

JOR

Band 59 · (2018)

2. Halbband

Begründet von
Prof. Dr. Reinhart Maurach

Herausgegeben von
Prof. Dr. Dres. h. c.
Friedrich-Christian Schroeder,
Regensburg,
Prof. Dr. Martin Fincke,
Passau und
Prof. Dr. Dr. Dr. h. c.
Dieter Pfaff, München

Institut für Ostrecht
München



Aufsätze

- Direkte Demokratie in Osteuropa
- Volksabstimmungen im öffentlichen Recht Ungarns
- Ukrainische Verwaltungsgerichtsbarkeit
- EU-Fiskalpakt und Zentralbanken im EU-Beitrittsprozess

Gutachten

- Rumänien: Vollstreckbarkeit rumänischer Insolvenzentscheidungen
- Russland: Schenkungsvertrag

Dokumentation

- Slowakei: Urteil des EuGH in der Vorlagesache Achmea
- Makedonien: Schlussabkommen mit Griechenland im Namensstreit

Buchbesprechungen



JOR
JAHRBUCH FÜR OSTRECHT

Band 59 (2018)
2. Halbband

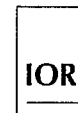
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Jahrbuch für Ostrecht

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VERLAG C. H. BECK MÜNCHEN 2018

**Neuer Bezugspreis
Jahrbuch Ostrecht**

Der Bezugspreis (einschließl. MwSt.)
beträgt ab 1. Januar 2019

jährlich (ein Band) € 169,-
zuzüglich Vertriebskosten.

ISSN 0075-2746

JOR – Jahrbuch für Ostrecht

Schriftleitung: Prof. Dr. Dr. h. c. Herbert Küpper, Institut für Ostrecht München e.V., Landshuter Straße 4, 93047 Regensburg, Telefon: (09 41) 9 43 54 50, E-Mail: herbert.kuepper@ostrecht.de, Homepage: www.ostrecht.de

Zitiervorschlag: JOR 59 (2/2018).

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Verlag: C. H. Beck oHG, Amtsgericht München, HRA 48045, Wilhelmstraße 9, 80801 München, Tel.: (0 89) 3 81 89-0, Telefax: (0 89) 3 81 89 98, Postbank Konto 62 29 802, BLZ 700 100 80.

Der Verlag ist oHG. Gesellschafter sind Dr. Hans Dieter Beck und Dr. h. c. Wolfgang Beck beide Verleger in München.

Erscheinungsweise: Halbjährlich.

Bezugspreis Jahrgang 2018: Jährlich € 175,- (inkl. MwSt.); Einzelheft: € 95,- (inkl. MwSt.). Jeweils zuzüglich Versandkosten.

Bestellungen über jede Buchhandlung und beim Verlag.

Abo-Service: Telefon (0 89) 3 81 89 750, Fax: (0 89) 3 81 89 3 58. E-Mail: abo.service@beck.de

Abbestellungen müssen 6 Wochen vor Jahresende erfolgen.

Adressenänderungen: Bei Adressenänderungen müssen neben dem Titel der Zeitschrift die neue und die alte Adresse angegeben werden.

Satz: Druckerei: C. H. Beck, Nördlingen

Druck: Druckhaus Nomos, In den Lissen 12, 76557 Sinzheim

Gedruckt auf säurefreiem, alterungsbeständigem Papier (hergestellt aus chlorfrei gebleichtem Zellstoff).

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Liebe Leserinnen und Leser!

Seit 1960 gibt das Institut für Ostrecht (IOR) das Jahrbuch für Ostrecht (JOR) heraus. Seit dieser Zeit berichtet das JOR jährlich in zwei Teilbänden über die aktuellen Rechtsentwicklungen in Osteuropa.

Ab nächstem Jahr ändern wir die Erscheinungsweise des JOR. Aus zwei Teilbänden wird pro Jahr ein Gesamtband. Damit beseitigen wir die Anomalie, dass ein Jahrbuch in jährlich zwei Teilbänden erscheint. Die Erscheinungsweise wird übersichtlicher, der Bibliotheksaufwand reduziert. Der Gesamtumfang des Jahrbuchs soll sich durch die Konzentration auf ein Heft pro Jahr nicht schmälern, sondern die jährliche Seitenzahl bleibt gleich.

Auch ansonsten bleibt das JOR seinem bisherigen Konzept treu. Es informiert über die aktuellen Entwicklungen in den Rechtsordnungen der ehemals sozialistischen Staaten Osteuropas und darüber hinaus, es analysiert und dokumentiert Gesetzgebung und Rechtsprechung aus diesen Staaten, und es bietet ein Forum für Diskussionen und Austausch, aber auch für Selbstreflexionen der westlichen Staaten und ihrer Rechtswissenschaften über die Herangehensweise an die Rechtsordnungen und Rechtskulturen des europäischen Ostens. Die Schwerpunkte der Rechtsentwicklung bieten einen nach Rechtsgebieten geordneten Überblick über die wichtigsten Ereignisse des Vorjahres, und die Veröffentlichung von Gerichtsgutachten des IOR ermöglicht einen praxisorientierten Einblick in über den Einzelfall hinausweisende Fragen des osteuropäischen Rechts, die die deutschen Rechtsanwender beschäftigen.

