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

CYPRUS

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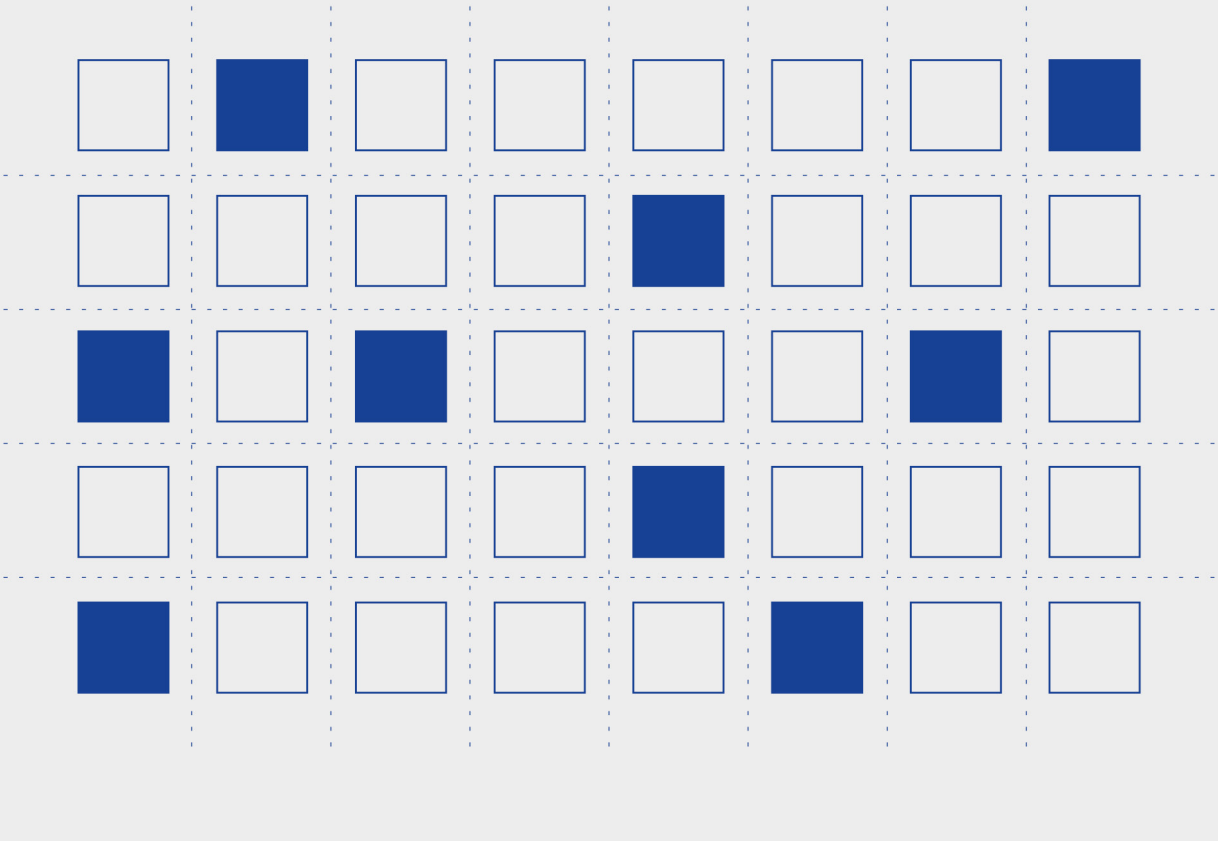

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Introduction

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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1) Main characteristics of the national constitutional system

The Republic of Cyprus (RoC hereafter) gained its sovereign independence from the UK by virtue of three international treaties, namely the Treaty of Guarantee, the Treaty of Alliance and the Treaty of Establishment and a Constitution, all of which came into operation the same day –16 August 1960.[1] The establishment of the independent RoC was seen as a political compromise between the different goals and aspirations of the two ethno-religious segments that live on the island, their motherlands and the colonial power. So, in order to achieve the balance between those conflicting interests, a complicated power sharing structure was designed. In fact, all of the principles of the consociational democracy – grand coalition, proportionality, autonomy and veto – were elaborately embodied in the 1960 Constitution.

