

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

HUNGARY

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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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HUNGARY (András Jakab / Pál Sonnevend)

1) Main characteristics of the national constitutional system

The current Hungarian system is mainly based on the Basic Law of 2011. The adoption of the basic law was accompanied by heavy international criticism, and the opposition (which did not participate in the procedure) widely considers document as legal but illegitimate.¹

Hungary is a unitary (as opposed to federal) state, the national parliament (Országgyűlés) consists of one chamber. As a rule, changing the Constitution requires two thirds of all the members of the parliament, whereas ordinary statutes require half of the members present. There is an intermediary category in the hierarchy of laws, so called cardinal laws (sarkalatos törvények) which require two thirds of the members present (generic minimum presence requirement is 50% of members).

The Constitutional Court is the ultimate guardian of the legality of acts above the level of local governments. Talking of the Constitutional Court's legal standard of review (ie scope of judicial review) and objects of review, EU law – as a rule – does not qualify as either.

There is no hierarchy within the Basic Law, there are no principles which would require a higher quorum in Parliament or which would be unamendable.

In the Hungarian doctrine, EU law is not treated as international law, but rather as special autonomous legal order. In contrast, the Treaty on Stability, Coordination and Governance (TSCG) and the Treaty Establishing the European Stability Mechanism (TESM) were promulgated in the Hungarian legal system by an Act of Parliament, as other international treaties.

The integration clause Article E Basic Law speaks only about jointly exercising and not about conferring competences. The strange formula seeks to ensure the defence of national sovereignty. This has, however, only a rhetorical importance, as in practice the same will happen as when competences had been conferred. Similarly to other Eastern European member states, it is often emphasized that sovereignty itself is not affected by EU accession, but only competences.

The Constitutional Court tried to avoid any direct conflict with EU law, and cases involving such issues have been resolved as procedural and technical issues. In obiter dicta, we sometimes find statements similar to (and probably stemming from) the Maastricht Urteil of the German Federal Constitutional Court emphasising the final say of the national constitutional courts instead of the ECJ.

¹ For more details on these debates, see Pál Sonnevend, András Jakab and Lóránd Csink, "The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary" in: Armin von Bogdandy – Pál Sonnevend (eds): *Constitutional Crisis in the European Constitutional Area*, Oxford e.a.: Hart 2015, pp. 33-109.

2) Constitutional foundations of EMU membership

Hungary is not part of the single currency, but the Basic Law contains provisions on public debt brakes the fulfilment of which is a precondition of EMU membership (there are no provisions on budget deficit per se or on inflation though).

Article 36 Basic Law provides the following: “(4) Parliament shall not adopt an Act on the central budget which would result in the state debt exceeding half of the Gross Domestic Product. (5) As long as state debt exceeds half of the Gross Domestic Product, Parliament may only adopt an Act on the central budget which provides for state debt reduction in proportion to the Gross Domestic Product. (6) Derogation from the provisions of paragraphs (4) and (5) shall only be allowed during a special legal order and to the extent necessary to mitigate the consequences of the circumstances triggering the special legal order, or if there is a significant and enduring national economic recession, to the extent necessary to restore the balance of the national economy. (7) If Parliament fails to adopt the Act on the central budget by the beginning of the calendar year, the Government shall be authorised to collect the revenues determined in the relevant rules of law and, within the framework of the appropriations determined in the Act on the central budget for the previous year, effect the pro-rata expenditures.” Paragraph 7 in the named Article was the subject of many controversies, as it is considered to be an overly strong limit on the budgetary powers of parliament.² Similar provisions are to be found in Article 36 para 1-3 on the competence of the government to accumulate public debt.

3) Constitutional limits for EMU membership

According to Article K Basic Law “The official currency of Hungary shall be the forint.” The provision’s actual purpose and legal consequences are not entirely clear. It probably does not imply the prohibition of money-substitutes (such as food vouchers which Hungarian employers often give to their employees for tax reasons). It probably does not imply the prohibition of foreign currencies in shops either (in touristic areas Euro is normally accepted). It most likely only prohibits a full scale change of the currency, i.e. the introduction of the Euro. This means that if Hungary wants to become a member of the Euro zone, then Article K of the Basic Law has to be amended.

Hungarian law recognizes the essential characteristics of EU law: Direct Effect and Primacy of EU Law. EU measures are not the subject of judicial control by the Constitutional Court. If the Constitutional Court has doubts as to the conformity of EU secondary law with EU primary law it ought to make use of the preliminary reference procedure under Art 267 TFEU, but in fact it has never done so far yet.

4) Crisis Management Measures

In the fall 2010, the Parliament adopted an amendment to the former (1949/1989) Constitution which exempted tax, financial and budget laws from the scrutiny of the Constitutional Court (with narrow exceptions). The amendment was widely believed to be a

² For more details see András Jakab, Sustainability in European Constitutional Law (July 1, 2016). *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2016-16*. Available at SSRN: <http://ssrn.com/abstract=2803304>.

preventive measure to avoid possible consequences of Constitutional Court judgments on the budget, especially laws concerning the nationalization of private pension funds. These limits on the competences of the Constitutional Court have been heavily criticized both by the Venice Commission, the opposition and academia, but they nevertheless have been introduced to the Basic Law 2011 as well (Article 37).³ Article 37 Basic Law provides: “(4) *As long as the level of state debt exceeds half of the Gross Domestic Product, the Constitutional Court may, within its competence pursuant to points b) to e) of paragraph (2) of Article 24 [constitutional complaint, abstract posterior review, concrete review initiated by ordinary judges], review the Acts on the central budget, on the implementation of the budget, on central taxes, on duties and on contributions, on customs duties, and on the central conditions for local taxes as to their conformity with the Fundamental Law exclusively in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience and religion, or in connection with the rights related to Hungarian citizenship, and it may only annul these Acts for the violation of these rights. The Constitutional Court shall have the right to annul without restriction Acts governing the above matters if the procedural requirements laid down in the Fundamental Law for the making and publication of such Acts have not been observed. (5) In the case of the statutory provisions that came into force in the period while state debt exceeded half of the Gross Domestic Product, Paragraph (4) shall also be applicable to such period even if state debt no longer exceeds half of the Gross Domestic Product. (6) The method for the calculation of the state debt and the Gross Domestic Product, as well as the rules relating to the implementation of the provisions of Article 36 and Paragraphs (1) to (3) shall be laid down in an Act.*”

³ Zoltán Szente, Breaking and making constitutional rules. The constitutional effects of the world economic and financial crisis in Hungary, in: Xenophon Contiades (ed.), *Constitutions in the Global Financial Crisis: A Comparative Analysis*, Farnham: Ashgate, 2013. pp. 245-262.

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