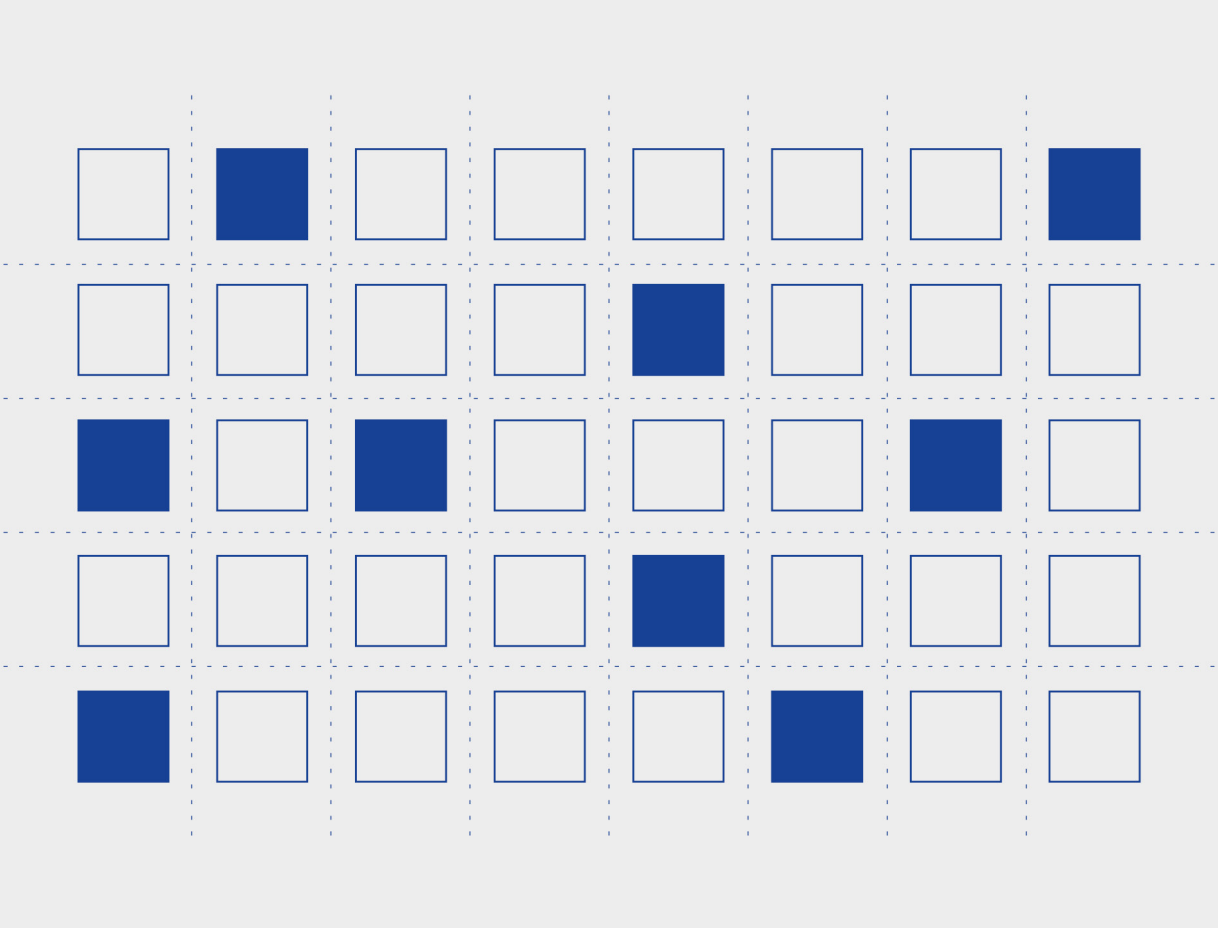
EMU CHOICES

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

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

GREECE

by Lina Papadopoulou



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

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’.

GREECE (Lina Papadopoulou)

1) Main characteristics of the national constitutional system

Since 1975, under the valid Constitution, Greece -officially the Hellenic Republic- is a unitary parliamentary mono-cameral democracy, headed by a President of the Republic, who is elected by the Parliament with high majority, whereas the political power is vested with the Prime minister and the Government.

Constitutional revision is a very bothersome and lengthy process, as it requires the approval of two consequent Parliaments with high majorities of three fifths (3/5) in the first and the absolute majority of all members in the second Parliament, or vice versa. Under this constraint, the 1975 Constitution has been amended three times ever since, in 1985 (limiting the President's competences), in 2001 (enhancing human rights, transparency and independent authorities) and 2008 (with minor politically insignificant changes, mainly abrogation of professional incompatibility for parliamentarians).

