

EMU CHOICES

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

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

FINLAND

by Tuomas Ojanen



Introduction

This country fact sheet provides concise information on the main characteristics of the national constitutional systems, including the system and role of national jurisprudence, parliaments and governments. Further, it briefs on the constitutional foundations and limits in the field of Economic and Monetary Union. It outlines on the existence of specific constitutional provisions on EMU membership, accession, treaty amendments, or limits to the (further) transfer of powers through Treaty amendments.

Among others, the overview informs about the principal actors in the field of fiscal and economic policies, the relevant findings of the judicial and parliamentary branches on EMU related actions, implementation measures of supranational and international rules, and respective constitutional amendments.

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FINLAND (Tuomas Ojanen)

1) Main characteristics of the national constitutional system

The Constitution of Finland (Act No. 731/1999) entered into force on 1 March 2000. Up until 2012, the Constitution of Finland suffered from the ‘European deficit’ as EU membership was insufficiently reflected in the text of the Constitution despite its great constitutional significance. After the recent amendment of the Constitution in 2012, 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. The domestic decision making system pertaining to EU affairs is regulated in more detail in Chapter 8 of the Constitution.

One of the greatest peculiarities of the Finnish constitutional system is the existence of a pluralist system of constitutional review combining abstract *ex ante* review by the Constitutional Law Committee of Parliament and *ex post* review by courts. In this model, the *ex ante* constitutional review by the Constitutional Law Committee is primary, whereas judicial review is designed to plug loopholes left in the abstract *ex ante* review. The constitutional position of the Constitutional Law Committee of Parliament bears many resemblances to centralized judicial review models with constitutional courts at their apex. It warrants 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, including EU- or EMU-related measures outside the formal institutional and legal framework of the EU. The possibility of *ex ante* constitutional review of proposals for EU or EMU measures also explains why the Constitutional Law Committee has often expressed much earlier such constitutional concerns about e.g. the proposal for the ESM Treaty than e.g. constitutional courts in other EU member states (see in more detail below).

Finland joined the European Union on 1 January 1995, along with Austria and Sweden. From 1 January 1999, Finland also became the member of the Eurozone.

In the mid-1990s, the Finnish Constitution was still very introverted and nationalist in its orientation. The sovereignty of Finland was understood in a very formal and rigid manner so that the transfer of powers to international organizations was almost ‘automatically’ found to be in conflict with the Constitution. In essence, the possibility of adhering to a very rigid and strict interpretation of sovereignty derived from the institution of *exceptive enactments* as it at the time allowed the possibility of approving the incorporation enactments of international treaties conflicting with the Constitution through a decision of Parliament by a qualified majority of two-thirds without formally amending the Constitution. The institution of exceptive enactments was also applied to the bringing into force of the Treaty of Accession of 1994 as the Treaty was deemed to be in conflict with the Constitution, the major reason simply being the incompatibility of the transfer of powers to the EU 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 consented to 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% 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%.

2) Constitutional foundations of EMU membership

EMU received little attention when Finland negotiated EU membership in the early 1990s. For Finland, EU membership was largely, if not exclusively, about principles, instead of money.

Hence, when the time came to proceed to the third stage of the EMU, the entry by Finland to the third stage did not generate any significant constitutional difficulties. As such, the EMU had been regarded as conflicting with the Constitution and, accordingly, as requiring the use of the exceptive enactment. However, as the Accession Treaty did not include any opt-out clause regarding the EMU, the view was that Finland had already accepted the EMU, including its third stage, through the ratification and incorporation of the Accession Treaty in 1994.

However, the Constitutional Law Committee of Parliament also took the view that Finnish entry into the third stage of EMU necessitated a decision by Parliament approving the move. As there was a strong political will to join the third stage among the first wave of states, Parliament decided on Finnish participation by simple majority, based on a government statement (1/1998).

Constitutional discussion and political debate about the EMU remained very lame in Finland until the emergence of ‘anti-integration’ and anti-Euro political movements and the euro crisis in the late 2000s.

The major authority of constitutional interpretation and 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 and crisis management measures, including EMU reform scenarios since the late 2000s onwards. In particular, the measures adopted to tackle the Euro crisis have been widely and repeatedly discussed in Parliament, including the Constitutional Law Committee. The 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 such 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’. The practical outcome of this view has been that Parliament has 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 (see in more detail below).

3) Constitutional limits for EMU membership

Currently, the Constitution provides that a ‘significant’ transfer of state powers to the EU or international organization or an international body requires the decision made by at least two thirds of the votes cast in Parliament (Sections 94.2 and 95.2 of the Constitution). 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, the crucial constitutional question is whether a given transfer of powers can be regarded as being ‘of significance’ within the meaning of the Constitution.

As noted, ex ante constitutional review by the Constitutional Law Committee of Parliament has so far included all EMU-related measures’ and crisis management measures. In practice, this review by the Committee has revolved around such constitutional concerns 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.

4) Crisis Management Measures

The Constitutional Law Committee of Parliament has scrutinized 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 Euro crisis would not endanger, in light of the annual national budget, the possibilities of Finland to meet its obligations under the Constitution. Although 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 to observe its constitutional obligations, these considerations nonetheless set out constitutional limits to EMU related measures and crisis management measures, as well as direct and shape constitutional scrutiny of EMU reform scenarios.

The Constitutional Law Committee has consistently emphasized the need to observe the strong constitutional prerogatives of Parliament as regards its rights of information and participation in domestic decision-making pertaining to EU affairs in accordance with Section 96 and 97 of the Constitution. These two sections guarantee strong constitutional prerogatives for Parliament, including its various committees with the Grand Committee at their apex, to be informed while the matters were being negotiated and to require modifications to the proposed instruments in order to guarantee their compatibility with the Finnish Constitution.

5) Constitutional law scrutiny of EMU reform scenarios

EMU reform scenarios have been considered from the same constitutional perspectives than 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 constitutional messages has been that EMU reform scenarios should preserve the primary responsibility for state finances and budgetary powers of the member states in the future, too. In addition, a

distinct constitutional concern has been this context by the Constitutional Law Committee that the inter-institutional balance between the EU institutions under the founding Treaties of the EU should not be affected indirectly by the use of Union secondary legislation. In addition, Finland has insisted that all reforms should take place within the EU structures and within the scope of EU legal order. From this constitutional stance, Finland has been very critical for the adoption of EU-related measure outside the EU legal order from the very outset.

The above outlined Finnish constitutional concerns by the Constitutional Law Committee of Parliament regarding EMU related measures, crisis management measures and EMU future scenarios bear much resemblance with those of the German Constitutional Court. Up until now, however, the constitutional premises and reasoning adopted by the Committee assume more interest than the actual conclusion or outcome. Despite its constitutional concerns outlined above, the Constitutional Law Committee has so far *invariably* found various measures to be compatible with the Constitution, albeit sometimes after some adjustments (e.g. ESM Treaty).

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