECJ). Finally, Uxue Barkos Berruezo, member of *Nafarroa Bai*,

²⁶⁶ See the *Diario de Sesiones* of the *Congreso de los Diputados* of 8th and 14th February 2012 in (respectively): http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_007.PDF
http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_009.PDF

²⁶⁷ Notice that other MP also defended this position (e.g. Josep Antoni Duran i Lleida, member of *Convergència i Unió*).

highlighted that the balanced budget rule is not the “panacea” and that, on the contrary, the last months had shown that it is far from being the solution.

Besides, on 14 February 2012 in the plenary session of the *Congreso*, Pedro Saura García, member of the *Partido Socialista Obrero Español*, and Álvaro Anchuelo Crego, member of *Unión Progreso y Democracia* defended the need to adapt the implementing legislation of the Constitutional reform of Article 135 to the Fiscal Compact, since Spain was adopting more restrictive measures than those that the EU was actually imposing on MS.

RATIFICATION

IX.2

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

On 2 March 2012 the President of the Spanish Government (Mariano Rajoy Brey) signed the Fiscal Compact in Brussels. Later, on 21 May, the Government presented a proposal to the *Congreso de los Diputados* in order to ratify the Treaty through the procedure of Article 93 of the Spanish Constitution and with urgency.²⁶⁸ In the proposal, the *Comisión de Asuntos Exteriores* (External Affairs Commission) was asked to prepare a Report on the Treaty and a deadline was established for tabling amendments.²⁶⁹ Following the urgent procedure, the *Ley Orgánica* adopting the Treaty was debated (including the five amendments presented) and voted in the *Congreso* on 21 June. The outcome of the voting was: 311 votes in favour and 19 votes against (out of 350 potential votes). No amendments were added.²⁷⁰ As for the *Senado*, on 29 June the Board of the House expounded that the law adopting the Fiscal Compact would be processed through an urgent procedure, and established a deadline for tabling amendments.²⁷¹ On 18 July the *Senado* debated and voted the Fiscal Compact (and the amendments presented) and adopted the *Ley Orgánica* on the Treaty.²⁷² The outcome of the voting was: 240 votes in favour, 4 votes against and 1 abstention (out of 265 potential votes). No amendments were added.

Later, on 25 July, the Head of State/King (Juan Carlos I) sanctioned the *Ley Orgánica*

²⁶⁸On the different procedures to adopt international treaties in Spain, see Question VIII.2.

²⁶⁹The Report of the *Consejo de Estado* on the Fiscal Compact, of 12 April 2012, also concluded that the Treaty attributed competences regulated in the Spanish Constitution, and that it should therefore be ratified as established in Article 93 of the Constitution. See this Report in:

http://www.boe.es/buscar/doc.php?coleccion=consejo_estado&id=2012-362

²⁷⁰See the five amendments presented to the Fiscal Compact in the *Congreso* and the 21st of June *Diario de Sesiones* of the *Congreso* in (respectively):

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/A_010-07.PDF#page=1

http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_043.PDF

²⁷¹See the document of the Board of the *Senado* in:

http://www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG_D_10_79_621.PDF

²⁷²See the amendments presented and the 18th of July *Diario de Sesiones* of the *Senado* in (respectively):

http://www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG_D_10_80_631.PDF

http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_27.PDF

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adopting the Fiscal Compact,²⁷³ and on 9 August he presented the *Instrumento de Ratificación* (Ratification Instrument) of the Treaty.²⁷⁴ Consequently, the Fiscal Compact came into force in Spain on 1 January 2013, as it did in the other 15 States that had ratified the Treaty before this date.

RATIFICATION DIFFICULTIES

IX.3

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

As for the debate during the ratification of the Fiscal Compact in the *Congreso de los Diputados*, it is essential to start by explaining the content of the most relevant amendments presented to the *Ley Orgánica* adopting the Treaty:²⁷⁵

1. Amendment no 1, to the entire proposal, presented by the *Grupo Mixto*. There are mainly three reasons why this *Grupo* was against the Fiscal Compact: (1) it is an expression of the balanced budget rule, which is an impossible commitment for Spain; (2) it is the exact opposite direction of what should be done because, since the balanced budget rule is in the Spanish Constitution, there has only been more and more unemployment and recession; (3) it is an example of the democratic deficit of the EU, since it will enter into force without the unanimity of the MS.
2. Amendment no 2, to the entire proposal, presented by the *Izquierda Plural*. There are mainly three reasons why this *Grupo* was against the Fiscal Compact: (1) its adoption as an international treaty (besides EU law) is a mere trick to avoid the unanimity rule; (2) it is an instrument that has been created to “germanise” Europe and it is the exact opposite of what should be done, since it will destroy the European social model; (3) in the Fiscal Compact, the expression “economic growth” is merely political rhetoric.
3. Amendment no 4, presented by the *Grupo Socialista*. The amendment proposed to add to the *Ley Orgánica* an additional provision regarding the action of the Spanish Government in the EU in order to foster a European policy on economic growth and the creation of employment.

²⁷³See the *Ley Orgánica* 3/2012 on the Fiscal Compact as sanctioned by the Spanish King in:

<http://www.boe.es/boe/dias/2012/07/26/pdfs/BOE-A-2012-9981.pdf>

²⁷⁴Notice that, according to Article 91 of the Spanish Constitution, the Head of State/King must sanction all laws adopted by the Spanish Parliament. On the other hand, regarding the role of the King in the adoption of international agreements, see Question VIII.2. See the Ratification Instrument of the Fiscal Compact, 9 August 2012, by the Spanish King in:

<http://www.boe.es/boe/dias/2013/02/02/pdfs/BOE-A-2013-1118.pdf>

²⁷⁵The links to the relevant parliamentary debates to this question can be found in the answer to Question IX.2.

