

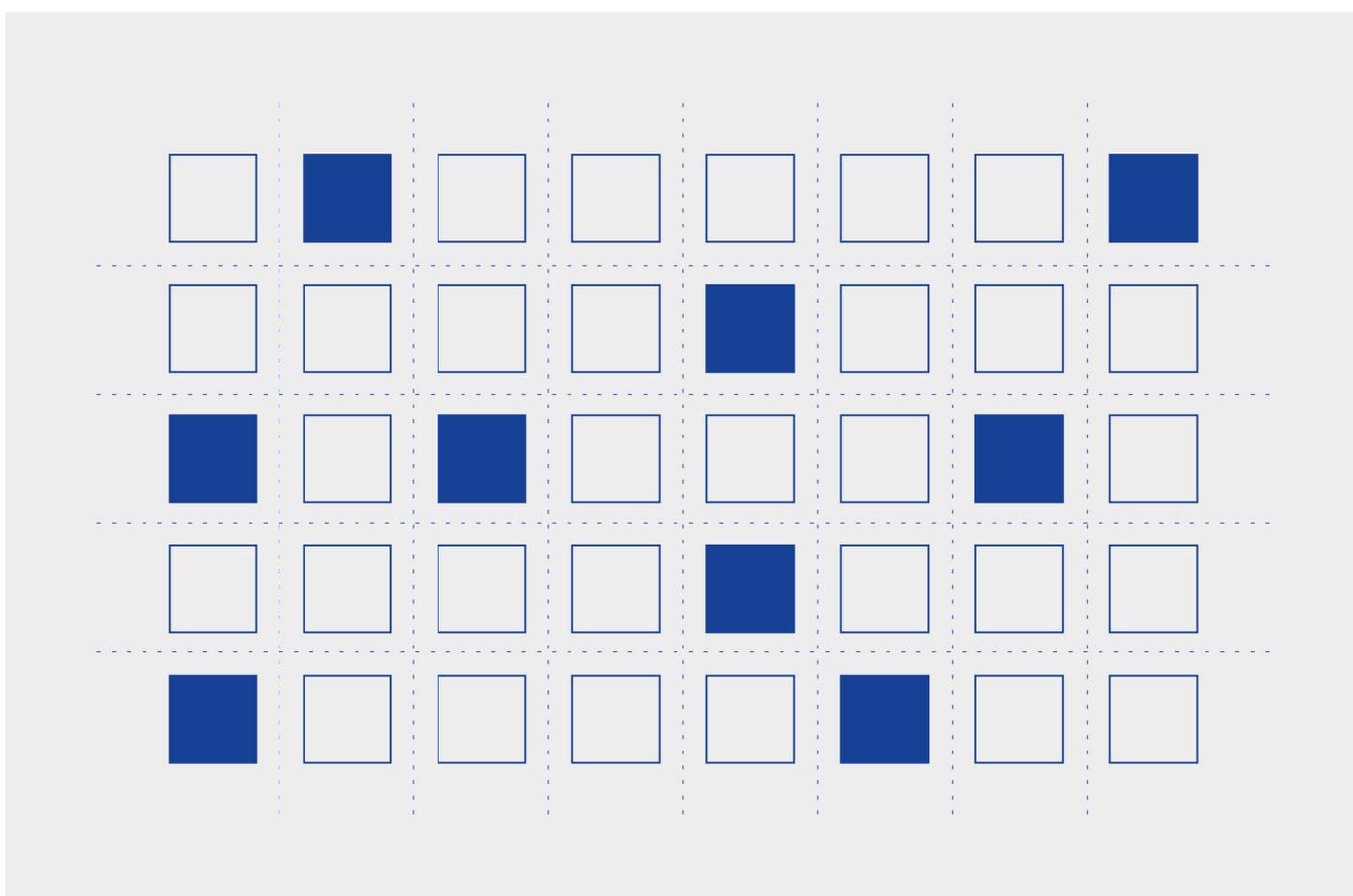
EMU CHOICES

THE CHOICE FOR EUROPE SINCE MAASTRICHT
SALZBURG CENTRE OF EUROPEAN UNION STUDIES

Fact sheet on legal foundations for fiscal, economic, and monetary integration

SLOVAKIA

by Robert Zbìral



Introduction

This country fact sheet provides concise information on the main characteristics of the national constitutional systems, including the system and role of national jurisprudence, parliaments and governments. Further, it briefs on the constitutional foundations and limits in the field of Economic and Monetary Union. It outlines on the existence of specific constitutional provisions on EMU membership, accession, treaty amendments, or limits to the (further) transfer of powers through Treaty amendments.

Among others, the overview informs about the principal actors in the field of fiscal and economic policies, the relevant findings of the judicial and parliamentary branches on EMU related actions, implementation measures of supranational and international rules, and respective constitutional amendments.

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SLOVAKIA (Robert Zbíral)

1) Main characteristics of the national constitutional system

Slovakia became independent after peaceful breakdown of Czechoslovakia in 1993, making it one of the youngest countries in Europe. It is a **unitary state**, regions have autonomy in only limited number of issues. The national parliament consists of one chamber: The **National Council** (“*Národná rada*”), which is elected in direct elections through proportional system. The **Government** must succeed in the investiture vote in the National Council and is accountable to the latter. The **Head of State (President)** is elected in direct elections since 1999, but the political system basically remains a parliamentary one.

Slovakian constitutional order is based on The **Constitution of the Slovak Republic** (Law No. 460/1992 Coll.) which also includes the Bill of Rights. The Constitution could be amended by three-fifths majority of all Members of Parliament, no referendum is necessary. Since the promulgation of the Constitution 13 amendments were adopted by the National Council. Yet it must be noted that while the Constitution is a central constitutional document, Slovak **constitutional order is polylegal**, meaning that there could be **other constitutional acts** independent from the Constitution. They require adoption by the same majority and have the same legal standing, in other words, there is **no hierarchy** between the Constitution and other constitutional acts, any conflicts are solved by standard legal interpretation methods or by balancing (e.g. proportionality test). All **ordinary acts**, requiring adoption by simple majority