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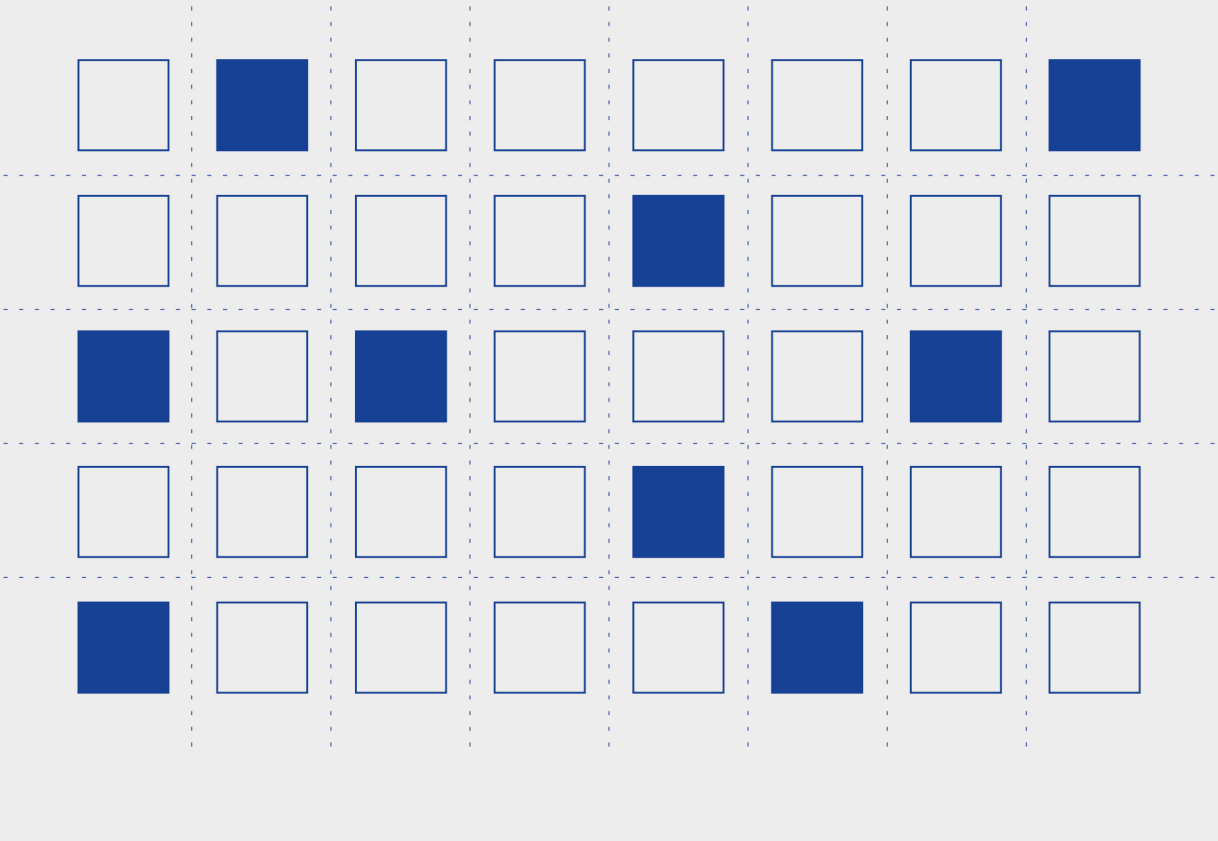
SALZBURG CENTRE OF EUROPEAN UNION STUDIES

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

BULGARIA

by Daniel Smilov



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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’.

BULGARIA (Daniel Smilov)

1) Main characteristics of the national constitutional system

The current constitution of Bulgaria was adopted in 1991 by a constituent assembly called Grand National Assembly. The constitution established a parliamentary republic, in which the main holder of executive powers is the Council of Ministers. There is a directly elected president with limited, although not insignificant prerogatives: head of state, chief of the armed forces, entitled to take part in high profile appointments in the Constitutional Court, the diplomatic service, etc. Yet, these powers are insufficient to qualify the regime as semi-presidential. The judiciary is a self-governing branch of power regulated and supervised by a Supreme Judicial Council. The prosecutors are part of the judicial system and enjoy the same rights and privileges as other magistrates. A recent constitutional amendment (2015) divided the SJC into two panels – one for judges, and the other one for prosecutors and investigators.

The Constitutional Court has wide ranging powers of interpretation of the constitution, invalidation of laws, presidential decrees and treaties, prohibition of political parties. The court can be addressed only by institutions – there is no individual complaint. The court consists of twelve judges, one third of which is appointed respectively by the President, the National Assembly, and the judiciary.

The constitution is fairly rigid – its most basic provisions are subject to a complex procedure of amendment, requiring special elections for a Grand National Assembly –a measure which disrupts the routine political process and is generally unattractive for political parties, having a majority in an ordinary parliament. Because of that there has been no GNA convened since 1991. Articles 155-163of the Constitution set out the procedure of amendment of the Constitution, which is rather original in comparative perspective and relevant for the prospects of European integration. Amendments of particular significance[1] of the Constitution require a majority of three quarters of the votes of all Members of the National Assembly in three ballots on three different days.

