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Abstract: Similar to other Nordic countries, Finland lacks a constitutional court, and courts still play a secondary role on the Finnish scene of constitutionalism. Instead, the main authority of constitutional interpretation and review is the Constitutional Law Committee of Parliament. The Committee has a constitutional mandate for ex ante review of the constitutionality of 'legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties' pursuant to section 74 of the Constitution.

Ex ante constitutional review by the Constitutional Law Committee includes the review of proposals for EU legislation and other EU-related measures. Hence, the Constitutional Law Committee has been able to advance constitutional observations on EMU-related proposals well before their entry into force, and in a way that these observations have occasionally shaped the further negotiations of these proposals at the EU level. For instance, the Committee initially had constitutional concerns over the draft ESM Treaty. These concerns later shaped the further supranational negotiation process of the draft ESM Treaty so that a conflict between the ESM Treaty and the Finnish Constitution was eventually eliminated. This is one of the advantages of ex ante constitutional review – it accommodates constitutional concerns in advance of international developments, the EMU reform proposals being a prime example.

The Constitutional Law Committee has issued a number of opinions on various EMU-related measures, crisis management measures and EMU reform scenarios. The following distinct, yet closely intertwined constitutional considerations emerge out from the maze of these opinions to define what the Finnish constitutional position to economic and fiscal integration is basically all about. On the one hand, the Committee has systematically emphasised the appropriate involvement of parliament in the national preparation of various EMU measures, including parliament's right to receive information on EMU affairs, in accordance with sections 96 and 97 of the Finnish Constitution for the purpose of securing democracy and the protection of parliamentary prerogatives. On the other hand, the Committee has focused on the implications of EMU measures on parliament's budgetary prerogatives and the sovereignty of Finland in general. When assessing the budgetary effects of various EMU measures, the Committee's ultimate constitutional concern has been that financial commitments pertaining to EMU integration do not jeopardise the effective observance of such constitutional obligations as those stemming from social rights and the Finnish welfare state system in general.

In addition, the Constitutional Law Committee has emphasised that the reform of EMU integration should primarily take place in accordance with the founding treaties of the EU and within the framework of the legal and institutional system of the EU. From this constitutional stance, the Committee levelled criticism against the adoption of such EMU-related measures outside the EU legal framework as the ESM Treaty, which was established by an intergovernmental treaty.

Despite occasional ex ante constitutional concerns expressed by the Constitutional Law Committee over the years on various EMU-related proposals, Finland has so far been able to adopt and implement all EMU-related measures without major (or at least insurmountable) constitutional problems.

Key words: Constitutional Law Committee of Parliament, ex ante constitutional review of EMU proposals, absence of ex post judicial review, participation of parliament in the national preparation of EMU reform proposals, parliament's right to receive information on EMU reform proposals, budgetary sovereignty and budgetary prerogatives of parliament, the adequate observance of constitutional obligations, constitutional criticism of EMU reform proposals outside the EU legal and institutional framework.

I. Main Characteristics of the Finnish Constitutional System

The Constitution of Finland (Act No 731/1999)[1] entered into force on 1 March 2000, replacing the earlier Constitution Act of 1919 and three other enactments enjoying constitutional status.[2] In comparison with other European Constitutions, Finland's 2000 Constitution stands out as a modern and unified document with a clear structure and concise and lucid style of writing.[3]

The first chapter, entitled 'Fundamental Provisions', defines the foundations of the constitutional-political system of Finland as a republican parliamentary democracy based on the rule of law, the principle of parliamentarism, the separation of powers, and the protection of fundamental and human rights. Up until 2012, the Constitution of Finland suffered from a 'European deficit', as EU membership was insufficiently reflected in the text of the Constitution despite its constitutional significance. After the amendment of the Constitution in 2012, however, the very first provision of the Constitution displays constitutional engagement with EU membership by providing that Finland 'is a Member State of the European Union'. In addition, constitutional provisions acknowledging the possibility of the transfer of powers to the EU or international organisations were enacted (sections 94 and 95 of the Constitution). The domestic decision-making system pertaining to EU affairs is regulated in more detail in Chapter 8 of the Constitution.

One of the most distinctive features of the Constitution, including Finnish legal culture, in recent years has been the tendency towards rights-based constitutionalism.[4] The very first provision of the Constitution expresses commitment to rights-based constitutionalism by providing that the Constitution 'shall guarantee the inviolability of human dignity and the freedom and rights of the individual and promote justice in society'. The same provision adds that Finland participates in international cooperation 'for the protection of peace and human rights and for the development of society'. Fundamental rights are enshrined in Chapter 2 that amounts to a

[1] Unofficial translation of the Constitution of Finland, including amendments up to 1112/2011, in English is available at www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf. Translations will be used from this source.

[2] The four constitutional enactments enjoying constitutional status were as follows: the Constitution Act of Finland, the Parliament Act and two Acts on ministerial liability. All Acts were passed during the first years of independence (the Acts of 94/1919; 7/1928; 274/1922; and 273/1922).

[3] For the major characteristics of the Nordic constitutions, see Helle Krunke, Björg Thorarensen (eds), *The Nordic Constitutions: A Comparative and Contextual Study* (Oxford, Hart Publishing, 2018).

[4] See especially Juha Lavapuro, Tuomas Ojanen, Martin Scheinin, 'Rights-based constitutionalism in Finland and the development of pluralist constitutional review' (2011) 9 *International Journal of Constitutional Law*, 505. See also Tuomas Ojanen, 'The Europeanization of Finnish Law' in Luif P (ed), *Österreich, Schweden, Finland – Zehn Jahre Mitgliedschaft in der Europäischen Union* (Vienna, Böhlau Verlag 2007) 156–58.

broad catalogue of fundamental rights, with a range of economic, social and cultural rights, in addition to the more traditional civil and political rights. There are also specific provisions on responsibility for the environment and environmental rights, as well as for the right of access to information and the right to good administration. Fundamental rights are almost invariably granted to everyone within Finland's jurisdiction, save certain dimensions of the freedom of movement and electoral rights that are something for Finnish citizens only.

The current domestic system for the protection of fundamental and human rights intertwines another contemporary characteristic of the Finnish constitutional system: the existence of a pluralist system of constitutional review combining abstract ex ante review[5] by the Constitutional Law Committee of parliament and ex post review by courts.[6] Similar to other Nordic countries, Finland lacks a constitutional court, and courts still play a limited role on the Nordic scene of constitutionalism. In the Finnish model of constitutional review, the ex ante constitutional review by the Constitutional Law Committee is supposed to remain primary, whereas judicial review under section 106 of the Constitution[7] is designed to plug loopholes left in the abstract ex ante review of the constitutionality of government bills, inasmuch as unforeseen constitutional problems would arise in applying the law by the courts in particular cases. Hence, the interpretive practice of the Constitutional Law Committee will be of great significance in this chapter.

The constitutional position of the Constitutional Law Committee bears many resemblances to centralised judicial review models with constitutional courts at their apex. However, the main difference is that the Committee is a political organ composed of members of parliament, albeit with a distinct constitutional mandate for ex ante review of the constitutionality of 'legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties' under section 74 of the Constitution. Despite its political composition, the practice of Committee is characterised by legal argumentation and a search for constitutional interpretations that can be linked to the text of the Constitution and its preparatory works, to the Committee's own previous interpretive practice and case law of the European courts and treaty bodies of international human rights treaties. Before issuing its Opinions, the Committee regularly hears experts in constitutional law and international human rights law, notably university professors, whose views often have significant impact on the Committee's statements on the constitutionality of legislative proposals and other matters.

