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A European Ministry of Finance? Charting and testing the national constitutional limits to EU fiscal integration

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II | Macro-Comparative Assessment of Finland

1 FINLAND AND EU INTEGRATION

The Eurocrisis can be described as a drastic turning point in the Finnish political debate on EU integration. Since Finnish accession to the EU in 1995, the country was praised as a commendable EU Member State.¹ From its inception, EU membership was perceived as beneficial and supported by a cross-party, political consensus.² This consensus translated into a positioning at the center of the EU, which made possible opt-outs from integration steps politically undesired³ and which *inter alia* resulted in the introduction of the Euro in 2002.⁴ An apparent underlying motive of this strong commitment to EU co-operation is to compensate for Finland's geographical position at the EU's periphery as well as to obtain political insurances against possible interferences from neighboring Russia.⁵ Therefore, EU membership continues to entail

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- 1 Tapio Raunio, 'Refusing to Be Sidelined: The Engagement of the Finnish *Enduskunta* in Foreign Affairs' (2016) 39 *Scandinavian Political Studies* 312, 316; Juha Jokela, *Finland and the Eurozone Crisis* (Palgrave Macmillan 2014) 29; Jokela, 'Finland: Towards a More Cautious Europeanization' 40.
 - 2 Sanna Salo and Jens Rydgren, 'Politicisation of the Eurozone Crisis in Finland: Adaptation Toward the Radical Right?' (2018) 34 *Journal of International and Comparative Social Policy* 234, 243; Raunio, 'Refusing to Be Sidelined: The Engagement of the Finnish *Enduskunta* in Foreign Affairs' 316; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 451; Ojanen, 'Constitutional Amendment in Finland' 95.
 - 3 Jokela, *Finland and the Eurozone Crisis* 26; Jokela, 'Finland: Towards a More Cautious Europeanization' 39-40; Teija Tiilikainen, 'Finland - An EU Member State With a Small State Identity' (2006) 28 *Journal of European Integration* 73, 77-78; Tapio Raunio and Teija Tiilikainen, *Finland in the European Union* (Frank Cass Publishers 2003) 13.
 - 4 Jokela, *Finland and the Eurozone Crisis* 29; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 455; Jokela, 'Finland: Towards a More Cautious Europeanization' 48; Tiilikainen, 'Finland - An EU Member State With a Small State Identity' 78.
 - 5 Salo and Rydgren, 'Politicisation of the Eurozone Crisis in Finland: Adaptation Toward the Radical Right?' 243; Mark C. Miller, 'Finnish Judges and the European Union: An American Perspective' (2016) 24 *Michigan State International Law Journal* 495, 498; Jokela, *Finland and the Eurozone Crisis* 29.

tangible geopolitical benefits for Finland, which initially resulted in a pragmatic approach to supranational cooperation.⁶

At the national constitutional level, EU membership coincided with and contributed to a more general process of fundamental constitutional transformation⁷ which *inter alia* established the Finnish Parliament as central national actor in all EU-related decisions.⁸ Notably, under the new constitutional framework the Finnish Parliament has to approve the conferral of competences to the EU and it is subsequently involved in the domestic *ex ante* preparation of EU secondary law.⁹ As can be deduced from this involvement, the Finnish Constitution appears to extend internal parliamentary prerogatives to international and EU cooperation, too. But the highlighted constitutional transformation did not only impact the procedural rules established within the Finnish Constitution. It equally introduced a more flexible interpretation of substantive constitutional principles, most prominently Finnish sovereignty.¹⁰ Overall, this illustrates that the Finnish constitutional system actively addressed the constitutional challenges that resulted from increasing supranational cooperation and the constitution-amending legislator in fact seized the opportunity to integrate the Finnish Constitution into a globalizing reality.

An important institutional particularity of the Finnish constitutional order that contributes to the identified constitutional openness towards EU cooperation, is the Finnish Constitutional Law Committee, which conducts constitutional review in Finland. The Committee adopted a comparably flexible interpretation of Finnish constitutional principles and it refrained until now

6 Which can be, for example, deduced from the Finnish support for increasing EU qualified majority voting, cf. Tiilikainen, 'Finland - An EU Member State With a Small State Identity' 79-80; Raunio and Tiilikainen, *Finland in the European Union* 14.

7 Which culminated in the 2000 constitutional reform, cf. Suksi, 'Finland' 88.

8 As now enshrined in Sections 94, 95 and 96 Finnish Constitution, cf. Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 459; Ojanen, 'Constitutional Amendment in Finland' 102; And as EU matters are now governmental and not presidential matters, cf. Suksi, 'Finland' 111-112.

9 Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 456-457; Ojanen, 'The Europeanization of Finnish Law' 168-171; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 554-556. Raunio and Tiilikainen, *Finland in the European Union* 86.

10 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 334-335; Tuomas Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' in Kimmo Nuotio, Melander Sakari and Merita Huomo-Kettunen (eds), *Introduction to Finnish Law and Legal Culture* (University of Helsinki 2012) 101; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 540-541.

from imposing substantive limits to Finnish EU integration efforts.¹¹ The reluctant constitutional scrutiny appears to result from a strong focus on parliamentary sovereignty¹² rendering the Finnish legal order highly receptive to EU integration proposals. Taken together, all three outlined aspects coin the apparent political and constitutional dedication to EU cooperation and the constructive, pro-EU approach adopted in Finland over time.

However, the eruption of the Eurocrisis changed this relatively unquestioned dedication to EU cooperation. It triggered an intense national debate on how to best react to the then unfolding crisis which prominently featured in the 2011 Finnish parliamentary election¹³ and which resulted in a clear electoral success of the Euroskeptical 'Finns'-party.¹⁴ The 'Finns' obtained 39 out of the 200 parliamentary seats, a share it could largely defend in the 2015 and 2019 parliamentary elections.¹⁵ This implies that significantly more Euroskeptical voices have been represented in the Finnish Parliament since 2011, which altered the political debate and impacted the EU-agenda of the established political parties.¹⁶ Given that the Eurocrisis was the most important non-domestic matter fueling the electoral success of the 'Finns' in

11 Which was confirmed in the Finnish statements on the Eurocrisis-measures, cf. Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 463; Instead, the Constitutional Law Committee strengthened through its review the institutional role of the Finnish Parliament, cf. Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 392; Although, the financial ability to comply with internal constitutional obligations in relation to social and health care might transform into such a constitutional limitation, as noted by: Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

12 Suksi, 'Finland' 88, 97.

13 Salo and Rydgren, 'Politicisation of the Eurozone Crisis in Finland: Adaptation Toward the Radical Right?' 243; Jokela, *Finland and the Eurozone Crisis* 36; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 455; Ojanen, 'Constitutional Amendment in Finland' 95.

14 Note, the political party was previously called the 'True Finns'.

15 The party received 19,1% of the votes in 2011 compared to 4,05% in 2007, cf. Salo and Rydgren, 'Politicisation of the Eurozone Crisis in Finland: Adaptation Toward the Radical Right?' 243; Jokela, *Finland and the Eurozone Crisis* 33; Jokela, 'Finland: Towards a More Cautious Europeanization' 49; Ojanen, 'Constitutional Amendment in Finland' 95; Juha Jokela and Kaisa Korhonen, *A Eurosceptic Big Bang - Finland's EU Policy in Hindsight from the 2011 Elections* (The Finnish Institute of International Affairs 2012) 3.

16 Tuomas Iso-Markku, 'Finland - Pro-European Arguments Prevail Despite the Rise of Euroscepticism' in Karlis Bukovskis (ed), *Euroscepticism in Small EU Member States* (Zinātne 2016) 65, 73; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 455; Jokela, 'Finland: Towards a More Cautious Europeanization' 49; A more critical stance towards the EU amongst the Finnish people was seemingly already apparent before 2011, but simply not reflected by the political parties, cf. Husa, *The Constitution of Finland - A Contextual Analysis* 36.

2011,¹⁷ other political parties altered their positions and embraced a more critical stance towards the EU as well. Despite the changed tone in the political appreciation of EU cooperation, which was recently showcased in the negotiations of Next Generation EU,¹⁸ the constitutional system itself, however, remains open for EU integration. This enabled the Finnish Parliament to play an influential role in the drafting of the various Eurocrisis-measures¹⁹ and allowed the Constitutional Law Committee to refrain from imposing substantive limitations to EU integration ambitions.²⁰ This confirms the identified flexible legal-constitutional nature of the Finnish constitutional order, which proved adaptive towards EU cooperation.²¹

The following assessment will focus on this apparent *constitutional flexibility* by analyzing the structural constitutional framework for EU cooperation (2.) as well as the procedural (3.) and substantive constitutional framework (4.) that EU fiscal integration proposals are confronted with. As indicated, a particular focus will rest on charting the flexible constitutional handling of the Eurocrisis. Contouring the high degree of *constitutional flexibility* will subsequently help to determine whether and to what extent Finnish flexibility could serve as a *best practice* example for other constitutional systems.

2 INTRODUCING THE FINNISH CONSTITUTIONAL ORDER

Finnish accession to the EU entailed a firm political commitment to the EU's values and an economic orientation towards the EU single market. It required a renunciation of the policy of 'active neutrality' that Finland followed during

17 Salo and Rydgren, 'Politicisation of the Eurozone Crisis in Finland: Adaptation Toward the Radical Right?' 243.

18 As Finland partly sided with the *frugal four*, cf. Dolores Utrilla, 'Insight: 'The European Deal for Post-Pandemic Economic Recovery: Content and Meaning'' (*EU Law Live*, 21 July 2020) <<https://eulawlive.com/the-european-deal-for-post-pandemic-economic-recovery-content-and-meaning/>> accessed 20 December 2020.

19 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 458, 478.

20 As previously highlighted, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 324-325; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 26-27; Ojanen, 'Constitutional Amendment in Finland' 109; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 463.