The most important features of the Bulgarian constitutional framework are: Parliamentarianism (rationalised), dominance of the executive, proportional electoral system, directly elected president with limited powers, a Kelsenian, European constitutional court, powerful judiciary: Mediterranean model with Supreme Judicial Council, and independent prosecutorial office part of the executive.

For good or bad, the Bulgarian CC has not developed a very sophisticated or developed theory of constitutional interpretation. The approach of the judges is ad hoc and depends on the choice of the rapporteur. This leaves significant latitude for changes in the practice of the court. One of the reasons for this ad hoc approach is the limited number of cases the court faces. Over the last decade, the court has dealt with approximately ten judgements per year:

[1] Art 158 (1) adopting a new Constitution; (2) resolving on territorial changes; (3) on changes in the form of state structure or form of government; (4) on any amendment of the direct applicability of the CRB, supremacy of international law, on the irrevocability of fundamental rights, some of which cannot be limited even following a proclamation of war, martial law or a state of emergency; and (5) on any amendments to the rules on constitutional amendment.

the main reason for that is the lack of individual constitutional complaint procedure. The Ombudsman of the republic was empowered to seize the CC, but this did not change significantly the caseload.

In the 1990s the CC was extremely active – I would even call it activist – in the area of privatization and especially restitution of agricultural land and urban property (to pre-communist regime owners). Then the court developed a rather sophisticated jurisprudence on these matters, which indicates that judges do have the capacity to deal with such issues. The Supreme Court of Cassation and the Supreme Administrative Court – the two bodies at the apex of the judicial system – have also been heavily involved on a regular basis with high profile cases. The most recent string of such cases involved the bankruptcy of the fourth largest bank in the country – the Corporate Commercial Bank – in 2014. However, there have not been high profile cases involving EU matters. Courts are slowly turning to EU law and it has not been a major source of judicial action yet.

2) Constitutional foundations of EMU membership

The Bulgarian constitution does not have specific provisions for membership in the EMU. The matter is falling under the general membership clauses of the constitution. Art. 85 below contains the general clause of membership in the EU adopted in 2005. "(1) *The National Assembly shall ratify or denounce by law all international treaties which:*

[..] 9. (new, SG 18/05) *confer to the European Union powers ensuing from this Constitution.*

(2) (new, SG 18/05) *The law ratifying the international treaty referred to in para 1, item 9 shall be adopted by a majority of two-thirds of all members of the Parliament.*

(3) (former para 2, SG 18/05) *Treaties ratified by the National Assembly may be amended or denounced only by their built-in procedure or in accordance with the universally acknowledged norms of international law.*

(4) (former para 3, SG 18/05) *The conclusion of an international treaty requiring an amendment to the Constitution shall be preceded by the passage of such an amendment.*"

It is interesting to note that there was no Grand National Assembly convened for the passage of the general membership clause. It was considered that EU membership does not change the form of government or the state structure – therefore the amendment was passed as an ordinary amendment by the National Assembly. In Bulgarian constitutional doctrine, under the form of government it is considered mainly parliamentary v. other type of regimes. In 2003 the Constitutional Court read this "form of government" provision more liberally to include transfer of powers among the main branches. Yet, no one has raised the issue that EU membership should be understood as a change of the form of government, and thus the case did not end up in the Constitutional Court.

Ordinary treaties are ratified by simple majority, while treaties conferring powers to the EU require 2/3 majorities. The Lisbon treaty was ratified by 199 to 15 votes, no abstentions.

Interestingly, since the Fiscal Compact is not formally part of EU law, it did not require 2/3 majority for ratification.

3) Constitutional limits for EMU membership

Contrary to the practice of other countries, the Bulgarian constitutional court has not developed jurisprudence with regard to the limits of transfer of powers through treaty amendments of the type of the German Federal Constitutional Court in the Maastricht and the Lisbon decision cases. This does not mean that the BCC cannot develop such jurisprudence anytime, if there is political necessity for that. Simply, the issue has not become the focus of public and political debates so far.

The Constitution is rather vague on the issue of limits to European integration outside the EU legal order. As the discussion from above shows, the requirement for Grand National Assembly could be invoked in the case of European integration, if the Constitutional Court decides that the specific transfer of powers invoked amounts to a change in the "form of government".

Bulgaria is not a member to the EMU yet.

According to the standing orders of NA, Art. 16 2 (3) provides, the European Affairs and Oversight of the European Funds Committee shall report to the National Assembly on the performance of the duty of the Council of Ministers to ensure prior awareness in the cases where the latter takes part in EU acts drafting and adoption. The European Affairs and Oversight of the European Funds Committee shall also draw up reports on other acts of the European Union institutions.

The Constitution foresees that the Parliament monitors and oversees the EU decision-making process.

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