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BALANCED BUDGET PROVISIONS IN THE CONSTITUTIONS OF SELECTED JURISDICTIONS

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BALANCED BUDGET PROVISIONS IN THE CONSTITUTIONS OF SELECTED JURISDICTIONS

I. Jurisdictions with a Constitutional Balanced Budget Rule

Bénin: Article 110, paragraph 1, of Law No. 90-32 of 11 December 1990, the Constitution of the Republic of Bénin states, "[t]he National Assembly shall vote a balanced budget. If the National Assembly has not come to a decision by December 31, the provisions of the appropriations bill may be enforced by edict."[1]

Côte d'Ivoire: The Constitution of the Republic of Côte D'Ivoire (2000) states as follows in article 80:

> The National Assembly is seized [*saisir*] with the bill of the Law of Finance from the opening of the October session. The bill of the Law of Finance must provide the receipts necessary for the integral covering of expenses. The National Assembly votes the balanced budget. If the National Assembly has not decided within a time period of seventy days, the bill of law can be put into force by ordinance. The President of the Republic seizes, for [the] ratification, the National Assembly convoked in extraordinary session, within a time limit of fifteen days. If the National Assembly has not voted the budget by the end of this extraordinary session, the budget is definitively established by ordinance. If the bill of the Law of Finance has not been deposited in a timely way to be promulgated before the beginning of the exercise, the President of the Republic demands [of] the National Assembly by urgency, the authorization to repeat the budget of the previous year by provisional twelfths.[2]

Curaçao: Article 85 of the Constitution of Curaçao calls for a balanced budget.[3] Article 85(2) seems to indicate that estimated expenditures must be fully covered.

El Salvador: Article 226 of the Constitution of the Republic of El Salvador, 1983 (as amended to 2003) states, "[t]he Executive Organ, through the appropriate Branch, shall have the direction

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[1] The Constitution of the Republic of Bénin, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD ONLINE, http://www.oceanalaw.com (online subscription database).

[2] The Constitution of the Republic of Côte D'Ivoire (2000), *id*.

[3] "Of particular significance is the inclusion of the principle of balanced budget in the constitution (Article 85)." *Memorie van Toelichting behorende bij de Staatsregeling van Curaçao* [Explanatory Notes on the Constitution of Curaçao], at 3 (June 18, 2010), http://www.gobiernu.an/extranet/curacao.nsf/resources/F6257FF6CD720B370425785B004FF0CE/$FILE/MinAG%20-%20Konstitushon%20Memorie%20van%20T oelichting.pdf (as translated by Google); Staatsregeling van Curaçao [the Constitution of Curaçao], The Governor of Curaçao website, http://www.gouverneurvancuracao.org/pdf/Staatsregeling.pdf (last visited Nov. 2, 2011).

of the public finances, and shall be especially bound to maintain a balanced Budget, insofar as this is compatible with the fulfillment of the purposes of the State."[4]

Gabon: The Constitution of the Gabonese Republic, 1991 (Law No. 3/91 of Mar. 26, 1991) (as amended to 1997), states in article 48, paragraphs 1 and 2, as follows:

> All resources and obligations of the State must, for each financial exercise, be evaluated and inscribed into the annual Bill of the Law of Finance filed by the Government before the National Assembly thirty (30) days at most after the opening of the second ordinary session.
>
> If, at the end of the budgetary session, the Parliament adjourns without having passed a balanced budget, the Government shall be authorized to repromulgate by ordinance the preceding budget. This ordinance may in spite of this provide for, in case of necessity, any reduction of expenditures or increase in revenues. Upon the demand of the Prime Minister, Parliament is convoked in two weeks in extraordinary session for a new deliberation. If Parliament has not passed the balanced budget at the end of this extraordinary session, the budget shall be definitively established by ordinance taken in the Council of Ministers and signed by the President of the Republic.[5]

Germany: The German government adopted a debt correction program in 2009 at the height of the global financial crisis. The law requires that, starting in January 2016, the government must not run an annual budget deficit of more than 0.35% of Gross Domestic Product, compared with the current European Union limit of 3%. The limit can only be breached in exceptional circumstances, such as natural disasters or a major economic crisis.[6]

Fiscal year 2011 is the first fiscal year in which Germany's new budget rule is being implemented.[7] "Known as the 'debt brake', the new arrangement **replaces** the **→'golden rule'** applicable until 2010 and contained in the relevant section of Germany's constitution, namely the

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[4] Constitution of the Republic of El Salvador, 1983 (as amended to 2003), CONSTITUTIONS OF THE COUNTRIES OF THE WORLD ONLINE, *supra* note 1.