21 Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 222; Ojanen, 'The EU at the Finnish Constitutional Arena' 242; Lämsineva, 'Fundamental Principles of the Constitution of Finland' 111; Suksi, 'Finland' 114; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 534-535.

the Cold War.²² Therefore, the Finnish commitment to EU integration can be characterized as genuine political decision, confirmed by public referendum,²³ which translated into the already highlighted constructive approach to EU cooperation.²⁴

At the same time, Finland acceded to a highly integrated EU, which had just ratified the Maastricht Treaty that transformed the Community into a Union. Contentious concepts such as the direct effect or primacy of EU law were (judicially) established.²⁵ In short, EU cooperation was politically, economically and legally advanced, which challenged the Finnish Constitution – as it stood during accession – that did not contain a constitutional framework for supranational or international cooperation. The doctrine of absolute sovereignty, then proclaimed in Section 1 (1) Finnish Constitution, seemingly excluded the transfer of competences to the supranational level, which rendered EU membership incompatible with the constitutional text.²⁶ Finnish EU membership was only constitutionally achievable by adopting a limited constitutional derogation, so-called ‘exceptive enactment’.²⁷ At the same time, it can be submitted that accession to such highly integrated EU entailed for

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- 22 Coined by the term ‘active neutrality’, cf. Frank Emmert and Siniöa Petroviæ, ‘The Past, Present, and Future of EU Enlargement’ (2014) 37 *Fordham International Law Journal* 1349, 1372; Tiilikainen, ‘Finland - An EU Member State With a Small State Identity’ 76; Raunio and Tiilikainen, *Finland in the European Union* 12, 21; A. Rosas, ‘Finland - Finland’s Accession to the European Union: Constitutional Aspects’ (1995) 1 *European Public Law* 166, 166; For a thorough overview of the Finnish ‘neutrality’ policy over time: cf. Miller, ‘Finnish Judges and the European Union: An American Perspective’ 500; Juha Jokela, *Europeanization and Foreign Policy* (Routledge 2011) 46.
- 23 In a public referendum 56,9% voted in favor of EU accession, cf. Emmert and Petroviæ, ‘The Past, Present, and Future of EU Enlargement’ 1373; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 244; Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 537; For the absolute numbers, cf. Rosas, ‘Finland - Finland’s Accession to the European Union: Constitutional Aspects’ 166.
- 24 Characterised as most constructive approach to EU integration of all Nordic countries, cf. Jokela, *Finland and the Eurozone Crisis* 26, 30; Also referred to as ‘community-centred approach’, cf. Tiilikainen, ‘Finland - An EU Member State With a Small State Identity’ 78.
- 25 Miller, ‘Finnish Judges and the European Union: An American Perspective’ 519.
- 26 As Section 1 (1) Finnish Constitution proclaimed absolute sovereignty, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 331-332; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 245-246; Ojanen, ‘The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism’ 100; Ojanen, ‘EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament’ 216; Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 537.
- 27 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 364; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 344; Suksi, ‘Finland’ 94; Rosas, ‘Finland - Finland’s Accession to the European Union: Constitutional Aspects’ 168.

Finland a constitutional *ad hoc* adaptation which was based on a clear political decision in favor of EU membership.²⁸ This experience is fundamentally different to that of the EU founding Member States, whose constitutional systems had to evolve alongside EU integration.²⁹ Subsequently, it enabled the Finnish constitution-amending legislator to reform the Finnish Constitution in light of the new EU obligations.³⁰ The resulting amended Finnish Constitution provides for a clear balancing of national with EU interests and for the active national parliamentary involvement in the EU decision-making process. The precise reform process, which contributed to this 'Europeanization' of Finnish constitutional law,³¹ will be subsequently outlined in order to investigate the evolutionary potential of the Finnish Constitution.

2.1 Finnish constitutional reforms to accommodate EU cooperation

When Finland acceded to the EU, the Constitutional Act of 1919 was still in force. The Act was adopted following Finnish independence from Russia,³² which was reflected in its design. Notably, the Constitutional Act focused on the internal organization of state power. The apparent constitutional intro-

28 Miller, 'Finnish Judges and the European Union: An American Perspective' 519; Raunio and Tiilikainen, *Finland in the European Union* 2-3; More generally, cf. C. Curti Gialdino, 'Some Reflections on the *Aquis Communautaire*' (1995) 32 *Common Market Law Review* 1089, 1090-1091.

29 Notably, new Member States are required to accept a fully developed legal framework, whereas the founding Member States developed this framework and their legal systems evolved alongside, cf. Gerda Falkner, 'How Pervasive Are Euro-Politics? Effects of EU Membership on a New Member State' (2000) 38 *Journal of Common Market Studies* 223, 224; On the Finnish experience: Raunio and Tiilikainen, *Finland in the European Union* 4.

30 Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 456-457; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 100-101; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 563.

31 Husa, *The Constitution of Finland - A Contextual Analysis* 24; A process, which however already started before EU membership with the accession to the ECHR and the EEA, cf. Juha Lavapuro, Tuomas Ojanen and Martin Scheinin, 'Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review' (2011) 9 *International Journal of Constitutional Law* 505, 512-513; Ojanen, 'The Europeanization of Finnish Law' 145-146; The term 'Europeanization' refers to the transformative impact of EU law on the national legal order, cf. Paul Luif, 'Grundlagen der Analyse' in Paul Luif (ed), *Österreich, Schweden, Finland - Zehn Jahre Mitgliedschaft in der Europäischen Union* (Böhlau Verlag 2007) 18-21.

32 Finland declared its independence from Russia in late 1917, cf. Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 164 para 9; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 276; Suksi, 'Finland' 92; For a general overview of Finnish history, cf. Raunio and Tiilikainen, *Finland in the European Union* 9-11.

version cumulated in the conception of Finnish sovereignty as an absolute constitutional principle established in Section 1 (1) Constitutional Act.³³ Historically, Section 1 (1) Constitutional Act constituted the constitutional confirmation of Finnish independence from Russia and it anticipated Finland's new international role amongst other sovereign states.³⁴ The absolute conception of Finnish sovereignty, however, collided with Finnish EU membership³⁵ and led to the indicated constitutional reforms that equipped the Finnish Constitution for EU as well as international cooperation.³⁶ This thorough reform process was initiated after Finnish accession to the European Convention of Human Rights (ECHR) in 1989 as well as Finnish EU membership in 1995, and it was completed in 2012 with the explicit acknowledgment of EU membership in Section 1 (3) Finnish Constitution.³⁷

33 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 280, 331-332; Ojanen, 'The EU at the Finnish Constitutional Arena' 245-246; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 100; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 216; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 537.

34 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 280.

35 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 364; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 344; Ojanen, 'The EU at the Finnish Constitutional Arena' 244; Ojanen, 'Constitutional Amendment in Finland' 105; Husa, *The Constitution of Finland - A Contextual Analysis* 22; Rosas, 'Finland - Finland's Accession to the European Union: Constitutional Aspects' 168.

36 In particular the acknowledgement of the 'specificity of the EU' and the conception of EU membership as 'exercising Finland's sovereign powers', cf. Miller, 'Finnish Judges and the European Union: An American Perspective' 501; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 301; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 101; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 218-219; Hautamäki, 'Novel Rules in the Finnish Constitution - The Question of Applicability' 134; The Finnish discussion emphasizes that a shared exercise of sovereignty at the EU-level allows for greater reach of Finnish sovereign powers, cf. Husa, *The Constitution of Finland - A Contextual Analysis* 37.

37 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 366; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 456; On the first two stages of the constitutional reform process, cf. Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 170-171 paras 27-29; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 217-218.

The current constitutional text qualifies Finnish sovereignty and explicitly mentions the possibility to engage in international and EU cooperation (Section 1 (3) Finnish Constitution).³⁸ Furthermore, it establishes a specific procedural framework for the conferral of competences to the EU (Sections 94 and 95 Finnish Constitution) and it lays down a procedural framework for parliamentary involvement in the national preparation of EU matters (Section 96 Finnish Constitution), including a parliamentary right to be informed on EU developments (Section 97 Finnish Constitution). The reform also introduced a limited *ex post* judicial review of legislative acts (Section 106 Finnish Constitution). In addition, it modified the power-balance between the Finnish President and the Finnish Government, as the Finnish Constitution now explicitly characterizes EU affairs as governmental prerogatives (Section 93 (2) Finnish Constitution).³⁹ Thus, the reform cemented the departure from a 'presidential democracy' to an increasing dominance of the Finnish Parliament and the Finnish Government, which is confirmed by and depends on the support of a parliamentary majority.⁴⁰

2.2 The Finnish Constitutional Law Committee

The most authoritative Finnish actor in constitutional matters is the parliamentary Constitutional Law Committee.⁴¹ This *quasi-judicial* authority assesses the compatibility of proposed national legislation and EU law with the Finnish

38 Note also the 'special status' that the Constitutional Law Committee awards to the EU in its decisions, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 301; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 101; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 218.

39 Suksi, 'Finland' 112; The Finnish Government depends on continuous parliamentary support and can face a vote of no-confidence if parliament loses trust into the governmental work according to Section 43 (2) Finnish Constitution cf. Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 556; Generally speaking, the Finnish model is based on broad parliamentary support, cf. Ojanen, 'Constitutional Amendment in Finland' 65; Raunio and Tiilikainen, *Finland in the European Union* 45.

40 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 285; Ojanen, 'The EU at the Finnish Constitutional Arena' 247-248; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 547-548.

41 In Finnish: *Perustuslakivaliokunta*.

Constitution.⁴² The Committee's precise mandate is enshrined in Section 74 Finnish Constitution,⁴³ which establishes:

'The Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties.'

Although its institutional mandate can be compared to other constitutional authorities in the EU, the Constitutional Law Committee is peculiar in several regards. It is a standing committee of the Finnish Parliament composed of 17 parliamentarians.⁴⁴ Therefore, its composition changes after every parliamentary election.⁴⁵ Furthermore, the Committee's members are not required to have any legal qualification.⁴⁶ To ensure continuity and legal expertise, the Committee is assisted by a permanent secretary, composed of civil servants

42 Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 219; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 172 para 32; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 324; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 26; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 453; Ojanen, 'Constitutional Amendment in Finland' 96; Ojanen, 'The EU at the Finnish Constitutional Arena' 252; Juha Lavapuro, 'Constitutional Review in Finland' in Kimmo Nuotio, Melander Sakari and Merita Huomo-Kettunen (eds), *Introduction to Finnish Law and Legal Culture* (University of Helsinki 2012) 132; Suksi, 'Finland' 91; Lavapuro, Ojanen and Scheinin, 'Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review' 510-511.

