

OPAL Country Reports

The Czech Parliament and EU Affairs

Martin Hrabálek, Masaryk University and Alexander Strelkov, PhD Student, Maastricht University

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OPAL Country Report on the Czech Parliament¹

Martin Hrabálek, Masaryk University and Alexander Strelkov, PhD student, Maastricht University

I. General Position of Parliament in the Constitutional Balance of the Member State: Constitutional and institutional factors

This section looks at the role of Parliament in the political system, to help us understand the relative power position of the legislature.

What is the type of government in the political system of your member state?

(i.e. parliamentary or semi-presidential)

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The Czech state is a parliamentary republic. From 2013 direct elections of the president are to be introduced. This doesn't affect the competences of the president, which stay mainly symbolic, but can arguably increase the legitimacy of the post. This argument might be underlined by the fact, that the post has been occupied by two very strong personalities since 1993 – Václav Havel and Václav Klaus, that both expanded the influence of the office beyond the institutional framework. An introduction of direct elections also required a constitutional amendment that has been adopted by the two chambers of the Czech republic in July 2012.

None of the political parties seem to have defined their candidates for the presidential post before the amendment was adopted. The measure to introduce direct presidential elections was much contested by the members of the expert community. The Senate's Commission for Constitution addressed several members of the academia and received 16 opinions of constitutional lawyers and political scientists, with 13 arguing against direct elections, arguing mainly that since the position of the president is weak, there is no need for direct elections.

Due to the fact that inter-party rivalry in the parliament is increasing, the introduction of direct presidential elections may be a conscious move to avoid a likley stalemate if the president still were to be elected by the parliament. Also, as first surveys showⁱ, it is very likely, that in the newly established two-round voting system, an independent candidate not attached to any of the already established parties might receive a broad public support.

Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.

According to the 1993 Constitution, the Czech Republic has a bicameral parliament, consisting of the Chamber of Deputies and the Senate. The latter was established only in 1996 due to disputes over the upper house powers and the debates over the necessity of creating a second chamber in the unitary state. Ultimately, a bicameral model was chosen as a continuation of the tradition of the First republic and the federal structure of the former Czechoslovakia.

The government (as a whole) is accountable only to the Chamber of Deputies. In general constitutional terms the Senate is weaker than the Chamber of Deputies, as the former has no powers on budgetary legislation and the formation of a cabinet. Additionally, the Chamber of Deputies can also over-rule the amendments or a veto of the Senate; the Chamber also approves the rules of procedure of the Chamber of Deputies. On the contrary, the Senate has an equal footing in adopting constitutional and electoral acts, it can put a veto on the ratification of international treaties. The Senate can't be dissolved, what guarantees a certain continuation of parliamentary traditions. In the field of EU policy the differences between the two houses are

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¹ This country report provides some basic data that has been collected in the context of the research for a chapter to be published in C.Hefftler, C. Neuhold, O. Rozenberg, J. Smith & W. Wessels (Eds.). (forthcoming in 2014). *The Palgrave Handbook of National Parliaments and the European Union*. London: Palgrave, Macmillan.