[5] The Constitution of the Gabonese Republic, 1991 (Law No. 3/91 of Mar. 26, 1991) (as amended to 1997), *id*.

[6] *Balanced Budget 'Golden Rule' Rare in Europe*, EUBUSINESS (Aug. 30, 2011), http://www.eubusiness.com/news-eu/spain-finance-debt.bx4.

[7] The discrepancy between the two dates of 2011 and 2016 is explained as follows: "In the period from 1 January 2011 to 31 December 2015, the Federation may deviate from the requirements of the second sentence of paragraph (2) of Article 115. The reduction of the existing deficit should begin with the 2011 budget. The annual budgets are to be planned in such a way that the 2016 budget satisfies the requirement of the second sentence of paragraph (2) of Article 115; details shall be regulated by federal law." Federal Ministry of Finance, *Compendium on the Federation's Budget Rule as Set Out in Article 115 of the Basic Law*, http://www.bundesfinanzministerium.de/nn_4544/DE/Wirtschaft__und__Verwaltung/Finanz__und__Wirtschafts politik/Finanzpolitik/Weitere__Informationen__Links/1109051a1001,templateId=raw,property=publicationFile.pdf (last visited Nov. 1, 2011).

old version of Article 115 of the Basic Law … ." [8] The key provisions on the balanced budget are found in articles 109 and 115 of the Basic Law. Article 109 states, in part:

> (3) The budgets of the Federation and the *Länder* shall in principle be balanced without revenues from borrowing. The Federation and *Länder* may introduce rules intended to take into account, symmetrically in economic good and bad times, the effects of cyclical developments that deviate from normal conditions, as well as exceptions for natural disasters or unusual emergency situations which are outside of the control of government and have a major impact on the financial position of the government. For such exceptions, a corresponding amortisation plan is to be adopted. Details for the budget of the Federation shall be governed by Article 115 subject to the proviso that the first sentence above shall be deemed to be satisfied if revenues from borrowing do not exceed 0.35 percent of nominal GDP. The *Länder* themselves shall regulate details for the budgets within the framework of their constitutional powers subject to the proviso that the first sentence above shall only be deemed to be satisfied if no revenues from borrowing are admitted. [9]

Article 115 states, in part:

> (1) The borrowing of funds and the assumption of sureties, guarantees, or other warranties which may lead to expenditures in future fiscal years shall require authorisation by a federal law specifying or permitting computation of the amounts involved.
> (2) Revenues and expenditures shall in principle be balanced without revenues from borrowing. This principle shall be deemed to be satisfied if revenues from borrowing do not exceed 0.35 percent of nominal GDP. In addition, when cyclical developments deviate from normal conditions, effects on the budget in periods of upswing and downswing must be taken into account symmetrically. Deviations of actual net borrowing from the upper borrowing limit specified under the first to third sentences above are to be recorded on a control account; debits exceeding the threshold of 1.5 percent of nominal GDP are to be reduced in accordance with the economic cycle. The regulation of details … shall be regulated by a federal law. In the event of natural disasters or unusual emergency situations which are outside of the control of government and have a major impact on the financial position of the government, these upper borrowing limits may be exceeded on the basis of a decision by a majority of the Bundestag's Members. The decision has to be combined with an amortisation plan. … .[10]

Guinea: The Constitution of the Republic of Guinea, 2010, states in article 75, paragraph 1, "[t]he National Assembly shall adopt a balanced budget. The Finance Bill shall be tabled before it on October 15 at the latest."[11]

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[8] *Id.*; *see also* Grundgesetz für die Bundesrepublik Deutschland [Basic Law for the Federal Republic of Germany] (May 23, 1949, *as amended*), http://www.gesetze-im-internet.de/bundesrecht/ gg/gesamt.pdf.