4. Amendment no 5, presented by the *Grupo Socialista*, proposed to add a paragraph in the Statement of reasons of the *Ley Orgánica*, which should (mainly) highlight that, in order to overcome the Eurocrisis, together with fiscal stability, it is essential to foster a European policy on economic growth and the creation of employment.

Besides, on 21 of June 2012 the amendments presented and the entire *Ley Orgánica* on the Fiscal Compact were debated and voted in the *Congreso*. In this sense, the following interventions were the most remarkable:

1. José Manuel García-Margallo y Marfil, Minister of External Affairs and Development Cooperation, stressed the need to keep on walking towards a real political Union, and mentioned that the Fiscal Compact should be incorporated as soon as possible as a EU law instrument.
2. Carlos Salvador Armendáriz, member of *Unión del Pueblo Navarro*, highlighted the fact that, if Spain had acted adequately in the past, it would not be necessary to adopt the Fiscal Compact. However, given that it did not, voting negatively was not an option.
3. Joan Valdoví Roda, member of *Coalició Compromís*, explained the reasons why his *Grupo* would vote against the Fiscal Compact: (1) it is a measure that goes in the opposite direction of what should be actually done; (2) it was not subject to a referendum, despite the fact that it entails a cession of sovereignty.
4. Rafael Larreina Valderrama, member of *Amaiur*, stressed that the Fiscal Compact is a step in the wrong direction, and that the roots of the crisis are in an EU that has failed to develop a productive and social European economy.
5. José Luís Centella Gómez, member of *Izquierda Plural*, expressed that the Fiscal Compact was not an answer to the interests of citizens but to those of the banking sector. Therefore, he stressed the need for a referendum on the Instrument. Besides, he criticised the Government for its lack of a real will to reach agreements with the rest of political parties, and for using its absolute majority to adopt measures without real parliamentary debates.
6. Josu Iñaki Erkoreka Gervasio, member of *Partido Nacionalista Vasco*, expressed that, given the history of the European integration process; no one should be surprised with the Fiscal Compact. However, he stressed that the fiscal austerity should be complemented with economic growth policies. Moreover, he highlighted the fact that some European leaders had already realised that austerity alone was no solution, and that so would eventually happen with Chancellor Merkel. He concluded by stating that it would be

stupid to vote against the Fiscal Compact, given that its essential element (the balanced budget rule) had already been implemented in Spain.

7. Álvaro Anchuelo Crego, member of *Unión Progreso y Democracia*, highlighted that a measure such as the Fiscal Compact should have long before been adopted by the Spanish Parliament. Moreover, he added that, given that Spain is part of a “European club”, its deficit affects the rest of MS, and therefore it is only logic that the club wants to set some rules in this regard. However, he stressed that his *Grupo* was not satisfied with the procedure through which the Fiscal Compact had been adopted, since it should have been a EU law instrument from the beginning.
8. Jordi Xuclà I Costa, member of *Convergència I Unió*, criticised the President of the Government for not having appeared before the *Congreso* to expound the *Ley Orgánica* on the Fiscal Compact, instead of delegating this task to the Minister of External Affairs and Development Cooperation. Moreover, he also criticised the political parties that had pointed out the loss of sovereignty deriving from the Fiscal Compact, and he asked for a Federal Europe.

Regarding the same debate in the *Senado*, only two amendments were presented to the *Ley Orgánica* on the Fiscal Compact, and they shared their content:

1. Amendment no 1, to the entire proposal, presented by the *Grupo Mixto*.
2. Amendment no 2, to the entire proposal, presented by the *Grupo Parlamentario Entesa pel Progrés de Catalunya*.

These two *Grupos* were against the Fiscal Compact mainly because: (1) it is an instrument to “germanise” Europe; (2) in it the expression “economic growth” is merely a rhetoric concept; (3) it is a step in the wrong direction, since it makes it impossible to preserve the European social model.

Besides, on 18 July 2012, the amendments presented and the entire *Ley Orgánica* on the Fiscal Compact were debated and voted in the *Senado*. However, the debate was very close to a repetition of what had been discussed earlier in the *Congreso*. In this sense, the following interventions were the most remarkable:

1. Juan Manuel Mariscal Cifuentes, member of *Izquierda Unida*, stressed that, in order to safeguard the Spanish democracy, it was necessary to vote against the Fiscal Compact, since it entailed giving away Spain’s sovereignty to the interests of “merchants”.
2. Iñaki Anasagasti Olabeaga, member of *Partido Nacionalista Vasco*, criticised the fact that no member of the Government had appeared in the *Senado* to defend the *Ley Orgánica* on the Fiscal Compact.

3. Jordi Vilajoana I Rovira, member of *Convergència I Unió*, highlighted that the Spanish Government should avoid adopting a centralist position (i.e. not respecting the competences of the Autonomous Communities) in order to fulfil its commitments with the EU regarding fiscal stability.

BALANCED BUDGET RULE

IX.4

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

On 26 of August 2011, following the last reform of the Stability and Growth Pact,²⁷⁶ the *Partido Popular* and the *Partido Socialista Obrero Español* presented to the *Congreso de los Diputados* a proposal to reform Article 135 of the Spanish Constitution.²⁷⁷ The aim of the reform was to introduce in the Constitution the “*principio de estabilidad presupuestaria*” (principle of balanced budget), which would be binding on every institution in the public sector and would reinforce Spain’s compromise with the EU and, at the same time, guarantee Spain’s economic sustainability. Despite the fact that 24 amendments were presented on the proposal in the *Congreso* and 29 in the *Senado*, only a small amendment from the *Congreso* including a grammatical correction was added to the final text. The *Congreso* approved the reform on September 2,²⁷⁸ and so did the *Senado* on September 7.²⁷⁹

On 27 of September 2011, the King sanctioned and promulgated the constitutional reform, which was published in the *Boletín Oficial del Estado* (Official State Gazette) of the same day,²⁸⁰ although the limits on the structural deficit established in Article 135(2) will

²⁷⁶ Notice that the Balanced Budget Rule was implemented in Spain before the signing of the Fiscal Compact, on 2 March 2011. Find further information regarding this Constitutional reform in the answer to Question VI.2 of the questionnaire.

