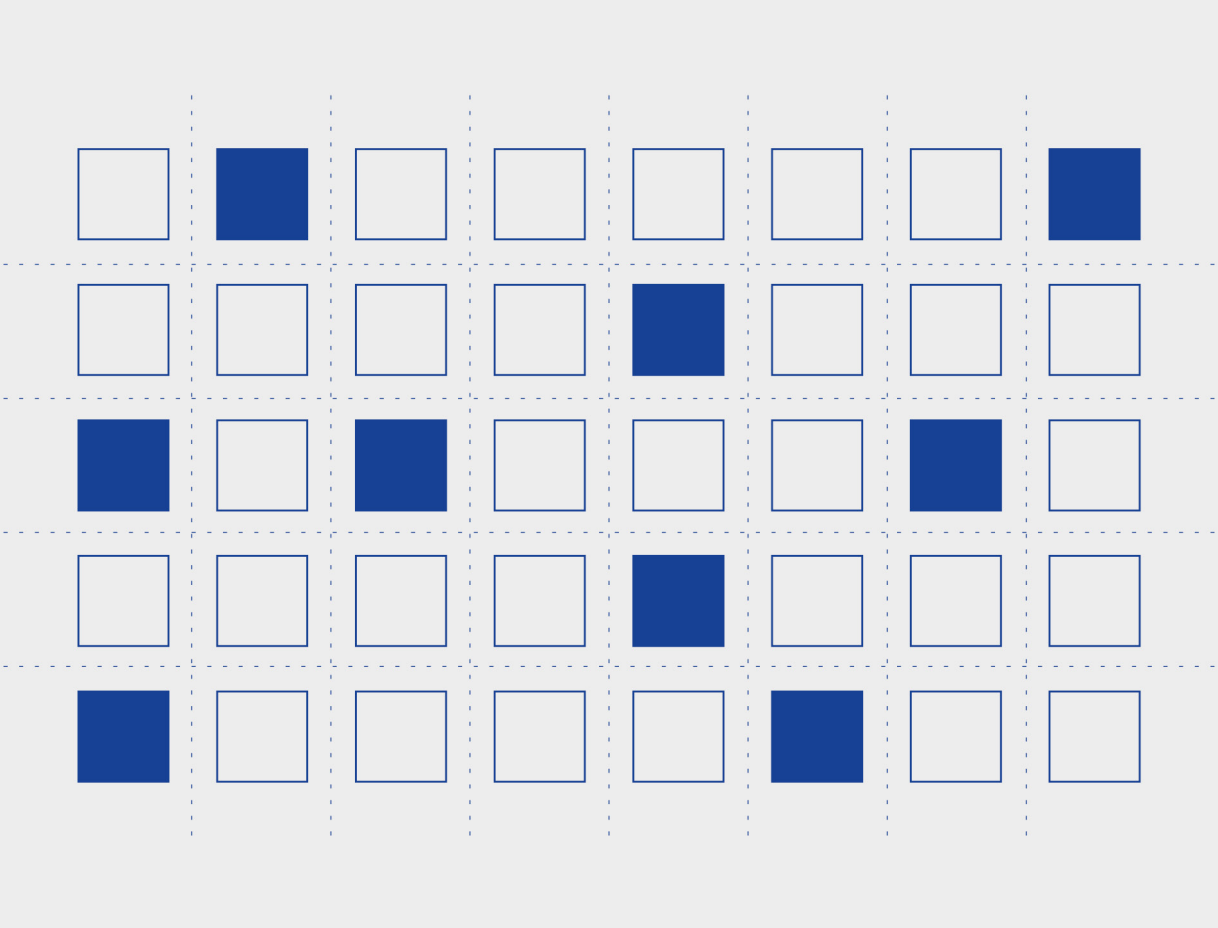
EMU CHOICES

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

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

ITALY

by Stefania Ninatti and Monica Bonini



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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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ITALY (Stefania Ninatti/ Monica Bonini)

1) Main characteristics of the national constitutional system

The Italian constitution was approved on December 22, 1947, by the overwhelming vote of 453 to 62. According to this latter, the **organisation of the Italian State** (part II of the It. Constitution) is based on some constitutional elements, such as a perfect bicameral system of government (with two chambers having exactly the same powers), considerable Head of State's powers, some devices aimed at guaranteeing a (limited) stability of the Government, which is nonetheless responsible in front of the Parliament, a regional form of state/government, stronger guarantees of independence of the judicial power from the executive, the existence of a body – the Constitutional Court – independent of Parliament and in charge of reviewing the constitutionality of legislation and resolving the other constitutional controversies.

