

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

SLOVENIA

by Matej Avbelj



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.

The legal fact sheets were compiled for all 28 EU member states of the Horizon 2020 funded project ‘The Choice for Europe since Maastricht: Member States’ Preferences for Economic and Financial Integration’.

SLOVENIA (Matej Avbelj)

1) Main characteristics of the national constitutional system

The Republic of Slovenia declared its independence on 25 June 1991. The Constitution defines Slovenia as democratic republic, based on the principles of the rule of law and the welfare state.¹ Recently, the Constitutional Court read into the provision of Article 1 of the Constitution the guarantee of the protection of equal human dignity.² Accordingly, Slovenian constitutional democracy should be understood as a foundational democracy whose foundation and paramount normative objective is the protection of equal human dignity.³

The Constitution of the Republic of Slovenia puts in place a system of separation of powers. According to Article 3 the power is vested in the people; the citizens exercise it directly through elections, consistent with the principle of the separation of legislative, executive and judicial powers.⁴ By contrast with the former communist regime, the judiciary is now a distinctive and independent branch of government. Judges are to be independent in the performance of their judicial function and are bound exclusively by the Constitution and the statutes.⁵ Judges are tenured and enjoy all the privileges and immunities typical for a constitutional democracy.⁶ However, it is a remnant of the socialist past that judges are elected by the National Assembly on the proposal of the Judicial Council and can also be dismissed only by the National Assembly in those rare cases provided by the law.⁷

The highest court in the state is the Supreme Court.⁸ Its role is to rule as a last instance in criminal and civil cases, commercial lawsuits, administrative review, and labor and social security disputes. It thus decides about the ordinary and extraordinary legal remedies. It might also perform other functions provided for by the law.⁹ On the other hand, the Constitutional Court is not part of the ordinary judiciary. The Constitution defines it as the highest body of the judicial power for the protection of constitutionality, legality, human rights, and fundamental freedoms.¹⁰

The Constitution of the Republic of Slovenia is a living constitution and the Constitutional Court its main interpreter and the driving force behind it. The Slovenian constitutional culture is, however, marked by a great discrepancy between the law on books, where Slovenia has always been regarded as a good disciple, and the law in action, where the Slovenian practical record is sometimes extremely poor. It would not be an exaggeration to argue that Slovenia

¹ Constitution of Republic of Slovenia, Art. 1 and 2.

² Constitutional Court Case U-I-109/10, 3.10. 2011.

³ See, *Matej Avbelj*, *Zgodovinska odločitev ustavnega sodišča in Pravna praksa* 29-40 (2011), 17-19.

⁴ Constitution Art. 3.

⁵ Constitution Art. 125.

⁶ Constitution Art. 129.

⁷ Constitution Art. 130.

⁸ Constitution, Art. 127.

⁹ *Ibid.*

¹⁰ Constitutional Court Act (OJ 64/07), Art. 1.

suffers from the systemic crisis in the rule of law.¹¹ As a result, Slovenia combines a modern, western liberal democratic constitution, with an old communist mindset and practice, which is due to the personal continuity in the main institutions of the state still dominant in many social sub-systems, the legal system included.

2) Constitutional foundations of EMU membership

Slovenia became a full member of the European Union on May 1, 2004. The country's membership was decided for on a referendum, in which an overwhelming majority voted in favor of the accession to the European Union.¹² The Constitution has been amended four times to facilitate Slovenia's entry to the European Union. There is no specific constitutional provision relating to the Slovenia's membership in the EMU. However, the most recent amendment to the Constitution is a direct response to the Slovenia's Eurozone related duties.

In order to fulfill the requirements stemming from the Fiscal Compact and to constitutionalize the so-called golden fiscal rule, in May 2013 the Parliament amended Article 148 of the Constitution concerning the budget. The new Article 148 now requires that all revenues and expenditures for the financing of public spending must be included in the budgets of the state.¹³ They must be balanced in the medium-term without borrowing, or revenues must exceed expenditures. Temporary deviation from this principle is only allowed when exceptional circumstances affect the state.¹⁴ However, the actual implementation of the golden fiscal rule, now laid down in the Constitution, is left to a statute to be adopted by the National Assembly by a two-thirds majority vote of all deputies. The statute shall define the manner and the time frame of the implementation of the golden fiscal rule, the criteria for determining exceptional circumstances, and the course of action when they arise.¹⁵ The statute mandated by the Constitution should have been adopted in one year after the passing of the constitutional amendment. However, due to the difficulty of winning the required qualified parliamentary majority for adopting the statute, it took more than 2 years to pass the statute in June 2015. Slovenia was thus in an unconstitutional situation, in which the golden fiscal rule existed on the books, but has not been operational in practice.