²⁷⁷ See *Diario de Sesiones* of the *Congreso de los Diputados*, 26 August 2011, in:

http://www.congreso.es/public_oficiales/L9/CONG/BOCG/B/B_329-01.PDF

²⁷⁸ See the debate and the voting outcome in the *Congreso* on the reform of Article 135 of the Constitution on 2 September 2011, in:

http://www.congreso.es/public_oficiales/L9/CONG/DS/PL/PL_270.PDF

²⁷⁹ Notice that, in order to adopt an (ordinary) constitutional reform, the Spanish Constitution, Article 167(1), requires a majority of 3/5 both in the *Congreso* and the *Senado*. See on 7 September 2011 the debate and the voting outcome in the *Senado* on the reform of Article 135 of the Constitution in:

http://www.congreso.es/public_oficiales/L9/SEN/DS/PL/DS_P_09_130.PDF

²⁸⁰ See the reform of Article 135 of the Constitution, as published in the BOE of 27 September 2011, in:

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only enter into force in 2020. Lastly, the reform was not put to a referendum. This is so because, according to what is established in Article 167(3) of the Constitution, in order to celebrate a referendum on a constitutional reform, 10% of the MP in the *Congreso* or in the *Senado* must formally request it. In this sense, given that this requirement was not met, there was no referendum on the reform of Article 135 of the Spanish Constitution.²⁸¹

Besides, according to Article 135(5) of the Constitution, as amended by the reform, a *Ley Orgánica* shall develop the content of the article. In this sense, on the 27th of April 2012, the *Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera* was sanctioned and promulgated by the King.²⁸² Finally, the Preamble of the State's Budget Law for 2013 mentions Spain's compromise with the EU regarding budgetary stability, and establishes that, in line with this compromise, the Budget for 2013 presents a considerable reduction in public spending.

It is important to highlight that the fact that the constitutional reform was only supported by the *Partido Socialista Obrero Español* (PSOE), the *Partido Popular* (PP) and *Unión del Pueblo Navarro* (UPN), and that it was debated through an urgent procedure, led to many criticisms from the rest of political parties in the Parliament, which expressed that the two major parties had not even tried to reach an agreement, and that the “*proceso constituyente*” (the constituent process) had been “broken”. The idea underlying these criticisms was that a constitutional reform is so important in nature that it should never be dealt with in the same way as any other law (see also the answers to the questions dealing with the Euro-Plus Pact, section VI). Instead, reaching consensus should be an essential priority. As an expression of this discontent, on 8 September 2011 *Izquierda Unida* presented an appeal before the Spanish Constitutional Court.²⁸³

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.

As explained in the answer to Question IX.4, the two fundamental dates regarding the constitutional reform that introduced the balanced budget rule in the Spanish Constitution are 2 and 7 September 2011.²⁸⁴ Indeed, these are the dates when the *Congreso* and the *Senado* debated and adopted the reform (respectively). In this regard, the most relevant interventions

<http://www.boe.es/boe/dias/2011/09/27/pdfs/BOE-A-2011-15210.pdf>

²⁸¹ Regarding the modification of Article 135 of the Spanish Constitution, see Question VI.2.

²⁸² See the *Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera* (Budget Stability and Financial Sustainability Law) in:

<http://www.boe.es/boe/dias/2012/04/30/pdfs/BOE-A-2012-5730.pdf>

²⁸³ In this regard, see Question IX.7.

²⁸⁴ The links to the relevant parliamentary debates to this question can be found in the answer to Question IX.4

on this issue on 2 September 2011 in the plenary session of the *Congreso* can be considered to be the following:²⁸⁵

1. Francisco Xesús Jorquera Caselas, member of *Bloque Nacionalista Galego*, explained the reasons why his party was against the reform: (1) it means surrendering the Spanish democracy to the interests of speculators; (2) it should have gone through in-depth parliamentary debates and a referendum; (3) it is an “attempt” against the autonomy of future Governments; (4) it makes it impossible to preserve the social model earlier enshrined in the Spanish Constitution.
2. Uxue Barkos Berruezo, member of *Nafarroa Bai*, stressed that the reform was one of exclusion, instead of one of consensus, and she defended the need for a referendum to adopt such constitutional innovation.
3. Rosa Díez González, member of *Unión Progreso y Democracia*, criticised the main political parties of the *Congreso* for having rejected the debate on some of the amendments presented by other parties, on the basis that they were contrary to the Constitution. The MP stressed that these parties had acted as the Constitutional Court.²⁸⁶
4. Carlos Casimiro Salvador Armendáriz, member of *Unión del Pueblo Navarro*, defended the reform and added that the amendments presented concerned legitimate interests, but were not related to the content of the constitutional reform that was being debated.
5. Fernando Ríos Rull, member of *Coalición Canaria*, criticised the main political parties for not having tried to reach consensus with other parties represented in the *Congreso*, and also for not having put the reform to a referendum. The MP also stressed the fact that the reform was surrendering the interests of the citizens to those of the markets. Finally, he pointed out that the Autonomous Communities should have a say in setting their deficit and debt.
6. Joan Ridao I Martín, member of *Esquerra Republicana de Catalunya*, explained the reasons why his party was against the reform: (1) it is centralist; (2) it is antidemocratic; (3) it is antisocial. Moreover, he criticised the main political parties in the Parliament for having rejected the debate on an amendment presented by his party. This amendment concerned the introduction in the Constitution of a self-determination clause, the idea being that given that the

²⁸⁵ Notice that the debate in the plenary session of the *Senado* on 7 September 2011 was very close o a repetition of what had been discussed earlier in the *Congreso* (on 2 September 2011). Therefore, only the most relevant interventions in the *Congreso* have been listed.

