

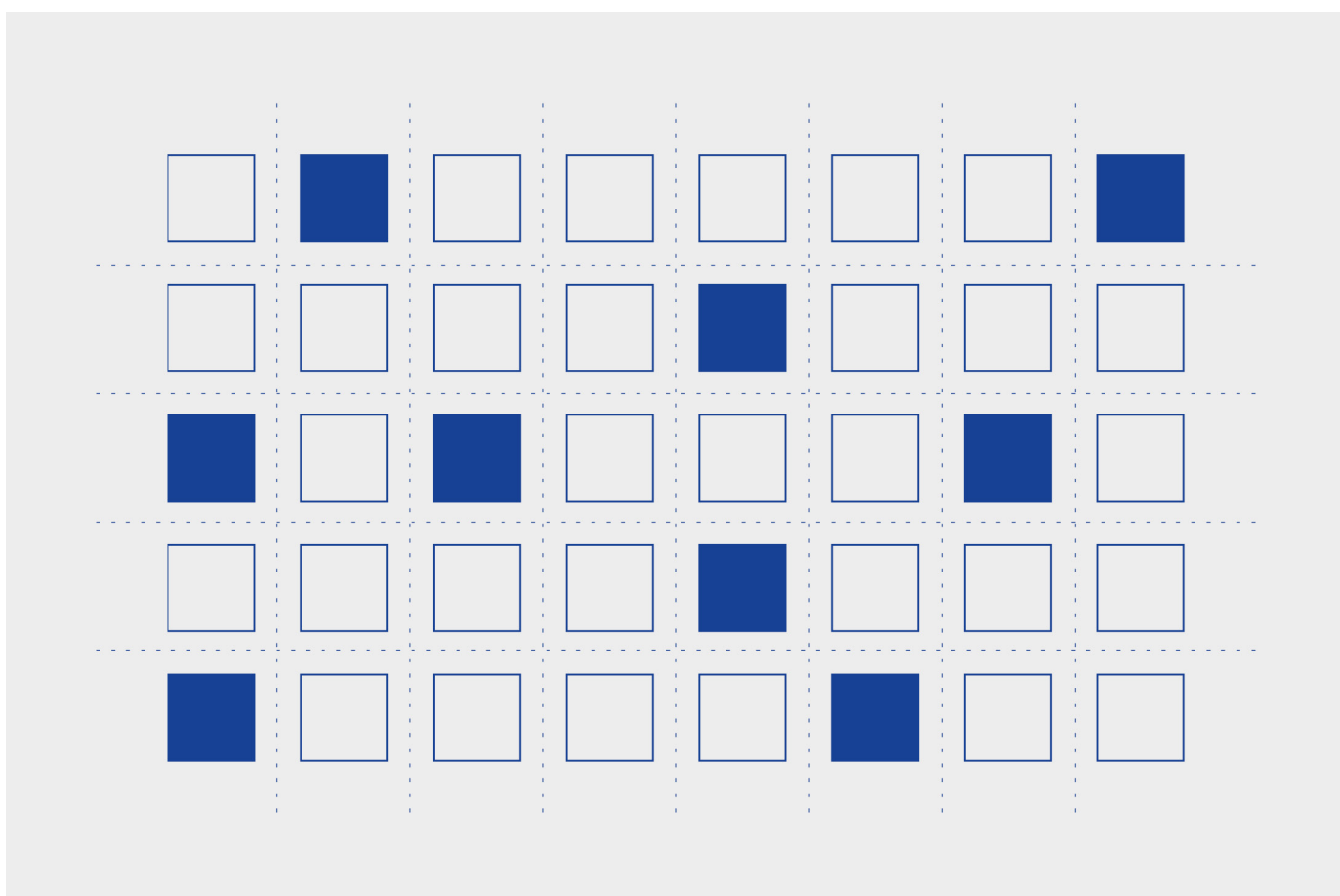
EMU CHOICES

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

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

CROATIA

by Tamara Čapeta and Iris Goldner Lang



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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CROATIA (Tamara Čapeta/ Iris Goldner Lang)

1) Main characteristics of the national constitutional system

Croatian Constitution was adopted in December 1992, and served as the legal basis for the separation from Yugoslavia. Since then, the Constitution was amended several times. The 2010 amendments introduced an EU Chapter (consisting of 4 Articles), in preparation for EU membership.