The **Italian "bill of rights"** (part I of the It. Constitution) re-examines and develops the main trends of the European legal tradition in matters of fundamental liberties. It is also enriched by more specific provisions and more precise guarantees and accompanied by a long list of social rights, peculiar to the "welfare/social state", even though this term is not specifically used in the Constitution. These fundamental liberties are guaranteed in part by constitutional requirement that some matters be regulated by statute and in part by declaring that some of these principles – together with the s.c. "**supreme principle of the State**", foreseen in the very first articles of the Constitution (democracy, equality, regionalism etc.) – constitute that "nucleo duro" (constitutional core) of the constitution that not even a constitutional law could amend.

The **Constitutional Court's judicial review** is aimed at ensuring that legislation respected the constitutional limits imposed upon it: alongside this function (the constitutional legitimacy of laws and enactments of laws having force of law issued by the State and Regions), the Court shall pass judgments also on conflicts arising from allocation of powers of the State and those powers allocated to State and Regions, and between Regions, charges brought against the President of the republic and the Ministers, according to the provisions of the Constitution, and the admissibility of the referenda.

Thanks to the interpretation of the Constitutional Court, the principle of the **supremacy of EU law** within the Italian legal system is fully recognized: more specifically, if a possible conflict between an internal and a EU provision cannot be solved by means of interpretation, the judge has to apply the EU norm and not apply the national one (the s.c. non-application, or disapplicazione in Italian): this general rule applies to internal provisions of both primary level (ICC judgment no. 170/1984) and constitutional level (ICC judgment no. 399/1987). The only exception to the principle of supremacy of community law and direct application of its sources of law can be identified in the possible violation of either fundamental rights or supreme principles of Italian constitutional system, i.e. the s.c. "counter-limits" to European integration, always considered intangible. The constitutional "door of access" for Europe in the national system was traditionally seen in art. 11 (originally conceived for the Italian participation to the UN): in 2001 the EU found a way to be expressly recognized in our

Constitution through a constitutional amendments of Title V (Regional form of State), according to which "legislative power belongs to the state and the regions in accordance with the constitution and within limits set by EU law and international obligations".

2) Constitutional foundations of EMU membership

Articles 11 and **117(1)** of the Italian Const., several **decisions of the It. Const. Court** and the **techniques for the implementation of EU primary and secondary law** represent not only the frame governing the EU-related measures and the limits to further transfer of powers to the EU (through Treaty amendments), but also the participation to the **EMU** and **the implementation of the EMU-related measures**.

If compared to the choices made by other Member states in order to face the European integration process after the adoption of the Maastricht Treaty, it must be made clear that, in spite of the importance of the matters foreseen by the European Union Treaty of 1992, at that time, and even long after, Italy hasn't amended the Constitution in order to make it consistent with the new integration steps. So, the **creation of the EMU** has been introduced in the Italian legal system using the proceeding disciplined by Articles **80** and **87** of the It. Constitution for **the ratification of international Treaties** (and for **the implementation of the related rules in the national constitutional and legal system**).

The following implementation of **acts in the field of EMU**, if **of EU law or EU instruments**, has to be ascribed to what has been explained sub no. 1) about the supremacy of community law, the direct application of its sources, and the s.c. "counter-limits".

With regard to the acts concerning the specific field of EMU, but adopted with **non-EU instruments**, it is important to clarify that these acts *could be* qualified as **intergovernmental acts adopted to implement primary EU law,** or as **intergovernmental acts linked to the EU institutional system**. For the Italian constitutional system, the **implementation of such acts** does not differ from the one of any other **international treaty**: Articles **10(1), 11** and **117(1)** of the It. Const. provide that rules contained in such acts, even if not characterized by the supremacy and direct applicability known only for EU law, once introduced in the constitutional and legal system, **do not risk to be amended or repealed by subsequent domestic rules**, even if of the same rank of the acts used to implement non-EU law or non-EU measures.