²⁸⁶ Notice that the *Mesa del Congreso* (the Board of the *Congreso*) decides on the admissibility of the amendments proposed. In this regard, since the *Mesa* is elected by the plenary of the *Congreso*, its composition reflects the majorities in the *Congreso*.

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Constitution was already being reformed, this other issue should also be considered.

7. Maria Núria Buenaventura Puig, member of *Iniciativa per Catalunya Verds*, explained why her party was against the reform: (1) it is the triumph of the financial markets' sovereignty over people's sovereignty, it is antisocial and it introduces in the Constitution a certain economic ideology; (2) democratically, it is a step backwards, since there is neither a political consensus, nor a referendum on it, nor has there been a chance to defend the amendments presented.
8. Juosu Iñaki Ekoreka Gervasio, member of *Partido Nacionalista Vasco*, criticised the main political parties in the Parliament for not having admitted most of the amendments presented, restricting the scope of the parliamentary debate. In particular, one of the amendments presented by his political party concerned the introduction of a self-determination clause in the Constitution.
9. Josep Sánchez I Llibre, member of *Convergència I Unió*, also criticised the main political parties in the Parliament for not having admitted most of the amendments presented, and he defended the amendments presented by his political party. For instance, one of these amendments concerned the fact that the Autonomic Parliaments should determine the limit of the Autonomous Communities' deficit, since doing it differently would entail encroaching upon the competences of the latter.
10. Soraya Sáenz de Santamaría Antón, member of *Partido Popular*, expressed that the constitutional reform was an exercise of political responsibility. In particular, she highlighted that it is an expression of Spain's will to respect its commitments with the EU. Besides, she stressed that without fiscal stability it is impossible to preserve the Welfare State. Finally, she criticised the political parties that had presented amendments outside the scope of the constitutional reform proposed (i.e. amendments regarding a self-determination clause).
11. Jose Antonio Alonso Suárez, member of *Partido Socialista Obrero Español* (the party in the Government), expressed that the fiscal and economic European integration process requires setting shared criteria on the structural deficit and debt. Moreover, he stressed that the constitutional reform is essential to the credibility of Spain and also in order to preserve the Welfare State. Besides, he highlighted that it is impossible to let the Autonomous Communities set their deficit and debt limits, since this would bring about a lack of unity that would undermine Spain's credibility.

Besides the political debate, the constitutional reform of Article 135 had a strong impact on the general public debate. In this sense see, for instance:

- “*Reforma express y sin referendum*”, *El País*, 23 August 2011:

http://politica.elpais.com/politica/2011/08/23/actualidad/1314128715_080054.html

- “*Calendario de protestas contra la reforma*”, *El País*, 31 August 2011:

http://politica.elpais.com/politica/2011/08/31/actualidad/1314802718_205808.html

- “*No a la reforma de la Constitución promovida por PSOE y PP*”, video on *YouTube* by *Izquierda Unida*:

<http://www.youtube.com/watch?v=I6yDzVekj10>

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)?

In this regard, in his intervention during the plenary session of the *Congreso* of 8 February 2012,²⁸⁷ Mariano Rajoy Brey, the President of the Government, explained to the House the content of the Fiscal Compact. In this intervention, Rajoy stressed that the Fiscal Compact obliges to pursue the MTO, excepting a case in which a MS would implement a structural reform that would bring about an increase of the deficit in the short term, but a decrease in the medium term. In this sense, the President highlighted that this clause was reflected in Article 11(2) of proposed *Ley Orgánica de Estabilidad Presupuestaria*.²⁸⁸

CASE LAW

IX.7

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

As explained in Question VII.2, the Balanced Budget Rule has caused a number of legal actions before the Spanish Constitutional Court. These have included (i) a “*recurso de amparo*” (action of infringement of fundamental rights) from *Izquierda Unida* against the amendment of Article 135 of the Spanish Constitution, (ii) an action of unconstitutionality from the Government of Canarias against the Organic Law 2/2012 of Budgetary Stability, (iii) an action of unconstitutionality from regional and local governments as well as a number of MPs against the Law 27/2013 of Rationalisation and Sustainability of the Local Administration. While the action against the amendment of the Spanish Constitution has

²⁸⁷See the link to this plenary session in the answer to Question IX.1.

²⁸⁸ Notice that the *Ley Orgánica 2/2012, de 27 de abril, de Estabilidad Presupuestaria y Sostenibilidad Financiera* was adopted and promulgated by the King on 27 April 2012. In this sense, see Question IX.4.

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been declared inadmissible by the Constitutional Court, the other actions have been declared admissible and their corresponding judgements are still pending (see Question VII.2 for more details).

NON-EUROZONE AND BINDING FORCE

IX.8

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

Not applicable.

MISCELLANEOUS

IX.9

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

No other relevant information.

X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT

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

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

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

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

CONTEXT

X.1

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

Regarding this issue, see the answer to Question I.1 and, in particular, points 11-13 in the section on “Economic and Financial Crisis Governance in Spain (January 2008- November 2012)”.