Wir hoffen, dass Sie uns auch in der neuen Erscheinungsweise die Treue halten, und wir freuen uns auf Ihre Anregungen, Kommentare und auch Manuskripte.

Prof. Dr. Dres. h. c. *Friedrich-Christian Schroeder*
Herausgeber

Prof. Dr. Dr. h. c. *Herbert Küpper*
Redaktion

zurückgewiesen hat, war es ihr möglich, die Befugnis zur Aufhebung der Anmeldung über die Gebrauchsfähigkeit der baulichen Anlage auszuüben. Das heißt, dass die Verwaltungsgerichte die Gründe für die Ausübung hoheitlicher Befugnisse bestimmen sollen.

Somit können zusätzliche Orientierungspunkte bei der Sachverhaltsaufklärung geschaffen werden, indem die Kriterien der Rechtmäßigkeit in ihre einzelnen Elemente zerlegt werden. Die Analyse des Kriteriums „kraft Gesetzes, im Rahmen der gesetzlichen Befugnisse und in der gesetzlichen Weise“ gibt die Möglichkeit, folgende Elemente zu benennen: (1) Inhalt und Umfang der Befugnisse der Verwaltungsbehörde; (2) die Gründe für die Ausübung hoheitlicher Befugnisse; (3) das Subjekt, auf das die Befugnisse abzielen; (4) das Objekt, auf das die Befugnisse abzielen; (5) Form und Verfahren bei der Ausübung hoheitlicher Befugnisse.

Basierend auf den Ergebnissen dieser Studie ist es zweckdienlich, die Liste der Fragen zu erweitern, auf die ein Verwaltungsgericht während der Entscheidungsfindung nach Art. 244 VwGVGB antworten soll. Dazu schlagen wir vor, diesen Artikel durch einen Absatz zu ergänzen: „Wenn das Gericht ein Urteil erlässt, entscheidet es, ob das strittige Verwaltungshandeln in Übereinstimmung mit den Kriterien der Rechtmäßigkeit steht, nach denen das Gericht den Inhalt, die Gründe, die Form sowie das Verfahren für die Ausübung hoheitlicher Befugnisse sowie das Subjekt und das Objekt, auf die die Befugnisse abzielen, bestimmen muss“. Dies könnte als ein zusätzlicher Orientierungspunkt bei der Sachverhaltsaufklärung dienen und die Aufklärung sämtlicher entscheidungserheblicher Tatsachen erleichtern.

V. FAZIT

Die aufgedeckten Zusammenhänge zwischen der Sachverhaltsaufklärung und der Subsumtion verweisen auf gewisse Gesetzmäßigkeiten und notwendige Folgen der Handlungen, die ein Verwaltungsgericht während des Entscheidungsprozesses verwaltungsrechtlicher Streitigkeiten ausführt. Angesichts der Abhängigkeit der Sachverhaltsaufklärung von der Berücksichtigung der Kriterien der Rechtmäßigkeit von Verwaltungshandeln ist es möglich, den Moment des Verstoßes gegen die Amtsermittlungspflicht zu bestimmen. Zur Lösung des Problems der ungenügenden Sachverhaltsaufklärung können zusätzliche Orientierungspunkte identifiziert werden, die der Bestimmung sämtlicher entscheidungserheblicher Tatsachen und der rechtlichen Bewertung eines streitigen Verwaltungshandelns dienen können.

SUMMARY

This essay deals with the judicial decision-making in Ukrainian administrative court procedures. The analysis of the practice of Ukrainian administrative courts shows that judges tend to establish too loose a connection between the discovery of the relevant facts and the analysis of the applicable legal norms. The lack of harmony between facts and law results in wrong judgements. The author subdivides the process of judicial decision-making into various steps and thus can localise more precisely where the judicial reasoning goes astray. Finally, the essay presents a possible solution for this mischief in Ukrainian administrative court practice.

PROF. DR. ALEKSANDRA MAKSIMOVSKA, SKOPJE, ASSOC. PROF. DR. JOVAN ZAFIROSKI, SKOPJE, ASSIST. PROF. DR. ELENA NESHOVSKA KJOSEVA*, SKOPJE

Coping with the EU Fiscal Compact: Cross Section Analyses of the Legal Framework and Economic Results by the Balkan Candidate Countries

This paper focuses on the harmonization of the legislation of four Balkan countries (Albania, Macedonia, Montenegro, and Serbia) with the EU Fiscal Compact. In doing so, it centres on the evaluation of the fiscal and monetary legislation of the candidate countries and their fulfilment of the EU requirements through cross section analyses by selected indicators. The starting thesis is that the rigorous EU fiscal rules are being softly bypassed, but more frequently by the member states than by the candidates. Consequently, the political braveness and financial capacity of the Balkan countries to cope with the Fiscal compact, as compared to the more advanced EU 28 members, is analysed. Answers and conclusions are given through several legal and economic dimensions.