The Constitution provided for 'an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President[2] being Turkish, elected by the Greek and the Turkish communities of Cyprus respectively'.[3] The President and Vice-President exercised executive power.[4] According to Article 54, all the executive powers not expressly reserved to the President and the Vice-President were exercised by the Council of Ministers. The cabinet had to consist of seven Greek ministers designated by the President and three Turkish ministers designated by the Vice-President. A seven-to-three ratio was also applied to the composition of the legislature, which was unicameral. The House of Representatives was comprised of 35 Representatives belonging to the Greek community and 15 belonging to the Turkish one.[5]

For the purposes of the present fact sheet, it is important to note the role of the parliament to the budget procedure. Details on the budget procedure are provided in Articles 81, 167 and 168 of the Constitution of the Republic of Cyprus. According to them, the Parliamentary Committee of Finance submits for discussion the Budget Draft Bill, which is then discussed in the Parliament, sitting in plenary session, and approved (or rejected) by simple majority as an ordinary law. Notwithstanding, it is the Minister of Finance that holds the main role in economic policy coordination. According to Art. 3(1) of Law 194 (I) of 2012 every Ministry and every Independent Agency has to send to the Minister of Finance the revenue and expenditure forecasts of their Ministry (or Agency) for the next 3 financial years.

The judicial system was to consist of a Supreme Constitutional Court,[6] a High Court of Justice and lower courts.[7] The Supreme Constitutional court was comprised of a Greek Cypriot judge and a Turkish Cypriot judge and it was presided over by a neutral judge that was neither a Cypriot citizen nor a citizen of any of the Guarantor States. Its jurisdiction ranged from constitutional issues arising from the interpretation of provisions of the

[1] See generally www.kypros.org/Constitution/English/.
[2] See generally Part 3 (Arts 36–60) of the Constitution of the Republic of Cyprus.
[3] Art 1 of the Constitution of the Republic of Cyprus.
[4] Art 46 of the Constitution of the Republic of Cyprus.
[5] See generally Part 4 (Arts 61–85) of the Constitution of the Republic of Cyprus.
[6] See generally Part 9 (Arts 133–151) of the Constitution of the Republic of Cyprus.
[7] See generally Part 10 (Arts 152–164) of the Constitution of the Republic of Cyprus.

Constitution[8] to the settling of conflicts or disputes regarding the extent of authority of legislative and administrative bodies.[9]

However, this sophisticated consociational arrangement was short-lived. In December 1963 the first, low-scale, inter-communal armed conflict broke out in Nicosia. That led to the break-up and the 'hellenisation' of the bicommunal Republic in 1964.

After this moment, the Turkish Cypriots have consistently rejected to participate in the administration of the common State. Notwithstanding, RoC continued functioning mainly by invoking the doctrine of necessity. This doctrine has been considered as a constitutional principle, which indirectly forms part of the 1960 Constitution. Its aim is to solve problems that were not foreseen by the drafters and which threaten the existence of the Republic.

The doctrine has been spelled out for the first time in the emblematic *Mustafa Ibrahim* judgment of the Supreme Court.[10] In the aftermath of the resignation of the President of the Supreme Constitutional Court, Professor Försthoff, the House of Representatives enacted the Administration of Justice (Miscellaneous Provisions) Law, 33/1964. According to this law, a newly established Supreme Court would exercise the jurisdictions and powers both of the Supreme Constitutional Court and the High Court 'until such time as the people of Cyprus may determine such matters'.[11] The allegation was that such Law, which was merging two Courts into one Supreme Court, was not enacted in accordance with the Constitution.