For the purposes of displaying constitutional limits to economic and fiscal integration, it deserves emphasis that ex ante review by the Committee of the constitutionality of matters pending before parliament extends to cover proposals for directives, regulations or other EU measures. This is unique by European comparison as the constitutional review of EU measures usually assumes the nature of ex post review by constitutional courts or other courts in other EU

[5] The supervision by the Constitutional Law Committee is abstract, not concrete, in the sense that the relation between the norm and the circumstances of a particular case is lacking, unlike in the case of concrete ex post (judicial) review where a court reviews the constitutionality of legislation in the light of all relevant circumstances of a concrete case to be decided.

[6] See Lavapuro, Ojanen, Scheinin 'Rights-based', 510–18.

[7] Section 106, entitled "the Primacy of the Constitution", provides as follows: 'If in a matter being tried by a court, the application of an Act of parliament would be in manifest conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution'. The criterion of a 'manifest conflict' is deliberately designed to subordinate judicial review to ex ante review by the Constitutional Law Committee. The *travaux préparatoires* of section 106 explicitly state that, as a rule, a court should not regard the conflict as manifest, if the Constitutional Law Committee, in its ex ante review, has already reviewed the constitutional issue at hand and held that relevant Act of parliament should be regarded to be in harmony with the Constitution. See Government Bill for the new Constitution No 1/1998, p. 164. See also the Report by the Constitutional Law Committee on Government proposal 1/1998. See also Report 10/1998 of the Constitutional Law Committee, at p. 31. See also Lavapuro, Ojanen, Scheinin, 'Rights-based', 517–18.

Member States. The possibility of ex ante constitutional review of proposals for EU measures also explains why the Constitutional Law Committee was already able to state constitutional concerns about the proposal for the ESM Treaty whereas the German Federal Constitutional Court, for instance, reviewed the ESM Treaty ex post after its entry into force.[8]

Finally, a distinct characteristic of the Finnish constitutional-political system is the distribution of powers between parliament, the government and the president of the republic. Up until the early 1990s, Finland still fell into the category of presidential democracies where the elected head of state – the president of the republic – enjoyed strong powers distinct from parliamentary decision-making and the requirement of parliamentary confidence. The most significant bastion of presidential power was in the area of foreign policy, but the president also enjoyed strong powers in domestic affairs such as legislation, the formation of the government and the appointment of state officials.

However, the trend has increasingly been away from the presidential focus of authority, towards the parliament-government axis since the early 1980s. In practice, the emphasis on the parliamentary aspect of the Finnish constitutional-political system strengthened the parliament vis-à-vis the government, on the one hand, and the strengthening of the government vis-à-vis the president of the republic, on the other hand. The current Constitution of Finland has carried the parliamentary ethos of the Constitution almost to completion by entailing a general restriction of the powers of the president and by affiliating the exercise of the remaining presidential powers to cooperation with the government. Hence, the functioning of Finland's constitutional and political system can no longer be defined with reference to the constitutional authority and political power of the president. Instead, it is the parliamentary mode of policy-making that matters at least predominantly, if not exclusively. The prime minister is nowadays the most significant political actor in Finnish everyday politics, and the leadership of the prime minister is nowadays explicitly recognised in section 66 of the Constitution.[9]

A. Constitutional Culture

The Constitution, as a legal and a political instrument, has traditionally been highly esteemed in Finland. Respect for the Constitution originates in the legal-positivist resistance by the Finnish legal and political elite to the campaigns of so-called 'Russification' between 1899 and 1905. For over a century, from 1809 to 1917, Finland was an autonomous Grand Duchy within the Russian Empire, so that Finland had its own legal system, including constitutional enactments inherited from the era of Swedish rule before 1809. During the years of 'Russification', however, the Finns fought against arbitrary Russian interferences with Finland's domestic legal and political affairs by advancing a constitutional challenge, essentially founded on a simple, yet firm claim that all authorities, including those of the Russian Empire, had to strictly observe Finland's constitutional enactments and Finnish law in general in the exercise of all their powers. As this constitutional challenge proved successful, the strong tradition of legalism, including respect for the rule of law, started characterising Finnish legal culture from those years onwards.[10]

[8] See eg Opinions 27/2011 and 1/2012 by the Constitutional Law Committee. The judgment by the German Federal Constitutional Court on the constitutionality of the ESM Treaty was given almost a year later, See judgment of 12.9.2012, 2 Bv 1390/12.

[9] For a brief overview of the history of the distribution of powers between state organs, see Ojanen, 'Europeanization', 161–63.

[10] See in more detail Ojanen, 'Europeanization', 146–48.

The Grand Duchy era also generated another constitutional idiosyncrasy, the institution of exceptive enactments. While the Finns urged, in the name of the legal positivist spirit originating in the rule of law, the Russians to abide by constitutional enactments originating in the period of the Swedish rule, there were simultaneously increasingly pressing economic and social reasons to enact such modern legislation which was at odds with the antiquated Swedish constitutional enactments. As the Finns wanted their constitutional challenge towards 'Russification' to remain credible, the institution of exceptive enactments offered a way out. In essence, this institution makes it possible to adopt legislation that conflicts with the Constitution without amending the text thereof, subject to the proviso, however, that such legislation is approved in accordance with the procedure for constitutional enactments. As will be discussed in more detail later, the institution of exceptive enactment has been used for the purpose of bringing into force of those obligations originating in EU membership that have been deemed to be in conflict with the Constitution.

Similar to other Nordic countries, rights and judiciaries traditionally assumed marginal legal roles in the Finnish scene of constitutionalism until the late 1980s. The Finnish constitutional system followed both formally and practically the classic legislative supremacy principles with ideas about democracy as majority rule and about the law as a supreme expression of the people's will at their apex. However, Finnish constitutionalism has witnessed a shift from the legislative sovereignty paradigm to one in which legislative acts are increasingly subordinated to rights-based system of pluralist review where both the democratically elected legislature through ex ante review by the Constitutional Law Committee of Parliament, and the independent judiciary ex post are entrusted with a duty to protect fundamental and human rights.[11]

Finally, it is important to note that Finland has traditionally been fairly homogeneous and state-centred in its self-understanding about community values. Aside from its civil war in 1918, there has been a lack of significant ethnic, cultural, political or religious controversies that threatened to divide society. 'Consensual pathos' has characterised Finnish political and constitutional culture in recent decades, thereby contributing to 'consensual constitutional reforms'. For instance, parliament adopted the Constitution of 2000 practically unanimously.

However, the most recent constitutional amendment of 2012 was an exception, as no less than 40 members of parliament voted against the amendment and another 40 MPs were absent. These numbers are high, as the unicameral parliament has only 200 MPs. Such a wide resistance stemmed primarily from those parts of the amendment addressing the 'European deficit' of the Constitution. In recent years, issues revolving around European integration in general and the euro crisis in particular have moved to the centre of the Finnish political arena in a manner that increasingly has caused friction between political parties and different groups of society. In particular, recent years have witnessed a breakthrough of right-wing populism that can be characterised by such attributes as 'anti-European', 'anti-immigration' and 'nationalistic'. These kinds of 'anti-EU integration' political trends are not constitutionally insignificant, because the Constitution of Finland nowadays explicitly reflects a commitment to EU membership from the very outset by providing that Finland is a Member State of the European Union' (section 1, paragraph 3 of the Constitution of Finland).

[11] For the role of rights and courts in the Finnish scene of constitutionalism, see Lavapuro, Ojanen, Scheinin 'Rights-based'.

II. Constitutional Foundations of EMU Membership and Closely Related Instruments

A. EU Membership

Finland joined the European Union on 1 January 1995, along with Austria and Sweden. On 1 January 1999, Finland joined the eurozone.

In the mid-1990s, the Constitution was still very introverted and nationalist. The sovereignty of Finland was understood in a very formal and rigid manner, so that the transfer of powers to international organisations was almost 'automatically' found to be in conflict with the Constitution. In essence, the institution of exceptive enactments allowed such strict interpretation of sovereignty, as it enabled the approval of the incorporation enactments of international treaties that conflicted with the Constitution, by a vote in parliament with a qualified majority of two-thirds, without formally amending the Constitution.