43 The function of the Constitutional Law Committee is traditionally occupied by constitutional courts, cf. Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 219; Ojanen, 'The EU at the Finnish Constitutional Arena' 252; Hautamäki, 'Novel Rules in the Finnish Constitution - The Question of Applicability' 140; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 204-205.

44 As established in Sections 35(1) and 74 Finnish Constitution, cf. Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 226; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 29; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 325; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 459-460; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 532.

45 Although, traditionally members are re-elected into the Committee to guarantee stability, cf. De Visser, *Constitutional Review in Europe - A Comparative Analysis* 29.

46 Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 172 para 33; Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 226.

with constitutional expertise.⁴⁷ In addition, the Committee consults constitutional law experts, which provide it with legal arguments.⁴⁸ Although the final decision is taken by the 17 parliamentarians, the consulted experts have a major impact on the decision.⁴⁹

As the Constitutional Law Committee is a parliamentary committee, its constitutional review is embedded in the parliamentary process. Upon referral by either the plenary, based on governmental recommendation,⁵⁰ or by a specialized parliamentary committee,⁵¹ the Constitutional Law Committee engages with the constitutional questions put before it.⁵² Hence, the Committee cannot act *ex officio* or request a referral.⁵³ Furthermore, its statements are embedded in the parliamentary process, which results in the adoption of a 'final' parliamentary decision. Given that the considered matters are not yet enacted laws when assessed by the Committee, the Committee's review is only

47 Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 173 para 34; Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 226; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 27.

48 Despite the fact that this consultation is not prescribed by law, but merely optional as laid down in Section 37 Rules of Procedure, the Constitutional Law Committee routinely consults constitutional law experts, cf. Tuomas Ojanen, '§ 296: Grundrechte in Finland' in Detlef Merten and Hans-Jürgen Papier (eds), *Handbuch der Grundrechte in Deutschland und Europa - Band X (Grundrechte in West-, Nord- und Südeuropa)* (C.F. Müller 2018) 380 para 122; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 172 para 35; Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 226; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 325; Ojanen, 'The EU at the Finnish Constitutional Arena' 252.

49 Which raised concerns regarding the dominance of a small selection of constitutional professors, cf. Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 173-174 para 36; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 27.

50 Following Section 6 No. 2 Rules of Procedure and subsequently approved by the parliament's plenary according to Section 32 (1) (2) Rules of Procedure; Cf. Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 176 para 44; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 325; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 27; Suksi, 'Finland' 102.

51 Suksi, 'Finland' 102; For example, as part of the procedure established in Section 96 Finnish Constitution, cf. Ojanen, 'Constitutional Amendment in Finland' 109; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 555; As exemplified during the Eurocrisis in relation to the EU Six-Pack legislation, cf. Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 460.

52 As established in Section 38 (2) Rules of Procedure, cf. Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 177 paras 45-46; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 27.

53 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 325.

exercised in an abstract, anticipatory *ex ante* manner,⁵⁴ which prevents the materialization of constitutional conflicts as the Committee considers *draft* legislation or EU commitments prior to their adoption.

Once the Constitutional Law Committee adopts a statement, it is either communicated to the plenary or the referring parliamentary committee. Traditionally, statements are formulated in a formalistic fashion in order to minimize political debates and to allow for unanimous support.⁵⁵ In its statements, the Committee includes a general assessment of the matter as well as suggestions for potential amendments and the applicable procedural requirements.⁵⁶ Overall, the statements are widely respected and considered as constitutionally binding, although formally lacking legal binding force.⁵⁷ At the same time, the statements are not intended to establish strict constitutional limits. Instead, the Finnish Parliament can employ the available *constitutional flexibility* in order to overcome possible constitutional concerns, by adopting an exceptive enactment or by initiating constitutional amendments, as outlined subsequently. The Finnish Constitutional Law declared, for example, the EU Accession Treaty to be in conflict with the Finnish Constitution, yet, the Finnish Parliament could overcome this conflict by adopting the Treaty through exceptive enactment by two-thirds majority.⁵⁸

Overall, this indicates that the Constitutional Law Committee is peculiar regarding its composition, its embedment in the parliamentary process and

54 As it is a parliamentary committee involved in the drafting of legislation, cf. Ibid 324-325; Ojanen, 'The EU at the Finnish Constitutional Arena' 251-252; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 324.

55 Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 178 para 50; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 325; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 29.

56 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 325; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 27-28; Without, however, directly including these changes into the referred proposal itself, cf. Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 178-179 para 51.

57 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 325; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 27-28; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 459-460.

58 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 364; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 537; Niilo Jääskinen, 'The Application of Community Law in Finland: 1995-1998' (1999) 36 *Common Market Law Review* 407, 409-410; Rosas, 'Finland - Finland's Accession to the European Union: Constitutional Aspects' 168.

the effect of its decisions.⁵⁹ This institutional design appears to reflect the strong constitutional position of the Finnish Parliament within the Finnish constitutional order.⁶⁰ Hence, the review of the Constitutional Law Committee is not intended to limit parliamentary action within certain preordained substantive boundaries, including in EU matters, but instead to ensure the sound exercise of the parliament's constitutionally secured prerogatives, which includes altering the substantive interpretation of constitutional provisions by, for example, exceptive enactment.⁶¹

2.3 Interim conclusion: Constitutional embracement of EU membership

Taken together, the implemented national constitutional reforms transformed the Finnish constitutional order into an outward looking constitutional system that embraces EU membership. The constitutional text provides for comprehensive parliamentary involvement in EU decisions, which ensures that the conferral of powers to the EU-level is not equated with a loss of influence for the Finnish Parliament. The open outlook of the Finnish constitutional system on EU cooperation is also fostered by the decisions of the Constitutional Law Committee. Given that this parliamentary committee considers the constitutionality of EU commitments *ex ante*, possible constitutional obstacles can be identified and removed in the parliamentary process.

3 PROCEDURAL AND INSTITUTIONAL FRAMEWORK APPLICABLE TO EU FISCAL INTEGRATION

The Finnish Constitution contains different procedures to engage with EU cooperation. These distinguish between the conferral of new competences to the EU (Sections 94-95 Finnish Constitution) and the exercise of already conferred competences (Sections 96-97 Finnish Constitution), as illustrated in *Figure 5*. As the precise design of future EU fiscal integration may either require

59 Ojanen, '§ 296: Grundrechte in Finland' 380 para 122; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 179 para 53; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 26.

60 Ojanen, 'The EU at the Finnish Constitutional Arena' 254; Lavapuro, Ojanen and Scheinin, 'Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review' 509.

61 As showcased during the Eurocrisis, cf. Klaus Tuori and Juha Raitio, 'Finland' in Ulla Neergaard, Catherine Jacqueson, and Jens Hartig Danielsen (eds), *The Economic and Monetary Union: Constitutional and Institutional Aspects of the Economic Governance within the EU (The XXVI FIDE Congress in Copenhagen)*, vol 1 (DJØF Publishing Copenhagen 2014) 331; As the Constitutional Law Committee mainly focussed on the procedural implications of the different measures, cf. Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 463.

new EU competences or the use of conferred competences, the subsequent analysis outlines the procedural framework for the conferral of budgetary and fiscal competences (3.1.), the adoption of EU secondary law (3.2.) and the conducted constitutional review (3.3.).

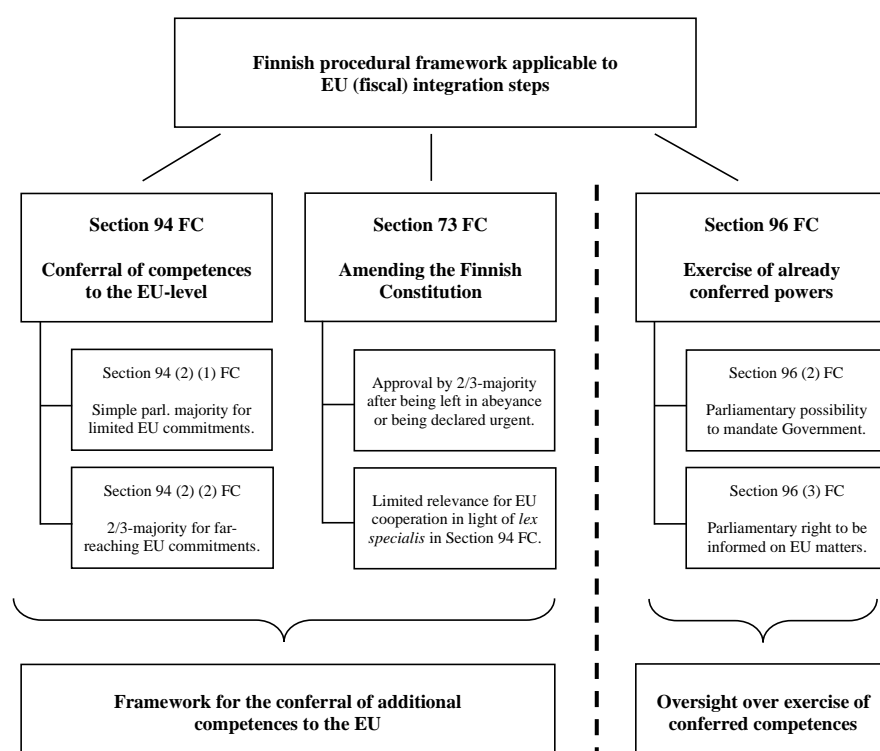


Figure 5: Finnish Procedural Framework for EU fiscal integration steps

3.1 Transferring budgetary and fiscal competences to the EU

Section 94 Finnish Constitution explicitly regulates the transfer of competences to the EU.⁶² This procedure can be classified as a *lex specialis* to Section 73 Finnish Constitution, which governs constitutional amendments. While Section 94 Finnish Constitution seems to constitute the most relevant basis for the conferral of powers to the EU, the subsequent assessment will equally consider

⁶² Ojanen, 'The EU at the Finnish Constitutional Arena' 247; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 206.