3) Constitutional limits for EMU membership

Theoretically - this means from the viewpoint of the constitutional provisions and guarantees concerning esp. the list of **social rights** (peculiar to the "welfare/social state"), several rules governing the Italian **economic and financial polity** and the **taxation system,** and **other constitutional provision**s (e.g. Articles 2, 3, 23, 53, 117(1), 119) and **principles** (strictly tied to Art. 2, first of all the "**solidarity principle**"), could represent **limits for Italian EMU membership;** but, as a matter of fact, no Government and/or Parliament did ever limit the Italian participation to the EMU-project because of these constitutional obstacles.

Tensions between EMU-related measures and the national constitutional and legal order, in particular with regard to autonomous decision-making in the area of economic policy, **may arise** if the very complex **"constitutional program",** to be realized in the next and far future in order to respect **the fundamental provisions and principles marking out** the **specific foundations** of the Italian constitutional system, anchored in **social welfare**, will not be respected.

Therefore, in order **to avoid the risk of thwarting these constitutional foundations**, the **new Art. 81** of the It. Constitution (and the other related provisions) should be **interpreted from the viewpoint of a social, welfare Constitution**, deeply involved in realizing the best conditions in order **to implement civil, social and political rights in the legal system**.

4) Crisis Management Measures

The **most relevant impact** on the **Italian constitutional system** and on the role of the central and local (regional) parliamentary bodies does not derive – even if this, too, always had a great importance - from the participation to the EMU project and the implementation of the related measures, but from the constitutional and legal challenges adopted in order to implement the ***Treaty on Stability, Coordination and Governance*** (TSCG).

The implementation of the **balanced budget rule** foreseen by Article 3(2) FC, did not only bring to **amend the Italian constitution** (constitutional law no° 1/2012 amended Articles 81, 97, 117 and 119): it also disciplines the budget-statute laws the Government is working on now (see new Article 81 and statute law no° 243/2012), and **introduces in the constitutional frame** such instruments as the ***Euro Plus Pact*** and the (whole) ***Fiscal Compact*** (FC).

The *Stability and Growth Pact*, the *Six-* and *Two-Pack*, the *Europe 2020 Strategy* and the *ECB measures* became part of the national legal system **as EU-law instruments or measures**, while the *Early Emergency Funding*, the *ESM Treaty* and the *TSCG* became part of the national legal system **as intergovernmental acts linked to the EU legal system and/or to the EU institutions**, **and/or adopted to carry into effect primary EU law**.

5) Constitutional law scrutiny of EMU reform scenarios

It is not yet clear if the **Italian fiscal, financial and economic policy** will be **conceived** in the name of a rigid application of the **balanced budget rule** or of the **"solidarity principle"** characterizing the **Italian Welfare State**; or, may be, in a third way, that is trying to respect the goals of the *Euro Plus Pact* and the *FC* making civil and social rights "outlive" the budget statute law (this means, applying the balanced budget rule, but first of all with the aim of achieving a not excessive *deficit*, which can be corrected in a reasonable lapse of time).

Therefore, in order to avoid the risk of thwarting the It. constitutional foundations, the new Art. 81 (and the other related provisions) should be interpreted as introducing in the Italian Constitution not *a rigid* balanced budget rule, *but a flexible* one (in It.: not a "*pareggio di bilancio*", but an "*equilibrio di bilancio*"). This means that, if the **EMU** provisions and measures are **not anchored in a system founded on social welfare and solidarity, European constitutional law** (even "future" European law, once the FC becomes part of the

Treaties) in the field of economic, financial and fiscal policy ***may break*** **Italian constitutional law**.

Anyway, from the national viewpoint, **statute law no° 243/2012,** implementing in the legal system the constitutional challenges, as a matter of fact has **a second, serious consequence**, often forgotten in the related debate: the ***Regioni*** will have **less autonomous decision-making power** in the **field of economic, financial and fiscal policy**, their budget being in future the result, at local level, of the decisions taken at the national one because of new Art. 81. So, even if the before mentioned interpretation of Art. 81 will not break the social and welfare-oriented constitutional frame; it will anyway reduce the *Regioni*'s autonomous decision-making power, leaving **all the most important decisions concerning this field in the hand of the national Government**.

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