The institution of exceptive enactments was applied to the bringing into force of the Treaty of Accession of 1994.[12] The Treaty was deemed to be in conflict with the Constitution in several ways, the major reason simply being that the transfer of powers to the EU was incompatible with the sovereignty of Finland. Accordingly, the Treaty of Accession was incorporated into Finnish law through an exceptive enactment (Act No 1540 of 1994), which was approved by a two-thirds majority in parliament. In addition, parliament accepted the ratification of the Accession Treaty by a simple majority decision. The domestic ratification and incorporation of the Accession Treaty was accompanied by a consultative referendum on 16 October 1994. The referendum was *not* a constitutional condition for accession, but aimed at enhancing the domestic democratic legitimacy of EU membership. In the referendum, a majority of 56.9 per cent of those who voted answered 'yes' to the following question: 'Should Finland become a member of the European Union in accordance with the treaty which has been negotiated?' The turnout was 74 per cent.

In addition, a constitutional amendment was found necessary insofar as the domestic distribution of powers between the government and the president, including the role of parliament in EU affairs, was concerned.[13] The accession of Finland to the European Economic Area (EEA) in 1994 had already made it necessary to reconsider the domestic distribution of powers between state organs. Although the powers of the president had been subject to significant reductions in domestic affairs before, the president still enjoyed strong powers in the sphere of foreign affairs in the early 1990s. Hence, one of the most important issues to be decided in Finland prior to embarking on the process of European integration was whether European affairs – first EEA affairs and later EU affairs – should be considered a domestic or a foreign policy matter. In the latter case, they would have fallen within the competence of the president by virtue of section 33 of the Constitution Act of 1919. This would have implied that the constitutional pendulum would have lurched back again towards a strong presidency, thereby watering down constitutional amendments since the early 1980s to nudge the Finnish constitutional system towards parliamentarism.

[12] The instrument concerning the accession of Finland to the European Union is the Treaty between Member States of the European Union and the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden [1994] OJ C241/14, as adjusted by Council Decision 95/1/EC, Euratom, ECSC [1995] OJ L1/1. See also Opinion 14/1994 by the Constitutional Law Committee on the Accession Treaty.

[13] See Ojanen, 'Europeanization', 155, 157.

In particular, this outcome would have been a severe blow to the effective participation of parliament in domestic decision-making pertaining to European affairs.

Hence, the competences pertaining to EU membership were arranged in the same way as in domestic legislative matters. Accordingly, the main responsibility for the national preparation of EEA affairs and later EU affairs was given to the government, whose members are both individually and collectively accountable to parliament. Moreover, specific constitutional provisions were enacted for the purpose of ensuring the effective participation of parliament in the national preparation of EU affairs (section 96), on the one hand, and parliament's right to receive information on all measures on which decisions are to be made in the EU whenever these fall within parliament's competence, on the other hand (section 97).

B. The Constitution of Finland of 2000

The entry into force of the Constitution of Finland on 1 March 2000 modified the constitutional foundations of Finland's EU membership, including EMU membership, by introducing the so-called 'internationalisation principle' according to which 'Finland participates in international cooperation for the protection of peace and human rights and for the development of society' (section 1, subsection 3). According to the *travaux preparatoires* of the Constitution, this new clause reflects the positive attitude of the Constitution towards international cooperation, including European integration, as well as to direct that the sovereignty clause of the Constitution must, under the current circumstances, be understood in relation to international obligations binding on Finland and, particularly, EU membership.

Since 2000 onwards, the Constitutional Law Committee of Parliament has consistently referred to this new constitutional provision in reviewing both EU measures, including those pertaining to the EMU, and international treaties for their compatibility with maintaining the sovereignty of Finland. Moreover, the Committee has invariably regarded the EU as being *sui generis* and, accordingly, something quite different from international and regional organisations.[14] In practice, this idea of the *sui generis* nature of the EU has resulted in a greater constitutional tolerance of limitations on sovereignty stemming from EU membership than those originating in international obligations. In addition, EU membership started increasingly shaping the interpretation of other constitutional provisions beyond the sovereignty clause of the Constitution.[15]

However, while the Constitution of Finland of 2000 allowed the adaption of an 'EU-oriented interpretation approach' of the Constitution, the Constitution still suffered from the 'European deficit' as the text of the Constitution itself failed to display appropriately the constitutional significance of EU membership. As the constitutional foundations of EU membership were premised on the basis of the institution of exceptive enactments, membership still appeared as an outsider of the constitutional system of Finland.

[14] See eg Opinions 13/2009, 36/2006, 9/2006, 38/2001 by the Constitutional Law Committee.

[15] For instance, the Nice Treaty, amending the founding treaties of the EU and the EC, was not deemed to be in conflict with the sovereignty of Finland by the Constitutional Law Committee. Accordingly, there was no need to take advantage of the institution of exceptive enactment for the purpose of bringing the Nice Treaty into force domestically. See Opinion 38/2001 by the Constitutional Law Committee. For the evolution of the sovereignty doctrine, see especially Anu Mutanen, 'Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? – The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain Other EU Member States' (Helsinki, University of Helsinki, 2015).

C. The Constitutional Amendment of 2012

Things eventually changed in 2012 when the latest amendment of the Constitution entered into force with provisions explicitly designed to address the 'European deficit' of the Constitution. To begin with, section 1, subsection 3 of the Constitution, located in Chapter 1 entitled 'Fundamental provisions of the Constitution', was amended to include an explicit commitment to EU membership by providing simply, yet forcefully, that 'Finland is a Member State of the European Union'. Moreover, new provisions on the transfer of powers were inserted in section 94, entitled 'Acceptance of international obligations and their denouncement' and section 95, entitled 'Bringing into force of international obligations'.

In essence, these new provisions provide that a 'significant' transfer of state powers to the EU or an international organisation or an international body requires the decision made by at least two thirds of the votes cast in parliament. By contrast, the transfer of powers that cannot be deemed to be 'of significance with regard to Finland's sovereignty' can be approved by a decision made by simple majority in parliament. As a result, there is no longer any meaningful scope of application for the institution of exceptive enactment as regards the transfer of powers to the EU. Instead, the crucial constitutional question simply is whether a given transfer of powers can be regarded as being 'of significance' within the meaning of the Constitution. It deserves to be emphasised that the text of the Constitution remains silent on such powers that cannot be transferred to the EU or international organisations. The foregoing considerations are applicable to EMU membership which is regarded as one major instance of Finland's EU membership.

In addition, the constitutional amendment of 2012 enhanced the identity of the individuals as 'EU citizens' by supplementing constitutional provision on electoral and participatory rights so that 'every Finnish citizen and every other citizen of the European Union resident in Finland, having attained eighteen years of age, has the right to vote in the European Parliamentary elections, as provided by an Act'. This amendment reflects the Constitutional Law Committee approach about the Union as a community of not only the Member States but also the citizens.[16]

The importance of these latest constitutional amendments cannot be overemphasised insofar as constitutional foundations of EU membership, including EMU membership, are concerned: the application of the institution of exceptive enactment originally entailed the exclusion of EU membership from the Finnish constitutional system, reflecting the EU as being in contradiction with the Constitution. After the amendment of 2012, however, the Constitution of Finland displays explicit constitutional commitment to EU membership among the foundations of the Finnish constitutional system. As a result, EU membership, including EMU membership, has evolved from being a constitutional outsider to being an insider, with a firm place among the foundations of the Constitution.