Section 73 Finnish Constitution, which could provide an additional constitutional basis to accommodate EU fiscal integration steps in Finland.⁶³

3.1.1 Preliminary step: Scope for EU cooperation

As a preliminary step, Section 1 (3) (1) Finnish Constitution prescribes that Finland only participates in international cooperation that serves '[...] the protection of peace and human rights and [...] the development of society'. Thus, international cooperation is connected to broader constitutional aims. In light of the broad framing, the Constitutional Law Committee appears to take a lenient approach and deems the requirement easily fulfilled.⁶⁴

Furthermore, Section 1 (3) (2) Finnish Constitution now explicitly mentions Finnish EU membership, which might even render the application of the scope restriction superfluous. In any case, fiscal integration proposals aim to stabilize the Eurozone and therefore contribute to the development of society, which corresponds to the requirements listed in Section 1 (3) (2) Finnish Constitution.

3.1.2 Conferral of competences under Section 94 Finnish Constitution

As indicated, the primary basis for conferring competences to the EU is Section 94 Finnish Constitution. The provision lists three different situations to which it applies. First, it applies in case the envisaged conferral contains provisions of 'legislative nature'. Although the Finnish Constitution does not explicitly define this concept, its meaning can be deduced systematically. Section 3 (1) Finnish Constitution establishes that all legislative power is exercised by the Finnish Parliament, which suggests that legislative power is a parliamentary prerogative. This legislative power is exercised by adopting 'acts' following the prescribed procedure in Section 70 Finnish Constitution. In addition, Section 2 (3) Finnish Constitution clarifies that the exercise of all public power has to be based on parliamentary acts. This extends in particular to measures that affect 'the rights and obligations of private individuals', which have to be established in their core content by a legislative act according to Section

63 Particularly, the institute of exceptive enactment was of crucial importance for adopting and implementing EU obligations in the past, cf. Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 180-181 para 57; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 307-308, 344; Ojanen, 'The EU at the Finnish Constitutional Arena' 244; Rosas, 'Finland - Finland's Accession to the European Union: Constitutional Aspects' 168.

64 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 336; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 366.

80 (1) (2) Finnish Constitution.⁶⁵ Overall, this suggests that EU integration steps, which provide the supranational level with the ability to enact directly applicable, binding rules concerning the exercise of public power, are legislative in nature and require parliamentary approval. Second, the provision applies in case the EU commitment affects matters that require parliamentary approval according to the Finnish Constitution. An example is the prerogative to establish the annual budget, which is assigned to the Finnish Parliament according to Section 3 (1) in conjunction with Section 83 (1) Finnish Constitution.⁶⁶ And third, it applies in case the EU commitment contains provisions that are otherwise significant, which is broadly interpreted by the Constitutional Law Committee as a sort of *catch-all-clause*.⁶⁷

Considering this wide framing, it is likely that EU fiscal integration proposals that involve the conferral of powers to the EU require parliamentary approval under Section 94 Finnish Constitution. Notably, budgetary and fiscal competences are currently assigned to the Finnish Parliament, following Section 3 (1) in conjunction with Chapter 7.⁶⁸ These matters concern decisions that require parliamentary approval under the second mentioned alternative, which prompted the application of Section 94 Finnish Constitution in relation to various Eurocrisis-measures.⁶⁹ Therefore, it seems highly likely that EU

65 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 305; Leino and Salminen, *Constitutional Change Through Euro Crisis Law: 'Finland' V.2.*; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 458.

66 Section 3 (1) Finnish Constitution establishes firstly that the parliament exercises legislative power and, subsequently, that it decides on the State finances – which suggests that both matters are different in nature.

67 Exemplified with the Eurocrisis-measures, which were considered by the Committee as EU obligations to secure wide parliamentary involvement despite their (partly) intergovernmental nature, cf. Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 458.

68 For example highlighted by the Constitutional Law Committee in: PeVL 13/2012 vp *Final Assessment Draft ESM-Treaty (III.)* [2012] (Finnish Constitutional Law Committee) 2; PeVL 49/2010 vp *Adoption of the EU Six-Pack Legislation* [2010] (Finnish Constitutional Law Committee) 3; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 463; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

69 For the opinions of the Committee in chronological order: *Adoption of the EU Six-Pack Legislation*; PeVL 1/2011 vp *First Assessment Draft ESM-Treaty (I.)* [2011] (Finnish Constitutional Law Committee); PeVL 5/2011 vp *Amendment to the EFSF (Increase in State Guarantee)* [2011] (Finnish Constitutional Law Committee); PeVL 6/2011 vp *Amendment of Article 136 (3) TFEU* [2011] (Finnish Constitutional Law Committee); PeVP 11/2011 vp *Protocol on the EFSF* [2011] (Finnish Constitutional Law Committee); PeVL 22/2011 vp *Second Assessment Draft ESM-Treaty (II.)* [2011] (Finnish Constitutional Law Committee); PeVL 24/2011 vp *Preliminary Assessment of Fiscal Compact (I.)* [2012] (Finnish Constitutional Law Committee); PeVL 3/2012 vp *Additional Amendment to the EFSF* [2012] (Finnish Constitutional Law

fiscal integration proposals would also have to be approved by the Finnish Parliament following this procedure.

Once it is established that parliamentary approval is required, the significance of the envisaged competence transfer is crucial to determine the applicable majority requirement.⁷⁰ Section 94 (2) Finnish Constitution imposes a two-thirds majority requirement for EU commitments that conflict with fundamental constitutional doctrines, whereas, all other obligations merely require approval by simple majority. Section 94 (2) (2) Finnish Constitution states:

‘However, if the proposal concerns the Constitution or an alteration of the national borders, or such transfer of authority to the European Union, an international [organization] or an international body that is of significance with regard to Finland’s sovereignty, the decision shall be made by at least two thirds of the votes cast.’

The provision determines three cases that trigger the stricter parliamentary threshold. First, a qualified majority is required in case an EU obligation directly affects the Finnish Constitution. Such conflict is given in case constitutional principles or constitutional provisions are altered or modified by the envisaged EU obligations.⁷¹ It can be submitted that in this case the internally applicable requirements for constitutional amendments enshrined in Section 73 (1) Finnish Constitution are extended to EU cooperation. Internally, the Finnish Constitution requires a qualified majority requirement for the amendment of the constitutional text.⁷² Thus, whenever such constitutional amend-

Committee); *Final Assessment Draft ESM-Treaty (III.)*; PeVL 37/2012 vp *Final Assessment of Fiscal Compact (II.)* [2012] (Finnish Constitutional Law Committee); On the ESM-Treaty assessment, which triggered the widest constitutional concerns, cf. Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 391-392; Leino and Salminen, *Constitutional Change Through Euro Crisis Law: ‘Finland’* VIII.1; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 464; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 247.

70 Cf. the different thresholds established by Section 94 (2) Finnish Constitution, Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 366-367; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 458; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 247.

71 Ojanen, ‘EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament’ 224.

72 Cf. Section 73 (1) Finnish Constitution establishes an even higher threshold, given that the matter has to be either approved by two consecutive parliaments or declared urgent by a five-sixths majority; however, under the 1919 Finnish Constitution, a special threshold for accepting international cooperation was recognised under Section 69 (1) Parliament Act of 1928, merely imposing a two-thirds threshold for constitutionally relevant international obligations, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of*

ments occur due to EU commitments a qualified majority is equally required. Second, an alteration of the Finnish border has to be approved by qualified majority. And third, competence transfers that are significantly affecting Finnish sovereignty require approval by a two-thirds majority.

A thorough assessment of the principle of sovereignty will be conducted further below.⁷³ Here, it can be concluded that under the current understanding of Finnish sovereignty⁷⁴ a transfer of authority is significant in case it either transfers decision-making abilities to the EU-level, which can be exercised independently from any Finnish control, or in case the EU would be transformed into an entirely new entity.⁷⁵ Considering the third mentioned qualification, significant overlap with the first one can be observed, as the principle of sovereignty is established in Section 1 (1) Finnish Constitution, and an alteration of this principle would therefore equally 'concern the Constitution'. Consequently, the separate mentioning of sovereignty might indicate, on the one hand, that the principle of sovereignty enjoys elevated constitutional importance. On the other hand, it might indicate that EU cooperation involves a particular risk for national sovereignty, which is explicitly recognized by the constitutional legislator. All other competence transfers, can be approved by simple majority following Section 94 (2) (1) Finnish Constitution.⁷⁶

Hence, the extent and significance of the envisaged conferral is important to determine the applicable majority threshold, which is conducted by the Constitutional Law Committee.⁷⁷ As indicated, EU fiscal integration steps will

Sovereignty in Finland and Certain other EU Member States 291; Rosas, 'Finland - Finland's Accession to the European Union: Constitutional Aspects' 168.

73 Cf. within this Chapter under Section 4.1.

74 Note in particular the openness to EU cooperation, cf. Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 366; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 301; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 101; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 218-219; Ojanen, 'The Europeanization of Finnish Law' 154; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 539.

75 *Commission's Draft EU Recovery Plan and MFF Planning* 18; Leino-Sandberg, 'Who is ultra vires now? The EU's legal U-turn in interpreting Article 310 TFEU'; This threshold was not met with regard to the Eurocrisis measures, which were not perceived as to significantly alter Finnish sovereignty, cf. Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 458-459; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

76 This underscores that the two-thirds majority requirement under Section 94 (2) (2) Finnish Constitution constitutes a qualification of the otherwise applicable simple majority threshold, cf. Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 366-367; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

77 Cf. Section 74 Finnish Constitution; And cf. within this Chapter Section 2.2.

likely alter parliamentary budgetary and fiscal prerogatives, which are constitutionally assigned to the Finnish Parliament, as well as particularly relevant under the Finnish sovereignty doctrine. Therefore, it seems likely that the Constitutional Law Committee would consider several forms of EU fiscal integration, for example the creation of a Eurozone budget, the introduction of new EU funding streams, the establishment of a Eurozone government, or additional supervisory competences on national budgeting, as significant encroachments on the Finnish parliamentary prerogative to establish and administer the state budget, as laid down in Section 3 (1) in conjunction with Section 83 (1) Finnish Constitution. The resulting potential constraints on the Finnish Parliament regarding the exercise of its budgetary prerogatives and on Finnish sovereignty would likely require the approval by qualified majority following Section 94 (2) (2) Finnish Constitution.

