

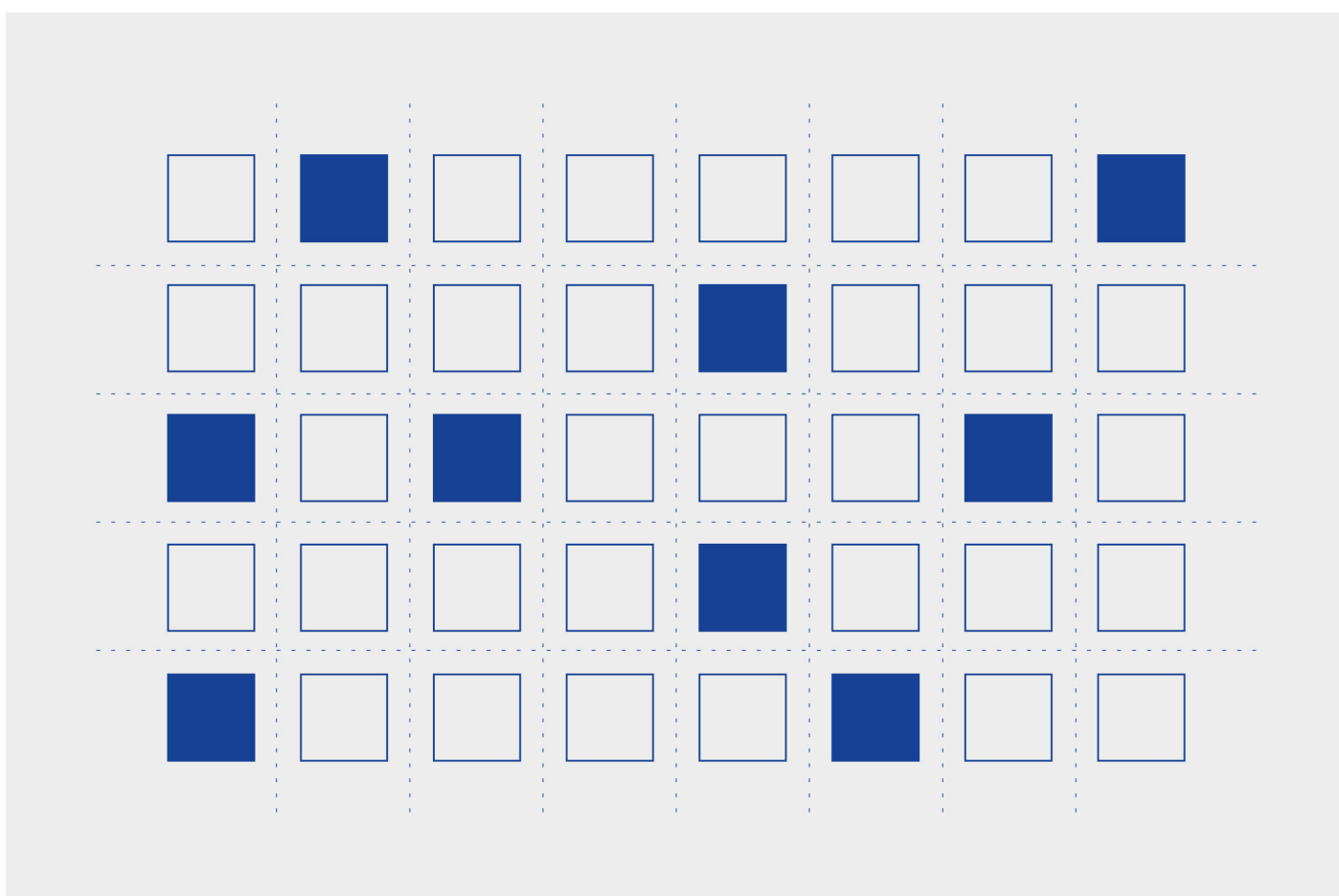
# EMU CHOICES

THE CHOICE FOR EUROPE SINCE MAASTRICHT  
SALZBURG CENTRE OF EUROPEAN UNION STUDIES

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

### AUSTRIA

by Rainer Palmstorfer



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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## **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’.

## AUSTRIA (Rainer Palmstorfer)

### 1) Main characteristics of the national constitutional system

The Austrian constitutional system is mainly based on the Federal Constitutional Law 1920. Austria is a federal state. It is composed of 9 autonomous states (“Länder”) each having its own parliament. The national parliament consists of two chambers: The **National Council** (“*Nationalrat*”) and the **Federal Council** (“*Bundesrat*”). As a rule, changing the Constitution merely requires the presence of at least half of the members of the National Council and the majority of two thirds of the votes cast.

The Constitutional Court is the ultimate guardian of the legality of acts by the federation, the states or communities against constitutional law. 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. By the same token, the Treaty on Stability, Coordination and Governance (**TSCG**) and the Treaty Establishing the European Stability Mechanism (**TESM**) – being **Treaties under public international law** – were contested before the Constitutional Court, for such treaties may not violate federal constitutional law. They rank below the latter.

