

# 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

### IRELAND

by Gavin Barrett



## **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’.

## **IRELAND (Gavin Barrett)**

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

The Irish constitutional system is mainly based on the 1937 Constitution (*Bunreacht na hÉireann*). Ireland is a unitary constitutional democracy. It has a parliamentary system of government with a bicameral parliament known as the *Oireachtas*, consisting of two chambers, the *Dáil* and the *Seanad* and the office of the President who acts as the ceremonial apex of the state. Since the end of a transition period in 1941, changes to the Constitution have been capable of being effected only by passage of a Bill through the *Oireachtas* followed by approval in a popular vote.<sup>1</sup>

Ireland has a unified court structure,<sup>2</sup> with no separate administrative courts or a separate Constitutional Court. The Superior Courts consist of the High Court, which has full original jurisdiction, the Court of Appeal and the Supreme Court. Constitutional review of laws is permitted only to these Superior Courts. The constitutionality of legislation can be questioned in Superior Court litigation by any person who can show *locus standi*. The President can also refer the question of a Bill's (i.e., draft law's) constitutionality to the Supreme Court under Article 26. Ratification of Treaties and/or their implementation into national law can and has been challenged before the Irish Courts.

Provision for judicial review distinguishes the Irish legal system from the English legal system which is also a common law legal system. Considerable judicial activism and in particular a lively fundamental rights jurisprudence are features of the Irish system. The relative rigidity of the Constitution is a third feature which has featured prominently in modern constitutional culture. Ireland has now had 39 constitutional referendums.

### **2) Constitutional foundations of EMU membership**

An amendment to the Irish Constitution facilitating ratification of the Maastricht Treaty and its provisions concerning economic and monetary union was approved by referendum on 18 June 1992. Ireland joined the initial group of 11 countries selected in the May 1998 European Council in Brussels to participate in the third stage of EMU.

Since the entry into force of the Lisbon Treaty in December 2009, the Treaty basis for economic and monetary union is now largely found in the TFEU (*i.e.*, the renamed EC Treaty), to a far lesser extent in the TEU, and in some annexed Protocols.

Ratification of the Lisbon Treaty by Ireland was (on the second attempt) facilitated by a referendum to amend the *Bunreacht* on 2 October 2009. A further referendum on 31 May 2012 successfully amended the Constitution so as to facilitate ratification of the Fiscal Stability Treaty.

---

<sup>1</sup> See Article 46(2) of the Constitution

<sup>2</sup> See generally Article 34 of the Constitution.

### 3) Constitutional limits on EMU membership

One of the main constitutional limits to the further transfer of powers *by treaty agreement* is seen by the ruling in 1987 by the Supreme Court in *Crotty v An Taoiseach* that Constitutional provisions authorising Treaty ratifications permit Treaty amendments as long as these *do not alter the essential scope or objectives*" of existing EU Treaties.<sup>3</sup>

Where this limit is overstepped or a EMU-related treaty is not a European Union treaty (with the exception of the Fiscal Stability Treaty, accession to which was authorised by Articles 29.4.10°. ) then all of the remaining provisions of the Irish Constitution retain their relevance.

The Constitutional provisions which might possibly be offended by an EMU-related Treaty or Treaty amendment transgressing the above limits would obviously depend on the content of the Treaty in question. However, a considerable number might possibly be relevant.<sup>4</sup>

As regards the development of EMU *via sub-Treaty provisions* such as secondary legislation, the same provisions of the Constitution are potentially relevant. However, in this case, the constitutional validity of such measures in Irish law (and indeed implementing legislation) is given very extensive protection against Constitutional attack under these provisions by two special provisions not normally capable of being invoked where either amendments to the EU Treaties are involved or intergovernmental treaties are at issue, Article 29.4.6° and Article 29.4.10°. Some protection from Constitutional attack can also be provided, in an appropriate case, by the provision of Article 29.4.7°.

### 4) Crisis Management Measures

Ireland was one of the countries hardest hit by the financial and sovereign debt crises. Some of the main features of these crises included the October 2008 issuance of a €440 billion two-year long state guarantee to six Irish banks so as to prevent their collapse, followed by the February 2009 multi-billion euro bailout by the Irish Government of the two largest banks, Allied Irish Banks and Bank of Ireland, followed by the Anglo Irish Bank Corporation Act 2009 which provided for the nationalisation of that bank. In December 2010 the effective nationalisation of Anglo-Irish Bank began.