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I. INTRODUCTION

The EU candidates from the Balkans, i. e. Albania, Macedonia, Montenegro and Serbia, are working hard on various harmonization issues in order to cope with the European Union's legislative and other relevant accession requirements. From a fiscal and monetary perspective, these Balkan countries are supposed to stabilize their public finance system in general as well as to ensure budgetary discipline and a fiscal consolidation as a pre-condition for EU membership. At the same time, the EU member states have to follow the same rigorous fiscal and monetary rules, imposed by the Maastricht Treaty and the Stability and Growth Pact (mostly in the Fiscal Compact). The Fiscal Compact contains provisions that enhance the member states' commitment to budget discipline and create mechanisms to ensure compliance with EU legislation.

In the last few years, the pro-EU orientation of the Balkan governments resulted in mostly accepting the budget balance rule and the debt rule as a symbol of their determination for the European integration. As a result, while more developed and economically powerful EU states still complain about the rigorous EU fiscal burdens, the candidate countries with developing economies and unsound public policies are supposed to take larger footsteps and go ahead with the EU requirements. The question arises whether a candidate country should be brave and politically strong enough to cope with the Fiscal Compact, or whether it should copy the less desirable behaviour of some EU member states and disobey the rules. There are several alternatives. If they follow the EU fiscal rules as strictly as they are set out by the Treaty, the result will be that Balkan candidates will have more exact legislative solutions than the EU member states. Otherwise, if they soften or slightly avoid some of the rigorous implementation rules, as many of the member countries do, they will be closer to the grey-zone practice of these states. Actually, the rigorous EU fiscal rules are being softly bypassed, yet more frequently by the member states than by the candidate countries.

The question in this paper is whether these four candidates, until joining the Union, should follow the rules strictly and firmly stick to the EU fiscal agenda, or whether they can loosen it up a bit in order to avoid additional pressure on their national fiscal policies and to fix other burning national financial questions. The answer has both political and financial sideways. In this paper, we investigate the financial features of the EU rules as implemented by the four EU candidates from the Balkan. The following concerns are going to be examined: the need for fiscal and monetary rules in the monetary union; the importance of the Fiscal Compact both for the EU members and the candidates; the struggle of the four EU candidates during the process to accomplish various pre-conditions and to follow rigorous rules; the challenges while tackling these different tasks, first in implementation of the legislation and sec-

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ond when working out practical problems. Methodologically, the legal inquiry will be used in the major part of the paper, and the legal framework of the four candidates on fiscal consolidation will be compared. In order to clarify the comparison differences, graphical charts will be presented. Conclusions with de lege ferenda measures and recommendations for the EU candidates will follow.

II. RULES ON PUBLIC FINANCE IN THE EURO ZONE

1. *The need for fiscal rules in a monetary union*

In the last decade, while the most desired target for membership, the European Union, was under pressure for new memberships, monetary and fiscal difficulties such as constant budget deficits and increasing public debts occurred. As a result of the financial crisis in 2007, there was a significant stagnation in the GDP of most member states. As monetary and fiscal policies are always correlated and presented as two sides of one coin, there was a need for mutual coordination in the European Union. The EU, seeking for solutions, established a set of supranational monetary rules and coordinated national financial policies.

The EU monetary policy is based on the common currency of the euro zone, governed on a supranational level by an independent EU central bank¹. Taken from the other side of the coin, the fiscal policy encompasses mutual and harmonized fiscal activities of national governments. Therefore, it is understandable that in the last decade the will for establishing a stable monetary union with a sound monetary policy exercised a constant pressure for the implementation of sound fiscal rules. So, a coordination of the fiscal policies between EU member states is desirable.

If the fiscal policies are not coordinated, this might endanger the well-functioning of the monetary policy and create a crack in the monetary union. In order to avoid imbalances in the monetary policy, a common set of budgetary and debt rules are set by the Maastricht Treaty. It is recommendable to follow these rules, and to avoid them will result in various monetary difficulties, which has been undoubtedly confirmed by the financial crisis during the last decade in Greece, Spain, Italy, and Portugal. Actually, the global financial crisis that began in late 2007 prompted a revision of the financial services regulation in the EU. From 2010 onwards, the banking crisis was followed by the sovereign debt crisis in the euro area which, among other consequences, increased the fragmentation of the single financial market. Just to mention one example, the increased sovereign risk in Greek bonds increased the interest rates for borrowing for Italy, Spain and other countries that were facing problems in their public finances. Furthermore, the high level of interdependence of the financial markets of EU the states may cause distortions among the holders of financial instruments. In this case, a distortion in one member state's financial market can easily be exported into the euro zone. Yet again, the financial crisis has shown that in the EU, the German and French investors were exposed to the Greek and Cypriot sovereign debt bonds which endangered the stability of the French and German banks. Conse-

¹ For the institutional importance of the central bank system for the EU monetary policy and on the lessons the Balkan candidate countries may learn from the Hungarian accession and membership process, cf. the paper by *Csaba Léntner* in this volume.

quently, the overall stability on the financial markets in these countries was jeopardized. Another kind of problem arises in the area of EU monetary liquidity. When a member state faces monetary liquidity difficulties, the EU central bank will exercise pressure on its national central bank to undertake specific measures for restoring liquidity. At the same time, since the markets are integrated, and while other member states do not face the same liquidity problems, such a request might produce inflation and other negatively correlated complications in the Euro zone. In addition, the establishment of the European Banking Union was an attempt to address the increasing fragmentation of financial markets in the EU.

