



CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: FINLAND

Päivi Leino-Sandberg and Janne Salminen

(Päivi Leino, Adjunct Professor, University of Helsinki, Faculty of Law;

Janne Salminen, Researcher, University of Turku, Faculty of Law)

14 February 2014

I POLITICAL CONTEXT

POLITICAL CHANGE

I.1

WHAT IS THE POLITICAL CONTEXT OF THE EUROZONE CRISIS PERIOD IN FINLAND? HAVE THERE BEEN CHANGES IN GOVERNMENT, ELECTIONS, REFERENDA OR OTHER MAJOR POLITICAL EVENTS DURING THE PERIOD OF 2008-PRESENT?

During this period there has been three Councils of State (governments): Prime Minister Vanhanen (II), period 19.4.2007–22.6.2010; Prime Minister Kiviniemi 22.6.2010–22.6.2011, and Prime Minister Katainen 22.6.2011–, all relying on a majority in the Parliament. Since 2008, parliamentary elections have been held once (17 April 2011). Prime Minister Vanhanen's second Government and Prime Minister Kiviniemi's Government were formed by the same parties (The Center Party, the National Coalition Party, the Greens and the Swedish People's Party) except for the change of Prime Minister, following the resignation of Prime Minister Vanhanen from the post of the chairman of the Center Party. On 12 June 2010 the party elected Mari Kiviniemi as the new chairperson, and this change was reflected in the Government. Prime Minister Katainen's Government is formed by the National Coalition Party, the Social Democrats, the Greens and the Swedish People's Party. The Left Alliance also served in the Government until 25 March 2014.

The parliamentary election campaign before the general election in April 2011 "was regarded as more dynamic than in elections of recent years. The high level of public engagement was typically attributed to the economic crisis and the rise of the True Finns party, which was reportedly gaining support from voters disillusioned with the leading established parties." (OSCE/ODIHR Election Assessment Mission Report 2011) According to the observers, there "was polarization between the positions of the True Finns party and other parties. Topics included international issues such as – the financial crisis in Europe, with the True Finns Party being the most Euro-skeptic. The rise in popularity of the True Finns party caused much media discussion of their priorities and their potential role in a government coalition also played a role in the campaign." (Ibid.)

The adoption of the Portuguese aid package coincided with the Parliamentary elections in April 2011. Voter turnout in the elections was 67 %. As indicated already in the polls before the elections, the True Finns party was the winner of elections (39 seats after election out of a total of 200, indicating a huge increase of 35 seats when compared with the situation prior to the elections). It gained 15 % more votes than in the previous elections. Subsequently, all other key parties lost voters, most critically the Center Party of Finland (seats after election 35, - 16), the party of both Prime Minister Vanhanen and Kiviniemi. The current Prime minister party, the National Coalition Party, turned into the largest party (seats after election

44, -6) in the Parliament.

Thus, the election resulted in a clear power shift in Parliament. It also turned government formation into an exceptionally difficult exercise for Finnish conditions. The elections were held in April, and a new government took up office as late as in June. The current Government is a large coalition known as the 'rainbow government' or the 'six-pack', an arrangement between the National Coalition Party (Prime Minister Jyrki Katainen's party), Social Democratic Party of Finland (holding other key positions including the posts of the Minister of Finance and for Foreign Affairs), Left Alliance, Green League, Christian Democrats in Finland, and the Swedish People's Party in Finland. Even if contacts were made between the future Prime Minister and the True Finns, the latter ultimately refused to undertake responsibility in the Government, which placed the Euro-sceptic party in opposition. Naturally, the euro crisis has provided it with plenty of opportunities to challenge the Government's EU policies.

In current Finnish politics some commitments made prior to the elections continue to affect Finnish positions. For example, a key promise given by the Social Democratic Party during the electoral campaigning was that Finland would not lend money without collateral; a promise it has struggled to keep in Government. Even if not genuinely attracted by this commitment, this has been the solution that the Prime Minister has needed to respect as the price for preserving his own position and keeping his government together.

In the current Parliament the True Finns Party has basically opposed all the decisions connected to the euro crisis, questioning the constitutionality of these decisions in Finland, too. The other large opposition party, the Center Party of Finland, has not been that categorical, but has continued to question the choices of the Government, even if some of them also bear a connection with decisions made during its own lengthy period in power.

Since the Constitution plays a significant role in both the political and legal culture in Finland, constitutional challenges have been visible in everyday decision-making as concerns relating to national sovereignty, the financial competence of Parliament and the democratic legitimacy of the exercise of financial powers.

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

DESCRIBE THE MAIN CHARACTERISTICS OF THE BUDGETARY PROCESS (CYCLE, ACTORS, INSTRUMENTS, ETC.) IN FINLAND.

The Budgetary process in Finland is rather informal. It centers on the Government and in particular the Ministry of Finance, which plays a key role in the elaboration of policy.

The budget procedure starts with the formulation of the Government's budget proposal in January after the Ministries have presented their spending limits proposals to the Ministry of Finance. These proposals are an important part of the multi-annual planning of the Ministries and government agencies. Central government spending limits for future years are then drawn up at the Ministry of Finance, and are endorsed by the Government in March. The formulation of the budget then continues in the ministries on the basis of the decision on spending limits and on procedural guidelines issued by the Ministry of Finance. The Ministries issue their guidelines to the agencies, which draw up draft budgets during the spring. Thereafter, the Ministries formulate a draft budget for their whole branch of government and hand it to the Ministry of Finance in May. The Ministries propose changes to the decision on spending limits, based on reasoned adjustments, and the proposed changes are submitted to the Government for consideration with the budget proposal. The drafts of the Ministries are processed at the Ministry of Finance during the spring and the summer. The Minister of Finance then formulates a position paper on the budget proposal which is made public in the late summer and hands the proposed budget to the other Ministries.

Based on this position paper of the Ministry of Finance, there are negotiations between the Ministry of Finance and Ministries about the spending limits. After these negotiations, the whole Government considers the draft budget prepared by the Ministry of Finance in the Government budget session and the Government substantively endorses the content of the budget proposal. After the Ministry of Finance has finalized the proposal, it is presented to the Government and submitted to the Parliament at the start of its autumn session. In the Parliament, the Finance Committee presents its report on the proposal, after which the budget is adopted in a plenary session of Parliament. If essential needs to revise the adopted Budget arise, as often is the case, supplementary budget proposals are presented to the Parliament. The same procedures are applied in drawing up supplementary budget proposals. (More information is provided at http://www.vm.fi/vm/en/09_national_finances/index.jsp.)

GENERAL CHANGE

II.2

HOW HAS THE BUDGETARY PROCESS CHANGED SINCE THE BEGINNING OF THE FINANCIAL/EUROZONE CRISIS?

In principle, the annual budget is prepared much as it was before the crisis. This can actually

be considered to constitute a problem, since the preparation of the budget in Finland is close to a cameralistic (*Kameralismus*) process and reflects more budget politics than genuine financial politics.

However, there might be a growing interest in the financial and fiscal policy involving an interest in the macro level care of the public finance and the relevant structure effects. The European Union based obligations are not the only quarters that require more refined argumentation. The two-pack legislation has provoked more interest in the control of public finance as a whole, not only at state level economy but also at its sub-levels, which enjoy from a high degree of autonomy in Finland. Still, it is unclear how the autonomy of municipalities and current Treaty obligations are balanced. The two-pack was not seen to affect the drawing up of the annual preliminary budget plans, since it did not contain an obligation to amend the budget proposal, if the Commission or the Euro Group would require it.

INSTITUTIONAL CHANGE

II.3

WHAT INSTITUTIONAL CHANGES ARE BROUGHT ABOUT BY THE CHANGES IN THE BUDGETARY PROCESS, E.G. RELATING TO COMPETENCES OF PARLIAMENT, GOVERNMENT, THE JUDICIARY AND INDEPENDENT ADVISORY BODIES?

The Act bringing into force the provisions of legislative nature of the Fiscal Compact (Act No 869/2012) introduced the correction mechanism which is build on duties of reporting and informing by the Government to the Parliament, including a plan for how the deviations will be corrected by the end of the year following the observation of the deviation (see question IX.2). According to the same Act, the duty to monitor the implementation of the Act falls under the responsibility of the National Audit Office (see question IX.2).

CHANGE OF TIME-LINE

II.4

HOW HAS THE TIME-LINE OF THE BUDGETARY CYCLE CHANGED AS A RESULT OF THE IMPLEMENTATION OF EURO-CRISIS LAW?

The time line has not yet changed but some amendments might be forthcoming. In the autumn of 2013 a working group under the Ministry of Finance planned the possible changes (see Memorandum, Ministry of Finance, December 2013, Budjettikehysdirektiivin ja budjettisuunnitelmien ennakkovalvonta-asetuksen kansallinen täytäntöönpano, Ministry of Finance publications 29/2013) According to the working group, legislation and control mechanisms in Finland relating to the different sectors of general government finances contain many of the elements referred to by the on budgetary frameworks. The working group concluded that the management of general government finances as a whole required by the directive is not sufficient nor on the level required by the directive, and that it would be justified to anchor the implementation of the directive in the existing procedures and legislation. It was proposed that the Government prepares in future a general government

FINLAND

finances plan in the beginning of the parliamentary term, which would be revised annually for the following four-year period. Provisions on the procedure for the general government finances plan would be included in a Government decree.

MISCELLANEOUS

II.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND CHANGES TO THE BUDGETARY PROCESS?

Not applicable.

III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

NATURE NATIONAL INSTRUMENTS

III.1

WHAT IS THE CHARACTER OF THE LEGAL INSTRUMENTS ADOPTED AT NATIONAL LEVEL TO IMPLEMENT EURO-CRISIS LAW (CONSTITUTIONAL AMENDMENT, ORGANIC LAWS, ORDINARY LEGISLATION, ETC)?

In Finland, the implementation of euro crisis law has not required amendments to the Constitution. The level of ordinary legislation has been used.

CONSTITUTIONAL AMENDMENT

III.2

HAVE THERE BEEN ANY CONSTITUTIONAL AMENDMENTS IN RESPONSE TO THE EURO-CRISIS OR RELATED TO EURO-CRISIS LAW? OR HAVE ANY AMENDMENTS BEEN PROPOSED?

There have been no proposals by the Government involving amendments to the Constitution. However, the major opposition party has constantly questioned the constitutionality of the proposed Acts used to implement the relevant measures. This is of a particular relevance because the constitutionality of international agreements and implementing laws is in Finland controlled by the Constitutional Law Committee in Parliament. Although the Constitutional Law Committee enjoys a clear judicial function in this respect it is composed of members of Parliament and reflects the power relations in the Parliament. In the statements concerning the constitutionality of the proposals relating to the implementation of euro crisis legislation, the Committee statements always contain a dissenting opinion of the members from the True Finns Party.

