

# 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

### FRANCE

by Laurent Sermet



## **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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## **FRANCE (Laurent Sermet)**

### **1) Main Characteristics of the National constitutional system.**

France is a Republic and a stable system since 1946, when the 4<sup>th</sup> Republic was adopted after WWII. When Charles de Gaulle came into power, in 1958, a new 5<sup>th</sup> Republic was adopted in the context of the Franco-Algerian war.

The Constitutional Council, a constitutional court established in 1958, is competent, among others, to deal with the conformity of statutes law with the Constitution, as well as with the conformity of treaties to be ratified with the Constitution. This kind of control can be regarded as a constitutional ultra-vires procedure.

The notion of Constitution consists of the constitutionality block of the Constitution itself but also the 1789 Declaration on human and civic rights, the Preamble of the 1946 Constitution and republican fundamental principles.

There is no “supra” constitutional norm in French law, as all the norms of the constitutional block are declared as being of the same value.

There are two ways to amend the Constitution. For the French participation to EU the relevant Articles are Article 89, providing a parliamentary procedure (2/3 approval by the congress: both assemblies) and Article 11, which requires a referendum by the French people. For the EU Treaties the following procedures were applied with the following outcomes:

- Rome Treaty (2005): Negative referendum
- Maastricht Treaty (1992): Positive referendum (art. 11 of the French Constitution)
- Treaties of Amsterdam (1999) and Lisbon (2008): Parliamentary procedure (art. 89 of the French Constitution)
- Nice Treaty (2001): No need to amend the Constitution

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

There is no separate constitutional foundation dedicated to the EMU membership in the current French Constitution. But there was a special constitutional mention for the taking part in the EMU in 1992.

When the European construction decided to go with a further stage in 1992, the Constitutional Council was seized in order to deliver a decision on the conformity of the third stage of the Economic and Monetary Union. It decided (April 9, 1992) that the : *“the achievement of such union would entail the establishment of a single monetary and exchange- rate policy on terms that would deprive each individual Member State of the essential conditions for the exercise of its national sovereignty »*. Accordingly France could not take part in the economic and monetary union provided for by the Treaty.

The French Constitution was then modified for the first time for European purposes to allow France to be part in the European construction, in 1992, in order to give a constitutional foundation to the European Union, in a general way:

Art. 88-1. - *The Republic participates in the European Communities and the European Union constituted by States that have freely chosen, by virtue of the treaties that have been established by them, to exercise in common some of their competences.*

But the modification did also explicitly mention the EMU:

*Art. 88-2. - Subject to reciprocity, and in the manner prescribed by the Maastricht Treaty signed on 7 February 1992, France agrees to the transfer of powers necessary for the establishment of the European economic and monetary union and the determination rules on the crossing of external borders of the Member States of the European Community.*

Since the last constitutional modification done in order to allow France to be part in the Lisbon treaty, there is any more explicit mention of the EMU.

*Article 88-1. - The Republic shall participate in the European Union constituted by States which have freely chosen to exercise some of their powers in common by virtue of the Treaty on European Union and of the Treaty on the Functioning of the European Union, as they result from the treaty signed in Lisbon on 13 December, 2007.*

*Article 88-3. - Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France. Such citizens shall neither hold the office of Mayor or Deputy Mayor nor participate in the designation of Senate electors or in the election of Senators. An Institutional Act passed in identical terms by the two Houses shall determine the manner of implementation of this article.*

The TESM has not been challenged before the Constitutional Council whereas the TSCG has been challenged before it (August 9, 2012). No incompatibility has been mentioned.

The EMU membership is much more a political question than a legal one in France. The previous President Nicolas Sarkozy attempted without success to enshrine the “golden rule” in the Constitution, but he failed to it due to the lack of a clear majority in favor of it. He mentioned that he would enshrine the rule after his re-election but he lost the post (6 may 2012). The new President did not follow his predecessor and did not try to change the Constitution. The “Golden rule” is not a constitutional rule in France.

### **3) Crisis Management Measures in France**

#### ***European Stability Mechanism Treaty***

In France, the question of the ratification of the European Stability Mechanism has not resulted in a legal discussion before the Constitutional Council. The debate was then political and, above all, the debate has been held in the first half of 2012, during which the French presidential campaign was in full swing between President Nicolas Sarkozy and socialist candidate François Hollande. On the political question, if France should ratify the European Stability Mechanism, the Socialist Party was much divided. Elisabeth Guigou, MP (PS), former Minister European Affairs explained the difficulties. “The fifth item of the Treaty stated that the Treaty establishing the ESM and TSCG were complementary. It also conditions the granting of financial assistance under the ESM ratification TSCG by the Member State concerned. The ambiguity comes from there”.

Jean-Christophe Cambadélis, then MP for Paris, now first secretary of the Socialist Party, believed that ratification had a double "trap", both "legal" and "political" because Nicolas Sarkozy (...) wants an argument for its presidential election.” For President Sarkozy there existed no political difficulties.

Finally, the French Parliament has given its assent on February 28, 2012, to the European Stability Mechanism (ESM), a permanent common structure to finance the troubled countries of the euro area. The vote was held in a climate of political controversy, fanned by the election campaign.