In the area of a single currency, being fully aware of the potential correlated financial implications of the mutual monetary policy, the creators of the EU treaties required a broad coordination of the fiscal policies among EU member states. The founding treaties contain numerous restrictive rules for limiting the national state's fiscal policies (Bickerton et al., 2015). Since the EU faces different challenges, the process of upgrading those fiscal rules is underway, and as a result, we have budget balance and debt rules in the Fiscal compact.

2. The Fiscal Compact

Adopted in 1997, the Stability and Growth Pact (SGP) provides the framework that coordinates the member states' fiscal policies and ensures fiscal sustainability while encouraging economic growth. The SGP was originally built on three principles: the requirement for member states' budgets to be close to balance or in surplus in the medium term; a ceiling of 3 per cent of the GDP for the overall fiscal deficit; and a ceiling of 60 per cent of the GDP for public debt. Before the sovereign debt crisis, the SGP had already been revised in 2005, following the political debacle associated with the breach of the deficit ceiling by France and Germany (Burret et al., 2013). In particular, the 2005 reform increased the flexibility of the fiscal rules by introducing the notion of country-specific medium-term budgetary objectives (MTO). In 2011, the adoption of the 'six pack' legislation further revised the operation of the SGP.

The Treaty stipulates that a government's annual budgetary position shall be balanced or in surplus, a provision also known as the golden rule. Specifically, member states undertake not to have a structural deficit higher than 0.5 per cent of the GDP. This commitment differs from those under the SGP where the lower limit to the structural deficit is 1 per cent. Second, the Treaty strengthens the correction mechanisms in case of slippages from the structural balance budget rule. In particular, the translation of the balance budget rule into national law must be done in a binding and permanent way, preferably at the constitutional level, and must be monitored by an independent supervisory institution, such as a fiscal council.

The EU members demonstrate various acts of resistance towards the implementation of the fiscal rules and the numerous reports and acts to support and evaluate these activities (EU Commission, 2017). Consequently, the members need more assistance for coordination and guidance of their public finances. All members should be aware that their fiscal and monetary obligations as members are the same for the candidates as prerequisites for their entrance into the EU.

III. PUBLIC FINANCE OF THE CANDIDATE COUNTRIES

The necessary amendment of the Monetary Union through the fiscal rules requires, however, European-shaped national economic, financial and budgetary policies. In the multi-level constitutionalism of the European Union, this implies that the national competences will remain, but need to be vastly better interlocked with European guidelines, combined with a more effective monitoring and surveillance (Calliess, 2012).

At this moment, the high level of public debt and the stagnating economic growth makes the position of the four Balkan countries under the EU fiscal rules, at its best, problematic. To comply with these so called external constraints, as an obligation under the process of accession, they are required to continuously lower their public debt year after year. In the next section we present the four different legal frameworks and analyse (1) the degree of harmonization with the EU fiscal consolidation framework, and (2) the specific state's variations towards public debt and budget deficit regulations. The goal is to detect whether the legislative harmonization is in positive correlation with resolving the public debt and budget deficit issues. In other words, is the harmonization just cosmetic, with the intent to fasten EU integration? This raises the question of the general dilemma of EU fiscal rules efficiency.

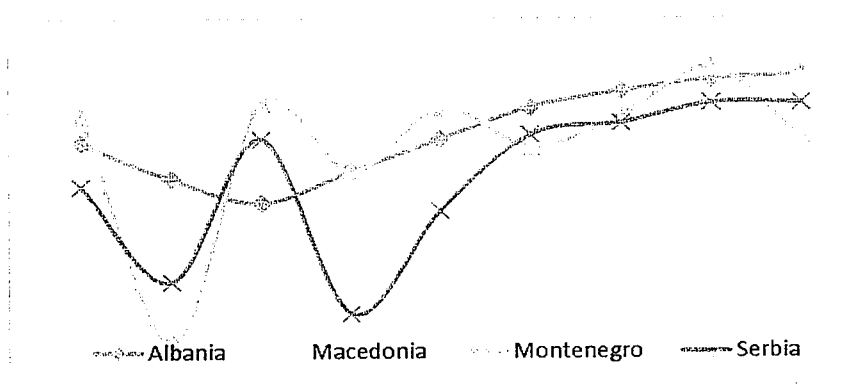
1. The obligation to harmonisation with EU rules

The need to adopt the EU rules in the national legal framework is twofold. First, there is a general obligation for the country to harmonize its legislation with the EU's *acquis communautaire*. The rules relating to the budget deficit and to public debt are part of the treaties and protocols that are primary EU legislation, which makes harmonisation inevitable. Second, public finance is one of the criteria for the accession to the EMU (protocol no. 13). Since no opt-out clauses may be granted to the new members of the EU, the process of preparation for the adoption of the euro as a national currency should start even in the pre-accession period (ECB, 2000).

The following chart shows the trends in public finance in the initial period of the establishment of fiscal rules (Fiscal Compact in 2011) through the years of implementation up to today, and with forecasting for the next two years, according to the MTO, until 2019.

The trends in chart 1 show that all four candidate countries faced decreases in their GDP in 2012, as an additional negative pressure in times of the acceptance of the strict fiscal rules. Afterwards, the lines mark an increasing trend in 2014–2016. In that period, the single market economy was healing, which obviously had a positive impact on the Balkan's economies. This process is still going on with a positive trend, and makes an additional pro argument in the country's progress reports. It certainly is not an easy process to cope with the rigorous EU rules, while the rigour of these rules is being avoided by the members.

