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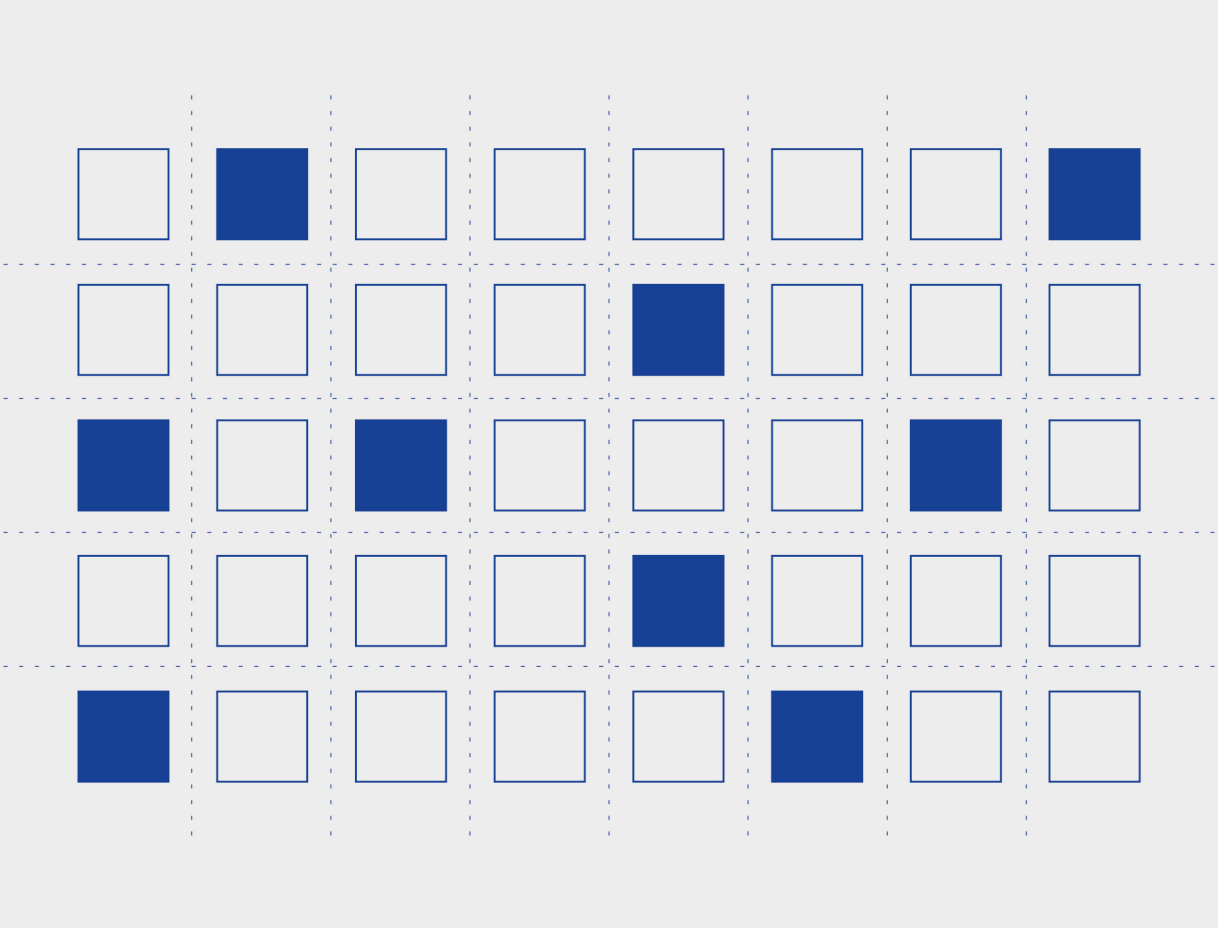
THE CHOICE FOR EUROPE SINCE MAASTRICHT
SALZBURG CENTRE OF EUROPEAN UNION STUDIES

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

UNITED KINGDOM

by Paul Craig



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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.

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’.

UNITED KINGDOM (Paul Craig)

1) Main characteristics of the national constitutional system

The principal characteristic of the UK constitutional system is the sovereignty of Parliament. The traditional theory of parliamentary sovereignty stipulates that Parliament can do anything that it wishes, such that there can be no substantive or procedural constraints on what Parliament can do. There is one exception to this proposition, which is that Parliament cannot bind its successors. Thus on this view there can be no substantive limits on what Parliament can do, and no procedural limits either, with the consequence that if Parliament provides in one statute that it can only be repealed or amended by a special majority, it would still be open to a later Parliament to make the change by simple majority. This theory has been contested on various grounds, and there is, for example, a school of thought that argues that manner and form limits on what Parliament can do would be upheld, such that a later statute could only change the earlier statute in accord with the procedural requirements laid down in the earlier legislation.

