

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

LITHUANIA

by Irmantas Jarukaitis



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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LITHUANIA (Irmantas Jarukaitis)

1) Main characteristics of the national constitutional system

The Lithuanian constitutional system is primarily based on the Constitution of the Republic of Lithuania, adopted by way of a referendum on October 25, 1992. Some specific constitutional acts (like the Constitutional Law of the Republic of Lithuania on the State of Lithuania of February 11, 1991; the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions of June 8, 1992; the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union of July 13, 2004) are part of positivist constitutional law as well.

The Constitution establishes the unitary **democratic state**, the **parliamentary republic** with some “**presidential**” **flavours**. Art. 5 of the Constitution, as interpreted by the Constitutional Court, establishes a strict separation of powers as regards legislative and executive powers, thus, no delegated legislation by the Government is allowed.

The Constitution is based on some core **constitutional principles**, which “may not be negated”: the independence, republic, democracy, rule of law, separation of powers, the innate nature of human rights. The Constitution is based on the systemic principle of market economy (but later on, *social orientation* of the Constitution as well). The Constitution explicitly pronounces its supremacy over other sources of law (Art. 7 of the Constitution) and its direct applicability (Art. 6).

The Constitution establishes a **rigid procedure for its amendment**. Different procedures and requirements regarding its amendment establish a certain *de facto* internal hierarchy of its provisions. These procedures require wide support both among the public in general and among the political parties represented in the Parliament, ensuring that the constitutional amendment procedure is above the ordinary political process.

The provision of Article 1 of the Constitution ‘the State of Lithuania shall be an independent democratic republic’ may only be altered by referendum if not less than three-quarters of the citizens of Lithuania with the electoral right vote in favour thereof. The Constitutional Court has recently ruled that Art. 1 consolidates the **fundamental constitutional values** – the independence of the state, democracy and the republic – which are inseparably interrelated and form the foundation of the State of Lithuania, as the common good of the entire society consolidated in the Constitution; they **must not be negated** under any circumstances. Further, the Court ruled that the principle of recognition of the innate nature of human rights and freedoms should also be regarded as a fundamental constitutional value that is inseparably related to these constitutional values and may not be negated either. Given the constitutional imperative to ensure that no amendments of the Constitution violate the harmony of the provisions of the Constitution or the harmony of the values consolidated by them, the Constitution does not permit any such amendment that would deny at least one of the above-mentioned constitutional values underlying the foundations of the State of Lithuania as the

common good of the entire society, with the exception of the cases where Art. 1 of the Constitution would be altered.

Amendments of the Constitution concerning **other chapters** of the Constitution must be considered and voted in the *Seimas* (the Parliament of Lithuania) twice (of course, it may decide to submit them to a referendum as well, since Art. 9(1) of the Constitution stipulates that the most significant issues concerning the life of the State and the Nation shall be decided by referendum). There must be an interval of not less than three months between the votes. A draft law on amendment of the Constitution shall be deemed adopted by the *Seimas* if, during each of the votes, not less than two-thirds of the Members of the *Seimas* vote in favour.

The Constitution (Arts. 102-108) envisages the establishment of the **Constitutional Court** (further – the CC), which *de facto* started functioning in 1993. Alongside the system of general competence courts (Arts. 109-117; four level system exists), the Constitution envisages (Art. 111 para 2) a possibility of creation of specialized courts. The system of **administrative courts** (two levels – five regional administrative courts and the Supreme Administrative Court of Lithuania) was established in 1999.

In order to ensure a proper constitutional basis for Lithuania's **EU membership** the Parliament adopted the Law Supplementing the Constitution with the Constitutional Act on Membership of the Republic of Lithuania in the European Union and Supplementing Article 150 of the Constitution on 13 July 2004. The amendments took effect as of 14 August 2004. The Constitutional Act is an integral part of the Constitution.

These amendments of the Constitution were preceded by **compulsory referendum**. According to Art. 9 of the Constitution, the most significant issues concerning the life of the State and the Nation shall be decided by referendum (Art. 4(5) of the Law on Referendums provides for a mandatory referendum concerning the participation of the Republic of Lithuania in international organisations ‘should this participation be linked with the partial transfer of the scope of competence of Government bodies to the institutions of international organizations or the jurisdiction thereof’). Given the profound impact of Lithuania's accession to the EU on the whole society, the state and the core constitutional principles of the national polity, it was decided to organise a referendum on EU accession once the Accession Treaty was signed. The referendum took place on May 10-11, 2003. (63.37% participation, 90% voted in favour).