Chart 1: Real GDP growth (per cent of change)



Source: European Commission, Economic Reform Programmes of Albania, FYR Macedonia, Montenegro, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, 2015 and 2017.

2. Fiscal legislation

a) Albania

Albania introduced the fiscal rule regarding the limitation of public debt in the Budget System Management Law no. 9936/2008. In the first years of operation, the law strictly insisted on the restriction of total public debt, whereas guarantees are set not to exceed 60 per cent of the GDP (Article 58). As long as there was a programme between Albania and the IMF (2009), the macroeconomic activities tended to be quite prudent (World Bank, 2015). When the programme expired, a significant portion of disciplining pressures on Albanian fiscal policy fell out of action. Influenced by the consequences of the 2008 financial crises and domestic political pressures, the GDP dropped to a substantially lower level than projected, while the deficit and the debt ratio shot up (Jonas, 2010). At the end of 2012, the legally binding ceiling on the debt ratio of 60 per cent was removed by a simple majority vote in the Parliament, without replacing it with any other fiscal or debt anchor. This legal “damage” destabilised public finance, turning Albania backwards (Klepšvik et al., 2014).

In order to ensure fiscal discipline and to improve the fiscal framework, the Albanian Parliament amended the Organic Budget Law in 2016 and readopted the fiscal rule (Durmishi et al., 2016). This time, the difference lay in the secure political support by the majority in Parliament as a solid base for all future Albanian governments (Ministry of Finance of Albania, 2017). In essence, the rule is to reduce towards and to keep the public debt level below 45 per cent of the GDP. Evidently, this is 15 per cent less than the EU fiscal consolidation rule, aiming to build more buffers for slowdown periods. Another important provision is the inclusion of a contin-

gency fund of at least 0.7 per cent of the total budget expenditures in the annual budget. Finally, the amendments to the Organic Budget Law require the Ministry of Finance to be more responsible and transparent by giving reports to a wider number of official state institutions. Besides these strict and rigorous limitations, some shortcomings are present in means that the legislator did not set a time deadline for these goals, and did not introduce an independent monitoring body to control the compliance with the amendments. As a substitute, one fiscal unit at the Ministry of Finance became fully operational for monitoring and reporting on fiscal risks. However, this body cannot guarantee to be independent, and therefore the legal changes just partially follow EU fiscal requirements.

b) Macedonia

Preparations for the introduction of the fiscal rule, originally planned for January 2017, are on hold. The reason lies in the political crisis and the absence of the two thirds parliamentary majority required for amending the Constitution. Fiscal rules were prepared to be introduced into the Macedonian Constitution.

The rules (on the waiting list) limit the general government fiscal deficit to 3 per cent and the public debt level to 60 per cent of the GDP, exactly as prescribed by the EU. The government may go beyond these limits only in exceptional situations, such as natural disasters and external shocks that are threat to national security or human health and cause a significant decline in the real GDP. Parliament will be in charge to confirm such situations, with a majority of two thirds, which indicates a broad political support to the government (Zafiroski, 2014). The legal framework includes an independent monitoring and oversight body, as well as other enforcement mechanisms (Hristovska et al., 2017). Even though it is expected that the relevant legislation will be introduced in the near future, the Macedonian government has not yet defined the measures to execute the fiscal consolidation plans.

Meanwhile, the country is proceeding up to the latest EU Report recommendations, the current state in public debt and budget deficit being satisfactory (European Commission, 2016). In practice, public debt is lower than the restrictive EU fiscal rules demand. More exactly, public debt amounted to 35–40 per cent of the GDP through the past five years. As a result, Macedonia with no fiscal limitations in its legislation has achieved better results than the average of the EU 28 states.

c) Montenegro

The analysis of the legislation shows that Montenegro does not have a *lex specialis* for public debt regulation, but state borrowing provisions are found in the Law on Budget and Fiscal Responsibility (Official Gazette of Montenegro, no. 56/2014). A fiscal responsibility legislation limiting the cash deficit and public debt of the government was adopted in 2014 in line with the Maastricht limits. Article 20 paragraph 1 of the Law on Budget and Fiscal Responsibility sets out two major rules for the fiscal consolidation. First, the level of the budget cash deficit of the government must not exceed the level of 3 per cent of the GDP at market prices. If the deficit deviates from that limit, a formal procedure requires the government to outline, within 60 days of the moment of the deviation, the measures designed to bring the deficit back to the prescribed level. Second, the level of the public debt must not exceed the level of 60 per cent of the GDP at market prices. If the debt reaches 60 per cent of the

GDP, the government has to propose amendments to the State Budget Law in order to bring the debt to the given level. If the debt exceeds 60 per cent of the GDP, the government has to propose to the Parliament a reduction of the multi-year expenditures, a reduction of municipal expenditure, as well as supplementary measures to ensure a reduction of state debt. If, however, the debt exceeds the 60 per cent threshold due to capital projects, where the borrowing was decided by Parliament, the government has to propose a debt reduction programme for a period not exceeding five years. During the fiscal year, if there is a lower outturn of the revenues, the Montenegrin government is obliged to define the fiscal policy measures to ensure recovery of the stated budget cash deficit.

