

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

CZECH REPUBLIC

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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.

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CZECH REPUBLIC (Tomas Dumbrovsky / Luboš Tichý)

1) Main characteristics of the national constitutional system

Czech constitutional law is organized into a **constitutional order**, which consists of several constitutional acts – the Constitution of the Czech Republic in the strict sense (Constitutional Act No. 1/1993 Coll.), the Charter of Fundamental Rights and Freedoms (Constitutional Act No. 2/1993 Coll.) and a number of other constitutional acts and their amendments. This constitutional order forms a **referential framework** for the Constitutional Court for evaluating constitutionality of all other acts. All constitutional provisions have the same legal status with one exception: the **eternity clause** in Art. 9(2) of the Constitution grants ‘**higher status**’ to “the essential requirements for a democratic state governed by the rule of law”, whose changes are impermissible. The content of the eternity clause consists of values protected by Art. 1 of the Constitution, which defines the Czech Republic as a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the fundamental rights and observing obligations resulting from international law. **Intermediate status** between constitutional law and ordinary law is assigned to **international treaties** ratified by the Parliament, which possess application priority over statutory law in case of conflict; ‘integrative treaties’ enjoys a special status (Art. 10a treaties).

The system of public power of the Czech Republic is based on **parliamentary and representative democracy with prevailing proportional electoral system and little features of direct democracy**. The Parliament is composed of two unequal chambers – the **Chamber of Deputies** and the **Senate**. Only the Chamber of Deputies adopts **annual budget** in the form of law. The Chamber of Deputies can also overrule the Senate veto on ordinary legislation by absolute majority. Several laws need consent of both chambers – most notably constitutional acts and their amendments, electoral laws, and ratification of qualified international treaties. The **Government** executes part of its powers in conjunction with popularly elected **President** of the Republic, who among others ratifies international treaties. The **Constitutional Court** exercises both **abstract and concrete reviews**; in particular the Constitutional Court annuls statutes if they are in conflict with the constitutional order. The Euro-amendment of the Constitution provided for an ex ante abstract **review of constitutionality of international treaties**. Also the **Czech National Bank**, the Supreme Audit Office and self-governing units are regulated by constitutional law and therefore enjoy special protection vis-à-vis other branches of government. The concurrence of three-fifths of all Deputies and three-fifths of all Senators present is required for the adoption of a constitutional act or for giving assent to the ratification of Art.10a treaties that transfer powers to an international organization. The ratification of Art.10a treaty may instead be approved in referendum, if a special constitutional act provides that.

2) Constitutional foundations of EMU membership

The 2001 Amendment of the Constitution (Constitutional Act No. 395/2001 Coll.) has created a special regime for participation of the Czech Republic in **integrative international organizations** (Art. 10a of the Constitution) and allowed for transfer of powers and resulting autonomous functioning of a complex legal system built up within such organizations in the

Czech Republic. Because the Euro-amendment creates a **general regime**, it represents a basis for participation of the Czech Republic in other integrative projects.

The Czech Republic is **not a member of the euro area**. It is considered a Member State with 'derogation', meaning that the Czech Republic did not negotiate an opt-out from joining euro and is therefore obliged to join as soon as it fulfills the convergence criteria. At the moment, there is **no political consensus about joining euro**. The Czech Republic relies on the Swedish precedent not to 'participate' in the Exchange Rate Mechanism II, although legally dubious nevertheless certified by the Commission, as the way to avoid the fulfillment of convergence criteria.

The negative attitude towards Euro-crisis measures in the Czech Republic was signified by the refusal to sign the Treaty on Stability Coordination and Growth (TSCG/Fiscal Compact) and the President's refusal to ratify the European Council Decision on **Art. 136 TFEU Amendment**. Only the elections of new President of the Czech Republic allowed for change. In April 2013, the Czech Republic ratified the EC Decision and in April 2014, the **ratification process of the TSCG has been initiated**. At the moment, the TSCG was approved by the Senate, however not yet by the Chamber of Deputies. Unlike Sweden, the Czech Republic considered the TSCG to be a treaty that transfers powers to an international organization (Art. 10a of the Constitution) requiring three-fifth (constitution) majority in both chambers of the Parliament, despite the fact that the transfer would occur upon the accession of the Czech Republic to euro only. The Czech Republic does not intend to be bound by parts of the Fiscal Compact on the basis of its Art. 14(5) that are otherwise applicable to the euro area only.