It should also be noted that since 2012 when the latest amendment of the Constitution entered into force, the Finnish Constitution includes new provisions explicitly providing that a significant transfer of state powers to the EU or international organization requires the two-thirds majority of the given votes in Parliament (Sec. 94, subsec. 2 and Sec. 95, subsec. 2). This also means that the transfers of ‘insignificant’ powers can be decided by simple majority. Whereas for example the EU membership in 1995 was brought into force internally by the use of the institution of exceptive enactment,¹ the current Constitution expresses a constitutional commitment towards the Union and provides a specific provision for transfer of the powers to the Union. Now, only a significant transfer of powers to the EU requires a qualified majority and the application of the Finnish institution of exceptive enactments is no longer needed for such transfer.

¹ For an introduction to the Constitution of Finland, see e.g. J. Husa, *The Constitution of Finland: A Contextual Analysis* (Hart Publishing 2011). See also T. Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’, Vol 10 *European Public Law* (2004) p. 531.

CONSTITUTIONAL CONTEXT

III.3

IF NATIONAL CONSTITUTIONAL LAW ALREADY CONTAINED RELEVANT ELEMENTS, SUCH AS A BALANCED BUDGET RULE OR INDEPENDENT BUDGETARY COUNCILS, BEFORE THE CRISIS THAT ARE NOW PART OF EURO-CRISIS LAW, WHAT IS THE BACKGROUND OF THESE RULES?

The question is based on a presumption of a strict categorisation and division of national and EU-based rules. In Finland, it had been understood that for example the balanced budget rule has been applicable as a part of EU legislation. Now the Parliamentary Act bringing into force the provisions of legislative nature of Fiscal Compact reiterates this principle (Act No 869/2012) (see also question IX.2). Although, prior to the Fiscal Compact there were no independent budgetary councils, the National Audit Office operating in affiliation with the Parliament as Finland's Supreme Audit Institution had similar functions. According to Section 90 of the Constitution “[a]n independent body affiliated with the Parliament, the National Audit Office, exists to audit the financial management of the state and compliance with the budget. More detailed provisions on the duties of the National Audit Office are laid down by an Act.” A part of its function has specifically been to audit the state's finances and evaluate fiscal policy. Its tasks were revisited and specified when implementing the Fiscal Compact and now they clearly include the functions envisaged in the Treaty.

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

WHAT IS THE PURPOSE OF THE CONSTITUTIONAL AMENDMENT AND WHAT IS ITS POSITION IN THE CONSTITUTION?

As indicated above, no constitutional amendments were made following the Fiscal Compact.

Regarding both stability mechanisms and economic governance, both types of measures have been generally understood to affect Finnish sovereignty. When addressing the European stability mechanisms and Fiscal Compact (see questions VIII.1, VIII.2 and IX.I), the Constitutional Law Committee has shown reluctance but ultimately concluded that the proposed measures have been compatible with the Constitution, and the subsequent amendments to legislation have not been understood as a significant limitation of sovereignty in terms of Section 94.2 and 95.2. Thus in order to approve the measures, a qualified majority in the Parliament – otherwise connected with measures affecting the Constitution - was not deemed necessary nor were there proposals made by the Government to amend the Constitution.

RELATIONSHIP WITH EU LAW

III.5

IS THE CONSTITUTIONAL AMENDMENT SEEN AS CHANGING THE RELATIONSHIP BETWEEN NATIONAL AND EUROPEAN CONSTITUTIONAL LAW?

Not applicable.

ORGANIC LAW

III.6

HAVE THERE BEEN CHANGES TO ORGANIC LAWS OR OTHER TYPES OF LEGISLATION THAT ARE OF A DIFFERENT NATURE OR LEVEL THAN ORDINARY LEGISLATION, IN RELATION TO EURO-CRISIS LAW OR THE BUDGETARY PROCESS?

Finnish constitutional law does not recognise a formal category of organic law, which would be enacted in a different procedure than ordinary legislation and have a higher level in hierarchy than ordinary Parliament laws. There are no organic laws or types of legislation other than the ordinary acts of Parliament and delegated legislation (Government decrees or Ministry decrees or orders). However, the constitutional law doctrine sometimes describes ordinary laws concerning the relationship between the institutions of the state as organic law or in the wider sense as ‘constitutional law’. In this sense, the Act implementing the Fiscal Compact Treaty (No. 869/2012, see question IX.2) contains provisions falling under this category, dealing for example with the responsibilities of the Government towards the Parliament and the tasks of the National Audit Office.

CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

IF ORDINARY LEGISLATION WAS ADOPTED IN CONJUNCTION WITH A CONSTITUTIONAL AMENDMENT, WHAT IS THE RELATIONSHIP BETWEEN THE TWO?

Not applicable.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

IN THE PUBLIC AND POLITICAL DISCUSSIONS ON THE ADOPTION OF ORDINARY LEGISLATION, WHAT WAS THE PERCEPTION ON THE APPROPRIATE LEGAL FRAMEWORK? WAS THE ORDINARY LEGISLATION SEEN AS IMPLEMENTING NATIONAL CONSTITUTIONAL LAW, OR EURO-CRISIS LAW?

As explained above, there have been views claiming that the new international Treaties on stability mechanisms and economic governance would not be compatible with the Finnish Constitution.

Interestingly and perhaps as an indirect reply to these concerns, the Finnish Constitutional Law Committee of the Parliament stressed in its early statement on the six-pack legislation the need to safeguard the division of competence based on the Treaties, and that the institutional balance at the European Union level should not be altered by secondary Union legislation. This concern has been repeated in several Constitutional Law Committee and Grand Committee Statements (see questions VII.1, VII.6 and VII.8).

MISCELLANEOUS

III.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND TO CHANGES TO NATIONAL (CONSTITUTIONAL) LAW?

The euro crisis has caused a clear friction in the Finnish political scene. Finnish European Union politics have traditionally been integration-oriented and provoked little passion in national debates. This is linked to how the membership in the Union generally and participation in the EMU more specifically has been understood in positive and beneficial terms.

In constitutional law the sovereignty doctrine is based on the idea of the specificity of the European Union relationship with the Finnish constitutional order, demonstrating greater tolerance of limitations on sovereignty stemming from EU membership than those derived from other international obligations. This is reflected in the current interpretations of the constitution (by the Constitutional Law Committee and constitutional law experts) too. However, some Finnish positions – for example during the ESM Treaty negotiations insisting on unanimous decision making in the ESM board of governors instead of qualified majority voting, and explaining that other solutions would infringe national sovereignty and the budgetary competence of the Finnish Parliament – do not quite fit into previous line of interpretation and could be understood in reflecting tightening interpretations of the limitations of sovereignty tolerable in the context of the Finnish Union membership.

IV EARLY EMERGENCY FUNDING

Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 1st round of Greek loan assistance).

The European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF) are two temporary emergency funds, both resulting from the turbulent political weekend of 7-9 May 2010. On May 9, a Decision of the Representatives of the Governments of the Euro Area Member States was adopted expressing agreement on both funds.

The EFSM is based on a 'Council regulation establishing a European financial stabilisation mechanism' of May 11, 2010 adopted on the basis of article 122(2) TFEU and therefore binding on all 27 member states of the EU.

([http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0001:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0001:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0001:EN:PDF))

The EFSF is a special purpose vehicle created under Luxembourgish private law by the 17 member states of the Eurozone. The EFSF Framework Agreement was signed on June 7, 2010. On June 24, 2011, the Heads of State or Government of the Eurozone agreed to increase the EFSF's scope of activity and increase its guarantee commitments.

(http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf and http://www.efsf.europa.eu/attachments/faq_en.pdf)

NEGOTIATION

IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE NEGOTIATION OF THE EFSF AND THE EFSM, IN PARTICULAR IN RELATION TO (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The earlier credit package adopted to assist Iceland (2009) and the opportunity provided for Latvia to borrow from Finland (2010) had attracted only little discussion in Finland. The Council Decision concerning the European Financial Stabilisation Mechanism of 2010 proved no particular difficulties for Finland. It provoked little discussion, and the same initially applied to the EFSF. The Government seems to have faced few difficulties with these new instruments during the negotiations. Basically, even if the crisis itself was unwelcome, the Government was in favour of these instruments in that particular situation, even if the big picture relating to the extent and depth of the crisis was not clear yet.

During the autumn 2010, the Grand Committee of the Parliament was informed several times about the developments concerning the situation. Also the possible need to amend the European Union Treaties was discussed. As during the euro crisis more generally, the Government has – in our view – demonstrated a willingness to seek various solutions and alternative ways out of the crisis.

While the situation was rather calm during the autumn 2010, the situation gradually grew

more challenging for the Finnish Government, at least partly because of the approaching parliamentary elections of April 2011 and partly because the seriousness of the financial and economic situation became clearer. In the debates in the Parliament, the opposition raised questions concerning the relationship of Government's politics obligating Finland to take part in the various emergency funds, on the one hand, and the attempts to cut public spending in Finland, on the other. Discussions in the Parliament were characterised by a deep suspicion concerning the Government's intentions.

The national political and even constitutional pressure became serious at the same time as new decisions to increase the earlier guarantee commitments became imminent. The decision by the Heads of Government of the euro zone in March 2011 led to a difficult political situation in Finland, and increasing the commitments and the amendment of the Framework agreement later became a painful exercise for the new Government (appointed in June 2011).

On 14 March 2011 the situation led to an interpellation (VK 6/2010) in the Parliament, a procedure that in Finland always ends with a vote of confidence in the Government. The vote(s) were held on 15 March 2011 (aye 104 – no 62 final), and subsequently the Government won a clear confidence in the Parliament (PTK 172/2010).² The amendment of the Framework agreement was accepted by the Parliament in 28 September 2011.

Prior to the parliamentary elections held in April 2011 one of the major parties (the SDP) had promised that it would require securities for the various guarantee commitments and financial aid if it secured a position in Government. After the elections, it turned into the second largest government party, also holding the position of the Minister of Finance, who also acts as the Prime Minister's first deputy. Thus, there has been a need for special arrangements in order to have these collaterals (see in greater detail reply to question I.1).