D. EMU Membership

The EMU received little, if any, attention when Finland negotiated its EU membership in the early 1990s. For Finland, EU membership was largely, if not exclusively, about principles, instead of money. The Finnish political establishment, as well as a clear majority of the Finns, regarded EU membership as an anchor to western Europe in the post-cold war era. In addition, EU

[16] See eg Opinions 36/2007 by the Constitutional Law Committee.

membership was regarded as marking economic stability, since there was a recession in Finland in the early 1990s. Hence, one of the reasons propelling EU and EMU membership was the desire to influence economic conditions in the country. Basically, the thinking was that sustaining stable monetary conditions in a small nation such as Finland, with its very export-dependent economy, is much easier within a Europe-wide economic area rather than remaining on the outside.

When the time came to proceed to the third stage of the EMU, the move itself and the need to fulfil the membership criteria of the EMU no longer provided any major constitutional or political difficulties. It is important to note that Finland did not seek an opt-out from the third stage of the EMU in its accession negotiations to the EU. Instead, the government that formed after the parliamentary elections in March 1995 set its target of preparing Finland to join the third stage among the first group of EU Member States. Moreover, the entry to the third state was smoothed by the rapid recovery of the Finnish economy after the recession of the early 1990s due to such factors as growth in consumer confidence, the access of Finnish exports to the wider EU market, and the success of Finnish high-tech industries, with the boom of Nokia at its apex. Given also a revision of the legislation governing the Bank of Finland for the purpose of complying with the European Central Bank system in the late 1990s, Finland could with relative ease enter the third stage of the EMU.

As such, EMU was regarded as conflicting with the Constitution and, accordingly, required the use of the exceptive enactment. However, as the Accession Treaty did not include any opt-out clause regarding EMU, the prevailing constitutional view was that Finland had already accepted EMU, including its third stage, through the ratification and incorporation of the Accession Treaty in 1994.

However, the Constitutional Law Committee also took the view that Finnish entry into the third stage of EMU necessitated a decision by parliament approving the move.[17] As there was a strong political will among the major political parties to join the third stage among the first wave of Member States, parliament decided on Finnish participation by simple majority decision, based on a government statement (1/1998), with 135 MPs voting in favour and 61 against.

Constitutional discussion and debate about EMU remained limited in the late 1990s and early 2000s. Indeed, it was not until the emergence of 'anti-integration' political movements and the euro crisis of the late 2000s that EU/EMU membership of Finland became a topic of day-to-day politics.

E. Treaty Amendments

All amendments of the EU founding Treaties (the Amsterdam Treaty and the Lisbon Treaty) except for the Nice Treaty have been found to conflict with the Constitution. Accordingly, the institution of exceptive enactments has been used to bring into force these Treaty amendments. However, it is important to emphasise that the institution of exceptive enactments has lost its significance since the constitutional amendment of 2012. Nowadays the essential constitutional question is whether a given transfer of powers can be regarded as being 'of significance' within the meaning of sections 94 and 95 of the Constitution. Even if the transfer of power is considered significant and, accordingly, a bill for the bringing into force of the treaty in

[17] Opinion 14/1994 by the Constitutional Law Committee. See also Opinion 18/1997 by the Constitutional Law Committee, reiterating the view that a decision by parliament is necessary for the entry of Finland into the third stage of EMU.

question is adopted by Parliament by a decision supported by at least two thirds of the votes cast (see section 95, paragraph 2), the domestic Act of incorporation would no longer feature as an exceptive enactment (see in more detail above the constitutional amendment of 2012).

F. Role of the Jurisprudence of Constitutional Actors

As noted, Finland lacks a constitutional court, and the judiciary still plays a secondary role in constitutional review. Hence, the role of the judiciary has been insignificant in the formation of government's preferences with regard to economic and fiscal integration. In practice, constitutional challenges of EMU-related measures through the courts would be doomed to failure in Finland.

For instance, the annual budget does not take the form of an Act of parliament, and there is no effective judicial review of Finland's annual budget once the budget is adopted by parliament. Hence, the question is whether the Finnish budgetary process can be regarded as being in harmony with the Treaty on Stability, Coordination and Governance in Economic and Monetary Union (TSCG, Fiscal Compact), requiring, among others, compliance with the criterion of being of 'binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes'. However, given that the budgetary process must observe the domestic implementing enactment of the TSCG, the 'Fiscal Policy Act', including the robust monitoring mechanism set up in that Act in accordance with the TSCG, and that the Chancellor of Justice[18] can ex ante review the legality of such government proposals by way of which the annual state budget is given to parliament, the European Commission regarded the Finnish law as complying with the TSCG.[19]

Instead of judicial review, the Constitutional Law Committee of Parliament has played a very significant role in the formation of government's preferences regarding economic and fiscal integration in the context of its ex ante review of various EMU-related measures, crisis management measures and EMU reform scenarios, including various EMU-related measures outside the institutional and legal framework of the EU. In particular, such measures adopted to tackle the euro crisis as the European Stability Mechanism (ESM treaty), the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG)[20] and the Stability and Growth Pact have been widely and repeatedly discussed in parliament, including in the Constitutional Law Committee. It deserves emphasis that this ex ante engagement by the Constitutional Law Committee has often been continuous. For instance, the Committee dealt four times with different versions of the ESM Treaty.[21] This is one of the benefits of ex-ante constitutional review – it allows for the possibility of the Constitutional Law Committee to not only react but also to try to influence (further) developments of EMU-related measures at the EU level.

[18] The Chancellor of Justice oversees the lawfulness of the official acts of the government and the president of the republic. The Chancellor of Justice also ensures that the courts of law, the other authorities and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Chancellor of Justice monitors the implementation of basic rights and liberties and human rights. See in more detail section 108 of the Constitution on the mandate of the Chancellor of Justice.

[19] See European Commission, country annex Finland to the Report from the Commission presented under Article 8 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. Brussels, 22.2.2017, C(2017) 1201 final.

[20] The Act on implementation of the TSCG and the budgetary framework directive No 869/2012 is Act No 869/2012) ('Fiscal Policy Act') with its subsequent amendments as introduced by the Act No 18/2017.

[21] See Opinions 1/2011, 22/2011 and 13/2012 by the Constitutional Law Committee and Protocol 11/2011 by the Constitutional Law Committee.

Three major trends emerge out of the maze of ex ante review of EMU-related measures by the Constitutional Law Committee. For the sake of clarity, it needs to be mentioned that the above views by the Constitutional Law Committee also apply to intergovernmental treaties outside the EU legal order such as the TSCG and TESM Treaties in addition to such EU measures as the EU Six Pack legislation. This is notwithstanding the fact that the Committee has criticised the adoption of such ad hoc intergovernmental treaties and, instead, has emphasised the need for developing the EMU within the EU's institutional and legal framework.

First of all, the Constitutional Law Committee has consistently taken the view that all EMU-related measures and crisis management measures, including those adopted outside the EU legal order, feature as 'EU affairs' that fall within the scope of application of section 96 and/or 97 of the Constitution, provided that there exists a sufficient 'EU or EMU linkage'. For instance, despite the TSCG being formally a treaty under international law, the Constitutional Law Committee emphasised that this Treaty nonetheless has very firm and strong linkage with the EMU and the EU legal order.[22] The outcome of such views by the Committee has been that parliament enjoyed very strong constitutional prerogatives of participation, including a right to be informed on matters being negotiated at the supranational level, as well as the right to demand modifications to various draft instruments.

In practice, ex ante constitutional review by the Committee has revolved around constitutional concerns of 'EMU-related measures' such as those relating to national sovereignty, the financial and budgetary competence of parliament and the democratic legitimacy of the exercise of financial powers, including the right of parliament to receive information and participate effectively in the national preparation of all EU measures and EMU measures falling within the competence of parliament. Within this context, the following two constitutional concerns are particularly worthy of elaboration.