Taken from recent practice, statutory provisions were violated in 2015 and 2016 by disrespecting the fiscal limitations. The government, as stated in the law, was obliged to take actions, but the plan for debt reduction was postponed until after the elections in October 2016 (European Commission, 2016). As a result, the government did not manage to be fully consistent with the legislative and strategic framework on the management of public debt. The conclusion is that even though fiscal consolidation rules do exist, political pressure has a negative impact and slows down the implementation of the statutory rules (Calovic Markovic et al., 2017).

d) Serbia

As a result of fiscal turbulences, the government of Serbia adopted a package of measures to stabilize public finances and economic recovery (Djurovic-Todorovic et al., 2015). In October 2010, provisions on fiscal responsibility were introduced into the Budget System Law. The most characteristic difference from the other analysed countries lies in the numerical quotations, with fiscal rules limiting the public-debt-to-GDP ratio to 45 per cent. Additionally, another specific is the establishment of a Fiscal Council, aimed to scrutinize the government's fiscal performance (Kalas et al., 2016). In short, the fiscal rules are:

- Budget Balance Rule: The maximum ratio between the fiscal deficit and the GDP in year t is calculated as $d(t) = d(t-1) - 0.3 [d(t-1) - d^*] - 0.4 [g(t) - g^*]$ where d^* is the medium-term deficit which is set a 1 per cent of the GDP, g is the real GDP growth rate, and g^* is the medium-term GDP growth (set at 4 per cent). Thus, the rule corrects past deficit deviations and allows a partial operation of automatic fiscal stabilizers. Over the medium-term, the targeted annual deficit is 1 per cent of the GDP.
- Debt Rule: the general government debt, excluding the liabilities arising from the restitution, must not exceed 45 per cent of the GDP.
- The Fiscal Council is an independent legal entity, accountable to Parliament, responsible for the assessment of the credibility of the fiscal policy in terms of compliance with established fiscal rules.

Under exceptional circumstances and only for a limited period of time, the government may deviate from the fiscal principles and rules specified by law in cases such as natural disasters and external shocks, for the national safety, or in case of a drop in the economic activities.

Until now, that law has been amended nine times. This is a vivid example of the time consistency problem, most of the changes including wage and pension increases. However, the key rules on debt and deficit were not amended, but were avoided re-

peatedly each year. The problem seems to be the inefficiency of the Parliament, if its powers are set just by one legal act. Constitutional changes may be more effective, as suggested by the academia in Serbia.

IV. ASSESSMENT OF THE FULFILMENT OF THE MAASTRICHT LIMITATIONS

1. Methodology

Since the fulfilment of the Maastricht limitations is recognized as an important dimension for the accession to the EU as well as for a good public finance management, the next step is the empirical mapping by specific indicators. This methodology is employed to address the central question whether the four selected states are sufficiently following the EU fiscal rules. We build the following four indicators stemming from the Fiscal Compact requirements: (1) budget balance rule (35 per cent impact), (2) debt rule (35 per cent impact), (3) independent fiscal body (20 per cent impact), and (4) well defined escape clauses (10 per cent impact).

All these indicators have been extensively elaborated in the previous sections of this paper. Therefore, here we define exact percentage points. The composition of the newly designed values of the indicators is strictly appropriate for countries that embarked on an EU integration in the last decade. Thus, our method is more applicable to the region of South Eastern Europe than to EU member states. Also, the method is linked with a special emphasis on the former group of developing and transition regions and countries, under the umbrella of the term 'consolidating democracies'. Additionally, our method reflects the policy actions and policy implications of fiscal consolidation. Due to the prescribed percentage points, it was designed and discussed with numerous experts (faculty colleagues). For example, the first two indicators carry a significantly greater weight, i. e. receive more percentage points in the total of points because the budget balance rule and the debt rule play a much more important role in the process of disciplining the states to stick to and follow the EU fiscal rules. On the other hand, the other two indicators are awarded a relative weight of 20 per cent and 10 per cent, due to their lower importance in the process. However, the states we examine are still not EU member states, but strongly committed to the idea of keeping a good fiscal discipline. Consequently, all the analysed countries are more willing to apply the first two fiscal compact requirements (Macedonia is going to adopt them in the near future), although they pose limitations on their national policies, but the final result will be a drastically improved and fiscal stability will be sounder. In the case of the other two indicators, the legal analysis shows that the states are not ready to cope with the EU fiscal standards yet. Hopefully, they will foster some additional arrangements in fulfilling these criteria in the near future.

Table 1. Assessment of indicators for fulfilment of Maastricht limitations

	Budget balance rule (35%)	Debt rule (35%)	Independent body (20%)	Well specified escape clauses (10%)	Overall score (max 100%)
Albania	0%	35%	0%	0%	35%
Macedonia	0%	0%	0%	0%	0%
Montenegro	35%	35%	0%	10%	80%
Serbia	35%	35%	20%	10%	100%

Source: Authors' assessment based on own calculations vis-à-vis legal framework analyses.