3) Constitutional limits for EMU membership

Article 3a of the Slovenian Constitution defines the material and procedural conditions for the Slovenian membership in the EU and subjects the latter to substantive constitutional limitations. In material terms, Slovenia may only transfer to the EU "the exercise of a part of its sovereign rights." Slovenian sovereignty, not even its part, let alone the whole, is thus non-transferrable and remains with the Slovenian people. In procedural terms, the exercise of a part of its sovereign rights is further subject to three conditions. It can only happen by an international treaty, which must be ratified by the National Assembly with a qualified

¹¹ Fort the argument that follows see *Matej Avbelj*, Transformation in the Eye of the Beholder, Bobek (ed), Central European Judges under the European Influence: The Transformative Power of the EU Revisited (forthcoming 2015).

¹² 89,64% of the voters voted in favor of accession to the EU. <http://www.dvk-rs.si/files/files/porocilo-o-referendumu-EU.pdf>

¹³ Constitution Art. 142/1.

¹⁴ Constitution Art. 148/2.

¹⁵ Constitution Art. 148/3.

majority of 2/3 of the representatives. Finally, even a referendum may be called and has to achieve a relative majority, so that the majority of the voters who have taken part in the referendum vote in favor.

The substantive constitutional limitations to the Slovenian membership in the EU consist of three groups and are clearly influenced by the jurisprudence of the German Constitutional Court. For the EU law to apply in Slovenia in accordance with its own rules and principles, it must respect: human rights and fundamental freedoms; democracy and the principles of the rule of law; and it must be adopted strictly within the competences conferred on the Union. These substantive limitations have, however, so far remained on the paper only. The Constitutional Court has explicitly refrained from adopting a position whether there are certain instances in which the Slovenian Constitution requires the disapplication of EU law.

Other than these three substantive constitutional limits to EU law in Slovenia, the Constitution does not contain any a priori limits to the development of the process of the European integration. There are thus no constitutional provisions on the formal limits to the (further) transfer of powers to the EU through Treaty amendments, such as the 'core competences', 'non-transferable' constitutional identities, which 'must' remain with the national parliament etc. Unlike the constitutions of some EU Member States, the Slovenian Constitution does not contain an explicit eternal clause [Ewigkeitsklausel], stipulating the so-called irreducible epistemic core of the national constitutional order.

4) Crisis Management Measures

In December 2012 the Constitutional Court banned a referendum on a statute, which was also indirectly intended to give full effect to the Fiscal Compact.¹⁶ In this case the Constitutional court was thus willing to override the constitutional right to a referendum by giving precedence to a financial instrument of international law. This could be interpreted as meaning that under financial duress, such as the Slovenia was under at the peak of the economic crisis in 2012, not only the will of the people but even the Constitution as such could bend to the demands of international law. In other words, in such exceptional circumstances, it is not the Constitution, which sets the limits to international or EU law, but it is the other way around.

In the decision U-I-295/13 the Constitutional Court for the first time made a reference for a preliminary ruling to the CJEU. The case, which concerns the constitutionality of a Banking law, was adopted as a crisis-management mechanism implementing the instructions (soft-law) of the European Commission on the bailing-out of the previous private banks and consequent deletion of the shares and sub-ordinate bonds, is still pending in front of the CJEU.¹⁷

5) Constitutional law scrutiny of EMU reform scenarios

As described above, the Slovenian Constitution is silent on any special limits to the future EMU reform scenarios.

¹⁶ Constitutional Court Case U-II-1/12, U-II-2/12, 17.12.2012.

¹⁷ Constitutional Court Case Case U-I-295/13, 6.11. 2014.

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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No. 649532

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