ENTRY INTO FORCE

IV.2

ARTICLE 1(1) EFSF FRAMEWORK AGREEMENT PROVIDES THAT IT WILL ENTER INTO FORCE IF SUFFICIENT EUROZONE MEMBER STATES HAVE CONCLUDED ALL PROCEDURES NECESSARY UNDER THEIR RESPECTIVE NATIONAL LAWS TO ENSURE THAT THEIR OBLIGATIONS SHALL COME INTO IMMEDIATE FORCE AND EFFECT AND PROVIDED WRITTEN CONFIRMATION OF THIS. WHAT DOES THIS PROCEDURE LOOK LIKE IN FINLAND AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

The Government proposal (No 95/2010 vp, Belgian etc ja Euroopan rahoitusvakaussuhteiden välisen ERVV-puitesopimuksen hyväksymisestä ja laiksi sen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta) was presented on 18 June 2010. It was announced in the Parliament on 18 June 2010 and sent to the Finance Committee of the Parliament on 21 June 2010. After the Committee handling, it was returned to the plenary for consideration and was

² Additionally, the euro crisis led to two other interpellations: VK 2/2011 (on 29 November 2011, vote on confidence 14 December 2011, see [PTK 86/2011](#)) and VK 4/2012 (on 13 April 2012, vote on confidence 25 April 2012, see [PTK 42/2012](#)).

discussed on 23 and 30 June 2010. The act was approved on the 30 June 2011 (aye 157 – no 31). The President signed the act (No 669/2010) on 14 July and it entered into force on 16 August 2010.

A noteworthy aspect relates to the fact that the proposal was not sent to the handling of the Parliament's Constitutional Law Committee at all. This Committee was later given the possibility to consider the Framework Agreement when it was first amended (see below question IV.4).

Despite its private law features, in Finland, the Framework Agreement was accepted by the Parliament according to Section 94.1 of the Constitution of Finland on 30 June 2011 (aye 157 – no 31). (Sec. 94.1, first sentence: “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.) The provisions of the Agreement, in so far as they were of a legislative nature, were brought into force by an Act of Parliament (No 669/2010), and the rest of the Agreement by a Government Decree (No 691/2010).

GUARANTEES

IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN FINLAND? WHAT DEBATES HAVE ARISEN DURING THIS PROCEDURE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE GUARANTEES FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

An Act on the State securities for the European Financial Stability Facility was enacted based on Governmental proposal (No 71/2010 vp, laiksi Euroopan rahoitusvakausvälineelle annettavista valtiontakauksista). The proposal was presented and announced in the Parliament on 4 June 2010, and sent to the Finance Committee on 8 June 2010. It was discussed and decided by the Parliament on 15–16 and 21 and 24 June 2010. The President signed the act (No 668/2010) on 14 July and it entered into force on the 15 July 2010.

According to Section 82 of the Constitution on State debt and guarantees, “ the incurrence of State debt shall be based on the consent of the Parliament, which indicates the maximum level of new debt or the total level of State debt. A State security and a State guarantee may be given on the basis of the consent of the Parliament.”

The Act on securities was enacted in the regular legislative procedure (Section 72 of the Constitution). According to the Act, the Government decides on the securities which are given to the Facility, but prior to this decision it is under an obligation to issue a statement to the Parliament. The situation is exceptional because statements are used in this context against what can be considered to be their constitutional function (Sec. 44 of the Constitution). Another peculiarity relates to how the Government is, based on an ordinary Act of Parliament, placed under an obligation to issue a statement to the Parliament in a

certain situation. Normally the issuing of statements belongs to the political discretion of the Government; according to the Constitution “at the conclusion of the consideration of a statement, a vote of confidence in the Government or a Minister shall be taken, provided that a motion of no confidence in the Government or the Minister has been put forward during the debate.”

The Government has issued five statements during the crisis: Statements 2/2010 vp (on Ireland), 1/2011 vp (Portugal), 1/2012 vp (Greece), 3/2012 vp (Spain) and 1/2013 (on continuing the State Securities).

ACTIVATION PROBLEMS

IV.4

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER DURING THE NATIONAL PROCEDURES RELATED TO THE ENTRY INTO FORCE OF THE EFSF FRAMEWORK AGREEMENT AND/OR THE ISSUANCE AND INCREASE OF GUARANTEES?

The national procedures used to bring the EFSF Framework Agreement into force nationally were not difficult. However, problems emerged and evolved gradually because of the subsequent increase of the guarantee commitments.

The Government informed the Parliament about the plans to increase the guarantee commitments in a memorandum (U 26/2011 vp) which was handled in the Grand Committee and other Committees. Also the Constitutional Law Committee issued a statement on this memorandum (its position was included in its meeting protocol 11/2011 vp of 31 August 2011).

The Government agreed with the changes to the guarantees as such but it did not consider all the proposals made at Eurozone level appropriate. The Government took a negative view on the proposal that the EFSF Board could decide by qualified majority on certain matters, and argued that the central features relating to the new measures should be either decided by unanimity among the guarantors or be included in the Framework Agreement itself.

Afterwards, the Government issued a proposal considering the acceptance of the changes required by the revised Framework Agreement and bringing them into force by law, also amending the law on State securities for the Facility, on 16 September 2011 (No 31/2011 vp, Belgian etc ja Euroopan rahoitusvakaussuhteiden välisen sopimuksen muuttamista koskevan sopimuksen hyväksymisestä sekä laiksi sen lainsäädännön alaan kuuluvien määräysten hyväksymisestä ja laiksi Euroopan rahoitusvälineelle annettavista valtiontakauksista annetun lain 2 §:n muuttamisesta). The proposal was announced on 16 September and sent to the Committees on 20 September 2011. This time the proposal was also handled in the Constitutional Law Committee of the Parliament.

The starting point for the considerations of the Constitutional Law Committee, which issued its statement on 22 September 2011 (PeVL, i.e. Statement of Constitutional Law Committee 5/2011 vp), was the finding that the funding of the Facility was guaranteed by the Contracting States. The fact that Section 82.2 of the Constitution requires the Parliament’s consent for a

state security was an additional justification for a requirement of the Parliament's approval. The Constitutional Law Committee paid special attention to the constitutional effects of a increase of the Finnish liabilities when the total amount of the securities by the Member States for the Facility was increased from EUR 440 billion to EUR 780 billion; for the Finnish part this entailed an increase from EUR 8 billion to EUR 14 billion. When evaluating the absolute amount of Finnish liabilities in relation to the annual national budget, the Constitutional Law Committee established that the risks related to the increase did not endanger the possibilities of Finland to meet the obligations it has based on its Constitution. This particular statement, which is not further developed in the Committee's practice, and the unspecified obligations of the State it builds on, is rather open to different interpretations. The Constitutional Law Committee has not developed this statement further. It could be interpreted to refer for example to various economic, social and cultural rights that the State has the responsibility to provide for its citizens according to the Constitution and various international treaties. It could also be understood as referring to the external responsibilities of the State in its various international commitments. Various risk calculations are typically difficult to conduct, and the Parliament, its Committees and the experts they consult are largely reliant on the information and estimates provided by the Government. At the same time, the statement suggests that the absolute amount of commitments and the risks involved may affect the Committee's future conclusions concerning the compatibility of a proposed financial measure with the Constitution (see also question X on the ESM Treaty). However, in view of the amount of commitments and the risks involved, the Constitutional Law Committee has confirmed the Government's wide room of manoeuvre, which the latter exercises under an equally wide political responsibility.

Since the relevant Act included no accurate information concerning the exact amount of the securities in the way that the constitutional practice was deemed to require, the Government needed to propose a correction to the Act to remedy this omission (proposal No 150/2011 vp). This was preceded by an overheated political and partly constitutional discussion of the Government's ability to act constitutionally and convincingly in the situation. Even the Constitutional Law Committee issued a statement on the issue (PeVL 14/2011 vp), and it gave a statement (PeVL 3/2012 vp) during the handling of the new proposal.

CASE LAW

IV.5

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ABOUT THE EFSM OR EFSF IN FINLAND

In the Finnish constitutional setting, which does not provide for a Constitutional Court and the ordinary courts have only a secondary role in the review of constitutionality of legislation, the Parliament's Constitutional Law Committee is the primary control mechanism for ensuring the constitutionality of legislation, including international obligations and Union-related measures. The Committee has a central and active role. The Committee is politically organised within the Parliament: it is composed of MPs and reflects the power relations in the Parliament. But the Committee has an essentially judicial function: it establishes the correct interpretation of the Constitution. Its opinions generally enjoy authority and are treated as

binding on Parliament and authorities. This makes the Committee the most central constitutional body of Finland.

Another feature which should be noted here is the organization of the participation and information of the Parliament in the European Union related matters. The core provisions are found in Chapter 8 of the Constitution in Sections 93.2, 96 and 97 of the Constitution. According to Section 93.2, the Government (not the President) prepares and decides in EU matters unless they require the approval of the Parliament, in which case the latter participates in the national preparation of EU decisions. The Parliament considers those proposals for acts, agreements and other EU measures that under the Constitution belong to its competence.

The Constitutional Law Committee has considered the measures combating the euro crisis as matters belonging to Section 96 or 97, which regulate in particular the *ex ante* participation and information rights of the Parliament in European Union affairs, irrespective of whether formally taken within the formal EU framework or outside of it (with regard to the Constitutional Law Committee's findings on the EFSF, see question IV.4). It has thereby allocated the primary competence in these matters to the Government under Section 93.2, but simultaneously placed it under a strict obligation to report to the Parliament in all matters falling under the competence of the latter. This is in line with the traditional interpretation of Sections 96 and 97, which have been generally understood to extend beyond the matters that belong formally to Union competence to questions that can be considered 'comparable' to Union matters both as regards their substance and their effects. Additionally, the relevant international agreements have also been approved by the Parliament under the Section 94/95 Procedure relating to the formal ratification of international agreements, offering the Parliament an exceptional possibility to address the same matters twice. Because they already had been considered *ex ante* by the Parliament in detail, the approval stage no longer raised significant problems.

The aforementioned interpretation of the Constitutional Law Committee has guaranteed strong rights of participation for the Parliament, giving it a wide prerogative to be informed while the matters were being negotiated and to require substantive and significant modifications to the proposed instruments (including e.g. ESM Treaty, Fiscal Compact) in order to guarantee their compatibility with the Finnish Constitution. Had the international agreements been treated as 'traditional' international agreements, the Parliament's rights of participation would have been limited to a 'yes' or 'no' at the stage when the substantive negotiations had already ended.³

³ We have dealt with these issues in a number of publications of 2013, see, Päivi Leino and Janne Salminen, *The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?*, 9 *European Constitutional Law Review* (EuConst) 3/2013 pp. 451–479; Päivi Leino and Janne Salminen, *Should the Economic and Monetary Union be democratic after all? Some reflections on the current crisis* *German Law Journal*, 7/2013 pp. 844–868; Päivi Leino-Salminen and Janne Salminen, *Eurokriisin demokratiaulottuvuusia*, *Lakimies Suomalaisen Lakimiesyhdistyksen aikakauskirja* 111 Nr 3/2013 pp. 390–413 [Democratic dimensions of the Euro crisis], and Janne Salminen, *Sopimus talous- ja rahaliiton vakaudesta – tie fiskaaliunioniin?*, *Lakimies Suomalaisen Lakimiesyhdistyksen aikakauskirja* 111 Nr 6/2013 pp. 1076–1098.