The Court held that the doctrine of necessity should be considered to be included in the provisions of a strict and written constitution, and is therefore part of the constitutional order in Cyprus. It allows the country to safeguard its interests whenever the Constitution, due to its rigidity, one-sidedness and narrow ambit, contains no provisions giving satisfactory solutions to extraordinary situations 'of a public necessity of the first magnitude'.[12] Most importantly, the Court decided that there are four prerequisites in order to determine whether the said doctrine could be applied in a particular case:

1. There is an imperative and inevitable necessity or exceptional circumstance;
2. There is no other remedy;
3. The measure taken must be proportionate to the necessity;
4. The measure must be of a temporary character limited to the duration of the exceptional circumstances.[13]

The doctrine of necessity, as defined in the *Mustafa Ibrahim* case, not only has provided the necessary legal basis in order for the Cypriot State to deal with the absence of the Turkish Cypriots in the Government, and their subsequent substitution with Greek Cypriots,[14] but also, has allowed the amendment of non-fundamental Articles of the Constitution.[15]

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[8] Art 149 of the Constitution of the Republic of Cyprus.
[9] Art 139 of the Constitution of the Republic of Cyprus.
[10] *Attorney General of the Republic v Mustafa Ibrahim* [1964] CLR 195.
[11] *Ibid*, 201 and 225.
[12] *Ibid*, 234.
[13] *Ibid*, 265.
[14] For a more detailed account see generally *Emilianides Achilleas*, Accession of the Republic of Cyprus to the EU, the Constitution and the Cypriot Doctrine of Necessity in The Cyprus Yearbook of International Relations

In 1974, after the Turkish intervention, the territorial division of the island was completed.

2) Constitutional foundations of EMU membership

As mentioned the constitution of the Republic was drafted in 1960. As such, it did not envisage the membership of RoC either to the EU or to the EMU. Following the 'hellenisation' of the Republic (and the subsequent use of the doctrine of necessity) there have been 8 amendments to the constitution. None of those amendments is related to the EMU.

As one of the ten Member States that acceded during the Big-Bang Enlargement, the participation of Cyprus to the EMU was provided by Article 4 of the Act of Accession 2003. The adoption of the euro as the new currency of the State, took place through Law 33 (I) of 2007.

It is important to note that the *acquis* concerning the EMU applies only to the areas under the effective control of the Republic and not to northern Cyprus. According to Article 1(1) of Protocol No 10 of the Act of Accession 2003, the EU *acquis* has been suspended in the North.

3) Constitutional limits for EMU membership

Cypriot law recognises the essential characteristics of EU law: Direct Effect and Primacy of EU Law. In particular, Cyprus's accession to the EU was effected through the passing of Law 35(III) of 2003 by the House of Representatives. Article 4 of this law, entitled 'Direct effect and supremacy' provided that

> 'The rights and obligations that the Treaty [of accession] imposes have direct effect in the Republic and prevail over any contrary legislative or regulative provision'.

At the time of accession, it was considered that no amendment to the Constitution would be necessary in order to give precedence to the application of EU law. However, following the decision of the *Supreme Court of Cyprus in Attorney General v. Kostas Konstantinou*[16] *according to which the legislation transposing the Framework Decision*[17] *for the European Arrest Warrant was found unconstitutional*, *t*he fifth amendment of the Constitution was deemed inevitable.

Law 127/06 amended four of the Constitution's Articles in order to provide expressly for the precedence of EU (and EC) law in the domestic legal order.[18] This amendment intended to settle in a definite manner the hierarchy of norms in Cyprus, by setting EU (and EC law) at the top of the scale, followed by the Constitution and then ordinary legislation. Article 1A of the Constitution now reads:

> 'No provision of the Constitution is deemed to invalidate laws which are promulgated, acts effected or measures taken by the Republic which are rendered necessary due to its

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(2007) 65; *Kyriakou Nikolas*, Report on Cyprus in Martinico and Pollicino (eds), The National Judicial Treatment of the ECHR and EU Laws: A Constitutional Comparative Perspective (2010) 191.