It is widely recognised in academic doctrine that the accession to the EU and the Constitutional Act had a systemic (horizontal) impact on the whole Constitution: the reorganisation of the exercise of public powers, envisaged by the Constitution (a new, vertical dimension was added); the impact on the separation of powers; the impact on the principle of democracy; the impact on the rule of law (for example, a shift of some powers due to *Simmmenthal II* decision from the Constitutional Court to administrative courts and courts of general competence). Because of the fact that the membership in the EU touches upon the core principles established in Chapter I of the Constitution, some authors voiced criticisms as regards the fact that the Constitutional Act was adopted by the Parliament and not by way of a referendum.

As regards the attitude of the **Constitutional Court** of the Republic of Lithuania to the EU related issues, the Court, on the one hand, **does not accept the idea of unlimited primacy of EU law** over the Constitution itself (see the Ruling of March 14, 2004), but, on the other hand, **admits the impact of EU law to the interpretation of the Constitution** (see the Ruling of December 21, 2006; decision of May 8, 2007 by which the CC addressed the EJC through preliminary rulings procedure), accepts the necessity of reinterpretation of the Constitution, prompted by the accession to the EU and adoption of the Constitutional Act (the Ruling of September 26, 2006). Even more, in its recent practice (see the Rulings of January 24, 2014 and November 12, 2015) the Constitutional Court treats Lithuania's fully-fledged **membership within the EU as a constitutional value**, acknowledges that the Constitution establishes a constitutional imperative for participation in the EU and treats the Constitutional Act as the expression of a positive geopolitical orientation of Lithuania. The CC never claimed the power to judge on the validity and/or application of EU legal acts in Lithuania.

Speaking of court practice of administrative courts and courts of general competence, after eleven years of the membership, **EU law is firmly entrenched in domestic court practice**, principles of primacy and direct effect are recognized and applied in practice of Lithuanian courts.

2) **Constitutional foundations of EMU membership and its limits**

Lithuania joined the **eurozone** on 1 January 2015. Its membership in the EMU received no special constitutional treatment, because the obligation to accede to the EMU (once it satisfies the Maastricht criteria) was established in the Accession Treaty of 2003. Besides, Art. 125 of the Constitution was amended in 2006 by the Parliament. Before amendment, Art. 125 provided for the **Bank of Lithuania's 'exclusive right to issue bank notes'**, which was not in line with the rights of the European Central Bank. The Law amending Art. 125(2) of the Constitution was adopted on 25 April 2006, and it simply abolished Art. 125(2) of the Constitution. The CC declared that the Law on amendment of Article 125 of the Constitution was adopted in breach of the essential procedural requirements of Art. 147 of the Constitution and annulled the law (see the Ruling of January 24, 2014). Still, the Court pointed out in the ruling that the Constitution establishes a constitutional imperative of positive geopolitical orientation (that is, membership in the EU and NATO), whereas the Preamble of the Constitutional Act expressly speaks about the '*fully-fledged* participation of the Republic of Lithuania in the European integration'. From this the Court deduced the constitutional obligation of Lithuania to participate as a fully-fledged Member State in the integration of the member countries into the EMU by adopting the common currency and conferring exclusive competence in the area of monetary policy to the EU.

Further, a group of citizens introduced proposals to amend Art. 125 of the Constitution and Art. 1 of the CA and to organize a referendum on this issue in 2014. The initiators proposed amending the Constitution in order to re-establish the right of the Bank of Lithuania to emit bank notes. The Central Electoral Commission refused to register the initiative, arguing that such amendments would not be compatible with the Constitution, since such amendments would be in conflict with international commitments undertaken by Lithuania in

the course of accession. The Supreme Administrative Court of Lithuania, after verifying with the CC whether the Central Electoral Commission had such authority under the Constitution (see the Ruling of the CC of July 11, 2014), supported the findings of the Central Electoral Commission on July 18, 2014. The Court, relying inter alia on the jurisprudence of the CC, concluded that Lithuania has the obligation, stemming both from the Accession Treaty as well as from the Constitution, to introduce the euro. Therefore, in order to introduce the proposed amendments to the Constitution, prior amendment of the Accession Treaty would be needed (see the Ruling of the Supreme Administrative Court of Lithuania of July 18, 2014 in case No. R-858-11-14).