IMPLEMENTATION

IV.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE EFSF, FOR EXAMPLE WITH REGARD TO DECISIONS ON AID PACKAGES (LOAN FACILITY AGREEMENT AND MEMORANDUM OF UNDERSTANDING) AND THE DISBURSEMENT OF TRANCHES, BOTH OF WHICH NEED UNANIMOUS APPROVAL BY THE SO-CALLED GUARANTORS, I.E. THE EUROZONE MEMBER STATES?

As explained above, the Government is under an obligation to issue a statement to the Parliament each time when the Facility decides on new aid.

In addition, all decision making in the Facility falls under Sections 96 and 97 of the Constitution, which regulate in particular the participation and information rights of the Parliament in European Union affairs. The Government has to communicate the relevant proposals for EU measures without delay for the determination of the Parliament's position. In matters that fall under the Parliament's competence, its position in practice equals the Finnish position, even if the Parliament usually leaves the details to the Government's discretion and limits itself to steering the main political lines. Proposals are considered by the Parliament's Grand Committee which ultimately determines its position, and also in the specialist committees. If the matter involves a constitutional dimension, it is sent to the Constitutional Law Committee, which is one of the specialist committees. The Government is obliged to keep the relevant committees updated with information on the negotiations and to keep the Grand Committee informed of its position. Section 97 of the Constitution includes provisions on the Parliament's right to receive information on international affairs. It requires the Government to keep the Grand Committee informed through reports on the preparation of EU matters other than those falling under Section 96, either upon request or when otherwise necessary. On the basis of the information provided, the committees may issue statements to the Government, and they frequently do so.

IMPLEMENTING PROBLEMS

IV.7

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE APPLICATION OF THE EFSF?

National decision-making linked to the EFSF presumes a Government statement, which is followed by its consideration in the Plenary and a subsequent vote of confidence. For Finland, the questions relating to collaterals have been the key challenge both in the domestic debates and in relation to the other euro countries, since Finland has been the only country to require a collateral. For Finland the request for the collaterals is not a constitutional or legal demand: the condition has been of political nature, dating back to the negotiations of the parties which form the Government. The condition was agreed as a part of the current

coalition's agenda and is elaborated in Attachment 3 to the Government Program.⁴.. Negotiating the collateral agreements has been challenging both legally and because of the strict time tables involved.⁵ Additional challenges have been constituted by stepping-out guarantors, creditor status, ambiguities relating to maximum lending capacity and several questions relating to governance. The usefulness of collaterals has also been subject to debate.⁶

BILATERAL SUPPORT

IV.8

IN CASE FINLAND PARTICIPATED IN PROVIDING FUNDING ON A BILATERAL BASIS TO OTHER EU MEMBER STATES DURING THE CRISIS, WHAT RELEVANT PARLIAMENTARY DEBATES OR LEGAL ISSUES HAVE ARISEN?

Finland enabled Latvia to borrow from Finland (2010), but this decision was not politically or legally problematic. Additionally, it took part in the credit package adopted to assist Iceland (2009).

MISCELLANEOUS

IV.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND THE EFSM/EFSF?

Not applicable.

⁴ The Government program of Prime Minister Katainen's Government can be found at <http://valtioneuvosto.fi/hallitus/hallitusohjelma/en.jsp.print> , see in particular attachment nr 3.

⁵ See "Finland Gets Collateral Deal With Greece" by Kati Pohjanpalo, published on 17 August 2011 by Bloomberg, available at e.g. <http://www.bloomberg.com/news/2011-08-17/finland-gets-collateral-deal-with-greece.html> .

⁶ See e.g. "Finland's Greek collateral: still pointless" by Joseph Cotterill, published in Financial times on 4 June 2013, available at <http://ftalphaville.ft.com/2013/06/04/1522742/finlands-greek-collateral-still-pointless/> .

V TREATY AMENDMENT ARTICLE 136(3) TFEU

At the 16/17 December 2010 European Council a political decision was taken to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. On March 25, 2011 the European Council adopted the legal decision to amend article 136 TFEU by adding a new third paragraph: “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 process of approval of this decision by the member states in accordance with their respective constitutional requirements as prescribed by article 48(6) has been completed and the amendment has entered into force on 1 May 2013.

NEGOTIATION

V.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

No significant political or legal difficulties were encountered in the negotiation of the amendment of Article 136 TFEU.

The Government explained its position to Parliament on 2 October 2010 (E 86/2010 vp). According to the Government position, even if the amendment was found legally unnecessary, its necessity related to the possibility to do away with fears and doubts expressed relating to the lawfulness of past decisions. For Finland it was important that Article 125 TFEU was not amended, and that the sanctions pertaining to the membership right which were discussed earlier could not be amended in the planned procedure.

The Parliament supported the views of the Government (Statement of the 15 October 2010 of the Grand Committee of the Parliament, SuVL 11/2010 vp).

In addition, the Constitutional Law Committee considered the matter in abstract in the context of the six-pack discussions (See PeVL 49/2010 vp), pointing out that the proposed framework of developing the coordination of economic policies has in recent discussions been repeatedly found insufficient. The new ideas presented would, however, presume Treaty changes. While it still seemed uncertain what amendments would be made, it was evident that the idea was to amend Article 136 TFEU to specify that a mechanism could be established by the euro area Member States to coordinate their economic policies more effectively. Also the possibility of including the main features of the mechanism in Article 136 TFEU had been mentioned. The Committee noted the agreement among the Member States that the amendment should fall under the simplified amendment procedure under Article 48(6), but would still presume national ratification. Based on the information received from the Government, it seemed that the envisaged amendment could fall under Article 48(6), but no final findings could be made on this issue as long as the proposed changes remained uncertain. The Committee stressed that no new competences could be added to the Union

under this procedure. This meant for example that sanctions involving the loss of voting rights by a Member State could not be introduced under this procedure.

APPROVAL

V.2

HOW HAS THE 136 TFEU TREATY AMENDMENT BEEN APPROVED IN FINLAND AND ON WHAT LEGAL BASIS/ARGUMENTATION?

The Government proposal (No 12/2011 vp, eduskunnalle Euroopan unionin toiminnasta tehdyn sopimuksen 136 artiklan muutoksen hyväksymisestä) was presented on 22 July 2011. It was announced in the Parliament on 6 September 2011 and sent to the Committees of the Parliament on 14 September 2011. After the Committee handling it was returned to the plenary for consideration and was discussed on 3 May 2012. The act was approved by the Parliament on the 9 May 2012 (aye 120 – no 33, with the True Finns voting against the adoption⁷) and by the President on 25 May and the Council of State (the Government) issued the decree (324/2013) bringing the amendment in force in Finland on 6 May 2013.

The Treaty amendment was accepted by the Parliament according to the Section 94.1 of the Constitution of Finland. (Sec. 94.1, first sentence: “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.”)

The key aspect in the consideration of the Constitutional Law Committee (PeVL 6/2011 vp) related to whether the amendment, which was considered rather technical and declaratory in character, would be taken to the Parliament for approval. Treaties or other international obligations usually require the approval of Parliament on the grounds that they contain provisions of a legislative nature. According to the Constitution of Finland, a matter is legislative in case it affects the rights and obligations of private individuals (Section 80 of the Constitution) or if the Constitution otherwise requires for an act to be adopted. Further, the parliament’s Constitutional Law Committee has clarified that a matter is of a legislative nature if it affects the foundations of an individual’s rights or obligations; if the same matter is currently regulated in an Act of Parliament or if there is a general understanding that the matter should be regulated by such Act (PeVL 11/2000 vp, PeVL 12/2000 vp, and PeVL 45/2000 vp). Provisions in international obligations that are of a legislative nature and other significant commitments also fall within the parliament’s competence (Section 95).

The Article 136 TFEU amendment was, however, not understood by the Committee to be ‘legislative’ in character or substance, but was instead presumed to require the Parliament’s approval because of being ‘otherwise significant’ under Section 94.1 of the Constitution. Such a decision when not affecting the Constitution or a transfer of powers to the Union is made by a majority of the votes cast in Parliament. The Constitutional Law Committee

⁷ The vote is registered in the plenary records 49/2012 vp, available at http://www.eduskunta.fi/faktatmp/utatmp/akxtmp/ptk_49_2012_p.shtml#kohta_linkki1.

motivated this interpretation given to the Constitution by stating that although being rather technical, the amendment did touch the Treaty system, which had in its turn previously been approved by the Parliament, and was of a particular importance for the Union in the current turbulent situation (PeVL 6/2011 vp). The Parliament ultimately approved the amendment without further ado.

RATIFICATION DIFFICULTIES

V.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER DURING THE RATIFICATION OF THE 136 TFEU TREATY AMENDMENT?

From the perspective of Finnish constitutional law the said amendment did not provide for particular difficulties. Of course, there were voices both within the Parliament and outside it who saw such an amendment of the TFEU as conferring new competence on the Union, and considered that the simplified revision procedure (Art. 48(6) and (7) TEU) could and should not be invoked for this purpose (PeVL 6/2011 vp, see in particular the attached dissenting opinion).

CASE LAW

V.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT IN FINLAND ON THE 136 TFEU TREATY AMENDMENT?

See in general about the absence of a constitutional court in Finland and about the ex ante consideration of crisis measures by the Constitutional Law Committee of parliament, question IV.5. For the Constitutional Law Committee's findings on the 136 TFEU treaty amendment, see questions V.9 and V.10.

MISCELLANEOUS

V.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND THE 136 TFEU TREATY AMENDMENT?

In Finland, the government's and Constitutional Law Committee's characterisation of the amendment followed largely the same logic that the CJEU later adopted in discussing the measures in its *Pringle* ruling, focusing on how the amendment did not confer any new competence on the Union and how the ESM Treaty was compatible with the relevant provisions of the TFEU. The Government did not intervene in the proceedings, but the ruling was still met with a certain degree of relief, since another outcome – even if perceived as unlikely – would have caused obvious embarrassment.

VI EURO-PLUS-PACT

On March 11, 2011 the Heads of State or Government of the Eurozone endorsed the Pact for the Euro. At the 24/25 March 2011 European Council, the same Heads of State or Government agreed on the Euro Plus Pact and were joined – hence the ‘Plus’ - by six others: Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (leaving only the UK, Czech Republic, Sweden and Hungary out).