NEGOTIATION

X.2

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

As for the debate in the *Congreso de los Diputados*, on 20 June 2012, in a plenary session of the *Congreso*,²⁸⁹ the *Grupo Socialista* presented an *interpelación* (a formal question) to the Government on its position regarding Spain’s request for financial assistance. In the motivation of the question, the *Grupo Socialista* stressed that the Government should inform the *Congreso* about the details of the financial assistance that Spain would be receiving. In particular, the *Grupo Socialista* referred to the fact that it was essential: (a) to make sure that the bailout was not ultimately paid by the working/middle classes; (b) to set the conditions so that the public resources would go back to the public purse at the end of the process; (c) to

²⁸⁹ See *Diario de Sesiones* of the *Congreso de los Diputados*, 20 June 2012 in: http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_042.PDF

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make sure that the assistance received by the banking sector would facilitate the access to credit for families and companies; (d) to make sure that people having difficulties in paying their mortgages or who had invested in preferred participations would profit from the financial assistance and; (e) to make sure that the whole process was transparent (i.e. the measures adopted and the final destination of the resources). In her defence of this *interpelación*, María Soraya Rodríguez Ramos, member of the *Grupo Socialista*, emphasised the confusion (and the consequent lack of credibility) that the Government had created regarding Spain's financial assistance. In this sense, she recalled that on 28 May the Government had explained that Spain would not be receiving financial assistance; on 9 June it stressed that Spain would obtain a very favourable loan (without conditions attached to it); and finally on 18 June it stressed that the bailout would be very harmful for Spain, because it would contaminate Spain's public debt with private debt (that of the banking sector). Besides, Rodríguez Ramos asked the Government to negotiate the longest possible grace period for the loan, and also that the interests would not be counted in Spain's public deficit as long as the country is falling into excessive deficit. The MP also regretted that the financial assistance would be given to the State, instead of being directly received by the banking sector. In his response to the *interpelación*, Cristóbal Montoro Romero, Minister of Finance and Public Administration, considered the intervention of Rodríguez Ramos as demagogic and populist, since the MP had said that the Government was creating confusion regarding the financial assistance. The Minister highlighted that the assistance would not be a EU invasion of Spain, but rather an example of how Spain can use the tools provided by the EU to get out of the crisis. Later, Rodríguez Ramos replied that the Minister had not answered to any of her questions, and she complained that the Government should be much more transparent towards the Parliament. In particular, she stressed that, since the Spanish people would be paying the bailout, they have a right to be informed of its details and about the conditions attached to it. In his final intervention, Montoro Romero denied the fact that the Government was not transparent, and criticised the *Grupo Socialista*, and especially Rodríguez Ramos, for not understanding essential economic concepts, and thus downgrading the level of the parliamentary debate. Besides, in the same plenary session of the *Congreso*, Álvaro Anchuelo Crego, member of *Unión Progreso y Democracia*, asked Montoro Romero how the Government planned to avoid the bailout turning the banking sector crisis into a public debt crisis. To this question, he added that the Government should not lie and should admit that Spain was being bailed-out. In his response, the Minister only referred to the second of these issues, that is, he explained that Spain was not going to be bailed-out.

Later, on 26 June 2012, in a plenary session of the *Congreso*,²⁹⁰ the *Grupo Socialista* defended a *moción* (a motion)²⁹¹ regarding the response of the Government to the

²⁹⁰See the *Diario de Sesiones* of the *Congreso de los Diputados* of 26 June 2012 in:

http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_044.PDF

²⁹¹A *moción* is a document expressing the position of the *Congreso* regarding the response of the Government to an *interpelación* presented earlier (Article 184 of the *Reglamento del Congreso de los Diputados*. See this *Reglamento* in:

http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/reglam_congreso.pdf

interpelación presented by the same parliamentary group some days earlier (on 20 June). In his defence of the *moción*, Tomás Valeriano Gómez Sánchez, member of the *Grupo Socialista*, explained that he considered a disgrace for the democratic system that the President of the Government had not appeared in the *Congreso* to speak about Spain's bailout. In this sense, one of the goals of the *moción* was to ask the President to do so. Besides, the *moción* also aimed at the creation of an investigation, control and follow-up committee regarding the bailout in the *Congreso*. The MP added that it was not possible to leave outside the control of the Parliament, which represents people's sovereignty, one of the most important economic and social events in Spain's recent history. Later, the rest of parliamentary groups had a chance to defend their positions regarding the *moción*, as well as to present amendments to it. After the positions were defended, the *moción* was voted and rejected. As for the positions of the different parliamentary groups:

1. Francisco Jesús Jorquera Caselas, member of the *Grupo Nacionalista Galego*, expressed that his parliamentary group would support the *moción*, and he stressed that the so-called European financial assistance is in fact an intervention of Spain, which will lose its fiscal and banking sovereignty.
2. Teresa Jordà I Roura, member of *Esquerra Republicana de Catalunya*, expressed the support of her group to the *moción*, but she added an amendment: the investigation, control and follow-up committee should include an investigation on those who are responsible for the financial crisis, like it was done in the US or Island.
3. Álvaro Anchuelo Crego, member of *Unión Progreso y Democracia*, explained that his group also considered that an investigation should be carried out in order to ascertain who was responsible for the financial crisis.
4. Pedro María Azpiazu Uriarte, member of *Partido Nacionalista Vasco*, expressed that his group would support the *moción*, and that the lack of transparency of the Government regarding the bailout was unacceptable. He also added that it is dangerous not to call things by their name, and that the so-called financial assistance should be called a bailout.
5. Alberto Garzón Espinosa, member of *Izquierda Unida*, highlighted that the financial assistance is not a bailout, but a robbery and an extortion to be suffered by Spanish workers.
6. Josep Sánchez I Llibre, member of *Convergència I Unió*, criticised the proposal of the *Grupo Socialista* to create a committee regarding the bailout, because he stressed that it was an electoral strategy, rather than a real proposal.
7. Vicente Martínez-Pujalte López, member of *Grupo Popular*, criticised the *Grupo Socialista* for putting obstacles to the task of the Government instead

of trying to help it in order to get out of the crisis.