Since the Czech Republic is not a member of the euro area, it did not participate in the EFSF, is not a party to the TESM, is not bound by most of the provisions of the six-pack and two-pack, and does not participate in the Euro-Plus-Pact. Although the political stance towards the Euro-crisis measures has changed, there are **structural reasons why participation in new measures is approached cautiously**. Although hit hard by the crisis, the debt level is still relatively low, the Czech koruna relatively stable, the Czech Republic has not been subject to MIP, and the banking system is functioning well. The Czech Republic signed, but not ratified, the IGA on the Single Resolution Fund. However, **the participation in the Single Resolution Mechanism (SRM) or a 'close cooperation' within the Single Supervisory Mechanism (SSM) is not envisioned at the moment**. The Czech Republic actively negotiated, within the Banking Union, safeguards to maintain competences in relation to subsidiary companies of transnational bank groups (since 70% of banks' assets in the Czech Republic is owned by subsidiaries of Eurozone parent companies).

3) Constitutional limits for EMU membership

The EU law has affect in the Czech legal order based on Art.10a of the Constitution that provided through the Accession Treaty for transfer of competences to the EU. According to the Constitutional Court, the EU law is applicable law for ordinary courts, but not for the Constitutional Court itself. The Constitutional Court will enforce the EU law only when its ignorance by ordinary courts is so serious and flagrant that it amounts to breach of the Constitution. The EU law functions autonomously in the Czech legal order and in case of conflict with constitutional provisions, a constitutional interpretation that affords the effect to EU law must take precedence (euro-conforming interpretation affording indirect effect). However, there are limits to such EU law effects. The Constitutional Court has acknowledged

that the **level of human rights protection** in the EU is comparable to the level of protection afforded by the Czech Constitution; however it has not fully precluded an ad hoc evaluation. The other essential requirements, such as **democracy** and **sovereignty** are developing concepts and the Constitutional Court would evaluate them on case-by-case basis (**ultra-vires doctrine**).

The limits to EMU membership thus rest in the eternity clause. Since the Constitutional Court keeps the interpretation of **the content of eternity clause open and flexible**, the limits will be evaluated only upon a review, in particular from points of view of fiscal and monetary sovereignty and democratic guarantees of public power exercise. The prior consent to join euro would have to be taken into account.

4) Crisis Management Measures

From the applicable parts of the reform of the Stability and Growth Pact the Czech Republic implemented the **European Semester** in 2011. Since the budgetary process has followed similar schedule, not many changes were needed (particularly the preparation of medium-term expenditures frameworks needed to be speeded up). The Czech Republic only partly implemented **Dir. 2011/85/EU** in regards of accounting and statistics (2010 accounting reform); macro-economic and fiscal forecasts (although a national fiscal council has not been created yet); medium-term budgetary frameworks (however without a sanction mechanism and applicable to state budget and state funds only). Most of the fiscal responsibility rules were to be introduced in the form of Fiscal Constitution. The Fiscal Constitution also envisaged incorporating the TSCG into the constitutional order.

In 2012, two constitutional amendments were submitted by the Government to the Parliament (i) constitutional bill on fiscal responsibility setting the Balanced Budget Rules, Medium Term Objective (MTO) and sanction mechanism for both the state and territorial self-governments' budgets; (ii) constitutional bill amending the competences of the Supreme Auditing Office so that it can audit organs of territorial self-government (regions and municipalities) and private companies. The former bill has expired with the dissolution of the Chamber of Deputies and the latter was rejected in the Senate. In February 2015, the Government submitted to the Parliament a new **constitutional bill on fiscal responsibility** and an implementing bill, which are currently in the committees awaiting second reading. The bill creates a **debt brake** activated when the debt reaches 55% of GDP (the debt-to-GDP is currently at 43,5% (2014) and decreasing). When this ratio is reached, the Government must propose balanced state budget and state funds budget. **Self-governing units** will be obligated to enact **balanced budget**, unless the deficit can be covered by previous-years surplus. Several exceptions are envisioned in line with the TSCG. The indebtedness of self-governing units shall not exceed 60% of their income for last four years. The bill includes a correction and enforcement mechanism for self-governing units in case of excessive debt (partial suspension of tax redistribution) (currently some 500 municipalities are in such situation). Finally, the bill improves transparency of budgetary documents of self-governing units and semi-budgetary organizations.

5) Constitutional law scrutiny of EMU reform scenarios

Since the Czech Republic does not participate in most of the EMU reforms there has been little ground for involving the Constitutional Court. From the measures the Czech Republic has been part of – the ESFM, EC Decision on Art. 136 TFEU Amendment, and applicable parts of the reformed Stability and Growth Pact – **neither of these measures were challenged in front of the Constitutional Court** since they did not have any real constitutional implications. The TSCG might be challenged at the Constitutional Court under the constitutionality review of international treaties; however, since the constitutional implications are potential only (as they will be triggered at the time of the accession to euro) and the Government opted for ‘safe’ constitutional majority for its ratification, there are little constitutional issues to address. **Same limits that apply to further integration within the EU legal order shall apply to any integration outside the EU legal order** and the Constitutional Court’s ‘European’ doctrine shall be applicable (since Art. 10a of the Constitution has created a general, not EU specific, regime).

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