The objective of the pact is to foster competitiveness, foster employment, contribute to the sustainability of public finances and reinforce financial stability. In the Euro-Plus-Pact the Heads of State or Government have entered into commitments on a number of policy areas, in which member states are competent.

(http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf)

NEGOTIATION

VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE NEGOTIATION OF THE EURO-PLUS-PACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE PACT FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

The matter was debated in the Parliament several times. The Government (memorandum E 146/2010 vp) argued for measures in four areas: increasing employment, rising productivity, reducing debt and improving coordination in taxation. The Government stressed that a majority of these issues fall under national competence and that the envisaged Pact should not involve Treaty changes. Existing procedures, such as the European Semester, Europe 2020 etc) should be fully used.

The most crucial debate in Finland took place in the Parliament’s Grand Committee under Section 97 of the Constitution, which establishes that “[t]he Prime Minister shall provide the Parliament or a Committee with information on matters to be dealt with in a European Council beforehand and without delay after a meeting of the Council. The same applies when amendments are being prepared to the treaties establishing the European Union.” Prime Minister Kiviniemi appeared before the Grand Committee on 10 March 2011 to present the agenda of the European Council. The Committee held a debate and voted on its position before the adoption of statement (SuVX 165/2010 vp) indicating that as far as urgent measures relating to financial stability in the euro area and the European Stability Mechanism were concerned, based on the information available no factual measures could be taken in the European Council. The Committee also pointed out that the Government had not asked for the powers to increase Finnish guarantee commitments. If this matter was to change, the Committee reserved a right to formulate its position prior to decision-making at EU level.

The Committee was convened again on 11 March 2011 in the evening to consider the events in Brussels based on a memorandum with attachments from the Prime Minister’s office, for which confidentiality had been requested and was granted until the end of the European

Council meeting. Questions raised during the debate involved questions relating to an increase in financial commitments and the proposed Euro-Plus Pact, which was seen to be problematic since it contained interference with pay policy, opening-up of closed sectors, moving the emphasis of taxation to consumers and the weakening of pensions and social security. Draft Conclusions were also not seen to present clear bail-in provisions or satisfactory obligations for Ireland. Following the debate, the Committee approved Statement (SuVL 171/2010 vp) indicating that the Committee supported the Government position, however, with ten dissenting opinion.

MISCELLANEOUS

VI.2

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND THE EURO-PLUS-PACT?

Not applicable.

VII SIX-PACK

The 'Six-Pack' is a package of six legislative measures (five regulations and one directive) improving the Economic governance in the EU. The Commission made the original proposals in September 2010. After negotiations between the Council and the European Parliament, the package was adopted in November 2011 and entered into force on December 13, 2011. Part of the 'Six-Pack' measures applies only to the Eurozone member states (see the individual titles below).

The 'Six-Pack' measures reinforce the Stability and Growth Pact (SGP), among others by introducing a new Macroeconomic Imbalances Procedure, new sanctions (for Eurozone member states) and reversed qualified majority voting. Also, there is more attention for the debt-criterion.

(http://ec.europa.eu/economy_finance/economic_governance/index_en.htm)

NEGOTIATIONS

VII.1

WHAT POSITIONS DID FINLAND ADOPT IN THE NEGOTIATION OF THE 'SIX-PACK', IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE 'SIX-PACK' FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

Government Memorandum

The whole legislative package was taken to the Parliament based on a single Government memorandum dated on 7 October 2010 (U 34/2010 vp), and the Parliament considered all the proposals as a package. Therefore, it is not always entirely easy to single out positions concerning individual legislative proposals. Since the six-pack was based on 'ordinary EU legislation', it was considered by the Parliament based on Section 96 of the Constitution. In its memorandum, the Government expressed its general support for the six-pack, noting its linkage with earlier European Council Conclusions.

A key feature of the negotiations leading to the six-pack was that during the time of the relevant negotiations the Finnish economy was still in a relatively good shape, and the problems in the distant corners of Europe were not really seen to involve it. Therefore, Finland often felt it was in a position to set demands on others together with the Commission and the European Central Bank. It was felt that those states that did not have an excessive budgetary deficit should be left outside strengthened monitoring altogether, and that strengthened overall coordination was not entirely necessary.

Constitutional Law Committee

When considering the package 8 December 2010 the Constitutional Law Committee noted (PeVL 49/2010 vp) that the proposed six-pack was based on TFEU provisions concerning economic politics and that the proposed legal bases seemed largely appropriate, but voiced some reservations on the use of Article 136 TFEU, which was new and open to

interpretations. The Committee established that several of the proposed pieces of legislation had implications for the budgetary powers that the Parliament exercises under the Constitution, including the proposed measures preventing an increase of public expenditure, the closely connected obligations relating to tax policies and the limitations of public debt, to which a sanctions mechanism was also attached. For the purposes of the Constitution, however, the Committee established with reference to its earlier practice (see PeVL 46/1996 vp, p. 2/II) that, most crucially, the proposed measures involved no new procedures or other additional elements that had not already been approved when ratifying the EU Treaties. The proposed measures did not impinge on sovereignty or independence of local government in a manner that would have been problematic for the Constitution. The Committee stressed, however, that the factual effect of the proposed measures would due to their future contents and interpretative practice potentially be more extensive and thus affect the Parliaments budgetary and financial competence. For this reason the Committee stressed that the rights of information and participation of the Parliament needed to be appropriately secured in particular in the context of subsequent reporting and control. In addition, the Government was to pay special attention to the adequacy and appropriateness of the legal bases in case the instruments were to be amended. The Committee further stressed that secondary legislation could not be used to influence institutional balance in the EU even if this effect would be indirect (for similar argumentation earlier, see in PeVL 49/1998 vp).

Grand Committee

Following this the Parliament's Grand Committee on 22 October 2010 considered (see SuVL 9/2010 vp) that it seemed evident that the six-pack included elements that affected the budgetary powers of the Parliament. The proposed measures were intended to affect the overall management of public finances in the Member States, which also involves impinging on municipalities and the functioning of centers for pensions. The Committee required the Government to urgently provide a full-scale explanation of the constitutional implications of the proposed package. In addition, the Committee required more information concerning the proposed legal bases and the implications for subsidiarity and proportionality; the size of envisaged sanctions, and the implications that the proposed regulation for the prevention and correction on macroeconomic imbalances might have on the interinstitutional relations and the competence of Member States in the area of economic policy. While the Committee generally supported the Government's positive view on the matter, it was unable to formulate a position before additional information had been provided by the Government.

Additional Government Memorandum

The Government gave an additional memorandum on 12 November 2010 specifying these matters (related to U 34/2010). In its memorandum it took a largely positive view on the proposed legal bases, and stressed that since the crisis had a clearly European dimension, measures needed to be taken at the European level. This finding was further justified with the existence of a common monetary policy.

As regards the constitutional dimension of the debate, the Government first analyzed the

obligations accepted at the time of acceding the Union, in particular those concerning budgetary deficits and their monitoring. The new measures were seen to enforce these obligations. The Government then pointed out that both the Accession Treaty and Lisbon Treaty had been approved through the procedure of exceptive enactments (see also question III.2), since they were found to include provisions that conflicted with the Constitution. The Commission proposals linked with various Sections of the Constitution: Section 3 establishing that ‘the legislative powers are exercised by the Parliament, which shall also decide on State finances’; with its Chapter 7 on State Finances and thus also with Section 1 establishing that ‘Finland is a sovereign republic’. The proposed regulations would also affect public finances in a wider perspective and outside state administration, including municipal and other regional self-government under Section 121, the Åland Islands under Section 120 and also indirect public administration. The key features of the Parliament’s budgetary powers involve questions relating to the state budget and supervision concerning its implementation (Section 83 of the Constitution), taxation and state debt (Section 82 of the Constitution). Particularly relevant from this perspective were the proposals linking to the limitations of public spending, required measures in the area of taxation and the limitations relating to public debt. In Conclusion, the Government found that the proposed measures did not add significantly to Finland’s previous obligations.

The Grand Committee returned to the matter after receiving the Government memorandum (SuVL 11/2010 vp) and after hearing the positive view of the Constitutional Law Committee on these findings, with some remarks concerning the individual instruments explained below. It gave a positive position, opening up the way for government agreement to the Six-Pack.

DIRECTIVE 2011/85/EU

[*Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States*](#)

IMPLEMENTATION

VII.2

WHAT MEASURES ARE BEING TAKEN TO IMPLEMENT DIRECTIVE 2011/85/EU ON REQUIREMENTS FOR BUDGETARY FRAMEWORKS (REQUIRED BEFORE 31 DECEMBER 2013, ARTICLE 15 DIRECTIVE 2011/85/EU)?

As far as we can see, Finland has not yet notified any legislative amendments for the Republic, only a number of pieces of legislation, some of them adopted in this context, for the Åland Islands (Lagtingsordning för Åland (No 97/2011); Landskapslag om Landskapsrevisionen (No 25/2013); Landskapslag om landskapets finansförvaltning (No 69/2012), Kommunallag för landskapet Åland (No 73/1997), Budgetförordning för landskapet Åland (No 70/1979).

Based on our consultations, the Ministry of Finance still seems to be in a process of preparing the relevant measures, even if it seems that most of the requirements are fulfilled by the Act relating to the adoption of the Fiscal Compact (see question IX.2). The government proposal

relating to the Fiscal Compact makes explicit reference to various provisions of the directive and the aim of implementing them in the same context.

IMPLEMENTATION DIFFICULTIES

VII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE IMPLEMENTATION PROCESS, IN PARTICULAR IN RELATION TO IMPLICATIONS OF THE DIRECTIVE FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

See also above question VII.1.

A key challenge relates to the relationship of the directive with Section 121 of the Constitution relating to Municipal and other regional self-government and stressing their independent position in relation to the central government:

Finland is divided into municipalities, whose administration shall be based on the self-government of their residents. Provisions on the general principles governing municipal administration and the duties of the municipalities are laid down by an Act.

The municipalities have the right to levy municipal tax. Provisions on the general principles governing tax liability and the grounds for the tax as well as on the legal remedies available to the persons or entities liable to taxation are laid down by an Act.

Provisions on self-government in administrative areas larger than a municipality are laid down by an Act. In their native region, the Sami have linguistic and cultural self-government, as provided by an Act.

Noting that the directive contains provisions involving local government (including municipalities), it infringes on matters that have usually been left to the municipalities to settle more or less independently (PeVL 49/2010 vp).