of Members of Parliament present, must comply with the Constitution and constitutional acts. The **Constitutional Court** is the guardian of the constitutional order and might perform both *ex ante* (abstract) and *ex post* (concrete) review, it could also review *ex ante* (on the submission of subjects authorized in the Constitution) the constitutionality of international treaties before they are adopted by the National Council.

The Constitution was amended significantly in 2001 in order to adapt it for EU membership. An entry to the “state union with other states” is conditioned by adoption of constitutional act confirmed by the **referendum**, in relation to the **EU accession** the referendum was held in May 2003 (with 93 % voters in favour). Concurrently, new clause in the Constitution allowed transferring part of Slovak powers to the EU by an international treaty. The amended text finally explicitly proclaims that legally binding acts of the EU have precedence over Slovak legal acts.

2) Constitutional foundation of EMU membership

Obviously by the time of Slovak accession the EMU was already fully functioning and the Accession Treaty required participation in the single currency for the new Member States. In Slovakia adoption of the euro was supported by almost all political parties and the aim was to join Eurozone as soon as possible, Slovakia eventually **adopted euro on 1st January 2009**. The constitutional aspects of single currency gained little attention during the preparatory process as they were deemed covered by the changes made before EU Accession (see above). Technical issues linked to the switch from Slovak crown to euro were addressed by ordinary act (Law No. 659/2007 Coll. on the introduction of the euro currency in the Slovak Republic).

The entry of Slovakia into **Eurozone** overlapped with the incoming financial crisis. Slovak political representation reacted immediately and started to negotiate domestic measures that would stabilize public finances. The main legal instrument was the **constitutional act on fiscal responsibility**, adopted by the National Council almost unanimously in 2011 (Law No. 493/2011 Coll.). It set automatic **debt brakes** (with the upper limit at 60 % of GDP) and established the independent **Council for Budget Responsibility**, which shall be responsible for overseeing the long-term sustainability of public finances. The discussions on the bill were initiated before any similar measures were taken by the EU but the bill was finalized in time the outlines (or texts) of **Six-pack** and **TSGC** were known, so it encompasses some of the latter “concepts”. The act on fiscal responsibility was the only constitutional change related to the financial crisis and Eurozone membership.

