

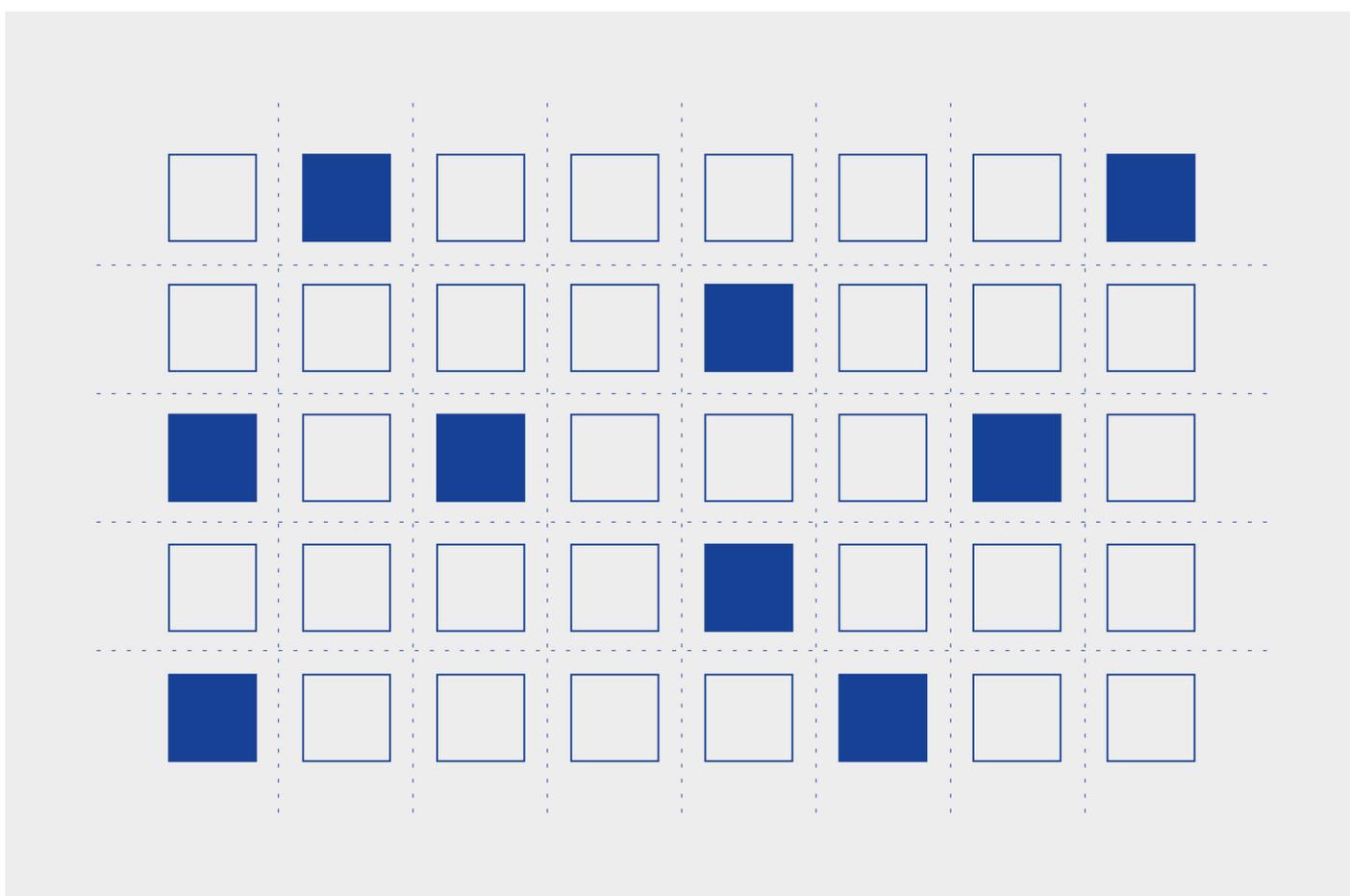
# EMU CHOICES

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

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

### MALTA

by Peter G. Xuereb



## **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’.

## **MALTA (Peter G. Xuereb)**

### **1) Main characteristics of the national constitutional system**

The Constitution of Malta is the supreme law of the land. Malta was a British colony from 1813 - 1964 and as a consequence constitutional and administrative law in Malta has been heavily influenced by the English common law position, even though English common law was never formally part of Maltese law. Malta is a democratic republic with a unicameral House of Representatives. The incumbent has executive authority but must act on the cabinet's advice and the position is therefore largely ceremonial. Parliamentary sovereignty is limited by the supremacy clause of the Maltese Constitution, namely Article 6 of the Constitution.