MACROECONOMIC AND BUDGETARY FORECASTS

VII.4

WHAT INSTITUTION WILL BE RESPONSIBLE FOR PRODUCING MACROECONOMIC AND BUDGETARY FORECASTS (ARTICLE 4(5) DIRECTIVE 2011/85/EU)? WHAT INSTITUTION WILL CONDUCT AN UNBIASED AND COMPREHENSIVE EVALUATION OF THESE FORECASTS (ARTICLE 4(6) DIRECTIVE 2011/85/EU)?

The Ministry of Finance based on Government Decree No 610/2003.

FISCAL COUNCIL

VII.5

DOES FINLAND HAVE IN PLACE AN INDEPENDENT FISCAL COUNCIL (ARTICLE 6(1) DIRECTIVE 2011/85/EU: 'INDEPENDENT BODIES OR BODIES ENDOWED WITH FUNCTIONAL AUTONOMY VIS-À-VIS THE FISCAL AUTHORITIES OF THE MEMBER STATES')? WHAT ARE ITS MAIN

CHARACTERISTICS? DOES FINLAND HAVE TO CREATE (OR ADAPT) A FISCAL COUNCIL IN ORDER TO IMPLEMENT DIRECTIVE 2011/85/EU?

This function is exercised by the National Audit Office. Provisions on its tasks relating to independent monitoring and evaluation of fiscal policy are laid down in the act on the implementation of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union and on multi-annual budgetary frameworks (No 869/2012) (see question IX.2 on the Fiscal Compact).

REGULATION NO 1176/2011 ON THE PREVENTION AND CORRECTION OF MACROECONOMIC IMBALANCES

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT>

MEIP DIFFICULTIES

VII.6

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The Government pointed out in its Memorandum (U 34/2010 vp) that the Commission proposal was linked to the experiences from the Stability and Growth Pact: recommendations do not work unless they are linked to possible sanctions. In the Government's view, the measures proposed by the Commission would be used as a last resort, if a Member State were to repeatedly refuse addressing serious problems and imbalances. The Government took a positive view of this proposal, even if the legal basis was the one that provoked most discussion. The Constitutional Law Committee was also somewhat hesitant as regards the last point (PeVL 49/2010 vp). The Government also stressed that the sanctions were not automatic but resulted from a procedure consisting of a number of stages and were only to be applied in case Member State proved incapable of acting.

The Grand Committee established (SuVL 11/2010 vp) with reference to the findings of the specialist Committees that even if necessary as such, the proposed regulation would need to be specified as regards the economic indicators to be used by the Commission, keeping in mind that averting from the figures set by the Commission would lead to half-automatic sanctions. For this reason, the powers of the Commission needed to be specified through examples of possible future indicators or by presuming a consultation prior to the introduction of any new indicators. As indicated above under question VII.1, the Grand Committee also had concerns relating to the impact of the proposed measures on the EU interinstitutional balance.

REGULATION NO 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS

<http://eur->

lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:20111213:EN:PDF)

MTO PROCEDURE

VII.7

WHAT CHANGES TO THE RULES ON THE BUDGETARY PROCESS ARE MADE TO ACCOMMODATE THE AMENDED MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) PROCEDURE?

There has been no need to change the rules of budgetary process because of the MTO. In line with fiscal policy law the Government defines the MTO when adopting the Stability Programme. The Council of the European Union will assess the MTO and ensure that it is appropriate. Then it is the task of the National Audit Office of Finland (Fiscal Council, on which see also questions VII.5 and IX.2) which operates in affiliation with Parliament to ensure that the budgetary process is in line with the MTO and the fiscal policy rules. According to the Section 90 of the Constitution, an “independent body affiliated with the Parliament, the National Audit Office, exists to audit the financial management of the state and compliance with the budget.” The National Audit Office is directed by the Auditor General, who is elected by Parliament for a term of six years.

EUROPEAN SEMESTER

VII.8

WHAT CHANGES HAVE TO BE MADE TO THE RULES AND PRACTICES ON THE NATIONAL BUDGETARY TIMELINE TO IMPLEMENT THE NEW RULES ON A EUROPEAN SEMESTER FOR ECONOMIC POLICY COORDINATION (SECTION 1-A, ARTICLE 2-A CONSOLIDATED REGULATION 1466/97)?

The existing budgetary timelines are in line with the new rules so that there has been no need to adjust them because of the European Semester.

MTO DIFFICULTIES

VII.9

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

The Government found that the Commission proposals to amend regulations 1466/97 and 1467/97 were in line with the Finnish position and interests and would strengthen the stability of euro area and the achievement of long-term goals (U 34/2010 vp).

RESPECT MTO

VII.10

HOW IS RESPECT OF THE MEDIUM-TERM BUDGETARY OBJECTIVE INCLUDED IN THE NATIONAL BUDGETARY FRAMEWORK (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)?

The Government is expected to take the Medium-term Objective into account according to fiscal policy rules when it adopts its framework decision on budget each year. The law

obliges the Government to assess the need of corrective measures if a risk of deviation from the MTO is observed or if the National Audit Office interferes.

CURRENT MTO

VII.11

WHAT IS FINLAND'S CURRENT MEDIUM-TERM BUDGETARY OBJECTIVE (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)? WHEN WILL IT BE REVISED?

The minimum objective is -0,5%, leaving flexibility for reaching a higher percentage. The objective is set in the Finnish Stability Program 2014, available at https://www.vm.fi/vm/fi/04_julkaisut_ja_asiakirjat/01_julkaisut/02_taloudelliset_katsaukset/20140411Suomen/name.jsp.

ADOPTION MTO

VII.12

BY WHAT INSTITUTION AND THROUGH WHAT PROCEDURE IS FINLAND'S MEDIUM-TERM BUDGETARY OBJECTIVE ADOPTED AND INCORPORATED IN THE STABILITY PROGRAMME (EUROZONE, ARTICLE 3(2)(A) CONSOLIDATED REGULATION 1466/97)?

The MTO is proposed by the Ministry of Finance, and approved by the Government in the context of approving the stability program (see Article 2 of the Fiscal Compact Act, Laki on 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 and Government decree on julkisen talouden suunnitelmasta (120/2014). See also question VII.7).

REGULATION NO 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF>

EDP DIFFICULTIES

VII.13

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

For general considerations, see above question VII.1.

REGULATION NO 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1173:EN:NOT>

SANCTIONS

VII.14

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

The Government expressed in Memorandum 34/2010 vp its general agreement with the proposal, which was found to contribute substantively to the credibility and implementation of the Stability Pact. The Government stressed the speedy nature of the new mechanism and the fact that it involved several subsequent stages, which contributed to their preventive nature. The Government expressed its support for the reversed qualified majority voting proposed, since the mechanism was to be as automatic as possible and contain little political discretion. It was also of importance that the mechanism could be used as soon as possible and also involves non-euro States. Sanctions involving the budget should be as comprehensive as possible, strengthening the elements linked to conditionality. Economic sanctions should be directed at national budgets, not private operators receiving support.

GENERAL CHANGES

VII.15

WHAT FURTHER CHANGES HAVE TO BE MADE TO THE RULES ON THE BUDGETARY PROCESS IN ORDER TO COMPLY WITH THE SIX-PACK RULES?

No changes have been made to the rules on the budgetary process in order to comply with the six-pack rules specifically.

MISCELLANEOUS

VII.16

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND THE SIX-PACK?

Not applicable.

VIII ESM TREATY

The European Stability Mechanism (ESM) Treaty was signed on July 11 2011. It was later renegotiated and a new ESM Treaty was signed on February 2, 2012. The Treaty provides a permanent emergency fund that is intended to succeed the temporary emergency funds. It entered into force on September 27, 2012 for 16 contracting parties (Estonia completed ratification on October 3). The 17 contracting parties are the member states of the Eurozone, but the ESM Treaty is concluded outside EU law.

(<http://www.european-council.europa.eu/eurozone-governance/esm-treaty-signature?lang=it> and <http://www.esm.europa.eu/pdf/FAQ%20ESM%2008102012.pdf>)

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE NEGOTIATION OF THE ESM TREATY, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

The Finnish Government informed the Parliament about the Treaty negotiations on 11 April 2011 (E 190/2010 vp, memorandum about the negotiations and the contents of new Treaty). The memorandum was considered by the Parliament and for example the Constitutional Law Committee discussed the issue during this process. The Government argued that a new permanent mechanism is of a major importance. However, according to the Government, the Treaty proposal required clarification. During the negotiations for the Government it was important that the Treaty would include private sector involvement and that the mechanism would have preferred creditor status.

The core challenges in the negotiations related to the size of lending capacity, provisions on private sector involvement, the inclusion of Collective Action Clauses (CACs) in operative articles and the provisions on decision-making, which in the Finnish view presumed unanimity. The question of collaterals was not a fundamental problem, since the question relating to preferred creditor status was settled rather early (December 2010). The question relating to the position of the ESM loans was settled by para 13 of the preamble to the ESM Treaty, stating that the “Heads of State or Government have stated that the ESM loans will enjoy preferred creditor status in a similar fashion to those of the IMF, while accepting preferred creditor status of the IMF over the ESM. This status will be effective as of the date of entry into force of this Treaty. In the event of ESM financial assistance in the form of ESM loans following a European financial assistance programme existing at the time of the signature of this Treaty, the ESM will enjoy the same seniority as all other loans and obligations of the beneficiary ESM Member, with the exception of the IMF loans.” While there was clearly a preference for an operative article, this preambular paragraph was deemed to offer satisfactory guidance for the interpretation of the Treaty.

The government interpreted its own program in the way that collaterals would be necessary

as regards the ESM in case the latter had no preferred creditor status. Based on the preamble, when ESM financial assistance in the form of ESM loans followed a European financial assistance programme existing at the time of the signature of the ESM Treaty, the ESM enjoys the same seniority as all other loans and obligations of the beneficiary ESM Member. As regards the Cypriot ESM program there was no need to require a collateral, since the ESM enjoyed preferred creditor status.

After the initial memorandum the Government informed the Parliament about the Treaty negotiation in several memoranda, the most important ones being memoranda of 12 May 2011 (E 13/2011 vp) and 20 May 2011 (U 6/2011 vp), discussing the requirements and limits Finland would have for participation in the forthcoming Treaty. These negotiations took place after the general elections, but before the appointment of Prime Minister Katainen's Government.

The memorandum of 20 May 2011 was handled in the Constitutional Law Committee too. In its statement (PeVL 1/2011 vp), the Committee underlined that the new Treaty would require the approval of the Parliament under Section 94.1 of the Constitution (see also question VIII.2). According to the Committee, the Treaty impinged upon the legislative and budgetary powers of the Parliament and thus the approval by the Parliament was required. The Committee also required that in the Finnish system the preparation of the national positions considering the ESM Treaty would fall under the competence of the Council of State/Government (not the President) as being a matter which is to be juxtaposed with the European Union affairs, yet formally being outside the Union system, thus simultaneously giving the Parliament itself an exceptionally strong position in the preparation of the Treaty (which as to its form constitutes an international agreement) based on Sections 96 and 97 of the Constitution which concern the rights of participation and information of the Parliament.