Numerous other obligations stemming from EU measures were implemented through ordinary acts. Among the most relevant was the amendment to the **act on budgetary rules for general government** (Act. No. 523/2004 Coll., e.g. implementation of the structural deficit rule from the TSGC) and **act on the competences of the organs of the Slovak Republic in ensuring fiscal responsibility in the EU** (Law No. 36/2013 Coll., defining who represents Slovakia in duties based on the TSGC). Regions were affected by all the changes only indirectly and exercised little influence on them.

While the previous measures aimed at tightening the fiscal discipline were welcomed by Slovakia and even adopted by its own accord, Slovakia had much more restrained approach to emergency measures and mutual debt guarantees (see also below). Because both the **EFSF Framework Agreement and TESM** (similarly to TSGC) were assessed as not directly applicable international treaties, they also required implementation through ordinary acts (EFSF: Act. No. 381/2010 Coll. on specific state guarantees, TESM: Act. No. 296/2012 Coll. on European Stability Mechanism), in either case it is the Government (Ministry of Finance) that shall exercise most powers upon both schemes.

3) Constitutional limits for EMU membership

While the Constitution acknowledges the primacy of EU legal acts, literal interpretation suggests the rule affects only Slovak ordinary acts. The majority of doctrine and also case-law of the Constitutional Court (e.g. Pl. ÚS 8/04, 18 October 2005) seem to argue that the constitutional order prevails over EU legal acts. It is more difficult to construct the relationship between the EU primary law and constitutional order. Because the Constitution provides for transfer of powers, there is no need to automatically amend Constitution for each reform of EU treaties. If some provision of the newly proposed primary law is in direct conflict with the Constitution (e.g. if the Constitutional Court comes to that conclusion during *ex ante* review of the proposed treaty), either the Constitution shall be amended or the treaty shall not be ratified. There is **no “material core” or unamendable provisions** in the Constitution.

The Constitutional Court has not developed any **ultra-vires doctrine** and its case-law towards EU law is generally rather uninspiring. Of course it may indirectly question the validity of EU law through preliminary reference procedure but it has not referred any preliminary question

so far. As noted, the *ex ante* review of international treaties by the Constitutional Court is possible, but no such proposal was submitted by the constitutionally entitled applicants to any of the measures linked to the Eurocrisis.

4) Crisis Management Measures

As one of the poorest Eurozone countries, financial support to other states was highly controversial topic in Slovakia. Indeed, Slovakia did not participate in the **first Greek (bilateral) bailout** in 2010 due to disagreement within the Government. While the EFSF Framework Agreement was adopted and implemented, the **increase of guarantees** agreed by Eurozone in 2011 again sparked conflicts in the Government and it was forced to resign after the Prime Minister unsuccessfully tried to link the decision to increase the guarantees with the **confidence vote**. Only the support from the opposition (“bribed” by an agreement to hold early elections) enabled the adoption of the increased guarantees and **second Greek bailout**.

As indicated above, all mentioned crisis management measures were ratified as **international treaties** (but not as those that transfer powers to the EU and thus three-fifths majority was not needed) and certain parts of almost all of them also required **implementation through ordinary acts**. The decision-making or scrutiny rights of the National Council have not been extended despite several such proposals from Members of Parliament or selected political parties.

5) Constitutional law scrutiny of EMU reform scenarios

Slovak constitutional order does not raise any considerable **barriers to deeper EMU integration** (see above). The potential higher threshold in the National Council to amend Constitution (or adopt constitutional acts) in principle shall not pose a problem as most of the major political parties are Eurooptimistic and consider tightening cooperation in the Eurozone as a safeguard against further fiscal profligacy of other Member States.

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