Uncertainty as to, *inter alia*, the financing needs of Irish banks and whether Ireland (at this time running a deficit of over €16 billion) could afford these drove Irish sovereign bond yields to unaffordable levels by October 2010, rendering it increasingly difficult for the State to borrow. In November 2010, the Government sought a bailout consisting of funding from the European Financial Stability Facility, the International Monetary Fund and other European countries. A so-called 'troika' consisting of the European Central Bank, the European Commission and the IMF agreed a very detailed three-year aid package in exchange for extensive austerity measures aimed at cutting state expenditure and increasing revenue, in

---

<sup>3</sup> See ruling of Finlay C.J. (who delivered the ruling of the court) [1987] I.R. 713 at 767. Emphasis added.

<sup>4</sup> Including Article 5, Article 6.2, Article 17.2, Article 21.1, Article 21.2, Article 28.2, Article 29.4.1°, Article 29.4.2°, Article 29.5.2°, Article 29.6, Article 33.1 and Article 34.1

effect severely limiting national economic sovereignty during the lifetime of the agreement. Ireland exited this programme on 15 December 2013, returning to normal market funding.

Public sector pay was cut using the Financial Emergency Measures in the Public Interest Act 2009, the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 and the Financial Emergency Measures in the Public Interest Act 2013. On 27 October 2011 a referendum was passed on a constitutional amendment facilitating the reductions of judges' pay.

A referendum was also held in May 2012 in a successful bid to allow the amendment of the Constitution in order to facilitate ratification of the Fiscal Stability Treaty on Stability, Coordination and Governance in the Economic and Monetary Union which had been signed in March 2012 by the leaders of all euro area members and 8 other European Union member states. This referendum resulted in the insertion of a new Article 29.4.10° into the Constitution, also set out in Section 2 of the text above.

The adoption of this amendment in the Constitution was followed by the adoption of the Fiscal Responsibility Act 2012 and the Fiscal Responsibility Act 2013.

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

Should an EMU reform scenario involve

(a) laws enacted, acts done or measures adopted by the EU or EU institutions or bodies competent under the Treaties (for example the adoption of secondary legislation); and

(b) laws enacted, acts done or measures adopted by the State necessitated by the obligations of EU membership (for example, laws implementing directives);

these will be accorded immunity from Constitutional attack under Article 29.4.6° of the *Bunreacht*.

So too, under Article 29.4.10°, will laws enacted, acts done or measures adopted by the State necessitated by the obligations of the State under the *Fiscal Stability Treaty* and laws enacted, acts done and measures adopted by bodies competent under that particular Treaty.

*Amendment* of the existing EU treaties themselves (or indeed the Fiscal Stability Treaty) *within* the extent authorised by the *Crotty* test of the flexible licence provided by the Article 29.4.5° (or, in the case of the Fiscal Stability Treaty, Article 29.4.10°) to adhere to those treaties will be regarded as constitutionally authorised.

Insofar as reform of the EMU involves *amendment* of the existing EU treaties (or the Fiscal Stability Treaty) *beyond* the extent authorised by the *Crotty* test relating to Article 29.4.5° (or, in the case of the Fiscal Stability Treaty, Article 29.4.10°), no special authorisation is provided by the Constitution. Thus if any provision of the Constitution will be transgressed by such an amendment – and the relatively strict *Crotty*/*Pringle* approach to Ireland's status as a 'sovereign' state under Article 5 will need to be borne in mind here - a referendum amending the Constitution will have to be held to render possible the relevant reform. Indeed, the reality

is that such a referendum will probably be held even if a provision of the Constitution merely seems *likely* to be transgressed.

Insofar as reform of the EMU involves amendment or agreement of *non-EU treaties*, no special authorisation is provided by the existing treaties for this. If any provision of the Constitution will be transgressed, a referendum amending the Constitution will have to be held. Again, such a referendum will probably be held even if a provision of the Treaty even seems likely to be violated.

Insofar as reform of the EMU involves laws, acts or measures at sub-Treaty level, however, immunity from Constitutional attack is provided by the immunity clauses set out in Article 29.4.6° and Article 29.4.10° which were seen in Section 3 of the text above (and which are, it should be noted, more limited in the case of national implementing measures than in the case of the relevant European-level measure, because of the ‘necessitated’ criterion in both Article 29.4.6° and Article 29.4.10°.)

# EMU --- CHOICES

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



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No. 649532

[www.EMUchoices.eu](http://www.EMUchoices.eu)