[15] *Nicolaou v Nicolaou* [1992] 1 CLR 1338.

[16] *Attorney General v. Kostas Konstantinou*, Civil Appeal No. 294/2005 (Supreme Court of Cyprus November 7, 2005).

[17] European Union, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

[18] Official Gazette of the Republic of Cyprus, no. 4090, 2006. Articles 1, 140, 169 and 179 of the Constitution were amended.

obligations as a member state of the European Union, nor does it prevent Regulations, Directives or other acts or binding measures of legislative character promulgated by the European Union or by the European Communities or by their institutions or competent bodies on the basis of the treaties founding the European Communities or the European Union from having legal force in the Republic.'

In that sense, Article 1A of the constitution of Cyprus explicitly recognises the primacy of EU law including the law related to EMU.

4) Crisis Management Measures

So far no constitutional amendments have taken place or have been proposed in relation to the crisis management measures. Yet constitutional amendments are being discussed in order to implement the 'golden rule' of the Fiscal Compact. Interestingly enough, such a rule might find its way to the constitution of the reunified Cyprus given that the reunification of the island will take place under a federal State.

All the crisis management measures have been transposed into the national legal order by means of ordinary legislation. The great majority of the instruments were adopted under Article 169(2) of the RoC Constitution on 'treaties, conventions and international agreements' that requires simple majority at the Parliament.

In particular, the EFSF was implemented in Cyprus through Law 13 (III) of 2010 with the title 'The law on the participation of the Republic of Cyprus in the European Financial Stability Facility'; the amendment of Article 136 TFEU was approved by Law 13 (III) of 2012; the "Six-Pack" was implemented through Law 194 (I) of 2012 on the Medium Term Budgetary Framework and the Fiscal Rules; the ESM Treaty ratified through Law 14 (III) of 2012; even the Memorandum of Understanding and the Financial Assistance Facility Agreement through which Cyprus received financial support were ratified through Law 1 (III) of 2013.

The only exception so far has been the Fiscal Compact which was adopted under Article 169 (1) by an Act of the Council of Ministers (governmental decree) on 20 April 2012, without a vote in the Parliament. It was later ratified and published in the Official Journal of the Republic of Cyprus (Official Journal of the Republic of Cyprus 4157/ 29 June 2012) upon the Cypriot Council of Ministers' decision, in accordance with Article 169 (3) of the Constitution, in Greek and in English. The ratification was completed by the notification to the Council of the EU on 3 July 2012.

5) Constitutional law scrutiny of EMU reform scenarios

Cypriot constitutional law does not seem to contain insurmountable barriers to further EMU integration due to a Treaty change. To this effect, one has to appreciate the legal importance of the fifth amendment of the RoC Constitution to which we referred in section 3. Article 1A recognises the primacy of (present and future) primary and secondary EU law and in a way pre-empts potential conflicts with Cypriot constitutional law. The absence of any other specific limits (eternity clause, ultra vires, need for amendment) further points to the non-existence of any specific constitutional and legal barriers to further EMU integration.

As I mention in the previous section the only constitutional amendment that is currently discussed relates to the introduction of the 'golden rule'. In order such amendment to take

place, there must be a two-thirds majority in the Parliament pursuant to Article 182(3) of the Constitution and the law of necessity.

As a final point, however, let me point out the following. The present discussion with regard to constitutional law scrutiny of EMU reform scenarios is accurate only to the extent that such integration will take place while the current constitutional framework exists. And although this holds true for every country, in the case of Cyprus it is slightly different given the current negotiations for the reunification of the island. If the negotiations are successful and both communities accept the new settlement, the reunified Cyprus will be a federal State with a very different constitutional architecture. And we would have to see whether the new constitution poses any hurdles to further EMU integration.

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