The **basic constitutional principles** (“*Grundprinzipien*”), deduced by means of interpretation, make up the **highest level of Austrian constitutional law**. Among others, **democracy** and **federalism** (i.e. multilevel governance system comprised of Bund and Länder) are considered to be such principles. Changing a constitutional principle is tantamount to a **total revision** of the Federal Constitution and calls for a compulsory **referendum** by the entire nation in addition to the higher thresholds in Parliament. The accession of the Republic of Austria to the **EU** on 1 January 1995 was considered to be the first case of a **total revision** of the Federal Constitution. Accordingly a referendum was held on the respective Federal Constitutional Law (“Accession Act”) on 12 June 1994 (66.6 % in favour, 82.3 % turnout).

### 2) Constitutional foundations of EMU membership

As the EMU had already been on track at the time of Austria’s accession, the issue of **EMU-membership** was not dealt with separately. Austria has not opted out from the single currency and was therefore bound by EC law to participate in the single currency. In order to understand how the Republic of Austria has tried to meet the new requirements imposed by EC Law in the field of EMU, one has to come back to the aforementioned constitutional principle of **federalism**.

Many fields of economic policy, such as trade and industry, or labour-legislation may be governed by federal laws, leaving only some issues to state legislation. In the field of **fiscal policy** the federal legislator decides upon **taxation** matters. As regards the **budgetary laws**, the states enjoy a comparatively big margin, as federal constitutional law hardly predetermines this field.

Considering that EU law simply refer to “member states” (cf Art 126 para 1 TFEU) as norm addressees, abiding by these legal requirements for a federal state such as Austria is a

challenge. The approach chosen how to tackle this problem was to provide for **coordination** between the Federation, the States and the Communities by means of agreements between those entities. This type of agreement is referred to as “**stability pact**”. It contains the obligations of the territorial corporate bodies to meet the criteria of budgetary discipline imposed by EC Law on the public households of Austria (ie Federation, States, Communities), with the **stability pact 2012**, the most recent agreement, serving also as basis for the transposition of the TSCG in the Austrian legal order. Stability pacts rank below the constitution.

In the recent decade, a constitutional provision was introduced imposing limits on the Federation, the states and the communities ensuring **overall and sustainable balanced budgets**. This provision was drafted in a rather vague way concerning the determination of sustainable balanced budget or the component of time. Further, these political decisions involve prediction of future developments. All of these reasons restrict the possibility of judicial control.

In the field of fiscal and economic policy, the federation and/or the states may act in different forms. Most importantly, the annual **Federal Finance Law** is adopted by the National Council. **Democratic legitimacy** is provided by the fact that the National Council is elected by the Austrian people. As regards its **accountability**, on the one hand legal measures can be **judicially controlled** before the Constitutional Court. On the other hand, the members of the National Council are **politically accountable**, in so far as their term of office is limited. Also the members of the Federal Government can be held responsible for contravening a law. The Federal Constitution also provides for parliamentary rights vis-à-vis the respective federal minister concerning projects within the framework of the European Union.

### 3) Constitutional limits for EMU membership

Austrian 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 makes use of the preliminary reference procedure under Art 267 TFEU. The Constitutional Court has not developed an **ultra-vires doctrine** with regard to EU law that is not backed by EU primary law. There is no **political control** of EMU-related measures by means of referenda.

It is unclear what kind of future EU Treaty amendment(s) would constitute another total revision. Applications were brought to the Austrian Constitutional Court claiming that the Lisbon Treaty was tantamount to such a total revision. However, they were dismissed because the applicants lacked standing (VfSlg 19.085/2010).

The **TESM** and the **TSCG** have been challenged before the Constitutional Court (VfSlg 19.750/2013, VfSlg 19.809/2013). Many arguments brought forward did not draw on distinct **economic and fiscal arguments**, but concerned rather general provisions of the Federal Constitution. Simply put, the Court found that the issue of Austria’s participation in the TSCG is a **political question** which is not to be answered by the Constitutional Court (VfSlg 19.750/2013, para 57). Unlike the German Constitutional Court, the Court did not seize the

chance to develop a doctrine of “overall budgetary responsibility” of the National Council. As regards the TSCG, the Constitutional Court held the application partly inadmissible, partly unfounded.

#### **4) Crisis Management Measures**

Since the outbreak of the euro crisis in early 2010, the Federal Constitution has been changed with regard to counter measures only to a minor extent. Apart from the introduction of information rights and authorization rights by the National Council with regard to the **ESM**, crisis measures were adopted by means of law ranking below constitutional law. Some commentators consider the newly introduced parliamentary rights in ESM affairs not necessary from a legal point of view. Instead, they consider this constitutional reform as “political price” for the support from the opposition for agreeing to the amendment of Art 136 para 3 TFEU, which required a constitutional majority. For meeting the obligations imposed by the TSCG, a **new stability pact (2012)** was agreed upon, containing a **debt break**. Accordingly, the Federation also amended the Federal Budget Law, which deals with the general framework of federal budgeting.

#### **5) Constitutional law scrutiny of EMU reform scenarios**

Austrian constitutional law does not seem to contain insurmountable barriers to further EMU integration due to a Treaty change. True, the changing of EU Treaties calls for higher thresholds as regards their approval in parliament. But so far, Treaty changes did not fail in the Austrian parliament. As regards the issue of mandatory referenda regarding a total revision, it will depend on the intensity of the prospective Treaty amendment.

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