	not that prominent. Ultimately, when the work of the Chamber of Deputies' European Affairs Committee was paralysed in 2008-2009 due to prolonged selection of the committee chair, the Senate played a crucial role in EU issues. During that time there were occasions when the government negotiating mandate said nothing on the position of the Chamber (to which it is formally accountable) but referred to the opinion of the Senate. In case the Chamber in the future adopts a more active stance on EU affairs, it'd be somehow easier for the government to disregard the Senate's opinions. No formal reconciliation mechanism is envisaged if the opinion of both houses diverges.
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?
	Since the dissolution of the federal Czechoslovakia at the end of 1992 Czech Republic is a unitary state.
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	The 81 senators are elected in single-seat districts, according to a two-round majoritarian scheme. In principle, the system favours more independent politicians (in comparison to the Chamber of Deputies), who are less constrained by party discipline. The full electoral cycle in the Senate takes 6 years, with one-third of the senators re-elected every second year after they finish their 6-years mandate.
	The 200 members of the lower house are elected through a proportional electoral system in 13 multi-member constituencies. The elections take part every 4 years with seats distributed according to the d'Hondt's principle. The elections of the lower house allow preferential voting, what enables the candidates at the bottom of the party lists to be catapulted to the top by voters deliberately selecting them to stir up the party structures. If a candidate receives "preferential" votes in the amount of at least 5 % of the overall number of the valid votes for his party in the electoral district, then the mandate is preferentially allocated to him. In 2010 elections it has caused a so-called "ring revolution", when not an insignificant part of the candidates of the large parties (ODS and CSSD) made it from bottom to the top, ousting some long-term Chamber members at the top of the lists out of their seats.
	In 2000, there was an attempt of changing the principle of voting into the lower Chamber. The two major parties, ODS and CSSD tried to establish a system that would favour large parties over the minor ones. This attempt was stopped by the Constitutional Court, however.
1.5	What (f)actors can prevent the parliament agreeing on EU legislation and/or treaty reform? (e.g. a constitutional court, or public referenda on questions of EU integration)
	In terms of political practice, the change of party majority in the Senate after the 2010 general elections seems to have had a major impact on how EU issues are discussed in the Czech parliament. The dominance of the CSSD (social democrats) in the Senate has brought down the level of criticism towards the European Union expressed in the resolutions of the Senate. In formal terms, the Czech Constitutional court decides on conformity on international agreements (and EU primary law) with the Czech Constitution according to articles 10 and 39 of the Czech Constitution (Articles 10, 39 and 87). The parliament has to ratify international agreements / changes to the EU primary law, unless it decides that an issue has to be resolved through a referendum, in which case it ahs to approve a constitutional act authorizing it, The ratification of an international agreement requires an approval of 3/5 of all deputies and 3/5 of the senators present at the voting session in the upper house. Ultimately, referring a matter to a Czech Constitutional Court can be done even after a referendum. Referendum is not a tool that is used very often in Czech Republic. In fact, so far there has been

only one referendum regarding the European issues – the referendum on entrance into the Union in 2003. The Czech Republic doesn't have a general law on referendum, the one held in 2003 being based on an ad hoc law. Theoretically, the laws enacted under a referendum can still be reviewed by the Czech Constitutional Court.

2. General Position of Parliament in the Constitutional Balance of the Member State: **Political Factors** This section is about the basic political factors which might influence parliament's strength in relation to the government. What is the type of government after the most recent elections e.g. single party, minority, 2.1 coalition, oversized coalition government? Before May 2012 the Czech government was based on a coalition of center-right parties: Civic Democrats (ODS) as the runner-up of 2010 elections, TOP og and the Public affairs (VV). Yet, after the conflicts and corruption allegations (and ultimate dissolution) of the VV the government is supported by ODS, TOP 09 and several "independent" members of the former Public Affairs party, that formed a party of Liberal Democrats (LIDEM). EU topics have not played any significant part in the 2010 electoral campaign. When were the most recent general elections and what were the results? Could you please give a 2.2 short list of the parliamentary groups, their no. of seats in parliament and ideological position? In both houses the social-democrats obtained the largest amount of votes, yet this didn't translate into a majority of seats, as the rightwing parties were able to form a coalition. The 28-29 May 2010 elections can be considered somewhat of an "earthquake" as the Latest election in the combined support of CSSD and ODS fell below 50% two new parties LOWER HOUSE: entered the parliament while two old ones (the Greens and the Christian Democrats) failed to surmount the electoral threshold of 5% of the votes. Preference voting was widely used, starting the so-called "ring revolution" to push the party backbenchers to the frontline. As a result, 57% of the Czech MPs are newcomers. Ideological position (e.g. Communist, left liberal, socialist, liberal, right No. and percentage of seats in Name of the party liberal. conservative. christian parliament democrat, extreme right, ethnic minority or regionalist party) ODS is major right party since the early 1990s. The party is a proponent of a liberal market economy, arguing against what it calls a "European The party is divided super-state". between the hardcore Eurosceptics (politicians close to Vaclav Klaus or Civic Democratic party 53 seats (26,5%) the current MEP Jan Zahradil) and (ODS) those with a more pragmatic attitude (e.g. Topolánek, Vondra). current prime-minister is in principle closer to the hardcore Eurosceptic camp, although his rhetoric was much modified due to being in office. The party has never disputed the