Regarding the debate in the *Senado* relating to the negotiation process of the financial assistance for Spain, it is important to mention the following MP's interventions, which took place in different plenary sessions of the *Senado* in June and July 2012:

1. On 19 June 2012:²⁹²

- Jordi Guillot Miravet, member of *Iniciativa per Catalunya Verds* (ICV), asked the Government about the conditionality attached to the financial assistance. In particular, the MP wanted to know whether the VAT would go up, and whether the retirement pensions and the unemployment benefits would be affected. In her response to the intervention of Guillot Miravet, Josefa Luzardo Romano, member of the *Partido Popular* (PP), did not give an answer to these concerns.
- Maria de los Ángeles Marra Domínguez, member of the *Partido Socialista Obrero Español* (PSOE), highlighted the fact that the bailout would undermine the credibility of the Spanish economy.

2. On the 21 June 2012:²⁹³

- José Manuel Marsical Fuentes, member of *Izquierda Unida* (IU), in response to Araceli Peris Jarque, member of the *Partido Popular* (PP), who had called him “idealist”, stressed that instead of an idealist he is a realist, because idealism is in fact thinking that the financial bailout will not have an effect in the lives of Spanish citizens.
- Carmen Méndez González-Palenzuela, member of the *Partido Socialista Obrero Español* (PSOE), criticised the Government for: (a) its lack of will to reach agreements with other political parties, trade unions, etc.; (b) having complained (when they were in the opposition) that the Government was too concerned with satisfying the requirements of “foreigners”, and now accepting the European financial assistance.

3. On 17 July 2012:²⁹⁴

- José Montilla I Aguilera, member of the *Partido Socialista Obrero Español* (PSOE), strongly criticised the Government for the lack of transparency regarding the financial assistance. The MP literally said

²⁹² See the *Diario de Sesiones* of the *Senado* of 19 June 2012 in: http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_23.PDF

²⁹³ See the *Diario de Sesiones* of the *Senado* of 21 June 2012 in: http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_25.PDF

²⁹⁴ See the *Diario de Sesiones* of the *Senado* of 17 July 2012 in: http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_26.PDF

that the Government had stolen the tasks of the Parliament, and that the financial assistance for Spain had perhaps been debated in the Dutch Parliament, but not in the Spanish one.

The public debate on the negotiation process of the financial assistance for Spain was very much in the line of the political debate expounded above. In this sense, the main concern was the lack of transparency of the Government regarding the negotiations and thus the confusion regarding the details of the financial bailout. Some examples of this are the following articles:

- “*El peligro del eufemismo*” (“The danger of euphemisms”), *El País*, 18/06/2012
http://elpais.com/elpais/2012/06/15/opinion/1339783247_897788.html
- “*Por qué es una intervención*” (“On why it is a bailout”), *El País*, 12/07/2012
http://economia.elpais.com/economia/2012/07/11/actualidad/134203095_1_205530.html
- “*Los documentos del rescate que el Gobierno ha ocultado a España*” (“The documents on the bailout that the Government has hidden from Spain”), *El País*, 19/07/2012

http://economia.elpais.com/economia/2012/07/18/actualidad/1342630778_162569.html

STATUS INSTRUMENTS

X.3

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

The Memorandum of Understanding on Financial-Sector Policy Conditionality, signed in Brussels and Madrid on 23 July 2012; and the Financial Assistance Facility Agreement, signed in Madrid and Luxembourg on 24 July 2012 are international agreements under Spanish law. This is so since they were published (together) on 10 December 2012 *Boletín Oficial del Estado* (BOE).²⁹⁵

In this sense, Article 96(1) of the Spanish Constitution establishes that international treaties, which have been validly celebrated, will be part of the Spanish legal order once they are published in the BOE. Besides, it is important to recall that Articles 93-94 of the Constitution distinguish between three different types of international treaties/agreements, depending on their subject matter. Linked to the category under which a given treaty is classified, the

²⁹⁵See these agreements, as published in the BOE, in:

<http://www.boe.es/boe/dias/2012/12/10/pdfs/BOE-A-2012-14946.pdf>

Besides, see the English version of these agreements in the response to Question I.1.

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Constitution enshrines a certain procedure in order to incorporate the treaty into the national legal order.²⁹⁶

TRANSPOSITION NATIONAL LEGAL ORDER

X.4

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

In the case of the MoU and the Financial Assistance Facility Agreement, the Government considered these agreements to fall into Article 94(2) of the Constitution [i.e. treaties/agreements on subject matters different than those regulated in Articles 93 and 94(1)], and thus treaties which only require the Government to inform the Parliament after their conclusion. This explains the lack of a parliamentary debate on the content of these agreements and the consequent criticisms by many political parties to the Government for its lack of transparency as regards the details of what had been agreed with the European authorities.

An example of this discontent is the question that Gaspar Llamazares Trigo, member of *Izquierda Unida*, posed to the Government regarding the lack of transparency in relation to the conditions agreed upon in the MoU, which had not been made public in Spanish.²⁹⁷ In its written answer to this question, the Government merely stated that the MoU could be found both in Spanish and in English in the website of the Ministry of Economy and Competitiveness.²⁹⁸

ROLE PARLIAMENT

X.5

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

See above.

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

While the Memorandum of Understanding on Financial-Sector Policy Conditionality (MoU)

²⁹⁶ As for these different procedures, see the answer to Question VIII.2.

²⁹⁷ See this question, which was published in the *Boletín Oficial de las Cortes Generales*, on 19 September 2012, in:

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/D/BOCG-10-D-146.PDF

²⁹⁸ See the response to the question, which was published in the *Boletín Oficial de las Cortes Generales*, on 7 November 2012, in:

http://www.congreso.es/public_oficiales/L10/CONG/BOCG/D/BOCG-10-D-173.PDF

mainly establishes the conditionality linked to the financial assistance for Spain, the Financial Assistance Facility Agreement is concerned with the technicalities regarding the operationalization of the assistance.