The Supreme Court recently affirmed that the constitutional relationship between the UK and EU was to be decided by the UK courts in accord with UK constitutional principle. The supremacy of EU law only takes effect within the UK through the European Communities Act 1972, and any conflict between EU law and UK law will be resolved by UK courts as a matter of UK constitutional law. The Supreme Court also reaffirmed the idea that there was a separate category of constitutional statutes in the UK constitutional order, with the consequence that it could not be assumed that when Parliament enacted the ECA 1972 that it impliedly authorized the limitation or abrogation of such principles by EU law.

The principle of the sovereignty of Parliament is, however, tempered in certain respects. Thus while the relationship between EU law and national law in terms of supremacy is to be decided by the UK courts as a matter of UK constitutional law, taking account of any statutes enacted by Parliament, UK courts will strive to interpret UK statutes to be in accord with EU law. The consequence is that if Parliament ever did wish to derogate from its EU obligations then it would have to do so expressly and unequivocally.

The Supreme Court is the ultimate legal arbiter in the United Kingdom. We do not have a divided system of public law and private law courts. Nor we do have a system whereby there is a separate constitutional court, which is formally distinct from the private and public law courts. The Supreme Court is the ultimate legal authority for all types of case, but it is equally important to stress that any UK court can adjudicate on a constitutional matter, provided that the subject matter of the dispute falls within its ambit of competence.

2) Constitutional foundations of EMU membership

The UK has not adopted the euro, nor is it under any obligation to do so. Protocol 15 of the Lisbon Treaty states that that unless the UK notifies the Council that it intends to adopt the euro, it shall be under no obligation to do so, with the consequence that the UK shall retain its powers in the field of monetary policy according to national law.

It is open to the UK to notify the Council at any time of its intention to adopt the euro. If it does so, the UK has the right to adopt the euro provided that it satisfies the necessary conditions. This

would be decided by the Council in accord with the procedure laid down in Article 140(1) and (2) TFEU. If the UK does join the euro the Bank of England must pay its subscribed capital, transfer to the ECB foreign reserve assets and contribute to its reserves on the same basis as the national central bank of a Member State whose derogation has been abrogated.

The UK is bound by relevant provisions on economic union, subject to exceptions specified in Protocol 15 of the Lisbon Treaty, Article 4. The constitutional foundation for the applicable provisions within the UK is the same as for any other provision of the Lisbon Treaty: they become part of UK law through the European Communities Act 1972. The UK is also bound by EU legislation applicable to economic union, except insofar as it has negotiated any special treatment. The EU legislation enters the national legal order through the European Communities Act 1972.

3) Constitutional limits of EMU membership

The UK recognizes the direct effect of EU law, and also accords primacy to EU law in the event of a clash with UK law. This is achieved largely through principles of interpretation, such that accommodation between national law and EU law is attained through a rule of construction to the effect that inconsistencies will be resolved in favour of EU law unless Parliament has indicated clearly and unambiguously that it intends to derogate from EU law.

However, as noted above, the constitutional relationship between the UK and EU is decided by the UK courts in accord with UK constitutional principle. The supremacy of EU law only takes effect within the UK through the European Communities Act 1972, and any conflict between EU law and UK law will be resolved by UK courts as a matter of UK constitutional law. If there is a clash between an EU provision concerning EMU and a constitutional statute or common law constitutional principle, the Supreme Court has made it clear that it could not be assumed that when Parliament enacted the ECA 1972 that it impliedly authorized the limitation or abrogation of such statutes or principles by EU law. There is in that sense a UK constitutional limit to provisions concerning EMU in the UK.

It should also be noted that insofar as the UK affords primacy to EU law over national law, this only operates in areas where EU law is applicable. It would therefore be open to a legal claimant to argue that the relevant EU legislation exceeded the EU's competence. This could then raise debates familiar in the literature as to who has the final Kompetenz-Kompetenz: who has the ultimate authority to decide whether a matter is within the competence of the European Union.

4) Crisis Management Measures

Many of the crisis management measures do not apply to the UK because it is not a member of the euro zone. EU legislation that forms part of the six pack, two pack or related measures, which is designed to prevent repeat of the national budgetary problems that led to the financial crisis, will be applicable to the UK insofar as the particular directive or regulation so specifies.

5) Constitutional law scrutiny of EMU reform scenarios

The existence of any constitutional law constraints on EMU reform will depend on the nature of such reform. There are two possible constraints.

First, there is the possible clash between any such reform and UK constitutional statutes and common law constitutional principles set out above.

Secondly, the European Union Act 2011 imposes a regime of parliamentary and referendum "locks" on Treaty amendments and a range of other EU decisions. Prior to the 2011 Act the general position under UK law was that any amendment to the EC Treaty required ratification by the UK through an Act of Parliament. This was the standard approach for ratification of any Treaty by the UK. The 2011 Act now requires that there must also, subject to limited exceptions, be a positive vote in a referendum, whenever new competence is to be granted to the EU, when an existing competence is to be extended, or when certain powers are to be accorded to the EU. The 2011 Act is not entrenched, and thus Parliament could choose to disapply it, but subject to this the obligation to secure a positive vote in a referendum as well as in Parliament is binding.

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