[9] Federal Ministry of Finance, *supra* note 7.

[10] *Id*.

[11] The Constitution of the Republic of Guinea, 2010 (promulgated on May 7, 2010), CONSTITUTIONS OF THE COUNTRIES OF THE WORLD ONLINE, *supra* note 1.

Hungary: Article N(1) of the Fundamental Law of Hungary states: "Hungary shall enforce the principle of balanced, transparent and sustainable budget management."[12]

Niger: The Constitution of the Seventh Republic of Niger (adopted by referendum on Oct. 31, 2010), states in article 114, paragraph 2, that the National Assembly is to vote a balanced budget.[13]

Poland: Since 1997, the Polish Constitution has stated that the budget must be balanced and that total accumulated debt must not exceed 60% of GDP, in line with the EU limit.[14] Under article 216(5),

> [i]]t shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute.[15]

Saint Martin: Article 100(2) of the Constitution of the Country of Sint Maarten (St. Martin) states as follows:

> The annual budget and the long-term budget shall be balanced. The provisions in the first sentence may be departed from if this is necessary in connection with the restoration of the damage caused by extraordinary events, including natural disaster, in accordance with rules issued under or by virtue of Kingdom law or national ordinance.[16]

Spain: On September 7, 2011, the Spanish Senate approved an amendment to article 135 of the Spanish Constitution[17] introducing a limit on the structural deficit of the state at the national, regional, and municipal levels. The amendment will come into force starting in 2020. The amendment states that public debt cannot exceed 60% of GDP, but exceptions may be made for natural catastrophes, economic recession, or other emergencies. The government will also be

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[12] The Fundamental Law of Hungary (Apr. 25, 2011), website of the Hungarian Government, http://www.kormany.hu/download/2/ab/30000/Alap_angol.pdf.

[13] Niger: Constitution de la VII[e] République (adopted by referendum on Oct. 31, 2010, promulgated on Nov. 25, 2010), JOURNAL OFFICIEL DE LA RÉPUBLIQUE DU NIGER 246–61 (Nov. 29, 2010), *available at* http://mjp.univ-perp.fr/constit/ne2010.htm.

[14] *Balanced Budget 'Golden Rule' Rare in Europe*, *supra* note 6.

[15] The Constitution of the Republic of Poland (Apr. 2, 1997), *in* DZIENNIK USTAW, No. 78, item 483, Sejm [Parliament] of the Republic of Poland website, http://www.sejm.gov.pl/ prawo/konst/angielski/kon1.htm.

[16] Constitution of the Country of Sint Maarten (July 21, 2010), BUROFOCUS, http://burofocus.com/pdfs/St_Maarten_Constitution_Eng.pdf; Staatsregeling van Sint Maarten (21 juli 2010), BUROFOCUS, http://burofocus.com/pdfs/Final_of_Constitution_Approved_on_July_21st_2010.pdf.

[17] For the published text of the amendment, *see* 15210: Reforma del artículo 135 de la Constitución Española, de 27 de septiembre de 2011, BOLETÍN OFICIAL DEL ESTADO, No. 233 (Sept. 27, 2011), http://www.boe.es/boe/dias/2011/09/27/ pdfs/BOE-A-2011-15210.pdf.

required to adhere to EU annual deficit limits of 3% of GDP.[18] The amendment adopted by the Spanish legislators is called the "golden rule" (*la regla de oro*) and is reportedly based on Germany's constitutional "debt brake" rule.[19]

Switzerland: Debt levels have been regulated for the past ten years in Switzerland, forcing the government to match revenues to spending. Temporary exceptions are allowed in times of crisis. Article 126 of the Federal Constitution of the Swiss Confederation states, "[t]he Confederation shall maintain its income and expenditure in balance over time."[20]

Ukraine: The Constitution of Ukraine, 1996 (as reinstated in 2010), states in article 95, paragraph 3, "[t]he State shall strive for balanced budget of Ukraine."[21]