With 300 parliamentary seats and an electoral system of reinforced proportional representation, the political system was polarised until 2011 and the Governments used to be supported by one party only; since 2011 and due to the demolition of the previous mass parties, coalition governments have been formed.

The basic constitutional principles (parliamentary republic, rule of law, separation of powers and social state), all expressly stated in the Constitution (except the principle of representation which is deduced by means of interpretation), are considered to have equal legal value with the rest of constitutional provisions but yet develop an interpretational function. There is no Constitutional Court; the judicial control of unconstitutionality of law is diffuse, which means that all Courts are vested with the competence not to apply a law contrary to the Constitution.

Moreover, Courts judge –at least ideal typically- upon a specific case (concrete review) and not *in abstracto*. Judgments have, at least formally, only an inter pares effect, and the constitutional question is posed in the course of ordinary litigation, since there is no legal means targeting specifically and directly the unconstitutionality of a norm itself. Last but not least, Courts, when they find and declare laws unconstitutional, set them aside and do not apply them in the case before them, but have no competence to annul them.

There are mechanisms, however, allowing for concentration of the control of unconstitutionality of law to the Plenum of the Council of State, which is the supreme administrative Court. Yet even this Court can only declare the unconstitutionality (or unconventionality, that is violation of an international, e.g. European, Treaty) of a norm and not annul it. Nevertheless, its judgments have a wider effect than this rule reveals.

Equally -on the basis of EU law- all Courts are obliged to apply that same law and competent to send preliminary questions to the CJEU, which they rarely do. According to Article 28 GrConst, international Treaties rank above the (normal parliamentary) laws, but there is no specific provision concerning their relationship to the Constitution, something that leaves space for endless theoretical debate.

Given the above the Treaty on Stability, Coordination and Governance (**TSCG**) and the Treaty Establishing the European Stability Mechanism (**TESM**) – being **Treaties under public international law** – could not be directly contested before the Courts. Only specific measures taken by the Government in order to realise these Treaties and *after* their application could only be contested before the Courts. Especially the Memoranda of Understanding containing the obligation of the Greek state to apply specific economic and fiscal measures of austerity, were contested, but this was procedurally possible only through contesting the administrative acts applying the relevant Greek laws.

2) Constitutional foundations of EMU membership

The Accession of the Republic of Greece to the EC/EU was signed in Athens on May 28, 1979, ratified based on Article 28 GrConst by Law 945/1979, and Greece became the tenth member of the then European Economic Communities on January 1, 1981. It is also part of the Eurozone since 2001 based on the same constitutional provision.

With the revision of 2001 an 'interpretative clause' was added to article 28 GrConst, in order to reaffirm what had always been known, namely that this provision constitutes the foundation for the participation of Greece to the European integration process. Thus, this constitutional provision is the 'European clause' of the Greek Constitution and it accommodates the 'integrational function' of the latter. Moreover on the same occasion of the 2001 revision, one more 'interpretative clause' was added to art 80 GrConst[1] in order for the accession of Greece to EMU and the adoption of Euro to be constitutionally accommodated.

The Treaty for Stability, Coordination and Governance in the EMU was ratified by the Greek Parliament through Law 4063/30.03.2012 (Governmental Gazette 71, A΄) as a common law. The two major parties of that time, the centre-leftist Panhellenic Socialist Party (PASOK) and the right wing New Democracy voted in favour, while the party ruling today (December 2015), SYRIZA, voted against together with the Communist party. At that time this accounted to 194 'yes' and 59 'no' (out of a total number of 300, the rest were absent) to the ratifying law, a rather high majority. However, the elections held a couple of months later (May and June 2012) resulted to the disempowerment of PASOK and an enhanced SYRIZA faction in the Parliament.

This law has not been judicially challenged by now. Neither have the TESM and the TSCG as such (international treaties) been challenged before the Courts.

3) The 'Golden Rule' has not been inserted into the Greek Constitution (yet)

Greece's fiscal constitution[2] does not contain any provisions concerning public borrowing. So if the 'Golden Rule' (constitutional **debt break**) were to be inserted into the Constitution, then the latter should be formally amended. The revision procedure of the relatively rigid

[1] Article 80: (1) No salary, pension, subsidy or remuneration shall be entered in the State budget or granted, unless it is provided for by statute concerning the organization or other special statute. (2) The minting or issuing of currency shall be regulated by law. Interpretative clause: Paragraph 2 does not impede the participation of Greece in the process of the Economic and Monetary Union, in the wider framework of European integration, according to the provisions of article 28 GrConst.