Two texts were adopted. The first text, which amends a section of the EU Treaty, authorizes the creation of such a mechanism, while the second treaty sets its operating procedures. Both texts are legally different from the budgetary stability pact between 25 EU countries. However, there exists a strong link between them as the loans ESM will only be granted to members of the Pact countries. This link has justified the socialist abstention. The left is divided, however, the Communists voting against it. This abstention was described as "historic mistake" by Prime Minister François Fillon.

#### ***Treaty on Stability, Coordination and Governance in the Economic and Monetary Union***

During the presidential election campaign, François Hollande argued in February 2012, that he intended to renegotiate the Treaty on the European Fiscal Pact initiated on 30 January 2012, if he were elected. The Socialist candidate in the presidential election proceeded substantive arguments: adding to the imperative of budgetary discipline, a "growth component and employment". Many economists, including several Nobel Prize laureates, shared his concern: the simultaneity of lines austerity policies in Europe would sink into recession and lack of tax revenues in debt. More realistically, it was obvious that none of French European partners did want such a renegotiation: It was politically impossible. Once elected, the president Hollande has not led to an end this renegotiation. In return he got a "growth pact" to mobilize some 120 billion euros over three years, who is as follows: 55 billion of structural funds for the least prosperous regions; sixty billion in additional loans from the European Investment Bank and some 5 billion to finance infrastructure.

With regard to the constitutionality, in its decision No. 2012-653 DC of August 9, 2012, the Constitutional Council considered that the treaty "does not carry out the transfer of skills in economic or fiscal policy" and that "No more than the previous commitments of fiscal discipline, the obligation to comply with these new rules will affect the conditions essential to the exercise of national sovereignty." Moreover, the constitutional council saw no obstacle at that France inscribe budgetary discipline rule in an organic law, not in the Constitution itself.

Politically, an important debate took place on whether to put the golden rule into the Constitution or not. For the right wing, given the nature of the Golden Rule, to include in the Constitution was an obvious requirement: "If the golden rule is not in the Constitution, we cannot refer to it when the budget will be brought before the constitutional Council. So we can never control the application of the golden rule" thought the president of the UMP group in the Assembly, Christian Jacob. President Hollande politically preferred intermediate and symbolic solution: the organic law, not the constitution.

Consequently, no constitutional amendment was needed to ratify the treaty. The procedure was twofold: first, a draft treaty in order to ratify the treaty; then, inscription in an organic law of the rule of the required budgetary discipline by the treaty.

Thus the Constitutional Council had to pronounce a second time, but this time indirectly, on the European rule of budgetary discipline, as for any organic is necessarily subject to constitutional review: this is Decision No. 2012-658 DC of December 13, 2012 - organic Law on the programming and the governance of public finances

#### **4) Constitutional framework and limits for EMU membership**

It is a very legal reasoning but, at the end, the necessity to take part to the EU process is stronger than the legal matter. The only exception is the 2005 referendum, which rejected the Rome Treaty. The Main Constitutional Principles on the financial framework have been set up by the Constitutional council.

***Declaration on human and civic rights Aug. 26, 1789***

*Article 3: The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise authority that does not expressly emanate.*

*Article 14: All citizens have the right to ascertain, by themselves or through their representatives, the necessity of public contribution, to consent freely, to watch over its use, and to determine its proportion, basis, the collection and duration.*

*Article 15: The Society has the right to require of every public agent of its administration.*

***Preamble of the Constitution of October 27, 1946***

*Section 14: The French Republic, faithful to its traditions, conforms to the rules of public international law. (...)*

*Section 15: Subject to reciprocity, France shall consent to the limitations of sovereignty necessary for the organization and the defense of peace.*

***Constitution of October 4, 1958***

*Article 20: The Government determines and conducts the policy of the nation.*

*Article 34: Finance Acts shall determine the resources and obligations of the State in the conditions and with the reservations prescribed by an organic law.*

*Social Security Financing Acts shall determine the general conditions for its financial balance and, in light of their revenue forecasts, shall determine expenditure targets in the conditions and with the reservations specified in an organic law.*

*(...) The multiannual guidelines for public finances are defined by programming laws. They are part of the objective of balancing general government accounts. The provisions of this Article may be specified and completed by an organic law.*

*Article 47: (...) Parliament shall pass social security finance bills in the manner provided by an organic law.*

The Main Constitutional Principles on the financial framework have been explained as such by the *Decision No. 2001-448 DC of 25 July 2001, Organic Law on Finance Laws*:

1° the principle of yearly of the budget law, which derives from Article 47 of the Constitution, applies in the context of the calendar year

2° Considering that the principles of yearly and universality, budget meet the twofold imperative of unity to ensure the clarity of the State's accounts and allow effective control by Parliament;

3° that such a device, closely related to the sincerity of the law of regulation, is among the rules that fall under the organic law under article 34 of the Constitution ;

4° the sincerity is characterized by the absence of intent to distort the main lines of the balance determined by the Finance Law;

5° The imperative of sincerity that attaches to the review of the budget law for the duration of it.

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