			necessity of being within the EU, the key concern being the scope of integration. The paradox of the ODS is that its voters mainly share positive attitudes towards the European Union but the party has never been "punished" for this as the importance of the stance towards the EU is marginal to the voters. The ODS criticism of the EU is a core matter of their ideology. The party leadership accepted the Lisbon Treaty but the opposition within the party has twice addressed the Constitutional court to consider the compatibility of the Lisbon treaty with the Czech Constitution. During the May 2010 elections the ODS lost votes primarily to TOP og
			and VV. In fact, 53 seats in the Chamber of Deputies is the lowest result for ODS since 1992.
	Czech Social Democratic party (ČSSD)	56 seats (28%)	CSSD is a major left-wing party in Czech Republic since 1990s. The party has a positive attitude towards the EU. This was a conscious strategy to differentiate itself from the rhetoric of Vaclav Klaus/ODS and to position itself as a reformed left-wing party which can be a legitimate negotiation partner. As in the case of the ODS, the ideological position of the party elite towards the EU isn't corresponding to the views of the voters, most of whom are Eurosceptic. In contrast to the ODS, which has a number of semi-independent "cells", the CSSD is much more centralised. There are still some points of convergence between the EU agenda of the ODS and CSSD, for example preserving the rights of the small member-states and diminishing the CAP budget. The result of the 2010 election was the worst since 1996 for CSSD.
	"Tradition, Responsibility, Prosperity 09" (TOP 09)	41 seats (20,5%)	The party was founded in 2009 as a pro free-market split from the Christian Democratic Union – Czechoslovak People's Party (KDU-CSL) by the former Czech finance minister Miroslav Kalousek. TOP 09 is a second strongest right-wing party after the ODS (while the gain of 20%

			of votes in 2010 elections was a big surprise) and their strongest rival in the upcoming 2014 elections (although the preferences have largely diminished and as for June 2012 surveys ⁱⁱ , the party would not make even 10% of the votes). The economic programmes of both parties are similar but the TOP 09 are much more positive towards the EU, what can attract a large proportion of the ODS electorate. The party quickly acquired a grass-root dimension by striking an alliance with the "Mayors and Independents" movement.
	Public affairs (VV)	24 seats (12%)	The party was founded in 2002 yet until 2009 it operated only at the local level in Prague. It is a populist party with anti-corruption rhetoric. In the 2010 elections it "captured" a lot of the Green electorate and the undecided people, only to have its founder Vit Barta accused of corruption. The party campaigned a lot through new social media (registered sympathisers can vote on the party programme online) and recruited well-known non-party political figures, as its leader Radek John-popular journalist. The success of both TOP 09 and VV represented the growing disenchantment in the established parties. The party split in 2012 and large part of its members founded a new party of Liberal Democrats (LIDEM). It practically has no chance getting 5% support in 2014 elections.
	Communist Party of Bohemia and Moravia (KSČM)	26 seats (13%)	This is an "unreformed" communist party with a stable base of voters, mostly elderly people. KSCM slowly come to accept EU membership as a given fact but still has negative attitudes towards the EU. For example, in the 2003 accession referendum it recommended its supporters to vote against.
	Latest election in the UPPER HOUSE:	round – 22-23 October 2010 (t	place 15-16 October 2010; the second the number and percentage of seats in tumber and percentage of seats won in
	Name of the party	No. and percentage of seats in parliament (if applicable)	Ideological position (if not mentioned above)

	Czech Social Democratic Party (ČSSD)	41 seat (50,6%)	
	Civic Democratic Party (ODS)	25 seats (30,8%)	
	"Tradition, Responsibility, Prosperity 09" (TOP 09)	5 seats (6,2%)	
	Christian Democratic Union - Czechoslovak People's Party (KDU- ČSL)	6 seats (7,4%)	Traditional conservative Christian party. The party supports EU integration but its chances of being back in the Chamber of Deputies are unclear. The party can potentially cover the necessary electoral threshold of 5% in recent surveys ⁱⁱⁱ . Yet, the party has arguable lost its course after the defection of many politicians to the TOP 09.
	Communist Party of Bohemia and Moravia (KSČM)	2 seats (2,5%)	
	"Independent" Severočeši party	2 seats	Regionalist party; no particular position on the EU
2.3	How polarized was parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?		
	The ratification of the Lisbon Treaty did incite heavy debates., it was arguably at heart of the Czech EU policy. As a "guarantee" for the ratification of the Lisbon Treaty and in the aftermath		