On the one hand, the Constitutional Law Committee has scrutinised various instruments related to the euro crisis for their impact on the budgetary powers of parliament. In particular, the Committee has been concerned that the absolute amount of Finland's liabilities under the ESM Treaty or other instruments pertaining to the euro crisis would not endanger, in light of the annual national budget, the possibilities of Finland meeting its obligations under the Constitution. The Committee has so far invariably concluded that Finland's liabilities have neither conflicted with the budgetary powers of parliament, nor endangered the possibilities of Finland observing its constitutional obligations. Nevertheless, these considerations set out constitutional limits to EMU related measures and crisis management measures and direct and shape constitutional scrutiny of EMU reform scenarios.[23]

On the other hand, the Constitutional Law Committee has consistently emphasised in the context of various measures pertaining to the euro crisis the need to observe the strong constitutional prerogatives of parliament as regards its rights of information and participation in EU affairs-related domestic decision-making in accordance with sections 96 and 97 of the Constitution.[24] In practice, this has ensured the continuous involvement of the Finnish parliament and its subcommittees, including the Constitutional Law Committee itself, throughout the euro crisis via the Finnish constitutional framework.

[22] Opinion 24/11 by the Constitutional Law Committee.

[23] See Opinion 13/2012 by the Constitutional Law Committee. For an overview of the Committee's practice regarding various measures pertaining to euro crisis, see Paivi Leino and Janne Salminen, 'Constitutional Change Through Euro Crisis Law: Finland. A country report on the impact of crisis Instruments on the legal structures of the EU Member States commissioned by the European University Institute' published on 20 May 2014.

[24] See eg Opinion 13/2012 by the Constitutional Law Committee.

G. The National Preparation of Proposals for EU Legislation and EMU Related Instruments, Including the Participation of Parliament

As already noted, the Finnish Constitution secures a strong role for parliament in the domestic preparation of EU affairs, including EMU-related matters. It is also important to emphasise in general that the domestic distribution of powers regarding EU affairs, including matters outside the EU legal order but with a sufficient EU linkage, revolves around the government-parliament axis. The general competence in EU matters belongs to the government, whose members are individually and collectively accountable to parliament. It deserves further emphasis that nothing has been ruled out of the government's competence and, accordingly, the government is competent also in matters falling within the EU's Common Foreign and Security Policy. The competence of the government is regulated by section 93, subsection 2, of the Constitution as follows:

> The Government is responsible for the national preparation of the decisions to be made in the European Union, and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution.

Within the government, the daily responsibility for the preparation, monitoring and determination of Finland's positions in EU affairs rests with the relevant ministries. In addition, a specific system of coordination exists for the purpose of securing coherence of the domestic preparation of EU affairs within the government, including the ability of Finland to present a sufficiently clear and concise position in line with Finland's general EU policy on issues under consideration in the EU. The coordination system involves competent ministries, the Cabinet Committee on European Union Affairs, the Committee for EU affairs and its EU sub-committees. The government secretariat for EU affairs serves as the secretariat for the Cabinet Committee on European Union Affairs and the Committee for EU affairs. The rationale behind the structure and functioning of the coordination system is that the greater the political, economic or legal significance of the EU affair in question, the higher the level of handling of that affair.

This domestic decision-making system is supplemented with the Finnish Permanent Representation in Brussels. It plays a pivotal role in the relationship between the EU institutions and the domestic preparation of EU affairs in Finland. It also maintains essential contacts with the Permanent Representations of the other Member States, as well as keeping in touch with officials at all levels in the EU institutions, in particular the Commission. The Finnish Permanent Representative is also the member of the Committee of Permanent Representatives (COREPER).

Distinct constitutional provisions are designed to secure the participation of parliament in the consideration of EU acts and measures that would otherwise fall within areas of parliamentary competence (section 96 of the Constitution) and right to receive information (section 97 of the Constitution). The government informs parliament on EU issues through communications, reports, statements and announcements.

In parliament, the Grand Committee[25] assumes main responsibility of the handling of EU matters whereas special committees, including the Constitutional Law Committee, may submit opinions to the Grand Committee. Indeed, it warrants emphasis that it is wholly possible to

[25] However, matters relating to the EU's Common Foreign and Security Policy are handled at the Foreign Affairs Committee.

request the Constitutional Law Committee's opinion on the compatibility of proposals for EU legislation and other EU matters with the Constitution and international human rights treaties binding on Finland. The outcome of this is ex ante constitutional review of proposals for EU measures is quite unique in European comparison and also explains why in recent years Finland has often been the first EU Member State to express constitutional doubts about various EU or EMU measures. Since almost all measures are considered ex ante by parliament, including for their constitutionality by the Constitutional Law Committee, the approval or implementation stage no longer raises significant problems. In addition, in the context of the ESM, some of its prospective decisions have been considered so significant that parliament has to be informed before any decisions are taken.

Overall, the system for national preparation of EU affairs, including the participation of parliament, has functioned efficiently in a manner that has also been satisfactory for parliament. The formally structured constitutional basis of the domestic system for the preparation of EU affairs has brought about stability and transparency to the handling of EU and EMU-related affairs in Finland, while also proving to be flexible. Above all, the system has succeeded in ensuring the parliamentary focus of authority, including the effective participation of parliament, in the national preparation of EU matters and EMU-related affairs. It has also provided a possibility for Finland to present a sufficiently coordinated position, in line with its overall EU policy, on issues under consideration in the EU at various stages of preparation.

The scope of application of sections 96 and 97 of the Constitution extends to all EMU-related measures, from proposals for EU Treaty amendments and EU legislation to such measures 'outside the EU legal order' as the EFSM, the ESM, and the TSCG. This has secured strong rights of participation for parliament. Hence, parliament, including its various committees with the Grand Committee at their apex, has enjoyed wide constitutional prerogatives to be informed during negotiations and to require modifications to the proposed instruments in order to guarantee their constitutionality.

III. Constitutional Obstacles to EMU Integration, Including Crisis Management Measures and EMU Reform Scenarios

The Constitutional Law Committee has issued a number of opinions on various EMU-related measures, crisis management measures and EMU reform scenarios. The following constitutional observations regarding various EMU-related measures emerge from the maze of all opinions.

A. European Financial Stability Facility (EFSF)

The first Greek rescue package was deliberated in parliament merely in the context of an amendment to the budget. Neither the Loan Facility Agreement, nor the Inter-creditor Agreement was submitted to parliament for approval. This happened due to the formalistic reason of the private-law nature of these intergovernmental agreements. In the worst scenario, Finland's losses from its guarantee commitment under the EFSF Framework Agreement could amount to 30 billion euros, which corresponds to more than a half of the annual budget. However, the Constitutional Law Committee considered that the Framework Agreement included factors which, when taken

together, would 'soften' the impact of the Framework Agreement on parliament's budgetary power.[26] First of all, the Committee noted that all major decisions in the EFSF affecting Member States' guarantee liabilities require unanimity. Moreover, the Committee took constitutional notice of section 96 of the Constitution, effectively giving the Grand Committee of parliament the right to decide on the position of Finland's representative in the Board of Directors. Moreover, the domestic implementing enactment included a provision, which obliges the government to seek parliament's authorisation for every guarantee given under the Agreement. As a result of all these factors, the involvement of parliament secures the constitutionality of the Framework Agreement.

B. Treaty Establishing a European Stability Mechanism

The ESM Treaty was examined by the Constitutional Law Committee three times in light of its impact on the budgetary power of parliament and the sovereignty of Finland, as enshrined in section 1 of the Constitution, in general.[27] In addition, the Committee took notice of Finland's ability to respect its constitutional obligations. It warrants emphasis that the constitutional deliberations by the Committee on the ESM Treaty took place before the 2012 constitutional amendment entered into force.