Overall, this underscores that the Finnish Parliament is the central actor when considering a transfer of additional competences to the EU. Although it might prove practically difficult to attain a qualified majority threshold on EMU-reforms given the outlined national political controversy on the EU, it should be emphasized that the constitutional text explicitly allows for the transfer of core constitutional competences by qualified majority – even if these could fundamentally alter the Finnish constitutional order. Interestingly, the applicable procedural requirements for approving EU conferrals that impact the Finnish Constitution are more lenient than the requirements applicable to internal constitutional amendments.⁷⁸ However, Section 94 (3) Finnish Constitution might alter this conclusion, as only EU commitments that are in accordance with the ‘democratic foundation’ of the Finnish Constitution may be approved by parliament.⁷⁹ A detailed assessment of this provision follows.⁸⁰ Yet, it can be already pointed out here that although the principle of democracy appears to enjoy enhanced constitutional protection through Section 94 (3) Finnish Constitution, the Constitutional Law Committee has

78 As highlighted, Section 73 (1) Finnish Constitution establishes an even higher procedural threshold, cf. Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 368-369; Ojanen, ‘Constitutional Amendment in Finland’ 104; Suksi, ‘Finland’ 105.

79 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 372-373; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 463; Ojanen, ‘Constitutional Amendment in Finland’ 106.

80 Cf. assessment within this Chapter under Section 3.3.

so far refrained from enforcing this provision.⁸¹ Therefore, its limiting impact on EU fiscal integration proposals remains uncertain.

3.1.3 Constitutional amendments according to Section 73 Finnish Constitution

In addition to the special procedure for the transfer of competences to the EU enshrined in Section 94 Finnish Constitution, the Finnish Parliament could amend the constitutional text itself in order to accommodate EU fiscal integration steps. Such amendment can be either adopted as an exceptive enactment, which introduces a limited constitutional derogation, or as explicit modification of the constitutional text.

3.1.3.1 Fiscal integration via exceptive enactment?

Exceptive enactments are a distinct instrument of the Finnish constitutional order. The underlying idea is that the Finnish Parliament can enact derogations to the Finnish Constitution, without altering the constitutional text. The instrument originated during Russian occupation and has to be seen in this specific historic context. At that time, exceptive enactments were employed by the Finnish Parliament to adapt the Finnish Constitution to changing socio-economic realities, whilst at the same time preserving the integrity of the constitution, which was used as a shield against too far-reaching Russian interferences.⁸² Subsequently, the constitutional practice was preserved under the 1919 Constitutional Act⁸³ and frequently employed, as 888 exceptive enactments were adopted between 1919 and 2000.⁸⁴ Under the reformed Finnish Constitution, both the legislator and the Constitutional Law Committee stressed that exceptive enactments should be restricted to, as the wording in Section 73 (1) Finnish Constitution suggests, 'a limited derogation of the Constitution'.⁸⁵

81 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 372-373; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 463; Husa, *The Constitution of Finland - A Contextual Analysis* 34; Hautamäki, 'Novel Rules in the Finnish Constitution - The Question of Applicability' 140.

82 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 360; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 98.

83 Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 180-181 para 57.

84 Suksi, 'Finland' 94-95; Ojanen, 'The Europeanization of Finnish Law' 148; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 535.

85 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 369-370; Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 220; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 307-308; The Constitu-

Therefore, it seems unlikely that EU fiscal integration, especially any more far-reaching steps, could be based on an exceptive enactment. Section 94 Finnish Constitution provides for a special procedure to enact EU commitments which largely resembles an exceptive enactment. Notably, the Finnish Parliament can overcome conflicts with the Finnish Constitution by following the procedure laid down in Sections 94 and 95 Finnish Constitution without amending the constitutional text itself. An exceptive enactment under Section 73 Finnish Constitution seems not to offer additional parliamentary options and it would impose, moreover, higher majority requirements.

3.1.3.2 *Fiscal integration via constitutional amendments?*

Consequently, only an explicit constitutional amendment could constitute an alternative to Section 94 Finnish Constitution. Section 73 Finnish Constitution does not restrict the extent or scope for an envisaged constitutional amendment.⁸⁶ Thus, the constitution-amending legislator is able to fundamentally alter the Finnish Constitution under this procedure, which can be distinguished into the ordinary and the expedited procedure for constitutional amendments.

The ordinary procedure requires that a constitutional amendment proposal is forwarded to the Finnish Parliament and left in abeyance after the second reading in the Finnish Parliament, confirmed by a simple majority. Only after parliamentary elections are held and the newly elected parliament convenes the amendment process is resumed.⁸⁷ Then, the Constitutional Law Committee issues a statement on the proposed constitutional amendment, which is subsequently debated in a final reading in the parliamentary plenary. Finally, the originally proposed amendment – without any changes to the content of the amendment – has to be confirmed by a two-thirds parliamentary majority. Hence, constitutional amendments enacted under the ordinary amendment procedure are lengthy and their success remains uncertain, as two consecutive parliaments have to support them. Obtaining such wide and lasting parliamentary support for EU fiscal integration measures might prove challenging, as the Eurocrisis triggered major political division in Finland.⁸⁸ When adopting the ESM-Treaty, for example, the Finnish Government modified the interna-

tional Law Committee emphasised the ‘principle of avoidance of exceptive enactments’, cf. Tuori, ‘§ 98: Verfassungsgerichtsbarkeit in Finnland’ 181-182 para 60; Lavapuro, ‘Constitutional Review in Finland’ 133; And it is equally emphasized by the *travaux préparatoires* to the reformed Section 73 Finnish Constitution, cf. Suksi, ‘Finland’ 104.

86 Different to the German *eternity clause*, which explicitly restricts the scope for constitutional amendments, cf. Calliess, ‘Constitutional Identity in Germany - One for Three or Three in One?’ 164-165.

87 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 368; Suksi, ‘Finland’ 91; Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 536.

88 Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 454; Ojanen, ‘Constitutional Amendment in Finland’ 95.

tional commitment in order to escape the two-thirds requirement, which seemed difficult to attain.⁸⁹ Although adopted under Section 94 Finnish Constitution, it illustrates the apparent difficulty of uniting a two-thirds majority for EMU-related matters. At the same time, in case successfully adopted, such constitutional amendment could ground EU fiscal integration on a solid democratic foundation.

In the alternative, the Finnish Parliament could employ the expedited procedure. Following Section 73 (2) Finnish Constitution, a five-sixths parliamentary majority can declare an envisaged constitutional amendment urgent and thereby directly approve the amendment with a two-thirds majority after the second reading.⁹⁰ The required almost consensual parliamentary support seems hard to achieve for EU fiscal integration proposals in light of the mentioned political disagreement. For instance, the Euroskeptical 'Finns'-party currently occupies 38 of the 200 seats in the Finnish Parliament. This means that the 'Finns'-party alone could block any 'urgent' constitutional amendment. Consequently, it seems very unlikely that an expedited procedure to accommodate EU fiscal integration proposals would be successful under the current circumstances.

Therefore, the ordinary constitution-amending procedure could theoretically provide an alternative to Section 94 Finnish Constitution. However, Section 94 Finnish Constitution enjoys priority given its *lex specialis* status and given that it imposes more lenient procedural requirements. Notably, limited conflicts with the Finnish Constitution can be approved by a simple majority and more comprehensive constitutional conflicts can be overcome by a two-thirds majority under Section 94 Finnish Constitution. In contrast, Section 73 Finnish Constitution requires that any constitutional amendment is approved by a two-thirds majority, after being left in abeyance or after being declared urgent by a five-sixths majority. Consequently, accommodating EU fiscal integration proposals by amending the Finnish Constitution would trigger significantly higher parliamentary majority requirements, which seems challenging in times of increasing Euroskepticism in Finland. Yet, constitutional amendments remain possible and are not *per se* constitutionally excluded.⁹¹

89 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 174-175 para 39.

90 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 368; Suksi, 'Finland' 91.

91 Cf. assessment within this Chapter under Section 2.1.; Cf. as well; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 456-457; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 100-101; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 563.

3.1.4 Application of the framework during the Eurocrisis

The outlined procedural framework was employed to address the different Eurocrisis-measures, which has indicative value for EU fiscal integration proposals given the overlap in the affected competence areas. To start, the Fiscal Compact required parliamentary approval following Section 94 Finnish Constitution as it altered Finnish parliamentary prerogatives. The Constitutional Law Committee noted that the proposed measures affected the national budgetary decision-making process and the state budget, which constitute prerogatives of the Finnish Parliament as enshrined in Section 3 (1) in conjunction with Chapter 7 Finnish Constitution. Although the Fiscal Compact reiterated in large parts already existing EU commitments, enshrined in the EU Stability and Growth Pact, the Committee emphasized that new reference values for the cyclically adjusted deficit of public finances were to be introduced.⁹² The Committee saw in these new reference values a modification of the original commitment under the Stability and Growth Pact, which was deemed to have an effect on parliamentary prerogatives and thus required anew approval following Section 94 (1) Finnish Constitution.⁹³ However, given that the Fiscal Compact largely reiterated existing EU commitments and given that the Finnish Parliament could decide how to implement the balanced budget rule in Article 3 (2) Fiscal Compact, a simple majority was sufficient for its adoption.⁹⁴

Similarly, the simplified EU Treaty revision introducing Article 136 (3) TFEU required parliamentary approval under Section 94 Finnish Constitution.⁹⁵ From the outset, the Constitutional Law Committee stressed that the proposed Treaty amendment was merely of declaratory and clarifying nature, as required

92 *Final Assessment of Fiscal Compact (II.)* 3; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 472.

93 Already highlighted in the first decision on the matter: *Preliminary Assessment of Fiscal Compact (I.)* 2; *Final Assessment of Fiscal Compact (II.)* 3; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 472-473.

94 *Final Assessment of Fiscal Compact (II.)* 3; Cf. as well: Tuori and Raitio, 'Finland' 330; As Finland is a dualist system, EU obligations require implementation following the procedure established in Section 95 Finnish Constitution, thus Article 3 Fiscal Compact did not impose additional obligation, cf. generally Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 288; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 473.