In order to introduce the euro, Lithuania had to join the **ESM Treaty**, which was done by a law of the Parliament of December 18, 2014. The explanatory memorandum that was submitted to Parliament with the draft ratification law treated the ratification of the ESM Treaty as an additional financial guarantee for the state financial system. There were some discussions both within the Parliament and in the general public concerning the far-reaching obligations undertaken under the ESM Treaty, but these discussions were to some extent overshadowed by events in Ukraine, since accession to the eurozone is viewed in Lithuania not only from the economic but also from the geopolitical perspective. It should be noted as well that the Law on ratification of the ESM Treaty (Art. 2) establishes the obligation of the Government to obtain *ex ante* **agreement of the Seimas** concerning (a) the maximum lending volume and the adequacy of the authorised capital stock of the ESM under Art. 10 (para 1) of the ESM Treaty; (b) possible amendments to the contribution key for subscribing to ESM authorised capital stock under Art. 11 of the ESM Treaty, if it increases financial obligations of Lithuania.

3) Crisis Management Measures

Lithuania was hit particularly hard by last economic crisis, but was able to restore the stability and economic growth, although certain measures, undertaken by the Parliament and the Government, were particularly drastic (sharp reduction of salaries of public sector, pensions, etc.) and later on some of these were declared to be contrary to the Constitution by the CC.

The latest crisis has not prompted **any constitutional amendments**. The Constitution places the emphasis on the central role of the Parliament in budgetary matters (only the Seimas is representative of the Nation (Art. 4 of the Constitution); under Arts. 67 and 94 of the Constitution only the Parliament adopts the budget; solely the Government has the right and duty to prepare the draft budget; only the Government has the right to propose amendments to the adopted budget (the Ruling of the CC of January 14, 2002); under Art. 128(1) “Decisions concerning the State loan and other basic property liabilities of the State shall be adopted by the Seimas on the proposal of the Government”), whereas the CC, under the basis of the principle of good governance, calls for sound management of public finances (the Government, submitting a draft budget to the Parliament, has the obligation to “substantiate the revenues and allocations indicated therein with the evaluation of the needs and possibilities of the state and the society”; the Seimas, when adopting the budget, has the

obligation to take “into consideration the existing social and economic situation, the needs and possibilities of the society and the state, the available or potential financial resources and the liabilities of the state, as well as a number of other important factors” (the Ruling of the CC of January 14, 2002).

Various crisis related measures were adopted by legal acts below the Constitution. First, it should be noted that the Parliament adopted the Law on Fiscal Discipline back in 2007, which establishes, among the other things, the achievement of the medium-term objective that the general government sector be in surplus or close to balance. This aim has not been achieved so far. As mentioned above, the Law ratifying the ESM Treaty establishes a duty of the Government to receive the approval of the Parliament in certain cases.

The Parliament ratified the **Fiscal Compact Treaty** on June 28, 2012. Although there were some discussion in the Parliament as regards the compatibility with the Constitution, the main conclusion was that the competences and obligations of the Seimas and the Government are not modified in a profound way; the obligation as regards the principle of balanced budget and corrective mechanisms in essence corresponds to those, stemming from the jurisprudence of the CC. Further, the Parliament adopted Republic of Lithuania Constitutional Law on the Implementation of the Fiscal Treaty on November 6, 2014. The Law establishes detailed provisions implementing the Fiscal Compact Treaty and, with some exceptions, came into force as of January 1, 2015. Under Art. 69 of the Constitution constitutional laws are adopted by majority of all MP’s of the Parliament, and, according to jurisprudence of the CC fall below the Constitution but above ordinary laws in the hierarchy of Lithuanian legal system. Some MP’s of the Parliament called for referral of the ratification of the Fiscal Compact Treaty to the CC, but this suggestion didn’t receive enough support.

4) Constitutional Law Scrutiny of EMU reforms scenarios

So far there are no deeper general or scholar discussions in Lithuania as regards future EMU integration scenarios and possible constitutional limits established by the Constitution. On the one hand, the practice of the CC, treating Lithuania’s membership in the EU as constitutional value and placing it in terms of geopolitical choice, seems to support a premise, that the Constitution is flexible enough to embrace future steps of deeper integration. So far the membership in the EU continues to receive high support in the society, differently from some other EU Member States, there were no challenges of various EU related issues (for example, the ratification of the EU Constitutional Treaty, the Lisbon Treaty, the European Arrest Warrant, etc.) before the CC.

Still, given the emphasis the CC places on the principle of democracy, one may not exclude a scenario, that the CC would follow the path chosen by the German Federal Constitutional Court linking the financial independence of a state with the principle of democracy.

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