As for the MoU, one could consider that the instrument refers to three different types of conditions: (a) conditionality for the banking sector (e.g. guidelines for the recapitalization and restructuring of banks, and adoption of measures in order to free Spanish citizens from part of the costs of the restructuring process), (b) conditionality regarding the framework for the operation of the banking sector (e.g. adoption of measures in order to ensure the independence of the Spanish Central Bank from the Ministry of Economy), (c) conditionality relating to macroeconomic imbalances (e.g. compromise to ensure the attainment of deficit targets, and introduction of measures in fields such as the taxation system).

Besides the conditionality, the MoU also refers to: (a) the objectives of the financial assistance (e.g. “to increase the long-term resilience of the banking sector as a whole, thus, restoring its market access”), (b) the program through which the financial assistance will be put into effect (i.e. once the ESM is in place, the assistance will be operationalized through the new Mechanism) and, (c) the supervision of such program (e.g. the European Commission will verify if the conditions are satisfied by sending missions to Spain and by asking for reports).

Finally, as mentioned above, the Financial Assistance Facility Agreement determines those aspects that are essential in order to operationalise the financial assistance (e.g. issues regarding the payments, situations of non-compliance, legislation applicable, etc.).

MISSIONS

X.7

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

Section VIII of the MoU establishes that “the European Commission, in liaison with the ECB and EBA, will verify at regular intervals that the policy conditions attached to the financial assistance are fulfilled”. One of the expressions of this monitoring is the right of the abovementioned authorities to conduct inspections in any financial institution, which is receiving the assistance, to control the compliance with the conditions. In this sense, the so-called “*hombres de negro*” (“men in black”) have visited Spain in three occasions: in October 2012, February 2013 and May 2013. It is important to stress that no legal changes have been introduced in the Spanish legal order to accommodate these missions.²⁹⁹

As for the political debate regarding the general role of the “troika”, and in particular its inspections in Spain, the emphasis has been repeatedly put (either directly or indirectly) on the fact that they constitute an attack on the sovereignty of the State. In this sense, the

²⁹⁹On the contrary, a legal change has been introduced in order to accommodate the exchange of information between the Spanish authorities and the “troika”. In this sense, see the answer to Question VIII.8.

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following interventions of three MP are illustrating:

(1) On 26 July 2012, Jesús Iglesias Fernández, member of *Izquierda Unida* in the *Senado*, expressed that the “troika” was intervening Spain *de facto* by imposing certain measures in order to avoid an intervention *de iure*. However, according to the MP, these measures are perhaps even more oppressive than the intervention *de iure* in itself.³⁰⁰

(2) On 27 August 2012, Enrique Álvarez Sostres, member of *Foro Asturias* in the *Congreso*, asked the Government whether the MoU contemplated the action of the “men in black”.³⁰¹

(3) On 4 June 2013, José Montilla Aguilera, member of the PSOE in the *Senado*, highlighted the fact that Spain was subject to foreign vigilance.³⁰²

In the same line, the public debate on the “troika” missions has been concerned with the attack on Spain’s sovereignty. In this sense, during the negotiations on the financial assistance, the issue as to whether the “men in black” would be coming to Spain was considered essential in order to assess whether the assistance was in fact an intervention/bailout. See, for instance, the article that *El Público* published on 10 June 2012, entitled “*Si vienen los hombres de negro*” (“Indeed, the men in black are coming”):

<http://www.publico.es/espana/436421/si-vienen-los-hombres-de-negro>

CASE LAW INTERNATIONAL INSTRUMENTS

X.8

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

No.

CASE LAW IMPLEMENTING MEASURES

X.9

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

There is no judgement/pending judgement by the Constitutional Court or by any other Spanish Court in relation to the national “implementation” of the MoU. However, given that the latter invited Spain to implement its labour market reforms, the *cuestión de inconstitucionalidad* presented by a judge of the Labour Court no. 30 of Madrid regarding some articles of the February 2012 labour market reform could be considered as a case

³⁰⁰See *Diario de Sesiones* of the *Senado*, 26 July 2012, in:

http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_28.PDF

³⁰¹Find this question, which was published in the *Boletín Oficial de las Cortes Generales* on 19 September 2012, in the link in note 269.

³⁰²See the *Diario de Sesiones* of the *Senado*, 4 June 2013, in:

http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_67.PDF

relating to national policy measures required by the MoU. The same holds true for the *recurso de inconstitucionalidad*, which was presented in October 2012 by the *Grupo Socialista* and the *Izquierda Plural*. This appeal concerns 9 articles of the February 2012 labour market reform, which are considered to be unconstitutional. As for the former, on 16 October 2012 the Constitutional Court declared inadmissible the *cuestión de inconstitucionalidad*.³⁰³ On the contrary, regarding the latter, the 30th of October 2012 the Constitutional Court declared the appeal admissible.³⁰⁴ However, the judgement is still pending.

BOND PURCHASES ECB

X.10

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

There are two fundamental dates regarding announcements of the ECB on its intention to buy (Spanish) bonds: August 2011 and September 2012. As for the former, the ECB agreed on buying (and ultimately did) Government bonds from Spain through the Securities Markets Programme (SMP), since the risk premium of the State had reached a historic record level (over 400 points) and was threatening a stock market crash.³⁰⁵

In particular, on 7 August 2011 Jean-Claude Trichet, then President of the ECB, published a statement in which he explained that the Governing Council of the ECB welcomed the fiscal and structural reforms by the governments of Spain and Italy, and was willing to “actively implement its Securities Markets Programme”.³⁰⁶

Regarding the latter bond-buying plan of the ECB, on 6 September 2012 the Bank published the “technical features” for the operation of the new Outright Monetary Transactions (OMT). For instance, the press release stressed the fact that the OMT would be strictly subject to the “conditionality attached to an appropriate European Financial Stability Facility/European Stability Mechanism (EFSF/ESM) programme”, which meant that no national bonds would

³⁰³See on 16 October 2012 the *Auto* of the Constitutional Court, in which it declares inadmissible the *cuestión de inconstitucionalidad* in: <http://www.boe.es/boe/dias/2012/11/14/pdfs/BOE-A-2012-14061.pdf>