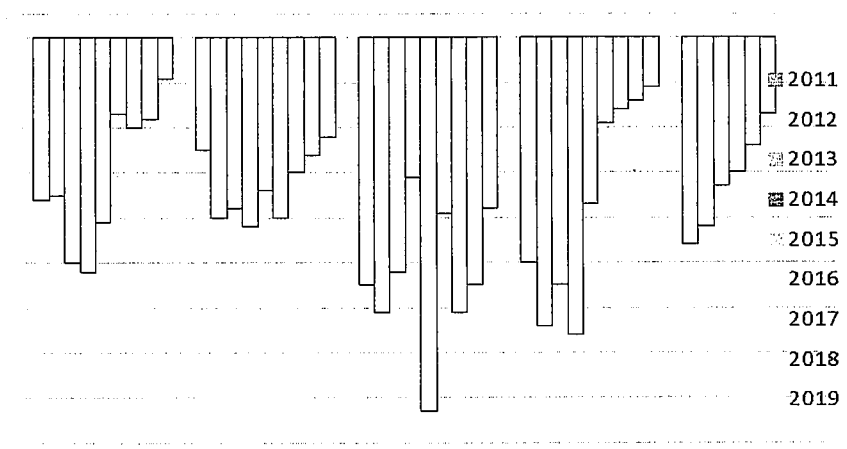
2. Results

The results are clear and reflect the legislative framework in the four selected countries. Serbia, as a winner and holder of 100 per cent of the total points, leads in the process of fulfilling the requirements. Montenegro, although having insisted on fostering the process of coping with the EU Fiscal Compact, dropped the rule for the establishment of an independent fiscal body. Albania gained just 35 of 100 per cent because the government did not manage to persuade the parliamentary majority to adopt the total of EU fiscal rules. In the case of Macedonia, according to the exact legislative acts, there is no harmony with the EU fiscal rules (*de lege*), but in the near future it is expected that the Macedonian Parliament will adopt and implement all four fiscal requirements, as they are prepared in a draft version for constitutional amendments.

3. Public finance vis-à-vis practical figures

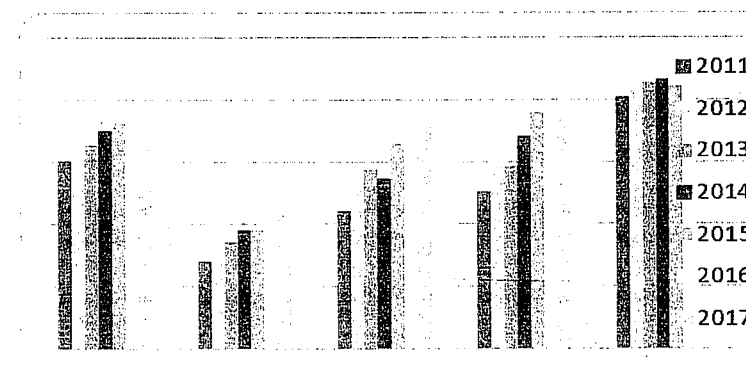
According Eurostat, Macedonia has the lowest budget deficit and general government debt. This is in huge discrepancy with the current legislative solutions, in means that Macedonia has not – yet – accepted the relevant constitutional amendments due to changes in the majority in Parliament and in the government. However, in practice the figures show that public finance in Macedonia is in a significantly better situation than in the other three analysed countries. Additionally, it has to be underlined that the state of public finance, i. e. the budget deficit and public debt, is in a much better shape in Macedonia than in the EU 28 average. The reason for this interesting phenomenon is the fact that in 2014 the Macedonian government paid out a huge proportion of the public debt and thus improved the image and starting position for new public borrowing that occurred recently. Serbia and Albania share similar trends in public finance, but Montenegro is far behind the average (see Chart 2 and 3).

Chart 2: General government balance (per cent of GDP)



Source: European Commission, Economic Reform Programmes of Albania, FYR Macedonia, Montenegro, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, 2015 and 2017; Eurostat.

Chart 3: General government debt (per cent of GDP)



Source: European Commission, Economic Reform Programmes of Albania, FYR Macedonia, Montenegro, Serbia, Turkey, Bosnia and Herzegovina and Kosovo, 2015 and 2017; Eurostat.

4. Legislative analyses versus practical figures: "black and white contrast" results

In the following tables 2, 3 and 4, we evaluate the four states on the basis of cross section analyses. In fact, this means assessing the real state of public finance in the four selected countries, taken as an amalgamation of the legislative assessment given in table 1 and the practical assessment presented in the charts 2 and 3.

The results demonstrate that the legislative framework may easily go forward or be left behind from the practical figures. Actually, the results in the case of Macedonia with 0 points in the field of the fulfilment of EU fiscal compact rules, are in stark contrast with the current figures of the public debt and budget deficit. On the other hand, but very consistent with the thesis of the "black and white contrast results", we have the case of Montenegro, where the legislative framework is in quite good order according to the EU fiscal compact, but where the true situation of public finances is discouraging.

