

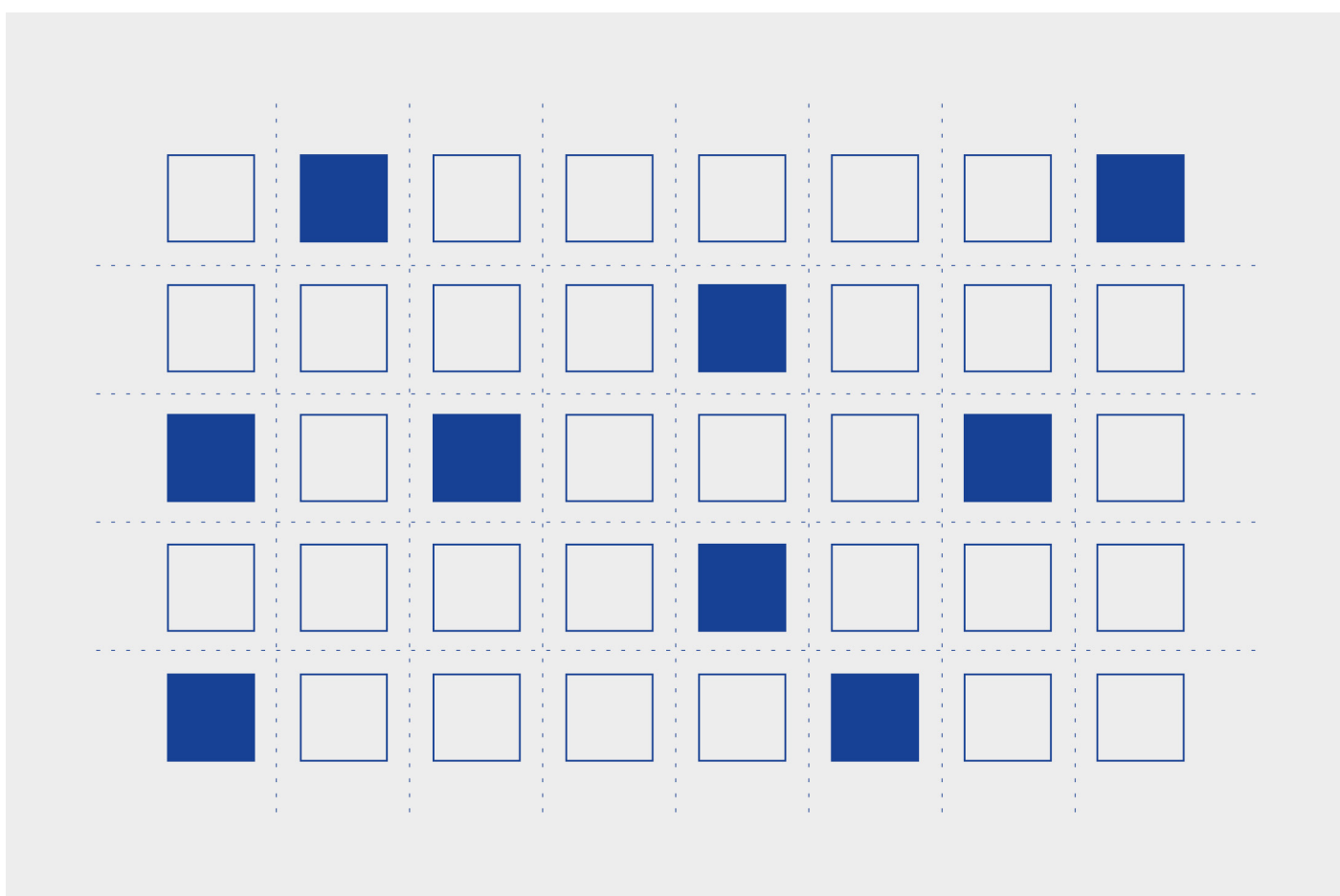
EMU CHOICES

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

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

LUXEMBOURG

by Jörg Gerkrath



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’.

LUXEMBOURG (Jörg Gerkrath)

1) Main characteristics of the national constitutional system

Luxembourg's constitutional system is based on the Constitution of October 1868 as amended by some thirty-six revision-acts between 1919 and 2009. The Grand Duchy is a unitary state as well as a constitutional Monarchy with a parliamentary system of governance.

As head of the state the Grand-Duke formally holds the executive power as well as a number of constitutional prerogatives which are in fact exercised by the government as all measures - besides those that are merely touching the Grand-Ducal Court - have to be counter-signed by a member of the government.

The national parliament consists of a single chamber: The Chamber of deputies ("*Chambre des députés*"). Amendments of the Constitution require a specific 2/3 majority within the Chamber in two readings. The second reading can be replaced by a referendum if required by a group of MPs or by 25 thousand voters (art. 114 C).

The State Council (*Conseil d'Etat*) is an advisory body of the government. Its opinions on legislative bills (and draft grand-ducal regulations) have however a strong influence in the legislative procedure. In practice its function is more that of a second chamber.

The judiciary is structured in three branches comprising ordinary courts (*juridictions judiciaires*), administrative courts and courts specialised in the field of social security. These courts do review the conformity of domestic legislation with international and European law but are not entitled to assess the constitutionality of parliamentary acts. In case of doubt they have to refer the matter to the Constitutional Court by introducing a preliminary question.