95 *Amendment of Article 136 (3) TFEU* 2; Leino and Salminen, *Constitutional Change Through Euro Crisis Law: 'Finland'* V.2.; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 469.

under the simplified revision procedure in Article 48 (6) TFEU⁹⁶ – as the CJEU would later also confirm in its *Pringle*-judgment.⁹⁷ Given its declaratory nature, it was questioned whether parliamentary approval would be at all required. The Committee concluded that the envisaged Treaty amendment did neither entail additional legislative obligations nor affect parliamentary prerogatives. However, the amendment was ‘otherwise significant’ under the third alternative of Section 94 (1) Finnish Constitution,⁹⁸ as it altered the Lisbon Treaty, which was adopted by the Finnish Parliament.⁹⁹ At the same time, given the highlighted declaratory nature of the amendment, a simple parliamentary majority was sufficient for the approval of the EU Treaty amendment.¹⁰⁰

In contrast to these two instances, the constitutional assessment of the ESM-Treaty and the temporary EFSF triggered wider constitutional concerns.¹⁰¹ From the outset, it was uncontested that the EFSF and ESM-Treaty required parliamentary approval under Section 94 Finnish Constitution.¹⁰² The Constitutional Law Committee confirmed this as both intergovernmental Treaties were found to affect parliamentary budgetary prerogatives established in Section 3 (1) in conjunction with Chapter 7 Finnish Constitution.¹⁰³ In its

96 *Amendment of Article 136 (3) TFEU 2*; Cf. as well: Leino and Salminen, *Constitutional Change Through Euro Crisis Law: ‘Finland’ V.2.*

97 C-370/12 *Pringle* [2012] (CJEU) paras 61-76; Cf. on the findings of the CJEU: Vestert Borger, ‘The ESM and the European Court’s Predicament in *Pringle*’ (2013) 14 *German Law Journal* 113, 122.

98 *Amendment of Article 136 (3) TFEU 2*; Cf. as well: Leino and Salminen, *Constitutional Change Through Euro Crisis Law: ‘Finland’ V.2.*; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 469.

99 *Amendment of Article 136 (3) TFEU 2*; Cf. as well: Leino and Salminen, *Constitutional Change Through Euro Crisis Law: ‘Finland’ V.2.*; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 469.

100 *Amendment of Article 136 (3) TFEU 2*; Cf. as well: Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 469.

101 For the opinions of the Committee: *First Assessment Draft ESM-Treaty (I.)*; *Second Assessment Draft ESM-Treaty (II.)*; *Final Assessment Draft ESM-Treaty (III.)*; On the ESM-Treaty, cf. Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 391-392; Leino and Salminen, *Constitutional Change Through Euro Crisis Law: ‘Finland’ VIII.1*; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 464; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 247.

102 As already indicated in relation to the EFSF, cf. *Amendment to the EFSF (Increase in State Guarantee) 3*; And the first draft ESM-Treaty, cf. *First Assessment Draft ESM-Treaty (I.)*.

103 Although both measures were intergovernmental agreements, the Constitutional Law Committee found that they had a close link with EU law, cf. Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 465.

statement, the Committee also determined that the envisaged Treaties could constitute State guarantees, which require parliamentary approval according to Section 82 (2) Finnish Constitution.¹⁰⁴ The subsequent question was whether the simple or qualified parliamentary majority requirement would be applicable.¹⁰⁵ The Constitutional Law Committee was particularly concerned that the ESM-Board could increase the Member States' financial commitment under the emergency voting procedure by qualified majority – and thus against Finnish opposition. The Committee considered that such a mechanism could have far-reaching consequences for parliamentary prerogatives and sovereignty, which would have required approval by a qualified majority.¹⁰⁶ However, given that the attainment of a two-thirds majority was uncertain,¹⁰⁷ the Finnish Government successfully renegotiated the ESM-Treaty. In its final appraisal of the amended ESM-Treaty, the Constitutional Law Committee concluded that the new voting arrangement safeguarded parliamentary prerogatives and that the budgetary commitment was sufficiently limited. Therefore, a simple majority was sufficient to adopt the ESM-Treaty. In this instance, the continuous involvement of the Constitutional Law Committee illustrates the advantages of the Finnish *ex ante* constitutional review, as the issued statements can *inform* the negotiations – even at EU-level – instead of merely *scrutinizing* the final legislative outcome – as is the case in judicial *ex post* appraisal, which is, for example, conducted in Germany.

3.1.5 Interim conclusions: EU fiscal integration with parliamentary approval

Overall, both Section 94 and Section 73 Finnish Constitution can be employed to accommodate EU fiscal integration steps. However, given its *lex specialis* status Section 94 seems to take precedence when considering new EU commitments. This conclusion corresponds to the view of the Constitutional Law Committee which identified Section 94 Finnish Constitution as relevant procedure to adopt the various Eurocrisis-measures. From these decisions, it can be deduced that EU commitments with budgetary implications require parliamentary approval, given that Section 3 (1) and Chapter 7 Finnish Constitution assign budgetary prerogatives to the Finnish Parliament. Hence, EU fiscal

104 *Final Assessment Draft ESM-Treaty (III.) 2; First Assessment Draft ESM-Treaty (I.)*; Cf. as well: Tuori and Raitio, 'Finland' 328; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 465.

105 *Final Assessment Draft ESM-Treaty (III.) 4; Second Assessment Draft ESM-Treaty (II.) 2; First Assessment Draft ESM-Treaty (I.)*.

106 *Second Assessment Draft ESM-Treaty (II.) 2*; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Tuori and Raitio, 'Finland' 328; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 467.

107 Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 174-175 para 39.

integration steps, which transfer budgetary competences or impact the exercise of these competences, require parliamentary confirmation following Section 94 Finnish Constitution.

Furthermore, the various obligations approved during the Eurocrisis could be approved by simple parliamentary majority, given their only limited impact on constitutionally enshrined parliamentary prerogatives and on the Finnish sovereignty doctrine. This suggests that limited EU fiscal integration steps could potentially be adopted by simple majority. However, more far-reaching proposals that limit the final authority of the Finnish Parliament in budgetary decisions might trigger the qualified majority threshold.¹⁰⁸ Thus, even far-reaching proposals are constitutionally feasible as long as they are supported by the required parliamentary majority, which might prove challenging under the current political circumstances.¹⁰⁹

3.2 The Finnish model of national engagement in EU matters

In addition to the constitutional framework for the conferral of competences, the *ex ante* involvement of the Finnish Parliament in the preparation of EU secondary law seems to be equally relevant for the exercise of potentially conferred budgetary and fiscal competences. The parliamentary involvement is based on an extensive right to receive information enshrined in Section 97 (1) Finnish Constitution.¹¹⁰ This obligation extends to the Finnish Prime Minister, who has to inform the Finnish Parliament about the deliberations of the European Council as clarified in Section 97 (2) Finnish Constitution. In addition to this extensive right, Section 96 Finnish Constitution introduces a special mandating practice for all EU decisions that affect constitutionally assigned competence areas of the Finnish Parliament.¹¹¹

108 As illustrated in relation to the draft ESM-Treaty, cf. Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 467; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

109 Jokela, 'Finland: Towards a More Cautious Europeanization' 49; Ojanen, 'Constitutional Amendment in Finland' 95.

110 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 365; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 459; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 555.

111 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 365; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 452; Husa, *The Constitution of Finland - A Contextual Analysis* 47; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 554-555.

3.2.1 Mandating the Finnish vote in the Council of Ministers

The internal Finnish ‘monitoring system’ starts operating when conferred competences are exercised at the EU-level. It ensures parliamentary involvement in the national *ex ante* preparation of EU decisions and empowers the Finnish Parliament to mandate the Finnish representative in the EU Council.

3.2.1.1 The procedural steps

Section 96 (1) Finnish Constitution applies to all envisaged EU ‘acts, agreements [or] other measures’ that affect parliamentary prerogatives, according to the Finnish Constitution. In the first place, this suggests that the Finnish procedure is not restricted to specific EU acts.¹¹² Second, the matter has to fall within the constitutionally assigned competences of the Finnish Parliament, which include legislative acts as well as budgetary and fiscal competences as established in Section 3 (1) in conjunction with Chapter 7 Finnish Constitution.¹¹³ Obviously, the latter is particularly relevant when considering EU fiscal integration. It implies that the Finnish Parliament would likely be involved in the national preparation of EU secondary law that might be required by fiscal integration proposals, which corresponds to the stance that the Constitutional Law Committee adopted during the Eurocrisis.

Notably, in its review of the proposed EU Six-Pack legislation, the Committee illustrated that the legislation contained provisions that limit government spending, fiscal planning, as well as the overall government debt level – with a sanction possibility in case of non-compliance.¹¹⁴ The proposed legislation thus impacted constitutionally guaranteed parliamentary competences and had to be considered by the Finnish Parliament under Section 96 (1) Finnish Constitution.¹¹⁵ An additional interesting element of this constitutional decision is the apparent *implied ultra vires* assessment, given that the Committee equally considered whether the Six-Pack legislation required approval under

112 In line with the interpretation of the Constitutional Law Committee to ensure the ‘effective participation’ of the Finnish Parliament, cf. Ojanen, ‘The Europeanization of Finnish Law’ 169; Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 554-555.

113 For example established by the Constitutional Law Committee in: *Final Assessment Draft ESM-Treaty (III.)* 2; *Adoption of the EU Six-Pack Legislation* 3; Cf. as well: Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 457.

114 *Adoption of the EU Six-Pack Legislation* 4; Cf. as well: Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 471.

115 *Adoption of the EU Six-Pack Legislation* 4-5; Cf. as well: Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 391; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 458; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 247.

Section 94 Finnish Constitution.¹¹⁶ In its very brief assessment, the Committee pointed out that the legislation did not extend the Finnish EU commitment and that Section 96 Finnish Constitution thus applied.¹¹⁷ Implicitly, the Committee evaluated whether the proposed secondary law corresponded to the conferred competences. However, different to the *ultra vires* assessment in Germany,¹¹⁸ the conclusion that envisaged EU law exceeds the EU-Treaties would not automatically lead to the illegality of such acts in Finland but would simply trigger a different procedure.

Once it is established that Section 96 Finnish Constitution applies, the matter has to be immediately referred to the Finnish Parliament in order to allow for sufficient time for parliamentary assessment. The procedure is initiated by an official communication of the Finnish Government, as laid down in Section 96 (2) (1) Finnish Constitution. It is referred to the Grand Committee, which is generally in charge of EU matters, and, if deemed necessary, to other specialized committees.¹¹⁹ For example, the Constitutional Law Committee is consulted when proposed EU measures raise constitutional concerns.¹²⁰ The specialized committees issue reports and forward these to the Grand Committee, which takes them into account when drafting the overall appraisal. The final position is forwarded to the Finnish Government, if deemed necessary in the form of an official statement, as provided for in Section 96 (2) (4) Finnish Constitution. Particularly important matters can also be considered by the plenary, according to Section 96 (2) (5) Finnish Constitution,¹²¹ which takes, however, no final decision.