The Committee noted that Finland's subscription to the authorised capital stock of the ESM amounts to 12.5 billion euros, which was more than a quarter of the annual state budget. If that liability were to be paid in a single instalment, this could, at least arguably, violate parliament's constitutionally anchored budgetary power, as well as national sovereignty. Furthermore, the financial capacity of the state to observe its constitutional obligations might be jeopardised.[28]

However, the Committee also noted that the ESM Treaty divides the authorised capital stock into paid-in and callable shares. The liability of the ESM members deriving directly from the Treaty covers merely the paid-in shares, which for Finland amounts to 1.4 billion euros. Moreover, all major decisions affecting Finland's financial liability – such as calls for unauthorised unpaid capital and changes in the authorised stock capital – must be taken by mutual agreement, ie unanimously, by the Board of Governors. The requirement of mutual agreement also covers major decisions on the stability support provided by the ESM. In this light, the established veto power of each individual Member State provides the Finnish parliament (the Grand Committee) with both de jure and de facto influence on the government's voting position in the procedure under section 96 of the Constitution. According to the Constitutional Law Committee, all this effectively softens the Treaty's impact on Finland's sovereignty and parliament's fiscal power, resulting in compatibility with the Constitution.

However, the ESM Treaty also provides for an emergency procedure, where decisions can be made by a qualified majority of 85 per cent of the votes cast. In that procedure only the three largest euro states – Germany, France and Italy – retain their veto power. According to Article 4(4) TESM, the emergency procedure 'shall be used where the Commission and the ECB both conclude that a failure to adopt a decision to grant or implement financial assistance would threaten the economic and financial stability of the euro-area'. When the draft ESM Treaty with its emergency

[26] See Protocol 11/2011 by the Constitutional Law Committee.

[27] Opinions 1/2011, 22/2011 and 13/2012 by the Constitutional Law Committee.

[28] Due to the institution of exceptive enactment, a contradiction with the Constitution is not an insurmountable obstacle to accepting an international Treaty and incorporating its provisions in the domestic legal order. However, such a conflict would entail a requirement of a two-thirds qualified majority of the votes cast in parliament (see section 94, subsection 2 and section 95, subsection 2, of the Constitution).

procedure was introduced in late 2011, it gave rise to interpretive doubts as regards the question whether the emergency procedure only applies to decisions on granting assistance or whether decisions directly affecting the liability of members, such as calls for unauthorised unpaid capital, were also within the scope of application of an emergency procedure. In December 2011, the Constitutional Law Committee took the view that the emergency procedure under the draft ESM Treaty was in conflict with the Constitution if provision on the emergency procedure were retained in this original form.[29] Hence, Finland demanded that the controversial draft provision should be amended to the effect that decisions affecting the liability of Members were left outside the emergency procedure. As this was also done during further Treaty negotiations, the constitutional conflict was resolved.

In June 2012, the Constitutional Law Committee gave its final Opinion on the government Bill on the domestic ratification and incorporation of the ESM Treaty.[30] In its Opinion, the Committee reviewed the ESM Treaty by taking into account Finland's previous commitments under the Greek rescue package and the EFSF Framework Agreement as a whole. The Committee found the ESM Treaty to violate neither the constitutional budgetary powers of parliament, nor the national sovereignty of Finland. The Committee also did not consider that the commitments under the ESM Treaty, the Greek rescue package and the EFSF Framework Agreement as a whole would jeopardise the state's capability to meet its constitutional financial obligations. Furthermore, the Committee stressed parliament's right to information on decision-making under the ESM Treaty.

C. Treaty on Stability, Coordination and Governance

The Constitutional Law Committee regarded the TSCG as curtailing the budgetary powers of parliament.[31] The Fiscal Compact builds on the Six Pack legislation by making the supervision of budgetary commitments more effective, and its added value is that it demands that a structural budgetary rule and a debt brake have to be introduced in the contracting parties' national legislation. The Committee considered these limitations significant in comparison with limitations previously originating in the EU Treaties and the Stability and Growth Pact. Yet, the Committee took the view that the Fiscal Compact did not amount to constitutionally significant limitations to the budgetary powers of parliament within the meaning of sections 94 and 95 of the Constitution. The argument was that the Fiscal Compact offers greater guarantees for the domestic implementation of the duties since the obligation to abide by the balanced budget rule already existed. The main novelty of the Fiscal Compact is to provide national guarantees for its implementation. From the Finnish constitutional law perspective the crucial aspect was – and still is – that this Treaty did not establish any significant new competences at the European level. Instead, the Fiscal Compact 'only' underlines the Member States' own responsibility for their fiscal and budgetary politics within the EMU framework.[32]

The requirement in some previous drafts of the Fiscal Compact to include the guarantees included in the Constitution would have caused serious difficulties in Finland. An international agreement specifically obligating a state to amend its constitution certainly appeared as

[29] Opinion 22/2011 by the Constitutional Law Committee.

[30] Opinion 13/2012 by the Constitutional Law Committee.

[31] Opinion 37/2012 by the Constitutional Law Committee. See also earlier Opinion 24/2011 on the draft Fiscal Compact by the Committee.

[32] See Opinions 37/2012, 34/2011 and protocol 49/2012 by the Constitutional Law Committee).

an extremely odd obligation from the perspective of the Finnish Constitution. Later, however, the national obligation for inclusion of a balanced budget rule was formulated in a more relaxed manner, which did not require the adoption of exact constitutional guarantees. In Finland, the balanced budget rule of the Treaty was introduced by means of adopting an ordinary Act of the parliament.[33] Under this Act, the correction mechanism for the case of deviation of the balanced budget rule is built on duties of reporting and informing between the government and parliament (section 4). It also includes a plan for how the deviations will be corrected by the end of the following year. The mechanism includes three stages. First, the government initially has the choice of adopting pre-emptive corrective measures at its own initiative. Second, if the problem persists and Finland receives a recommendation by the Council, the government needs to consider giving a report to the parliament. According to section 44, subsection 2 of the Constitution, no decision on confidence in the government or its members shall be made in the consideration of a report. Third, if the Council establishes that Finland has not taken sufficient measures, a statement within the meaning of section 44 of the Constitution must be given to the parliament, and in that statement the government must clarify in detail how the deviation of the balanced budget rule will be corrected. According to section 44, subsection 2 of the Constitution, a vote of confidence in the government or a minister shall be taken at the conclusion of the consideration of a statement, provided that a motion of no confidence in the government or the minister has been put forward during the debate. Hence, the consideration by parliament of the government's statement includes a mechanism of political accountability and, accordingly, the possibility of testing whether the government's plans on corrective measures enjoy sufficient political acceptability and democratic legitimacy.

D. Amendment of Article 136(3) TFEU

Article 136 TFEU was amended by a decision of the European Council through the simplified revision procedure under Article 48(6) TFEU. After the amendment, Article 136(3) TFEU provides that

> The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.

The Constitutional Law Committee dealt briefly with this (draft) amendment when considering the proposal for the Six Pack legislation in 2010.[34] The Committee emphasised then that no new competences could be transferred to the EU under the simplified procedure under Article 48(6) TFEU. As a consequence, sanctions involving the loss of voting rights by a Member State could not be introduced under this procedure. Later, when dealing with the government proposal for the domestic approval of the decision by the European Council, the Constitutional Law Committee took the view that the amendment of Article 136(3) TFEU was not of 'legislative nature', but 'otherwise significant' within the meaning of section 94, subsection 1 of the

[33] Law No. 869/2012. (In Finnish: Laki talous- ja rahaliiton vakaudesta, yhteensovittamisesta sekä ohjauksesta ja hallinnasta tehdyn sopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja sopimuksen soveltamisesta sekä julkisen talouden monivuotisia kehyksiä koskevista vaatimuksista. In Swedish: Lag om sättande i kraft av de bestämmelser som hör till området för lagstiftningen i fördraget om stabilitet, samordning och styrning inom Ekonomiska och monetära unionen och om tillämpning av fördraget samt om kraven på de fleråriga ramarna för de offentliga finanserna). According to section 17, para 1, 'national languages of Finland are Finnish and Swedish'. All laws and decrees exist in both Finnish and Swedish.