The ratification of the Lisbon Treaty did incite heavy debates., it was arguably at heart of the Czech EU policy. As a "guarantee" for the ratification of the Lisbon Treaty and in the aftermath of two rulings of the Czech Constitutional court both of the parliamentary houses were entrusted with a right to mandate the government in cases dealing with modification of the EU Treaty base.

In the Chamber of Deputies the ratification of the Lisbon Treaty went through after large debates in February 2009 after 125 MPs voted for it (120 was needed). The parties that voted for were CSSD, the Greens, KDU-CSL and a minor part of ODS.

Problems with ratification arose in the upper house with a group of ODS senators. Interestingly, the ODS was not opposed to the Lisbon Treaty as vehemently as it was opposed to the Constitutional Treaty. Experts argue that being in a coalition with more Europhile parties (Christian-Democrats and the Greens) as well as the oncoming Czech presidency played the moderating role. Nevertheless, the party leadership had a hard time convincing the party members to support the Lisbon Treaty.

The treaty was ratified by both chambers in spring 2009, although two appeals to the Czech Constitutional Court have somewhat slowed down the process. The Parliament was asked in January 2008 to approve the Lisbon Treaty according to the Article 10a of the Czech constitution. In April 2008 the first request was made by a group of ODS senators close to V.Klaus as well as some members of the KDU-CSL (in the Senate's resolution Nº 379 from 24 April 2008). In drawing up the request they were assisted by a member of parliamentary staff. The group has been arguably inspired by the rulings of the German Constitutional Court. The request mentioned 6 points of concern, addressing inter alia the division of competences, flexibility

clause, relationship between the EU Charter of Fundamental Rights and the Czech charter of fundamental rights and basic freedoms etc. In November 2008 the Court ruled unanimously that the suggested articles are in compliance with the Czech Constitution although it was explicit in making no judgment as to whether the Lisbon Treaty as a whole complies with the Czech Constitution. The flexibility clause was not considered to be an opportunity for an uncontrolled transfer of powers and sovereignty to the EU level.

The Czech opt-out out of the European Charter of Fundamental Rights (as agreed upon the European Council conclusions from 30 October 2010) also contributed to the delay of the ratification process. The Czech opt-out was also to be linked to the ratification of the Croatian accession Treaty. Initially the government planned to link the ratification of both documents, yet in such a case the ČSSD were threatening to put a veto on Croatian accession due to their negative attitudes to the opt-out from the European Charter of Fundamental Rights (ECFR). Eventually the two issues were-decoupled, both houses voting in favour of the Croatian accession. The issue of opt-out is still pending in the Parliament.

In November the 2009 the Constitutional Court passed its ruling on the second request of the ODS senators, again finding no contradiction between the Lisbon Treaty and the Czech Constitution. The Court found the objections of the senators ill-founded. The second motion suggested introducing a binding mandate for the Czech government for decision-making in the European Council and the Council of Ministers. The Court has ruled nevertheless that the type of scrutiny is a political decision and is not within the remit of the Court's competence.

3. New Provisions of the Lisbon Treaty on Direct Contact with EU Institutions

The Lisbon Treaty provides national parliaments with new opportunities for direct contact with the EU institutions. This section addresses the incorporation of the new Lisbon provisions into national law and concrete procedures. Questions 6.3 to 6.5 investigate in how far these procedures have been used.