This Constitutional Court with rather limited competence of constitutional review has been created in 1998. The EU treaties as well as the Treaty on Stability, Coordination and Governance (TSCG) and the Treaty Establishing the European Stability Mechanism (TESM) – being Treaties under public international law – cannot be challenged before the Constitutional Court, whose jurisdiction does not include the review of parliamentary acts approving the ratification of treaties.

Constitutional culture can be summarized under six headings:

- A great difference between the written and the living constitution explaining an ongoing revision procedure aiming to modernize the outdated text;
- Remarkable governmental stability;
- Pragmatism as a leading policy and legal philosophy;
- Attachment to the 'Luxembourgish social model'
- Strong commitment to European integration;
- Entire recognition of the supremacy of international law and direct effect and primacy of EU law.

2) Constitutional foundations of EMU membership

The current Constitution does not contain any explicit foundation of EU or EMU membership. Since an amendment of 1956 article 49bis allows simply for “the exercise of powers reserved by the Constitution to the legislative, executive, and judiciary branches to be temporarily vested, by treaty, in institutions of international law“. Such treaties are to be approved by a law meeting the voting requirements established for a constitutional amendment.

The Chamber approved the ratification of the Maastricht treaty by voting such a law. EMU-membership was not dealt with separately. Luxembourg did not encounter any further legal obstacle in joining the EMU and adopting the single currency. Being a member of the Belgium-Luxembourg Economic Union, the country did not enjoy full ‘monetary sovereignty’ before joining the EMU.

In the field of fiscal policy it’s the legislator who decides upon taxation matters and approves the annual budgetary laws. Taxes for the benefit of the State „may only be established by a law“ (art. 99 C). In addition communal councils “may establish communal taxes, with the approval of the Grand Duke“ (art. 107-3 C).

Luxembourg’s tax system strongly reflects influences of the German, Dutch, French and Belgian systems, which were imposed to the Grand Duchy during the historical periods when it was part of these countries. Especially the German legislation on direct taxation is still part of Luxembourg’s legal system following a grand-ducal decree of 1944.

Furthermore administrative interpretation of tax legislation by means of administrative circulars, ministerial instructions, advance tax rulings and ‘comfort letters’ plays an important role because of the complex situation caused by the coexistence of German procedural laws of the 1930’s and the Luxembourg income tax law from 1967.

The so-called ‘golden rule’ on budgetary equilibrium was not brought into the Constitution but written into ordinary legislation.

3) Constitutional limits for EMU membership

The only hypothetical constitutional limit to EMU membership is to be found in the ‘Independence clause’ of article 1 providing that Luxembourg is ‘an independent state’.

Be it a matter of the past within the German Confederation or of the present within European integration, this proclamation of independence has however never refrained the Grand Duchy from participating in integration enterprises with a constitutional dimension. Moreover, at no time has the preservation of the independence of the state ever been discussed as a possible limit to Luxembourg’s participation in the European integration process.

Its successive incorporation in the German Confederation (1815-1866), the ‘Zollverein’ (1842-1918), the Belgo-Luxembourg Economic Union (from 1921) and the Benelux Union (from 1944) have, on the contrary, enabled Luxembourg to acquire indispensable experience for being prepared for the legal implications of its membership.

All state bodies recognize the Direct Effect and Primacy of EU law as its essential characteristics even with regard to constitutional law. EU treaties as well as secondary legislation cannot be subject to judicial control by the Constitutional Court.

4) Crisis Management Measures

The national laws approving the participation in the rescue mechanisms (EFSM, EFSF, ESM) all passed by a large majority in the Chamber with the only exception of the Fiscal Compact that raised more debate and passed by a smaller majority (of still 46 out of 60 MP's).

Compared to other member states Luxembourg was not constrained to adopt severe austerity measures. Measures adopted in 2010 for the period 2011-2014 include notably: a 10% reduction of funding to the budget (*budget de fonctionnement*) of all entities financed on the state's budget, a decision to raise the 'solidarity tax' as well for revenues of natural and legal persons, the introduction of an additional 'crisis tax' 0.8 % on all incomes exceeding the minimum social salary and the suspension of the automatic system of rising wages (*index*) in order to compensate losses due to inflation.

Luxembourg even gained some 'benefits' from the euro crisis. First, the EFSF was indeed established as a public limited liability company under the laws of the Grand-Duchy of Luxembourg and, second, the EFSF as well as the European Stability Mechanism (ESM), which is an intergovernmental organization, are both located in Luxembourg City.

5) Constitutional law scrutiny of EMU reform scenarios

Luxembourg's constitutional law does not contain barriers to further EMU integration due to a Treaty change. True, the changing of EU Treaties calls for higher thresholds as regards their approval in parliament. But so far, Treaty changes did not fail in the parliament.

As regards the issue of a possible consultative referendum (art. 51 C) on a parliamentary act approving the ratification of a future treaty revision, it will depend on the intensity of the prospective Treaty amendment. The decision to hold such a consultative referendum is to be taken by the Chamber. The procedure was followed with success in 2004 regarding the treaty establishing a constitution for Europe.

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