Table 2: budget balance rule (BBR) grade

BD < bbr	5
BD > bbr for 0.5%	4
BD > bbr for 1%	3
BD > bbr for 2%	2
BD > bbr for 2.5%	1
No rule in legislation	0

*budget deficit – BD

Table 3: debt rule (DR) grade

GD < dr	5
GD > dr for 1–10%	4
GD > dr for 10–15%	3
GD > dr for 15–20%	2
GD > dr for 20–25%	1
No rule in legislation	0

*government deficit – GD

Table 4:	Average budget deficit	BBR grade	Average general government deficit	DB grade	Overall fiscal consolidation country score (taken as average score)
Albania	-3,08889	0	66,68889	1	0.5
Macedonia	-3,3	4	38,14444	5	4.5
Montenegro	-5,27778	2	63,01111	4	3
Serbia	-3,68889	1	66,72222	1	1

Source: Authors' assessment based on own calculations vis-à-vis legal framework analyses and practical figures.

V. CONCLUSION

Given the previous explanations of the legislative and practical conditions of the four selected Balkan countries, and having in mind the various assessments made as a contribution to back up the main thesis, we conclude the following:

- First, the thesis at the beginning of the paper is that while more developed and economically powerful EU member states still complain about the rigorous EU fiscal burdens, the candidate states with their developing economies and unsound public policies are supposed to take a larger footstep and go ahead with the EU requirements. The analyses confirm that the selected Balkan candidate countries fully cope with the EU requirements, irrespective of their real conditions and national priorities in public finances.
- Second, the question about the braveness of a candidate country in means of "to be or not to be" politically strong enough to cope with the Fiscal Compact, or to copy the behaviour of some of the EU member states in avoiding and neglecting the rules is: according to the cross section evaluation given in section IV.4., there are various pathways, even within this small sample of just four countries. The Macedonian case study confirms that it is not a case of braveness, but a matter of a political problem that slows down the process of the implementation of EU fiscal rules. Surprisingly, Macedonia's real figures are closer to the EU 28 average. The case of Montenegro ring-roads the whole thesis, but gives the same answer.
- Third, it is clear that Balkan candidate countries are willing, and much more than that, to cope with the EU fiscal compact rules, given the promising economic, political, and other advantages that EU membership holds for the member states.

In a longer perspective, it is expected that Montenegro will overcome the current public debt crisis, that Serbia will succeed to cut and stop the avoidance of the excellent legislative fiscal solutions, that Albania will implement the necessary rules that put the country behind the average of the Balkan countries' assessment, and that Macedonia will find the political strength to adopt the drafted fiscal consolidation framework. In sum, being academically honest, if it were not for the EU fiscal rules and the wish for EU membership, these four countries would have been awarded with much more respect for their results in public finance, due to the fact that they are consolidating economies.

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ZUSAMMENFASSUNG

Dieser Beitrag untersucht die Harmonisierung der Gesetzgebung der vier Beitrittskandidaten auf dem Westbalkan (Albanien, Makedonien, Montenegro, Serbien) mit dem Europäischen Fiskalpakt. Dabei konzentriert er sich auf die Auswertung der fiskalischen und monetären Gesetzgebung der Kandidatenstaaten und die Erfüllung der Anforderungen der EU durch Querschnittsanalysen ausgewählter Indikatoren. Ausgangsthese ist hierbei, dass die strengen fiskalischen Regeln der EU immer wieder umgangen werden, wobei dies jedoch häufiger durch die vorhandenen Mitglieder als durch die Kandidatenstaaten geschieht. Darauf folgt eine Analyse des politischen Mutes und der finanziellen Kapazitäten der Balkanstaaten, den Fiskalpakt umzusetzen, im Vergleich zu den 28 EU-Mitgliedstaaten. Die Antworten und Schlussfolgerungen beruhen auf der Einbeziehung verschiedener rechtlicher und wirtschaftlicher Aspekte.

PROF. DR. CSABA LENTNER^{*}, BUDAPEST

Convergence in Central Banking Regulation – What EU Candidates in South East Europe can Learn from the Hungarian Experience**

This paper describes and analyses the regulatory dynamics of the role of the central bank in Hungary through the changes in the legislative framework, with special regard to the central bank's monetary policies and the government's economic policies. The processes before the economic transition, especially the 1987 set-up of the two-tier banking system, laid the foundation for a successful and effective central bank. This paper highlights major changes in key pieces of legislation between 1987 and 2013. As a conclusion, the Magyar Nemzeti Bank (National Bank of Hungary) has been successfully integrated into the European System of Central Banks, and its history may serve as a blueprint for countries still in the accession period.

CONTENT

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| II. Central banks in the EU candidate countries | VI. Epilogue: Key regulatory elements in the 2011 and 2013 Central Bank Acts |
| III. Preliminaries and the outset of central banking regulation in Hungary (1947–1987) | <i>Zusammenfassung</i> |
| IV. The regulatory practice of the transition to a market economy – the 1991 Central Bank Act | |

I. INTRODUCTION

Within the Hungarian banking system, converted into a two-tier one in 1987, this study describes through the perspective of legislative changes the central bank's regulatory dynamics and convergence to European standards, with special focus on the interrelation between the economic policies adopted by the central bank and by the

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^{**} Dieser Beitrag wurde im Rahmen des Prioritätsprogramms Europäische Union Nr. KÖFOP-2.1.2-VEKOP-15-2016-00001 „Entwicklung des öffentlichen Dienstes hin zur guten Regierungsführung“ im „Professor Lajos Lőrincz Programm“ im Auftrag der Nationalen Universität für den Öffentlichen Dienst verfasst.