3.1	Have there been any regulations adopted by your member state to incorporate the new powers that are entrusted to the national parliaments by the Treaty of Lisbon? If so, please list the regulations in their appropriate categories:
	a. Constitutional provisions
	b. Legal provisions - Statutory provisions
	c. Parliamentary Standing Orders
	d. Other (please specify)
	Is this process complete or ongoing?
Lower house	The Chamber has changed the rules of procedure (Act 162/2009 Coll.)
Upper house	The Senate has changed the rules of procedure (amendments to Act 107/1999 Coll.). The process is complete as regards the legal changes, but it also affects the relations of the Chamber and the Government, that are still to be cleared as regards procedural aspects, for example in the case of application of the Article 352 TFEU.
3.2	What exactly are the rules (i.e. parliamentary bodies involved, procedure, regional parliament's involvement, cooperation in bicameral systems) for
3.2 i	The "Political Dialogue" with the Commission
Lower house	The Chamber has been far less active than the Senate in participating in the political dialogue with the European Commission. In 2006-2009 the Chamber of Deputies has sent 3 opinions

	while the Senate submitted 49. In 2010-2011 the Chamber submitted 6 opinions
Upper	Czech Senate belongs to the most active Chambers in whole EU, as regards the dialogue with the Commission. But according to the opinion of practitioners, the replies from the European Commission are very formal and they presence or absence doesn't change much. The problem is that the Commission does not really deal with the remarks in Senate's resolutions and thus the senators does not really think the dialogue is a real dialogue. On one occasion the Czech attempted to use the "political dialogue" as an instrument to pressure the government, complaining to the European Commission that the Czech government didn't consult it during the preparation of the national reform programme. The European Commission hasn't reacted, avoiding taking sides. Arguably, several years ago there were divisions amongst the Senate's staff on the salience of the "Barosso initiative". The conflict between the governing coalition and the opposition sometimes may lead to a situation when two variants of a resolution exist. A more diplomatic is sent to Brussels, the harsher variant is pro domo and is addressed to the government. Yet this is very rare The Senate hasn't really made impact assessments of the Barosso dialogue. The Upper House submitted 52 contributions since the entry into force of the Lisbon treaty.
3.2 ii	The Early Warning Mechanism (EWM)
Lower house	The Chamber of Deputies has actively participated in the conduct of the COSAC subsidiarity tests. Still, only 1 reasoned opinion was published by the Chamber (on the proposal fro the seasonal labour migrants directive, COM 2010 0379). The short time span of 8 weeks to run the subsidiarity scrutiny procedure is generally considered a problem. Also, if the opinions of the upper and the lower house diverge, there is no legal framework as to how and if their opinions are to be reconciled.
	The Senate has been much in favour of continuing coordinated subsidiarity checks within the COSAC framework, having participated in all of them. Despite being very active in EU affairs, the Senate has passed only 1 reasoned opinion (on COM 2010 0379; proposal for a directive dealing with third-country seasonal labour migrants). In practice, there is reluctance to pass further reasoned opinions: the CSSD has a more positive position towards the European integration in general and considers them as damaging for the party image within the S & D party group in the European Parliament at the same time.
Upper house	Apparently, practitioners in the Senate see the merit of reasoned opinions/ political dialogue not so much in communicating with the Commission but primarily in establishing a better working relationship with the government. There is an understanding that the European Commission can't do much with the suggestions received. There isn't much faith among the experts of both chambers in the power of national parliaments to coordinate their actions. There is no special procedure for subsidiarity scrutiny – it is in-built in the ex-ante scrutiny of EU legislation. At the same time the Senate would be willing to hear more specific replies to the Commission Green papers and non-legislative documents.
	Subsidiarity checks in both chambers are delivered in the form of a resolution signed by the Committee chair/rapporteur/verifier and Senate president and Senate verifier (in the case of the upper house). The Senate is much more active in developing contacts with the European Commission (and the EP) than the Chamber of Deputies as it has consciously thought to develop a profile on EU affairs and assume a role of guardian of a constitutional order, both internally and externally.
3.2 iii	The "Passarelle clause"
Lower house	According to the new provisions, the government should seek the consent of both chambers when the Article 352 TFEU (flexibility clause), Article 48 (7) TEU (passerelle clause; also articles 153/2-192/2-312/2-333/1 &2 TFFEU and 31-3 TEU) and Article 48 (6) TEU (simplified revision procedure) are invoked. The evaluation is given separately by both chambers and different majorities are required for the various provisions, e.g. a simple majority is enough for the