II. European Jurisdictions Proposing a Constitutional Balanced Budget Rule

France: French lawmakers adopted a constitutional budget limit on July 13, 2011; it must go to a vote in the full Parliament, where it needs a 60% majority to pass.[22] President Nicolas Sarkozy will decide later this year whether to put the reform before both houses of Parliament.[23]

Italy: On September 8, 2011, the Italian Cabinet approved a proposed constitutional amendment calling for a balanced budget. The measure must be approved by a two-thirds majority in each house of Parliament.[24] The amendment would affect articles 53, 81, and 119 of the Italian Constitution.[25]

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[18] Mamta Badkar, *Here Are the Details from Spain's New Balanced Budget Amendment*, BUSINESS INSIDER (Aug. 26, 2011), http://articles.businessinsider.com/2011-08-26/europe/30065232_1_budget-amendment-constitution-amendment-states#ixzz1b4rERjoW.

[19] *Spain Backs a Constitutional Amendment to Limit the Debt*, GLOBALOPINION (Sept. 4, 2011), http://globalopinion.pl/2011/09/spain-backs-a-constitutional-amendment-to-limit-the-debt/.

[20] Federal Constitution of the Swiss Confederation (Apr. 18, 1999) (Status as of Jan. 1, 2011), The Federal Authorities of the Swiss Confederation website, http://www.admin.ch/ch/e/rs/1/101.en.pdf (unofficial translation).

[21] The Constitution of Ukraine, 1996 (adopted June 28, 1996, as reinstated in 2010 by virtue of the ruling of the Ukrainian Constitutional Court, Sept. 30, 2010), CONSTITUTIONS OF THE COUNTRIES OF THE WORLD ONLINE, *supra* note 1.

[22] The text of the pending French legislation is available at Projet de loi constitutionnelle relatif à l'équilibre des finances publiques, Assemblée Nationale (July 13, 2011), http://www.assemblee-nationale.fr/13/ta/ta0722.asp; *see also* Budget: équilibre des finances publiques [Budget: Balancing Public Finances], ASSEMBLÉE NATIONALE, http://www.assemblee-nationale.fr/13/dossiers/equilibre_finances_publiques.asp (last visited Nov. 1, 2011).

[23] *Balanced Budget 'Golden Rule' Rare in Europe*, *supra* note 6; *see also* Nicole Atwill, *France: Constitutional Reform to Balance the Budget*, GLOBAL LEGAL MONITOR (Mar. 22, 2011), http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402581_text.

[24] *Govt Passes 'Golden Rule' Balanced Budget Amendment*, FRANCE 24 (Sept. 8, 2011), http://www.france24.com/en/20110908-italy-berlusconi-golden-rule-amendment-balanced-budget-debt-crisis-constitution.

[25] The text of the proposal, DISEGNO DI LEGGE COSTITUZIONALE: Introduzione del principio del pareggio di bilancio nella Carta costituzionale [CONSTITUTIONAL BILL: Introduction of the principle of a

III. Stance of Other European Advanced Economies on 'Golden Rules'[26]

Belgium: No change is planned.

Britain: There are no formal provisions on the budget deficit, but former Prime Minister and Finance Minister Gordon Brown set the aim of balancing finances over a ten-year period during 1997–2007. His self-imposed "golden rule" was abandoned during the global financial crisis when public finances collapsed.

Greece: There is no provision in the Constitution regarding budget limits. The Finance Ministry has noted that if the EU were to adopt such a provision, it would automatically apply to Greece.

Ireland: No "golden rule" is contained in the Constitution.

Netherlands: According to the Ministry of Finance, it could adopt an administrative ruling on the budget, but the country has no intention of altering the Constitution.

Portugal: The Portuguese government has talked of opening a debate on limiting the budget deficit, but the proposal seems to have made little progress. The President has expressed doubts about the reform and no parliamentary debate on the topic has been scheduled.

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balanced budget in the Constitution], is available on the Italian Government website, http://www.governo.it/Governo/Provvedimenti/dettaglio.asp?d=64832 (last visited Nov. 2, 2011).

[26] This section is based entirely, but with slight changes in wording, on the information in *Balanced Budget 'Golden Rule' Rare in Europe*, *supra* note 6.