[34] Opinion 49/2010 by the Constitutional Law Committee.

Constitution. The reasoning of the Committee was that despite being primarily declaratory and technical, the amendment nonetheless had an impact on the EU Treaty system as previously approved by parliament. Given also the turbulence of the EMU during the euro crisis, the amendment could be seen as being of particular importance for the EU with the outcome that the acceptance of parliament was needed for the amendment.[35]

E. EMU Reform Scenarios

EMU reform scenarios have been considered from the same constitutional perspectives as were EMU-related measures. Hence, constitutional considerations have stemmed from concerns relating to national sovereignty, the budgetary powers of parliament and the democratic legitimacy and accountability of EMU reform scenarios. One of the basic requirements has been that EMU reform scenarios should also preserve the primary responsibility for state finances and budgetary powers of the EU Member States in the future. A distinct constitutional concern has been that the EU inter-institutional balance should remain intact while reforming the EMU.[36] In addition, Finland has insisted that all reforms should take place within the framework of the legal and institutional structure of the EU. From this constitutional stance, Finland has been critical of the adoption of EU-related measures outside the EU legal order from the outset.[37]

In May 2018, the Constitutional Law Committee dealt with the government's communication on the EMU reform proposal package under the so-called Saint Nicholas Package.[38] In late 2017, the Constitutional Law Committee had already dealt with the government's communication on the reform of the EMU, and in that opinion the Committee emphasised the importance of securing parliament's right to receive information and the necessity of taking into account sovereignty and budgetary powers of parliament in the context of EMU reform proposals.[39]

The Constitutional Law Committee's opinion on the proposed EMU reform measures under the so-called Saint Nicholas Package is quite general and it largely reiterates earlier constitutional positions of the Committee regarding EMU integration. In more detail, the following important observations emerge from the Committee's opinion.

- The Committee noted that, as an EU and EMU Member State, Finland is, as a matter of constitutional law, for its part responsible to further develop and promote EMU integration. Accordingly, the constitutional starting point by the Committee for considering the reform package was favourable and positive, rather than critical or negative.

[35] Opinion 6/2011 by the Constitutional Law Committee.

[36] See eg Opinion 55/2017 by the Constitutional Law Committee.

[37] For more recent Opinions, see eg Opinions 55/2017 and 13/2018 by the Constitutional Law Committee.

[38] Opinion 13/2018 by the Constitutional Law Committee. The EMU reform proposal package includes the following proposals: European Commission, 'Communication on new budgetary instruments for a stable euro area within the Union framework', COM (2017) 822; European Commission, 'Communication on a European Minister of Economy and Finance, European Commission', COM (2017) 823; 'Proposal for a Council Directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States', COM (2017) 824; European Commission, 'Proposal for a Regulation amending (EU) No 1303/2013 of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006', COM (2017) 826; European Commission, 'Proposal for a Council Regulation on the establishment of the European Monetary Fund', COM (2017) 827.

[39] Opinion 55/2017 by the Constitutional Law Committee.

- The Committee briefly addressed the legal basis of the reform package in the EU treaties because most of the envisaged reform proposals would consist of passing secondary EU law. Besides that, the Constitutional Law Committee dealt with the reform package in accordance with section 96 of the Finnish Constitution on the participation of the parliament in the national preparation of EU matters, the provision of which can only apply to competences that are already conferred upon the EU. Hence, one of the salient questions is whether the reform package would give rise to such additional obligations that were not yet conferred to the EU by Finland. However, instead of delving into this question, the Constitutional Law Committee contented itself with observing that the government should work at the EU level towards securing an adequate legal basis for the reform package.
- The Committee reiterated at length the essence of its previous constitutional approach regarding the EMU reform, particularly that on the Fiscal Compact. Accordingly, the Committee emphasised the need to take appropriate notice of the possible effects of the proposed measures on the parliament's budgetary competences. This had the purpose of ultimately ensuring that the commitments under the proposed EU measures would not jeopardise the observance of the State's constitutional obligations, such as those stemming from social rights. Similarly, the Committee reiterated the need for the Parliament to be effectively informed on the further negotiation process of the EMU reform package at the EU level.
- Last and most importantly perhaps, the Committee took the view that, on the basis of the information available in the government's communication, the proposed reform package seemed to be largely, if not exclusively, reiterating already existing rules pertaining to EMU integration without significantly altering the current state of EMU law. Hence, the Committee concluded that the reform package did not appear to entail such qualitatively new limitations on the budgetary prerogatives of the Finnish parliament or the sovereignty of Finland in general that would give rise to major constitutional concerns in Finland.

It warrants notice that the Constitutional Law Committee's opinion – like most of its other opinions for that matter – was based on the information available in the government's communication on the reform package. As with other opinions, the Committee's opinion also remained silent on several issues explicitly dealt with in detail in the government's communication on the reform package. For instance, the Constitutional Law Committee's opinion is silent on the motion to elect a vice president of the Commission as chairperson of the Eurogroup. In its communication to parliament in accordance with section 96 of the Constitution, the government had taken a negative stance on that motion. Given that the Constitutional Law Committee ultimately concurred with the government's communication, it can be said that the Committee also shared the critical views of the government regarding such issues as double-hatting of the European Finance Minister, even if this did not trigger any constitutional concerns.

F. Constitutional Concerns about Transparency and Openness Over Measures to Combat Euro Crisis

Strong rights for parliament to receive information on the preparation of EU measures or EMU-related measures entail, among others, that parliamentary documents are open for public scrutiny as a matter of principle. In practice, this is reflected in the major part of the government's correspondence with parliament in EU and EMU-related matters, as well as the minutes and

other related documents of the committees of parliament, being publicly available, often in both official languages in Finland (Finnish and Swedish), on the parliament's website.[40]

However, the confidentiality of many of the EMU-related proposals until the decisions were made has caused tensions with parliament's right to receive information and the Finnish constitutional-political culture of openness and transparency in general. While confidentiality as such cannot be a valid reason for derogating from parliament's access to information on EU affairs (or EU-related matters outside the EU legal order), it is permissible for the government, if necessary, to exceptionally request parliament's Grand Committee to maintain confidentiality for a limited period of time. Section 50, paragraph 3 of the Constitution explicitly provides that when considering matters relating to Finland's international relations or EU affairs, the members of a Committee shall observe the level of confidentiality considered necessary by the Foreign Affairs Committee or the Grand Committee after having heard the opinion of the government.

However, it has become somewhat of a problem in matters revolving around the euro crisis that the government has so often requested confidentiality on the ground that there would otherwise be a risk of harm to Finland's EU relations. Thus far, the Grand Committee has always consented to these requests for confidentiality, despite criticising the supranational tendency towards preparing these kinds of matters in secret. The Committee has also reminded that 'democracy also requires that the principles of transparency and public access to documents are secured in the development of EMU'.[41]

The openness and transparency of documents pertaining to the euro crisis has on one occasion been tested before the Finnish courts. The case was about the legality of secrecy in the context of the Greek government collaterals. In May 2013, the Supreme Administrative Court of Finland ruled on the numerous appeals relating to the publicity of the Greek bail-out collaterals. These appeals were largely refused by the Finnish Ministry of Finance at the time of signing the pact, at the request of the Greek government. In its judgment, the Supreme Administrative Court observed that exceptions to the right to receive information always need to be construed narrowly, and to be examined on a case-by-case basis. The authorities should also consider the possibility of partial access to documents in order to secure the right to information as widely as possible. From these premises, the Court went on ruling that there were no justified grounds for limiting public access to documents and, accordingly to the main bulk of information, save for some minor details. It, thus, ordered the Ministry of Finance to allow access to the documents and, in any case, guarantee partial access to information (even if a certain document in some parts contained secret information) (Judgment of 14 May 2014 by the Supreme Administrative Court of Finland).