Croatia is a parliamentary democracy since the constitutional amendments of 2000 when the semi-presidential system was abandoned. It has a unicameral Parliament.

Amendments to the Constitution have to be adopted by two-thirds majority in the Parliament. The Constitution can also be amended by a referendum.

The interpretation of the Constitution is vested in the Constitutional Court, which is can invalidate statues for non-conformity with the Constitution. In terms of constitutional justification and limits to EU membership, there are not yet significant judgments. The Court has recently (not in the context of an EU-related dispute¹) pronounced supremacy of the Constitution over EU law, thus setting the scene for future development of constitutional limits to EU integration. As the Croatian Constitutional Court proved very open to foreign influences (eg. German Constitutional Court's doctrines or ECtHR's decisions), one may expect the development of both ultra vires and national identity doctrines as tools for controlling further integration.

As far as the application of EU law by courts, via direct effect and supremacy is concerned, no constitutional issue has yet arisen. As far as international treaties are concerned, they were always, according to the Constitution, a part of the Croatian legal order, and had, if duly ratified, the force higher than laws. However, in practice, they were rarely used in adjudication.

2) Constitutional foundations and limits to EMU membership

Croatia became an EU member on the basis of a Constitutional provision related to the 'association with other states'. It required a two-third majority in the Parliament and a popular referendum. As no opt-outs or other derogations from the EMU were negotiated, by joining the EU Croatia at the same time embarked on the irreversible path towards the euro area.

Future EU Treaties' amendments are procedurally easier to accomplish than EU membership. In case these amendments imply the transfer of new regulatory powers to the EU, their ratification requires a two-thirds majority in the Parliament, but not a referendum. However, a referendum is possible. These are the only procedural limits to further economic integration.

Substantive limits are not set in the Constitution, and will depend on the interpretations given by the Constitutional court. The constitutional identity doctrine, thus far developed by the Constitutional Court (even though outside of the EU framework)², does not seem to suggest obvious limits, for as long as further transfer of powers to the EU does not interfere with the characterisation of Croatia as a welfare state (not yet constitutionally elaborated concept), based on a value of social justice (again a vague and non-explored concept).

¹ Decision U-VIIR - 1159/2015 of 8 April 2015 of Croatian Constitutional Court, para. 60; and Decision U-VIIR - 1158/2015 of 21 April 2015, para. 45.

² Notification SuS – 1/2013 of the Constitutional Court of 14 November 2013 about the popular constitutional referendum on the definition of marriage.

3) Effects of the Economic and Monetary Union on the Croatian legal order

Croatia, being a relatively new EU member, is not yet euro state. It, however, aspires to become a euro area member, but under the current procedures it will take many years before it joins the single currency. In the meanwhile, it is only bound by the rules of the Stability and Growth Pact and the Six Pack. The Two Pack does not apply to Croatia, as it is applicable only to euro area members. Due to the fact that Croatia is not a euro area member, it has not signed and it is not obliged to sign either the ESM Treaty or the Treaty on Stability, Coordination and Governance in the EMU (further in text: TSCG). The Croatian position vis-à-vis the TSCG is unique in comparison to all other EU Member States and remains open, which is the result of the fact that the TSCG was signed before Croatian accession to the EU. The Croatian government has, so far, not given any official position in respect of potential subsequent signing of all or some titles of the TSCG. Potentially, Croatia could unilaterally decide to adopt more stringent national rules and sign and ratify the TSCG in its full scope. However such a decision would mean undergoing an even more ambitious adjustment than that required by the Stability and Growth Pact, i.e. the Excessive Deficit Procedure that Croatia has to observe as the new member with a formidable fiscal imbalance. Since Croatia had previously not been bound by such strict rules and since the procedures built into the Stability and Growth Pact are binding and very challenging to achieve under the weak economic situation Croatia is experiencing, any additional and more strict rules would be hardly justifiable in the short term.