³⁰⁴ See on 30 October 2012 the *Providencia* of the Constitutional Court, in which it declares admissible the *cuestión de inconstitucionalidad* in:

<http://www.boe.es/boe/dias/2012/11/09/pdfs/BOE-A-2012-13830.pdf>

³⁰⁵ “*El BCE compra deuda española e italiana*” (The ECB buys Spanish and Italian debt), *La Razón*, 9 August 2011:

http://www.larazon.es/detalle_hemeroteca/noticias/LA_RAZON_391285/4297-el-bce-anuncia-la-reactivacion-de-su-programa-de-deuda-publica#.Uc0PsOAe5fo

“*El BCE anuncia la compra de deuda española e italiana para evitar un lunes negro*” (The ECB announces that it will buy Spanish and Italian debt to avoid a black Monday), *El País*, 8 August 2011:

http://elpais.com/diario/2011/08/08/economia/1312754402_850215.html

³⁰⁶See the press release with the Statement by the President of the ECB of 7 August 2011 in:

<https://www.ecb.int/press/pr/date/2011/html/pr110807.en.html>

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be bought by the ECB, unless the MS concerned was being bailed-out.³⁰⁷ Besides, the OMT would consist of open-ended, unlimited buying of bonds. According to Mario Draghi, the aim of the OMT is to address distortions in government bonds markets based on unfounded fears. As stated by *The Guardian*, “the scheme is aimed at depressing the costs of borrowing for Spain and Italy and countering the risks of fragmentation of the eurozone and the unravelling of the single currency”.

In this sense, with Spain’s risk premium around 450 points in September 2012, the press of the country considered Spain to be one of the most likely addresses of the OMT. However, Draghi clearly stated that Spain’s financial bailout of July 2012 was not enough for the ECB to buy Government bonds through the OMT, since the MoU agreed in that occasion does not determine strict macroeconomic objectives and a total conditionality.

In a speech given on 4 October 2012 in Slovenia, the President of the ECB clearly stated that the Bank would only buy Spanish bonds if the Government requested a bailout and agreed to conditions. Later, in February 2013, Draghi recalled that the ECB would only consider buying Spanish bonds if there were major problems in the transmission of monetary policy and/or if Spain was being bailed-out.³⁰⁸

CONDITIONALITY BOND PURCHASES ECB

X.11

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

³⁰⁷ See the press release of the ECB of 6 September 2012 on “Technical features of Outright Monetary Transactions” in:

http://www.ecb.int/press/pr/date/2012/html/pr120906_1.en.html

³⁰⁸ “El BCE comprará deuda sin límite si los países piden el rescate y cumplen de forma estricta” (The ECB will buy unlimited debt if states ask to be bailed-out and obey strictly), *RTVE*, 6 September 2012:

<http://www.rtve.es/noticias/20120906/bce-comprara-deuda-sin-limite-si-paises-piden-rescate-cumplen-forma-estricta/561745.shtml>

“ECB to buy Spanish bonds but with strings attached”, *EU Observer*, 6 September 2012:

<http://euobserver.com/economic/117461>

“ECB’s Mario Draghi unveils bond-buying euro debt plan”, *BBC*, 6 September 2012:

<http://www.bbc.co.uk/news/business-19499950>

“ECB introduces unlimited bond-buying in boldest attempt yet to end Eurocrisis”, *The Guardian*, 6 September 2012:

<http://www.guardian.co.uk/business/2012/sep/06/debt-crisis-mario-draghi>

“La decisión del BCE de comprar deuda desata la euforia en los mercados (The decision of the ECB to buy debt causes euphoria in markets), *La Razón*, 8th of September 2012:

http://www.larazon.es/detalle_hemeroteca/noticias/LA_RAZON_485661/5145-el-ibex-sube-el-0-67-confiado-en-la-compra-de-deuda-por-parte-del-bce#.UdKEtuAe5fp

“Draghi says next move not his as Spain resists bailout”, *Bloomberg*, 5 October 2012:

<http://www.bloomberg.com/news/2012-10-04/draghi-says-next-move-not-his-as-spain-resists-bailout.html>

“Draghi in no rush to buy up Spanish bonds”, *City A.M.*, 13 February 2013:

<http://www.cityam.com/article/draghi-no-rush-buy-spain-s-bonds>

As stated in question X.10, there are two fundamental dates regarding announcements of the ECB on its intention to buy (Spanish) bonds: August 2011 and September 2012. However, only the former ultimately led to the ECB effectively buying Spanish bonds through the SMP.³⁰⁹ In this sense, it is important to stress that it was precisely the lack of a strict conditionality attached to the SMP what urged the ECB to agree on a new programme: the OMT. As published by *Reuters* in September 2012, “the ECB was hurt last year when it bought Italian and Spanish bonds, only for Italy’s then-prime minister, Silvio Berlusconi, to go back on the reform promises he had made to get the ECB to step in just days after he made the commitments. The ECB has learned from the Italian experience – hence the tough conditions attached to any bond buying under the new plan”.³¹⁰

However, some aspects of the Statement by Jean-Claude Trichet on 7 August 2011 on the activation of the SMP could be regarded as ECB’s requests affecting national policy measures, despite their non-binding character.³¹¹ For instance, the commitment to agreed fiscal targets, the implementation of all decisions taken at the euro area summit, and the implementation of the national fiscal and structural policies’ reforms.

MISCELLANEOUS

X.12

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

No other relevant information.

³⁰⁹ See the answer to Question X.10

³¹⁰ “*ECB’s first bond program goes out with a whimper*”, *Reuters*, 10 September 2012: <http://www.reuters.com/article/2012/09/10/us-ecb-bonds-idUSBRE8890ON20120910>

³¹¹ See the link to this Statement in note 305.