Overall, these procedural arrangements guarantee that the Finnish Parliament actively participates in the national *ex ante* preparation of EU decisions.

116 *Adoption of the EU Six-Pack Legislation 4*; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 471.

117 *Adoption of the EU Six-Pack Legislation 4-5*; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 470-472.

118 On the German *ultra vires* review, cf. for example: *Quantitative Easing (PSPP) Final Judgment* para 110; 2 BvR 2661/06 *Honeywell-judgment* [2010] (German Federal Constitutional Court) paras 54-61; Cf. as well: Schwerdtfeger, 'Europäisches Unionsrecht in der Rechtsprechung des Bundesverfassungsgerichts – Grundrechts-, ultra-vires- und Identitätskontrolle im gewaltenteiligen Mehrebenensystem' 292-293.

119 As established in Section 96 (2) (2) Finnish Constitution, the speaker of the Finnish Parliament assigns the matter to the committee, cf. Section 30 (1) (2) Rules of Procedure, which will be announced during plenary session, cf. Section 30 (2) Rules of Procedure.

120 Miller, 'Finnish Judges and the European Union: An American Perspective' 503; Ojanen, 'Constitutional Amendment in Finland' 96-97; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 555.

121 Particularly during the Eurocrisis, matters were frequently referred to the parliamentary plenary for debate, cf. Katrin Auel and Tapio Raunio, 'Debating the State of the Union? Comparing Parliamentary Debates on EU Issues in Finland, France, Germany and the United Kingdom' (2014) 20 *The Journal of Legislative Studies* 13, 19.

Furthermore, this participation is comprehensive as several parliamentary committees can consider the matter, thereby extending the internal parliamentary *modus operandi* to EU affairs. For possible EU secondary law required to implement EU fiscal integration proposals this suggests that a comprehensive parliamentary assessment will be conducted, which may ultimately result in a political mandate for the Finnish Government to approve these possible EU secondary acts.

3.2.1.2 *The effect of the parliamentary mandate – real scrutiny?*

The final position issued within this procedure by the Grand Committee¹²² is not legally binding.¹²³ Nevertheless, practice shows that the Finnish Government tends to follow the communicated positions¹²⁴ given the government's institutional dependency on continuous parliamentary support. Notably, if the Finnish Parliament is dissatisfied with the government's voting at EU level, it can consider taking additional *internal* steps, including the initiation of a motion of no confidence following Section 43 (2) Finnish Constitution. Thus, it can be argued that parliamentary positions have a political *binding force* yet nevertheless award the government with some leeway for EU negotiations as well.¹²⁵

Moreover, the factual importance and power of the Grand Committee should be underscored. It issues the final parliamentary position, based on the views communicated by the specialized committees, and it thereby takes political decisions on behalf of the entire institution. One could raise the question whether the Committee's 25 members¹²⁶ can adequately represent the Finnish Parliament. Yet, the Grand Committee mirrors the parliament's composition in a proportionate manner, ensuring that all political parties are represented accordingly.¹²⁷ Furthermore, the outlined procedure merely concerns the exercise of already transferred competences. The prior transfer of these competences involved the entire parliament. Therefore, debating EU

122 Normally, these are formulated in a broad, general manner providing for some discretion, cf. Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 459-461.

123 Section 96 (2) Finnish Constitution does not specify the status of the statement, cf. Ojanen, 'The Europeanization of Finnish Law' 170; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 556.

124 Ojanen, 'The Europeanization of Finnish Law' 170; Raunio and Tiilikainen, *Finland in the European Union* 86.

125 Ojanen, 'The Europeanization of Finnish Law' 170; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 556.

126 As established by Section 35 (2) Finnish Constitution.

127 Classified as 'broad and oversized' coalition, cf. Raunio and Tiilikainen, *Finland in the European Union* 44-45.

matters amongst specialized parliamentarians can ensure a goal-oriented, speedy assessment.¹²⁸

3.2.2 Section 97: Scrutinizing the Finnish vote in the European Council

The Finnish Constitution also establishes parliamentary involvement in decisions of the European Council.¹²⁹ The Finnish Prime Minister informs the Finnish Parliament, prior to European Council meetings, about the agenda and, subsequently, on the positions taken during the meeting, as established in Section 97 (2) Finnish Constitution. In contrast to the scrutiny of the Council vote, Section 97 (2) Finnish Constitution is not restricted to 'parliamentary prerogatives'.

Thus, the Finnish Prime Minister is required to always brief the Finnish Parliament, which ensures that parliament is continuously informed about important EU developments. Given that the European Council sets, *inter alia*, the political agenda of the EU,¹³⁰ the right to be fully informed on these developments is crucial for all other decisions on EU matters. In case deemed politically necessary, the Finnish Parliament can communicate a statement to the government under Section 97 (3) Finnish Constitution. Although this also lacks legal force,¹³¹ it is of political importance thereby offering parliament a powerful tool to influence the Finnish Prime Minister in her or his decisions – and where the European Council acts by consensus even the final decision taken by European Council.

3.2.3 Conclusive appraisal and outlook: Exemplary parliamentary involvement?

Overall, this shows that the Finnish Parliament occupies a pivotal position in the exercise of conferred competences, which is constitutionally secured by a right to be informed on EU policies and the outlined 'mandating' system. Through such a mandate, parliament is able to influence EU decision-making by the Finnish representative at EU-level and it arguably vests the adopted Finnish position with additional democratic authority. Furthermore, the early involvement of the Finnish Parliament in the adoption of EU law can possibly

128 Eurocrisis imposed tight schedule, which made consideration very difficult, cf. Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 461.

129 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 365; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 555.

130 Cf. Article 15 (1) (1) TEU; Cf. Craig and de Búrca, *EU Law Text, Cases, and Materials* 47-48.

131 Cf. conclusions drawn in this Chapter under Section 3.2.1.2.

trigger a greater politicization of EU matters and hence stimulate a public debate, as could be observed during the Eurocrisis.¹³²

Although such a mandating system entails the risk that parliaments focus merely on national benefits, the overall involvement of the Finnish Parliament provides an interesting example of how to enhance the position of national parliaments in the EU decision-making process. Given the extensive, continuous involvement and the strong procedural tools available to the Finnish Parliament, this model might serve as *best practice* example. The outlined exemplary Finnish system might accommodate democratic concerns and, in light of the general importance of parliamentary involvement in budgetary and fiscal decision-making, the resulting thorough national parliamentary involvement might partially address national constitutional concerns related to EU fiscal integration steps. Ultimately, the better national parliaments are involved – and connected across each other – the more legal-constitutional, political and normative space may be available for EU fiscal integration.

3.3 *Ex ante* Constitutional review and *ex post* judicial scrutiny

As established, the Finnish system relies on *ex ante* constitutional review *in abstracto*, which is conducted by the Constitutional Law Committee upon referral.¹³³ Given the Committee's institutional position within the Finnish Parliament, the Finnish constitutional order does not provide for *ex post* review of legislative acts. This equally impacts other forms of judicial review in Finland, which are traditionally based on formalistic and rule-based reasoning,¹³⁴ thereby relying on the authority of the contested measure and legislative supremacy.¹³⁵

132 Suvanto and others, *Improving the resilience of Europe's Economic and Monetary Union* (37b/2015) 17-18, 22; Tapio Raunio, 'The Finnish Eduskunta and the European Union: The Strengths and Weaknesses of a Mandating System' in Claudia Heffler and others (eds), *The Palgrave Handbook of National Parliaments and the European Union* (Palgrave Macmillan 2015) 407; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 453.

133 Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 176 para 44; Suksi, 'Finland' 102; Ojanen, 'The Europeanization of Finnish Law' 146.

134 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 361-362; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 179 para 53; Ojanen, 'The Europeanization of Finnish Law' 150; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 205.

135 Ojanen, 'Constitutional Amendment in Finland' 109; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 106; Lavapuro, Ojanen and Scheinin, 'Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review' 509.

The initial outright prohibition of judicially reviewing parliamentary acts was altered during the constitutional reform process. Currently, Section 106 Finnish Constitution allows for the review of legislative acts by Finnish courts under strict conditions.¹³⁶ Notably, Section 106 Finnish Constitution limits the judicial review to an 'evident conflict [of a legislative act] with the Constitution',¹³⁷ Such 'evident conflict' is given in case no available interpretative method could resolve the conflict and in case the Constitutional Law Committee did not explicitly confirm the constitutionality of the act.¹³⁸ Furthermore, the respective court can only declare the act of parliament inapplicable to the case at hand and not generally invalidate it,¹³⁹ which illustrates the limited mandate of Finnish courts *vis-à-vis* the Finnish legislator.¹⁴⁰ This equally suggests that successful judicial challenges against EU fiscal integration measures will be unlikely once adopted.

3.4 Applicable procedural and institutional framework to EU fiscal integration

EU integration contributed to a major transformation of the Finnish constitutional order. It triggered comprehensive constitutional reforms which introduced a specific procedural framework to interact with the EU. This framework applies to EU fiscal integration proposals. In the first place, the Finnish Parliament can confer budgetary and fiscal competences to the EU based on Section 94 Finnish Constitution. Given the likely implications of such a conferral for Finnish sovereignty and parliamentary budgetary prerogatives, it seems

136 Cf. parallel to the British doctrine of parliamentary sovereignty, Miller, 'Finnish Judges and the European Union: An American Perspective' 503.

137 Only reluctant application of Section 106 Finnish Constitution, cf. Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 361-362; Hautamäki, 'Novel Rules in the Finnish Constitution - The Question of Applicability' 136, 140.

138 Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 184 para 67; Lavapuro, Ojanen and Scheinin, 'Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice' 227; De Visser, *Constitutional Review in Europe - A Comparative Analysis* 29; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 108; Suksi, 'Finland' 102; Ojanen, 'The Europeanization of Finnish Law' 173.

139 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 361; Lavapuro, 'Constitutional Review in Finland' 135.