The Budget authority holds the Parliament. It adopts the revenues and expenditures, based on the Finance Minister's presented estimates of the revenues and expenditure of Malta, in an appropriation bill. Therefore, the usual parliamentary procedure is used, which contains three reading stages, including a commission stage as part of the second reading and the report stage. The law is published as a 'Budget Measures Implementation Act'. The Constitution also contains the obligation to create an Auditor General who shall be an officer of the House of Representatives. He has the competence to audit all accounts annually.

The Maltese Constitutional Court's matters touch upon the interpretation of the Constitution itself and it decides ultimately upon the validity of laws. Its pre-eminence is determined by the subject matter of the cases that can come before it. It has extensive jurisdiction if such issues are linked to Constitutional questions.

It is by virtue of the Constitution and laws made under it that EU law, regarded in principle as a separate system of law, is integrated into the Maltese legal order. However, EU law has been integrated strongly, first by virtue of the European Union Act, which makes EU law effective law in Malta on the terms of the latter legal order, and secondly by virtue of strong judgments of the Maltese Courts which can be said to be based on a strong interpretation in favour of application of EU law of the relevant Constitutional provisions and of the European Union Act itself.

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

Malta is a Eurozone Member State. Indeed there was no debate of a constitutional nature in Malta either on membership or when Malta joined the Eurozone or regarding later developments.

Otherwise the Prime Minister has often declared that Malta's policy as far as budgetary discipline is concerned is one of flexibility rather than rigidity, and of economic and social balance. In this respect it seems we are in step with Italy's approach. However, there is no developing jurisprudence on *controlimiti 'alla Italiana'* here, though possibly such might develop if our judges were given the opportunity to develop it, which they have not had so far.

There are no specific provisions in the Constitution on EMU membership. As far as the EU is concerned, the matter is covered by the general Membership Clause viz. Article 65 of the Constitution. Any new treaty has to be ratified in accordance with the Ratification of Treaties Act, which requires an Act of Parliament for ratification as a rule, but can be done by Prime Ministerial Order in appropriate circumstances. There has been some political but little doctrinal debate on these issues. The political debate took place in Parliament in the crossover between governments in 2003, interrupted by a general election and a consequent change of government.

### **3) Constitutional limits for EMU membership**

No limit is expressly set out in the Constitution on the possible acceptance of wider competence for the Union, whether ‘exclusive’ or ‘shared’ in terms of the TEU.

All new treaty obligations need to be ratified by Act of Parliament, if necessary by amendment of the European Union Act, so that Parliamentary scrutiny is inbuilt into the process, with input from the European and Foreign Affairs Committee. The question of ultra vires would be settled by reference to Article 65 of the Constitution and the European Union Act of 2004. There have been no constitutional court judgments on the matter.

### **4) Crisis Management Measures**

Euro-crisis instruments are adopted by ordinary legislation. In compliance with the Stability and Growth Pact and its reform measures the Fiscal Responsibility Act of 2014, Chapter 534 of the Laws of Malta is relevant.<sup>1</sup>

The only exception is the approval of the amendment of Article 136 (3) TFEU which is based on an order of the Prime Minister and is classified as subsidiary legislation.

Malta’s participation in the Fiscal Compact entered into force on 1 July 2013. According to the parliamentary procedure for the ratification of international treaties, set out in the Maltese ‘Ratification of Treaties Act’, Act V of 1983; Chapter 304, the TSCG as an international treaty became part of the law of Malta.

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<sup>1</sup>[https://www.google.com.mt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwje7\\_\\_lp8DLAhVmEJoKHcLkD8oQFggaMAA&url=http%3A%2F%2Fwww.justiceservices.gov.mt%2FDownloadDocument.aspx%3Fapp%3Dlp%26itemid%3D26047%26l%3D1&usg=AFQjCNFkg7Ju19BgE3RG-wE\\_fUQWKffinQ](https://www.google.com.mt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwje7__lp8DLAhVmEJoKHcLkD8oQFggaMAA&url=http%3A%2F%2Fwww.justiceservices.gov.mt%2FDownloadDocument.aspx%3Fapp%3Dlp%26itemid%3D26047%26l%3D1&usg=AFQjCNFkg7Ju19BgE3RG-wE_fUQWKffinQ)

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