Renegotiation ESM Treaty

Later, the Prime Minister informed the Parliament (20 July 2011 and 2 August 2011) about the preparations for the Treaty. Subsequently, a new set of memoranda was sent for the Parliament on 25 August 2011 (U 27/2011 vp, memorandum concerning the new Treaty on ESM). When discussing the Treaty under preparation the Constitutional law Committee (PeVL 22/2011 vp) re-assessed the Treaty, establishing that the Finnish liabilities based on the Treaty could increase under the emergency voting procedure by the envisaged qualified majority decision making against the will of Finnish member, which would be against the principle of sovereignty and contrary to the Parliament's budgetary powers. If the Treaty in its final form would include this kind of possibility, it had to be approved according to the Sections 94.2 and 95.2 of Constitution, contrary to what the Committee had previously established.

At the time, there might not have been the required qualified majority in the Parliament in favour of the ratification of such a Treaty. During the following negotiations the Government underlined the need of unanimous decision making within the Mechanism and further clarifications and limits for the so called emergency decision making in the Mechanism, since

they enabled a lighter national procedure in the Finnish Parliament.

RATIFICATION

VIII.2

HOW HAS THE ESM TREATY BEEN RATIFIED IN FINLAND AND ON WHAT LEGAL BASIS/ARGUMENTATION?

The Government proposal relating to the ratification of the ESM Treaty (No 34/2012 vp, Euroopan vakausmekanismin (EVM) perustamisesta tehdyn sopimuksen hyväksymisestä ja laiksi sen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta) was presented to the Parliament on 26 April 2012. It was announced in the Parliament on 27 April 2012 and sent to the Committees of the Parliament on 3 May 2012. After Committee consideration it was returned to the Plenary following the relevant procedures, and was discussed there on 13, 19 and 21 June 2012. The relevant Act was approved on 21 June 2012 (aye 104 – no 71). The President signed the law (No 402/2012) on 29 June 2012 and it entered into force on 4 October 2012 based on a Decree of the Government (No 534/2012).

The Treaty was approved by the Parliament according to Section 94.1 of the Constitution of Finland. (Sec. 94.1, first sentence: “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.) The provisions of the Treaty, in so far as they were considered to be of a legislative nature, were brought into force following the general practice through an Act (No 402/2012) and the remainder through a Government Decree (No 534/2012).

This procedure is based on the findings of the Constitutional Law Committee of the Parliament when assessing the relationship of the Treaty with the Constitution. The Constitutional Law Committee issued a statement on the new Treaty (PeVL 13/2012 vp). Like when considering the EFSF Treaty earlier, the Constitutional Law Committee assessed the amount of Finnish capital investment in the ESM and the risks related to it against the so-called Constitution-based obligations of the state. It required the financial liabilities and investments in the various parallel mechanisms to be calculated *in toto*. In the ESM, the Finnish part of the paid-in capital (EUR 1.4 billion) and callable capital (EUR 11 billion) were found extensive by the Constitutional Law Committee for example, when compared for example with the annual State budget. In order to establish the applicable procedure for approval and bringing the Treaty into force, the Committee considered the total amount of public debt and risks to the investment.

Of major importance for its conclusion was the interpretation that the Parliament has, due to the participation and information rights based on Sections 96 and 97 of the Constitution, possibilities to genuinely control and influence the Finnish member of the ESM Board of Governors, where for example decisions on the capital payments are made unanimously. According to the Constitutional Law Committee, the State’s current liabilities did not even in this case endanger its possibilities to take responsibility for its Constitution-based duties. When evaluating the possible risks to the investments made, operations within the ESM

provided greatly improved possibilities for risk management when compared with the previous situation.

Especially the emergency decision procedure (Art. 4 and 5(6) of ESM Treaty) was discussed in the Committee statement – both ex ante and ex post its conclusion -, in particular as regards the scope of decision-making by qualified majority in the ESM Board of Governors. As said above, in the ex ante scrutiny, based on the draft agreement, it seemed that the financial liabilities of Finland could also grow by a qualified majority decision of the Board of Governors over the maximum limit defined in the agreement, even if Finland opposed such a decision. This possibility was considered to affect national sovereignty and the budgetary competence of the Finnish Parliament, and led to demands concerning a need to specify the agreement in this respect. When Finland ultimately approved the agreement, this matter was no longer problematic, as it had been solved through changes to the agreement during negotiations, for example as regards the situations in which the emergency voting procedure could be used and by limiting the relevant liabilities. Also the insertion in Article 4(4) - “Where the emergency procedure referred to in the first subparagraph is used, a transfer from the reserve fund and/or the paid-in capital to an emergency reserve fund is made in order to constitute a dedicated buffer to cover the risks arising from the financial support granted under that emergency procedure. The Board of Governors may decide to cancel the emergency reserve fund and transfer its content back to the reserve fund and/or paid-in capital.” – was relevant for this consideration.

The transfer of powers to the ESM was not considered significant with regard to Finnish sovereignty. Thus the instrument was accepted in the Parliament and brought into force nationally in accordance with the ordinary legislative procedure pertaining to an Act of Parliament.

RATIFICATION DIFFICULTIES

VIII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER DURING THE RATIFICATION OF THE ESM TREATY?

The drafts of the ESM Treaty were repeatedly scrutinized ex ante by the Parliament according to the Sections 96 and 97 of the Constitution. Thus the Constitutional Law Committee had the possibility to discuss the constitutionality of the new Treaty before it was submitted to the Parliament for final approval, and various amendments were successfully proposed by the Government following its findings during the negotiations (see also question VIII.2).

CASE LAW

VIII.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE ESM TREATY?

See in general about the absence of a constitutional court in Finland and about the ex ante

consideration of crisis measures by the Constitutional Law Committee of parliament, question IV.5. For the Constitutional Law Committee's findings on the ESM Treaty, see questions VIII.1 and VIII.2.

CAPITAL PAYMENT

VIII.5

WHAT IS THE ROLE OF PARLIAMENT IN THE PAYMENT OF THE (FIRST INSTALMENT OF) PAID-IN CAPITAL REQUIRED BY THE ESM TREATY (ARTICLE 36 ESM TREATY)? WHAT RELEVANT DEBATES HAVE ARISEN IN RELATION TO THIS PAYMENT?

Funds for this purpose were included in the second supplementary budget in 2012, which presumed the participation of the Parliament in its adoption process. Subsequently the Government decided on 4 October 2012 to subscript the shares.⁸

APPLICATION & PARLIAMENT

VIII.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE ESM TREATY, FOR EXAMPLE WITH REGARD TO DECISIONS TO GRANT FINANCIAL ASSISTANCE AND THE DISBURSEMENT OF TRANCHES, WHICH BOTH REQUIRE UNANIMOUS ADOPTION BY THE BOARD OF GOVERNORS COMPOSED OF THE NATIONAL FINANCE MINISTERS.

The Constitutional Law Committee and the Audit Committee of the Parliament have set demands on the participation and information rights of the Parliament when decisions are made in the ESM. Part of the argumentation at the time when the Treaty was approved was based on the possibilities of the Parliament via its participation and information rights based on Sections 96 and 97 of the Constitution, to control and influence the Finnish member of the ESM Board of Governors, when for example decisions on the capital payments are made unanimously. Thus the Government has to keep the Parliament informed about the decisions to be taken under the Mechanism and to consult the Parliament before the decisions are taken. The Audit Committee of the Parliament, one of the Parliament's specialist committees further insisted on being informed under Section 97 of the Constitution about the annual reports of both the ESM and the ESM audit committee, and about the EFSF, in order to enable a discussion of the risks involved.⁹

The Parliament is involved in the functioning of the mechanisms. As regards decision-making within the ESM, the Parliament has based the requirement concerning its participation in national decision-making on Sections 96 and 97 of the Constitution. The arrangements made in the context of the ESM rely on the need to safeguard the Parliament's central role in the exercise of budgetary and financial powers. Decisions relating to the granting of loans are as to their nature and their financial implications considered to be so significant that they require the provision of relevant information by the responsible Cabinet

⁸ The Government took the decision in its plenary session on 4 October 2012. For further details, see <http://valtioneuvosto.fi/ajankohtaista/tiedotteet/tiedote/fi.jsp?oid=366457>.

⁹ Report of the Audit Committee 2/2013 vp.

minister prior to decision-making within the ESM in order to safeguard the prerogatives of the Parliament. The Constitutional Law Committee has required that these constitutional aspects for participation of national parliaments through the national representative have to be reflected in its decision-making rules, arrangements and practices within the mechanism (PeVL 13/2012).

In case the ESM Treaty is to be amended in order to raise the ESM capital, the matter would – since it involves an amendment of an international agreement – need to be approved by the Parliament on the basis of Section 94 of the Constitution.

APPLICATION DIFFICULTIES

VIII.7

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE APPLICATION OF THE ESM TREATY?

Direct recapitalisation

The discussion concerning the additions to the list of ESM financial tools (Article 14 of the ESM Treaty) with the perspective of enabling direct recapitalisation of financial institutions through the ESM has been somewhat problematic. Additions to the list have presumed unanimous decision in the Governing Board, but the Constitutional Law Committee has in general considered that enabling direct recapitalization operations should be made by amending the ESM Treaty and not based on Article 19 (PeVL 3/2013 vp, PeVP 108/2013 vp, PeVP 18/2014 vp). This is linked to a need to control the overall amount of commitments and the rights of information and participation of the Parliament under Sections 96 and 97 of the Constitution. Even in the case the addition of direct recapitalization were approved, these considerations should be taken fully into account. Therefore the use of this tool should be limited, and be possible to use only after bail-in and national back-stops. Direct recapitalization of financial institutions through the ESM should come into the picture as the last instance, after all the other ESM instruments have been exhausted.

Transparency

A different matter that is traditionally of interest for the Finnish Government and Parliament is the transparency regime, and the Finnish footprint can be found in Article 17(1) of the By-Laws, which states the following:

Article 17 Disclosure of Documents

1. This Article 17 sets forth the conditions under which the ESM may communicate documents drawn up or held by the ESM to other persons or entities or otherwise disclose such documents externally.

This Article 17 does not concern:

(a) the flow of information within the ESM, including to the Board of Governors, the Board of Directors, the Board of Auditors or the external auditors;

(b) the flow of information within and between the national governments and parliaments of ESM Members, it being understood that this Article 17 is without prejudice to applicable legal provisions governing such information exchanges.