	application of Article 352. Yet, when the flexibility clause is under consideration the mandate should be sought only when the envisaged new EU competences are not essential for the functioning of the Internal market. In practice, this leads to constant negotiations between the Czech parliament and government as to whether a certain proposal is essential for the Internal market. Both the Chamber of Deputies and the Senate are willing to use the new provisions on every possible occasion. Practitioners from both houses agree that this sets a precedent for the future: lax implementation of the new provisions would in the long run undermine the position of the EACs. None of the issues debated have actually returned in the form of a directive/regulation to be discuss in the final version at the Brussels level, hence so far it a bit unclear how the new rules will be adhered to in practice. The "negotiations" on the applications of the "flexibility clause" are generally conducted by parliamentary and government staff. The assistance of MPs is required only when the government is especially
	reticent. For example, when the "Europe for citizens programme" was discussed, the Chair of the EAC had to write a letter to the relevant governmental department. At the moment, the government seems to accept the broad interpretation of the Chambers and the procedure has already settled somehow, as the debate on the necessity of prior approval from the Chambers on proposal on European foundation (COM 2012 35 final) has shown.
Upper house	See above
3.2 iv	The action of annulment before ECJ on breach with the subsidiarity principle (What quota of MPs is needed to enforce the action of annulment?)
Lower house	According to the rules of procedures of both houses the parliament can pass a resolution obliging the government to submit the annulment of an EU legislative act to the European Court of Justice. In both houses there are two entities which can initiate such a resolution: either a committee or a group of parliamentarians (41 deputies or 17 senators respectively). This resolution has to be approved by the simple majority in the plenary of each house. It remains to be seen how the instrument will be used in practice. The representatives of both houses are to be assisted by the government during the potential ECJ hearings, yet it's exact pattern of assistance also remains unclear. So far, no attempt has been done to bring a subsidiarity case to the ECJ
Upper house	See above
3.2 V	Accession of new member states to the EU
Lower house	Regulated via Section 109 of the Rules of procedure (opinion of the foreign affairs committee and plenary debate)
Upper house	Ratification by the plenary on the basis of the opinions of the foreign affairs committee and the European affairs committee
3.3	How actively does the parliament engage in the political dialogue and "early warning mechanism" with the Commission?
Lower house	See section 6.1 and 6.2.
Upper house	See section 6.1. and 6.2.
3.4	Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?
Lower house	No
Upper house	Not in the real way, yet they are aware of this competence, as might have been seen while

	potentially controversial proposals were debated
3.5	If applicable to your member state, how does parliament proceed on the ratification of: a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012 b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012
	a. Czech Republic is not a member of the eurozone. Nevertheless, as the proposal on the amendment of Article 136 (3) meant a change of primary law of the EU, it was subject to prior approval in both Chambers. It was passed in both chambers in early 2012.
Lower house	b. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the Fiscal Compact) wasn't ratified by the Czech Parliament. On the 30 th January 2012 rimeminister Nečas refused to sign the Treaty: he cites the complications of the ratification procedure, limited added-value for the Czech republic and the stringent fiscal measures already adopted by Prague. As some experts have claimed prime-minister Nečas would agree with the content of the fiscal pact but doesn't want any external interference in the Czech budget policies. The resistance to the fiscal compact is highly ideological. ODS would like to see the matter decided on a referendum. The TOP og would like to decide by parliamentary vote only, as it considers the issue to be too complex for electorate, but is in principle in favour of the compact, putting a strain on the integrity of the coalition agreement. The ČSSD is against holding a referendum. Nečas is personally in favour of a referendum. Yet, he could have arguably succumbed the fear of a presidential veto before trying to negotiate a consensus in the governing coalition and discuss the matter in the parliament.
Upper house	In Senate, the ČSSD majority adopted a resolution on the plenary, claiming that the position of the Prime Minister towards the Fiscal Compact goes against the national interests of the Czech republic. It has also reproved the government for not consulting all the national institutions, what led to an inadequate national position form ČSSD point of view. Last but not least it has invited the government to change its position towards Fiscal Compact.

i http://www.novinky.cz/domaci/274119-zeman-posiluje-v-druhem-kole-prezidentske-volby-by-se-utkal-s-fischerem.html ii http://www.sanep.cz/pruzkumy/volebni-preference-publikovano-10-8-2012/ iiii http://www.sanep.cz/pruzkumy/volebni-preference-publikovano-10-8-2012/