[2] Section III: Parliament, Chapter Six: Taxation and fiscal administration, art.78-80 grC nor Art 75 "Bills resulting in burdening the State budget".

Greek Constitution is foreseen in art 110.[3] A balanced budget amendment is in principle not excluded by the 'eternity clause' of Article 110 §1 GrConst. The opposite resting on the case that such a rule poses too wide a restriction on a government's framework to design and execute its policy that comes against the principle of democracy is not very convincing, since it ignores the constitutional character of our democracy that allows for a binding frame within which decisions are only allowed.

In any case, in order to formally revise the Constitution, the Parliament must approve with qualified majorities the amendment in two subsequent periods. Given the requirement for a qualified majority (i.e. three fifths of the total number of MPs, see art 110 §4 GrConst), inserting a 'Golden Rule' into the Constitution presupposes that different political parties have to agree on the basics of future economic policies and on a set of contingencies that would only provide them with little room to deviate from a balanced budget when in office. Given the current political situation, a balanced budget amendment can hardly be supported by the necessary three fifths majority (180/300 MPs). Moreover, for the amendment procedure to be properly completed, an absolute majority of the MPs in the next parliamentary period after the elections is required. Not only does this result in time delay, but it also risks annulment of the forthcoming amendment, in case of a possible radicalisation of voters and/or a change in government in favour of opposition parties. Thus, amending the Constitution in Greece in order to incorporate the 'Golden Rule' is not only technically difficult and time consuming but politically ambivalent, as well. Furthermore, it would need to face the accusation that it would result to a further loss of sovereignty.

As a result, the 'golden rule' has not been yet inserted in the Constitution, given the fact that – as already mentioned above- the revision process is very lengthy and that SYRIZA (nowadays on power together with the 'Independent Greeks') were against it (at least until recently).

4) Constitutional limits for EMU membership

Greek law recognizes the essential characteristics of EU law: direct Effect and primacy of EU law, at least over common laws (not necessarily over the Constitution itself). EU measures are not the subject of judicial control by the Courts. If the Courts have doubts as to the conformity of EU secondary law with EU primary law they make use of the preliminary

[3] Article 110 of Greek Constitution (grC):
1. The provisions of the Constitution shall be subject to revision with the exception of those which determine the form of government as a Parliamentary Republic and those of articles 2 paragraph 1, 4 paragraphs 1, 4 and 7 , 5 paragraphs 1 and 3, 13 paragraph 1, and 26.
2. The need for revision of the Constitution shall be ascertained by a resolution of Parliament adopted, on the proposal of not less than fifty Members of Parliament, by a three-fifths majority of the total number of its members in two ballots, held at least one month apart. This resolution shall define specifically the provisions to be revised.
3. Upon a resolution by Parliament on the revision of the Constitution, the next Parliament shall, in the course of its opening session, decide on the provisions to be revised by an absolute majority of the total number of its members.
4. Should a proposal for revision of the Constitution receive the majority of the votes of the total number of members but not the three-fifths majority specified in paragraph 2, the next Parliament may, in its opening session, decide on the provisions to be revised by a three-fifths majority of the total number of its members.
5. Every duly voted revision of provisions of the Constitution shall be published in the Government Gazette within ten days of its adoption by Parliament and shall come into force through a special parliamentary resolution.6. Revision of the Constitution is not permitted before the lapse of five years from the completion of a previous revision.

reference procedure under Art 267 TFEU. The Courts have 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.

5) Crisis Management Measures

Since the outbreak of the euro crisis in early 2010, the Constitution has not been changed with regard to counter measures. Crisis measures were adopted by means of law ranking below constitutional law that is mainly parliamentary statutes implementing the Memoranda of Understanding between Greece and its creditors. These laws have been often challenged before the Courts, lower ones and the Council of State. The latter has found no unconstitutionality in most cases; there are some recent exceptions though concerning the salary and pension cuts mainly for judges, but also for police officers and university professors (the so-called 'special salaries').

6) Constitutional law scrutiny of EMU reform scenarios

Greek constitutional law does not seem to contain insurmountable barriers to further EMU integration due to a Treaty change.

It is not clear if the ratification of EU Treaties introducing further EMU steps calls for higher thresholds as regards their approval in parliament according to Article 28 §2 GrConst. But so far, Treaty changes did not fail in the Greek Parliament. It all depends on the stance of the ruling parties SYRIZA and Independent Greeks: if they agree, the other parties (except from the orthodox Communist party and the Neo-nazi 'Golden Dawn') will vote in favour. If the ruling parties do not agree the exact majority does not play a role anyway, since the minimum is the simple majority anyway.

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