IV. Constitutional Rules and/or Practice on Implementing EMU Related Law

The Constitution of Finland requires EU legislation which is of a 'legislative nature' to be implemented through an Act of parliament. EU legislation can be regarded as being of a 'legislative nature' within the meaning of the Constitution when the EU Act in question regulates, inter alia, the rights and obligations of private parties, or otherwise pertains to matters governed by Acts of

[40] For the public nature of parliamentary activity, see section 50 of the Constitution.
[41] Opinion 4/2012 by the Grand Committee on the Banking Union and the Future of the EMU.

parliament. If a certain EU or EMU-related measure is not deemed to be of a 'legislative nature', it suffices to be implemented by a decree, issued either by the government or the competent ministry.

However, EMU-related instruments such as the TESM and TSCG assume the form of ad hoc intergovernmental treaties under international law. Hence, their ratification and incorporation have taken place in accordance with section 94 (Acceptance of international obligations and their termination) and section 95 (Bringing into force of international obligations) of the Constitution which regulated the relationship between domestic law and international law in line with the so-called dualistic model in Finland.

According to section 94 of the Constitution, the acceptance of the parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the parliament under this Constitution. Moreover, section 94 provides that a decision concerning the acceptance of an international obligation or the denouncement of it is made by a majority of the votes cast. However, if the proposal concerns the Constitution or an alteration of the national borders, or such transfer of authority to the EU, an international organisation or an international body that is of significance with regard to Finland's sovereignty, the decision shall be made by at least two-thirds of the votes cast.

When assessing government proposals for the ratification and incorporation of the TESM[42] and TSCG,[43] the Constitutional Law Committee considered that both treaties required the acceptance by parliament above all for their impact on the budgetary powers of parliament. However, the Committee was also of the view that neither the TESM, nor TSCG entailed such transfer of authority that was 'of significance' with regard to Finland's sovereignty within the meaning of section 94 of the Constitution. Hence, it sufficed to take the respective decisions concerning the acceptance of these two treaties by a majority of the votes cast in parliament. Thus, the Committee concluded that the proposals for the Acts on the implementation of the TSCG[44] and TESM[45] did not concern the Constitution or such transfer of authority that is of significance with regard to Finland's sovereignty within the meaning of section 95 of the Constitution. Consequently, these domestic implementing enactments were considered in accordance with the ordinary legislative procedure pertaining to an Act. In essence, this entails that the legislative proposal can be accepted or rejected by a majority of the votes cast.

The Acts on the implementation of the TESM and TSCG neatly illustrate the most frequently used method of implementing treaties in Finland, ie the method of incorporation through an Act of parliament *in blanco*. As a result, the incorporating enactments of these two treaties simply state that the treaty provisions are in force as law in the Finnish legal order. For instance, section 1 of the Act on the implementation of the TSCG simply provides that section 1 of the Law No 869/2012 provides that the legislative provisions of the TSCG 'are in force as law inasmuch as Finland has committed itself to them', which incorporates the relevant part of the TSCG into the Finnish legal order.

Effectively, section 1 brings into force domestically Article 3 of the TSCG on the balanced budget rule without the need for further specification in national legislation. Section 2 of the Act, in turn, provides that the government is responsible to set out the medium-term objective in accordance with the TSCG. Similarly, there are no distinct domestic legislative provisions on

[42] Opinion 13/2012 by the Constitutional Law Committee.

[43] Opinion 37/2012 by the Constitutional Law Committee.

[44] Act No 869 of 2012 on implementation of the TSCG and the budgetary framework directive No 869/2012 as well as its subsequent amendments as introduced by the Act No 18/2017.

[45] Act No 402 of 2012 on the implementation of the Treaty establishing the European Stability Mechanism.

those provisions of the TSCG that regulate convergence towards the medium-term objective or exceptional circumstances (escape clauses). However, again, section 1 of the Act on the implementation of the TSCG effectively brings them into force in Finnish law. In conclusion, therefore, the domestic incorporation enactment of the TSCG ensures full compliance of Finnish law with the TSCG.

V. Resulting Relationship between EMU Related Law and National Law – Concluding Remarks

The constitutional concerns expressed by Finland's Constitutional Law Committee of Parliament regarding EMU-related measures, crisis management measures and EMU future scenarios bear much resemblance to those of the German Constitutional Court. Often, however, the constitutional premises and reasoning adopted by the Committee assume more interest than the actual conclusion or outcome. Namely, despite the constitutional concerns it has evoked, the Constitutional Law Committee has so far invariably found various measures to be compatible with the Constitution, albeit sometimes after some adjustments (eg ESM Treaty). Indeed, despite some constitutional concerns and political criticism regarding the EU's eurozone strategy, Finland has so far eventually adopted and implemented all euro crisis measures.

For instance, the Committee has ultimately taken the view that stability mechanisms have limited parliament's budgetary powers and the sovereignty of Finland, but they have not, even as a whole jeopardised neither the national fiscal sovereignty, nor the ability of the state to observe its constitutional duties. Participation in these mechanisms has not been understood as a significant limitation of sovereignty in terms of sections 94.2 and 95.2 of the Constitution, even though they have entailed significant economic liabilities with potential consequences for the state's future democratic choices, in particular if all potential risks are to realise in their entirety.

One can certainly challenge this view, eg by maintaining that national sovereignty and budget autonomy is not only threatened by financial liabilities related to emergency assistance and financial stability mechanisms, but also by the gradual evolution of the European economic governance with the Stability and Growth Pack reforms of the Six Pack, Two Pack, and the Fiscal Compact at their apex. Yet, it can also be argued that effective participation of Finland in all these measures and mechanisms is a way of contributing to the stability of the Eurozone, thus enabling Finland and other EU Member States to exercise their financial competence in a tightly integrated union. Actually, the Finnish approach in the area of EMU affairs has relied on a finding that sovereignty in state finances is de facto at least partly exercised through participation in the EMU, and through the adoption of stability mechanisms. In short, Finland has been so far of the view that such active participation is crucial in guaranteeing that the Member States' financial and budgetary competence remains genuine.

In recent years, however, this way of thinking has been challenged. This is highlighted by the fact that the Constitutional Law Committee has increasingly seen unanimous decision-making in the stability mechanisms or other measures as a crucial constitutional precondition for compatibility of various EU measures with parliament's budgetary powers and Finnish sovereignty in general. In contrast with the earlier Finnish approach to European integration, with a strong emphasis on loyal cooperation, the domestic constitutional and political desire nowadays seem to focus on the preservation of Finland's interests in decision-making. True, the possibility of invoking this option has always been considered significant from the point of view of sovereignty but the possibility of a Finnish veto has previously remained 'just a theory', rather than something real

because the predominant thinking for a long time was that the active participation of Finland – eg the participation of a Finnish representative in decision-making within the ESM – is actually an active exercise of sovereignty. Hence, the possibility of preventing EU level decision-making was of secondary significance, if even that.

However, things have changed. In the 2010s, a crucial issue in the considerations of the Constitutional Law Committee has often been whether a possible amendment of a state's maximum liabilities could take place without unanimity, thus opening up a possibility of amendment without Finnish approval. This constitutional 'fixation' on the unanimity requirement, together with overall changes in Finland's EU policy-making, features as a significant departure from the earlier political-constitutional stance that shaped and directed Finland's participation in EU integration in the late 1990s and the early 2000s. At the time, the predominant political thinking was that Finland's role in EU integration should primarily be based on active and loyal participation in all EU decision-making and less on the legal-constitutional competence of preventing such decision-making.

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