The Six Pack, most particularly its Directive 2011/85 on requirements for budgetary frameworks of the Member States, obliged Croatia to implement much stricter requirements on its budgetary framework than the previously existing ones and imposed new and more demanding rules for Croatian fiscal policy. The new fiscal policy rules were implemented as part of Croatian Fiscal Responsibility Law, which contains a balanced-budget rule. The Croatian Fiscal Responsibility Law was adopted in 2010, while its balanced-budget rule became active for the 2012 national budget.³

During the first year Croatia managed to observe the balanced-budget rule, requiring steep fiscal consolidation towards balanced budget despite a deep recession. Since the adjustment path as designed by the national fiscal rule was very ambitious and was created on the assumption of strong economic growth, such a rule was too strict under the prolonged recession Croatia is enduring. For that reason, the existing fiscal rule has been amended to make it more cyclically balanced, while making it fully compatible with the EU procedures.⁴

4) Austerity procedures

Croatia has not been subject to any EU bailout and to the subsequent related austerity procedures, which would initiate a strong negative reaction in the state. However, as all other EU Member States, Croatia is subject to economic governance procedures, which require the adoption of policies and measures recommended by the Council. Excessive macroeconomic imbalances identified by the Commission led to strong policy recommendations for Croatia.

³ Official Gazette of the Republic of Croatia 139/10.

⁴ Official Gazette of the Republic of Croatia 19/14.

The Excessive Deficit Procedure, initiated on 28 January 2014, obliges Croatia to correct its excessive deficit by the end 2016. The EU recommendations are mostly in line with the domestic policy priorities – fiscal consolidation and return to the sustainable growth path. Croatia is adhering to these recommendations. In that context, the Croatian Government has not (yet) imposed aggressive austerity measures, which would disproportionately hurt Croatian citizens. So far, only modest measures have been taken in that direction, the most visible being the adoption of two laws of temporary character: the Law on the denial of payment of certain material rights to employees in the public service,⁵ in force as of 31 March 2015, and the Law on the denial of the right to increase salaries based on seniority,⁶ in force as of 1 April 2014. The former act denies public servants the right to the 2015 Christmas bonus and the regress for using annual leave in 2015, while the latter denies the right to increase the coefficient of the complexity of work in public service based on the number of years of service.

5) Effects of the Banking Union on the Croatian legal order

Croatia has implemented the Single Rulebook (Bank Recovery and Resolution Directive and Capital Requirement Directive) as required by all 28 Member States. Croatia was one of the first Member States to implement the BRRD in January 2015. The adopted legislation did not include any transitional period for the full application of the BRRD. In October 2015 the first recovery and rehabilitation of a Croatian bank was launched. Croatia signed the Intergovernmental Agreement on the Single Resolution Fund, but it has not ratified it due to the fact that it is not a member of the Banking Union.

6) Challenge of the EMU and Banking Union instruments before the Croatian Constitutional Court

The only Croatian Constitutional Court challenge associated with the EMU instruments and austerity measures has been linked to the previously mentioned Croatian Law on the denial of the right to increase salaries based on seniority. It has been subject to constitutional review procedure initiated by nine trade unions and a number of Croatian citizens. In its judgment, dated 30 March 2015, the Constitutional Court rejected the proposal and declared that the Law on the denial of the right to increase salaries based on seniority is in accordance with the Croatian Constitution.⁷ The Court based its judgment on the argument that “there are imperative reasons of public interest which justify its application (correction of excessive deficit in accordance with the Council recommendations)”.⁸ Nevertheless, the Constitutional Court warned that potential further extension of the application of the Law in question could turn the measure into a permanent one, which would raise the question of the functioning of the rule of law, the principle of legal certainty and could call in question the citizens’ confidence in public authority.⁹ In case of further austerity measures, one can expect the initiation of further constitutional review procedures.

⁵ Official Gazette of the Republic of Croatia 36/15.

⁶ Official Gazette of the Republic of Croatia 41/14, 157/14 and 36/15.

⁷ Judgment U-I-1625/2014 and others, U-I-241/2015, U-I-383/2015, U-II-1343/2015 as of 30 March 2015.

⁸ Ibid, para. 66.

⁹ Ibid, para. 67.

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