The key issue from the Finnish point of view has been to ensure that the ESM arrangements do not prevent the Government or Finnish members in the ESM Governing Bodies from sharing information with the Parliament, or from applying the national access to documents regime, which is more generous than the European one.

IMPLEMENTATION

VIII.8

HAVE THERE BEEN ANY RELEVANT CHANGES IN NATIONAL LEGISLATION IN ORDER TO IMPLEMENT OR TO COMPLY WITH REQUIREMENTS SET BY THE ESM-TREATY?

No.

MISCELLANEOUS

VIII.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND THE ESM TREATY?

Not applicable.

IX FISCAL COMPACT

The Fiscal Compact (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) was signed on March 2, 2012. Negotiations on this Treaty began between 26 member states of the EU (all but the UK) after the 8/9 December 2011 European Council. 25 contracting parties eventually decided to sign the Treaty (not the Czech Republic).

After ratification by the twelfth Eurozone member state (Finland) in December 2012, the Fiscal Compact entered into force on 1 January 2013. For several contracting parties the ratification is still on-going.

(<http://www.european-council.europa.eu/eurozone-governance/treaty-on-stability?lang=it>)

NEGOTIATION

IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER IN THE NEGOTIATION OF THE FISCAL COMPACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

The Finnish Government informed the Parliament about the Treaty on 22 December 2011 (E 122/2011 vp, memorandum, followed by four additional memoranda informing about the negotiations and possible alternatives). In principle, the Government positively welcomed the new Treaty even if (and because) it was considered that it included many provisions which were already part of Union legislation. The development of automatic mechanisms was deemed necessary. The Government underlined the need for new strengthened governance structures and the importance of greater supervision as regards the achievement of economic policy goals. These features, it was believed, would contribute to the introduction of a more credible coordination of the economic policies of the Member States. The Government stressed the importance of as many Member States as possible joining the new Treaty. It was also considered important that the Commission formed a part of the supervision system under the Treaty. The Government did however express concern relating to the relationship of the Treaty with the Union Treaty system and stressed that this relationship should be coherent.

In the debates concerning the Treaty, it was argued that the Fiscal Compact underlines the Member States' own responsibility for their fiscal and budgetary politics within the EMU framework. Although the provisions of the Fiscal Compact limit the budgetary powers of the Parliament, and these limitations were considered significant as such by the Constitutional Law Committee of the Parliament (PeVL 37/2012 vp of 4 of December 2012), when comparing these obligations with those previously contained in the Treaties and the Growth and Stability Pact, the Fiscal Compact was not considered by the Committee to result in constitutionally significant, additional limitations to the budgetary powers of the Parliament. The argument was that the contribution of the Fiscal Compact is to provide greater guarantees for the implementation of the duties which already existed based on earlier commitments.

RATIFICATION

IX.2

HOW HAS THE FISCAL COMPACT BEEN RATIFIED IN FINLAND AND ON WHAT LEGAL BASIS/ARGUMENTATION?

The Government proposal relating to the ratification and for the adoption of relevant legislation which was deemed necessary for its application (No 155/2012 vp, talous- ja rahaliiton vakaudesta, yhteensovittamisesta sekä ohjauksesta ja hallinnasta tehdyn sopimuksen hyväksymisestä sekä laiksi sopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja sopimuksen soveltamisesta sekä julkisen talouden monivuotisia kehyksiä koskevista vaatimuksista) was presented to the Parliament on 9 November 2012. It was announced in the Parliament on the same day and sent to the Committees of the Parliament on 13 November 2012. After the Committee consideration it was returned to the Plenary following the relevant procedures, and was discussed there on 13–14 and 17–18 December. The included acts were approved on 18 December 2012 (aye 139 – no 38). The President signed the laws 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 (No. 869/2012 and Laki valtiontalouden tarkastusvirastosta annetun lain 1 §:n muuttamisesta No 870/2012) on 21 December 2012 and they entered into force on 1 January 2013 based on a Decree of the Government (No 1030/2012). The same legislative package also included amendments to the act on the National Audit Office (No 870/2012).

The Treaty was approved by the Parliament according to Section 94.1 of the Constitution of Finland. (Sec. 94.1, first sentence: “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.) The provisions of the Treaty, in so far as they were considered to be of a legislative nature, were brought into force through an Act (Nos. 869/2012 and 870/2012) and the remaining parts through a Government Decree (No 1030/2012).

As the Treaty did not confer any significant new competences to the Union, it could be brought into force by a simple majority of votes.

RATIFICATION DIFFICULTIES

IX.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID FINLAND ENCOUNTER DURING THE RATIFICATION OF THE FISCAL COMPACT?

As was anticipated, the True Finns opposed the Treaty categorically. However, they were also joined by voices on the Government side, most notably the Foreign Minister, who described the Treaty to be negotiated both as unnecessary and harmful and argued that the plans for a fiscal, economic and political union drafted by the heads of the Commission, Council, European Central Bank and Euro group were not to be trusted (see Euobserver, ‘Finland: We Have to Prepare for Euro Breakup’, 17 Aug. 2012, <<http://euobserver.com/economic/117259>>). This was major news in Finland.

Such opposition was linked to general anti-Union feelings, and concerns relating to the further integration and tightening of the EMU, in particular fears relating to budgetary discipline forced on the Member States from the outside. It is unclear to what extent such concerns were perceived as involving also Finland – in no way an unrealistic alternative - or whether they were seen to link exclusively to ‘other’ Member States namely those considered being under more severe distress.

BALANCED BUDGET RULE

IX.4

ARTICLE 3(2) FISCAL COMPACT PRESCRIBES THAT THE BALANCED BUDGET RULES SHALL TAKE EFFECT IN NATIONAL LAW THROUGH “PROVISIONS OF BINDING FORCE AND PERMANENT CHARACTER, PREFERABLY CONSTITUTIONAL, OR OTHERWISE GUARANTEED TO BE FULLY RESPECTED AND ADHERED TO THROUGHOUT THE NATIONAL BUDGETARY PROCESSES.” HOW IS THE BALANCED BUDGET RULE (INTENDED TO BE) IMPLEMENTED IN FINLAND? WILL THERE BE AN AMENDMENT OF THE CONSTITUTION? IF NOT, DESCRIBE THE RELATION BETWEEN THE LAW IMPLEMENTING THE BALANCED BUDGET RULE AND THE CONSTITUTION. IF THE CONSTITUTION ALREADY CONTAINED A BALANCED BUDGET RULE, DESCRIBE THE POSSIBLE CHANGES MADE/REQUIRED, IF ANY.

The requirement included in some previous drafts of the Fiscal Compact to include the guarantees included in the Constitution would have caused serious difficulties in Finland: a provision in an international agreement specifically obligating a State to amend its constitution certainly appeared as an extremely foreign idea. Instead, in Finland, the aim of the Fiscal Compact was not seen to require an amendment to the Constitution. The balanced budget rules of the Treaty were introduced in a regular Act of the Parliament (Law on 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, No. 869/2012), which is of course substantively linked to the international law governed Treaty relating to the European Union, which can be seen as offering it more importance.

Therefore, instead of a constitutional amendment, the correction mechanism was built on duties of reporting and informing between the Government and the Parliament (Section 4 in above mentioned Law), including a plan for how the deviations will be corrected by the end of the following year. The mechanism includes three stages. The Government first has the choice of adopting pre-emptive corrective measures at its own initiative. If the problem persists and Finland receives a recommendation by the Council, the Government needs to consider giving a report to the Parliament. If the Council establishes that Finland has not taken sufficient measures, a statement must be given to the Parliament. The procedure builds on Section 44 of the Constitution, which enables the Government to present a statement or report to the Parliament ‘on a matter relating to the governance of the country or its international relations’. The consideration of the statement always ends with a vote of confidence in the Parliament. The Finnish version of the correction mechanism exceptionally limits the discretion of the Government to choose between a statement and a report. Since the

constitutional system provided no relevant alternative, this was deemed possible, and was further justified by how the Section 44 procedure enables the participation of the Parliament in a significant debate and decision-making on economic politics.

DEBATE BALANCED BUDGET RULE

IX.5

DESCRIBE THE NATIONAL DEBATE ON THE IMPLEMENTATION OF THE FISCAL COMPACT/BALANCED BUDGET RULE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

Since the obligation was deemed possible to fulfil through the adoption of an ordinary Act of Parliament and the prerogatives of the Parliament were supposedly not affected, the Parliament ultimately approved the adoption of a mechanism, chosen on the basis of considerations relating to the widening of the jurisdiction of the Court of Justice of the European Union, the supervision of the obligations in the Treaty and thus a slight widening of the Court's competence in the area of economic policy. These were not deemed significant enough by the Constitutional Law Committee (PeVL 37/2012 vp) to affect the choice of national procedure for approving and bringing the agreement into force.

RELATIONSHIP BBR AND MTO

IX.6

WHAT POSITIONS, IF ANY, ARE TAKEN IN THE NATIONAL DEBATE ABOUT THE RELATIONSHIP BETWEEN THE BALANCED BUDGET RULE OF ARTICLE 3(1)(B) FISCAL COMPACT AND THE MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) RULE IN THE SIX-PACK (SECTION 1A, ARTICLE 2A REGULATION 1466/97, ON WHICH SEE ABOVE QUESTION VII.10)?

In the national debate, it was stressed that the Treaty builds on and contributes to the previously adopted six-pack legislation by making the supervision of budgetary commitments more effective. For the considerations relating to the Finnish ratification of the Treaty it was important that the European Union had already exercised competence by regulating these matters through the six-pack. There has been no public debate about the relationship between the balanced budget rule of the Fiscal Compact and the Medium term budgetary objective in the six-pack.

CASE LAW

IX.7

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE FISCAL COMPACT/IMPLEMENTATION OF THE BALANCED BUDGET RULE?

See in general about the absence of a constitutional court in Finland and about the ex ante consideration of crisis measures by the Constitutional Law Committee of parliament, question IV.5. For the Constitutional Law Committee's findings on the Fiscal Compact, see questions IX.1.

NON-EUROZONE AND BINDING FORCE

IX.8

HAS FINLAND DECIDED TO BE BOUND BY PARTS OF THE FISCAL COMPACT ON THE BASIS OF ARTICLE 14(5) FISCAL COMPACT ALREADY BEFORE JOINING THE EURO AREA, OR HAS THIS OPTION BEEN DEBATED?

Not applicable, since Finland is a member of the Eurozone.

MISCELLANEOUS

IX.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO FINLAND AND THE FISCAL COMPACT?

Not applicable.