140 Which is stemming from the limited use of Section 106 Finnish Constitution, cf. Miller, 'Finnish Judges and the European Union: An American Perspective' 504; Hautamäki, 'Novel Rules in the Finnish Constitution - The Question of Applicability' 146.

possible that a qualified two-thirds majority would apply.¹⁴¹ Once conferred, Section 96 Finnish Constitution extends the internal parliamentary decision-making process to EU matters and the Finnish Parliament can mandate governmental action at EU-level. This suggests that even if (fiscal) competences are conferred to the EU, the Finnish Parliament retains an active role in the domestic preparation of EU decisions that are taken based on this conferral.¹⁴²

The central position of parliament in the Finnish constitutional system is further underscored by the system of constitutional review. Notably, constitutional review is conducted by a parliamentary committee, which issues statements on the constitutionality of the envisaged acts. This review is conducted *ex ante* and *in abstracto*. When considering EU integration, the Constitutional Law Committee generally emphasizes the specificity of EU law and that Finnish law and EU law work ‘in tandem’.¹⁴³ As a result, the Committee refrained until now from detecting open conflicts between Finnish and EU law,¹⁴⁴ and continuously highlighted the discretion of the Finnish Parliament when taking EU integration steps. Once adopted, no additional constitutional challenge can be initiated.

Therefore, it appears that the special Finnish constitutional set-up – which enables parliament to initiate fundamental constitutional reforms and which underscores parliamentary discretion – is the main source for Finnish *constitutional flexibility*. A potential risk in relation to such seemingly unconditional parliamentary empowerment is, of course, that decisions depend on attaining the prescribed majority. At this point, it is only hardly predictable whether continuous parliamentary support for further EU fiscal integration steps can be secured.

4 SUBSTANTIVE FRAMEWORK APPLICABLE TO EU FISCAL INTEGRATION

The Finnish Constitution contains substantive principles in its first chapter entitled ‘fundamental principles’ which are relevant when considering EU fiscal integration steps. These fundamental principles function as substantive reference point when interpreting the Finnish Constitution.¹⁴⁵ At the same time,

141 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 392; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 247.

142 Even if intergovernmental in nature, cf. Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 460

143 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 366-367; Lavapuro, Ojanen and Scheinin, ‘Finland: Intermediate Constitutional Review in Finland: Promising in Theory, Problematic in Practice’ 238.

144 Miller, ‘Finnish Judges and the European Union: An American Perspective’ 533.

145 Läsineva, ‘Fundamental Principles of the Constitution of Finland’ 115.

given their systematic position at the very beginning of the constitutional text and given their framing as ‘fundamental principles’, they equally represent core characteristics of the Finnish Constitution. The mentioned principle of sovereignty and the recognition of Finnish EU membership are both ‘fundamental principles’ enshrined in Section 1 Finnish Constitution. Similarly, the principle of democracy, enshrined in Section 2 Finnish Constitution, and parliamentary responsibility for budgetary decisions, enshrined in Section 3 (1) Finnish Constitution, form part of these fundamental principles as well.

This indicates that the debated fiscal integration steps might interfere with Finnish sovereignty (4.1.)¹⁴⁶ and could undermine the democratic decision-making process as well as the pivotal role of the Finnish Parliament in budgetary matters (4.2.).¹⁴⁷ Finally, Section 94 (3) Finnish Constitution might evolve into a supra-constitutional provision *vis-à-vis* EU fiscal integration ambitions (4.3.).¹⁴⁸

4.1 Finnish sovereignty: An evolutionary conception

Given the systematic importance of Finnish sovereignty for the Finnish constitutional order,¹⁴⁹ the transformation triggered to accommodate EU cooperation seems remarkable. This transformation can be traced back to statements of the Constitutional Law Committee on Finnish EU accession. Notably, although

146 In particular, ‘budgetary sovereignty’ which gained particular importance during the Eurocrisis, cf. Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 391-392; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 465-467; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 247; With an extensive overview, cf. Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 536-541.

147 Reflected in prevailing legislative sovereignty; cf. Ojanen, ‘The EU at the Finnish Constitutional Arena’ 254; Lavapuro, Ojanen and Scheinin, ‘Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review’ 509; As well as parliamentary sovereignty, cf. Suksi, ‘Finland’ 88.

148 Although this remains uncertain, as the provision has never been employed as limit to EU integration, cf. Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 372-373; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 463; Husa, *The Constitution of Finland - A Contextual Analysis* 34; Hautamäki, ‘Novel Rules in the Finnish Constitution - The Question of Applicability’ 140.

149 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 370-372; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 281; Ojanen, ‘EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament’ 216; Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 540-541.

Section 1 (1) Constitutional Act proclaimed absolute sovereignty, the Committee considered the factual benefits stemming from EU membership when evaluating the impact of EU accession on Finnish sovereignty.¹⁵⁰ This *qualified understanding* of Finnish sovereignty was subsequently codified by the 2000 constitutional reform which introduced Section 1 (3) Finnish Constitution and with it the principle of internationality as a counterbalance to sovereignty.¹⁵¹

The subsequent analysis retraces the important constitutional transformation of Finnish sovereignty in order to determine its limiting potential for EU fiscal integration ambitions as well as to determine the *substantive* flexibility of Finnish constitutional order.

4.1.1 The historic origin of Finnish sovereignty

Initially, Section 1 (1) of the 1919 Constitutional Act declared the sovereignty of the Finnish Republic without providing for any derogation. Arguably, this absolute conception of sovereignty is historically rooted. When enacting the 1919 Finnish Constitutional Act, Finland just gained independence from Russia of which it formed an autonomous part since 1809.¹⁵² Hence, the emphasis on sovereignty can be seen as expression of this then newly acquired independence. It was also perceived as a necessary prerequisite for its new role on the international stage and possible cooperation with other sovereign states.¹⁵³ When considering the historic constitutional framework it is apparent that the overall focus of the Constitutional Act rested on the domestic organization of public power, which was mirrored in the conception of Finnish

150 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 328-332; Ojanen, 'The EU at the Finnish Constitutional Arena' 245; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 100; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 540-541.

151 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 334-335; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 101; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 540-541; The formal constitutional reform of 2000 then codified the existing constitutional practices, cf. Suksi, 'Finland' 96.

152 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 360; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 161 para 1; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 275-276; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 98.

153 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 280.

sovereignty.¹⁵⁴ Furthermore, the Constitutional Act did not elaborate on the sovereignty doctrine in broader detail, apparently conditioned by the time pressure under which the Act was drafted in 1919.¹⁵⁵ Consequently, the absolute constitutional conception of Finnish sovereignty stems from the particular historic context in which the Constitutional Act was adopted and it fits the dominant legal-positivist approach of that time.¹⁵⁶

Based on the unambiguous wording of Section 1 Constitutional Act, Finnish sovereignty was traditionally construed as an absolute, unconditional principle. Consequently, the Constitutional Law Committee initially considered any form of international cooperation, which involved the ability to use public power at the international level or which required Finland to change internal legislation, as conflicting with Finnish sovereignty.¹⁵⁷ This suggests that the Constitutional Law Committee adopted a highly formalistic interpretation of Section 1 Constitutional Act and with it a formalistic conception of Finnish sovereignty, which focused on whether international cooperation limited internal decision-making abilities. At the same time, this strict conception of sovereignty could be remedied under the Finnish Constitution by adopting the mentioned exceptive enactments, which enabled the Finnish Parliament to implement international obligations despite conflicting with Finnish sovereignty.¹⁵⁸ Although exceptive enactments had to be adopted following the constitutional amendment procedure, Section 69 (1) Finnish Parliament Act established a simplified procedure for implementing international obligations into Finnish law via exceptive enactment. Notably, the Finnish Parliament

154 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 362; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 332; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 100.

155 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 282-283.

156 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 360, 368-369.

157 Ojanen, 'The EU at the Finnish Constitutional Arena' 245; Ojanen, 'The Europeanization of Finnish Law' 151; As the constitutional text did not provide for a possible derogation of this absolute principle, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 299; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 216.

158 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 364; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 344; Ojanen, 'Constitutional Amendment in Finland' 105; Suksi, 'Finland' 94; Rosas, 'Finland - Finland's Accession to the European Union: Constitutional Aspects' 168.

could enact a derogation from the constitutional text with a two-thirds majority without having to leave the act in abeyance or declare it urgent.¹⁵⁹ Obviously, this rendered the implementation of international obligation more feasible compared to ordinary constitutional amendments and enabled the Finnish Parliament to remedy the identified substantive conflicts with Finnish sovereignty.

This formalistic conception of Finnish sovereignty partially prevailed after Finnish accession to the EU. As highlighted, when confronted with the Finnish EU Accession Treaty, the Constitutional Law Committee identified a conflict with Finnish sovereignty, given the significant transfer of responsibility involved. Although at this point a changing understanding of Finnish sovereignty was already emerging, as the Committee considered, for example, wider constitutional implications of the then envisaged EU membership beyond only sovereignty concerns, the Accession Treaty was declared to be in conflict with Finnish sovereignty.¹⁶⁰ This conflict was overcome by exceptive enactment.¹⁶¹ Taken together, this constitutes the starting point of a wider shift in the Committee's interpretation of Finnish sovereignty and a diversification in the substantive constitutional review of EU commitments under the Finnish Constitution.¹⁶²

4.1.2 *A new conception of Finnish sovereignty*

The emerging qualified interpretation of Finnish sovereignty was embedded in the new constitutional text, which entered into force in 2000. As highlighted, the constitution-amending legislator introduced Section 1 (3) Finnish Constitution, which now states:

'Finland participates in international co-operation for the protection of peace and human rights and for the development of society.'

159 So-called 'narrow procedure of constitutional enactment', cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 291; Rosas, 'Finland - Finland's Accession to the European Union: Constitutional Aspects' 168.

160 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 331; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 537.

161 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 364; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 537; Jääskinen, 'The Application of Community Law in Finland: 1995-1998' 409-410; Rosas, 'Finland - Finland's Accession to the European Union: Constitutional Aspects' 168.

162 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 331-332.

Hence, today Section 1 Finnish Constitution explicitly recognizes the possibility to engage in international cooperation. The *travaux préparatoires* documents of the constitutional reform process suggest that the legislator intentionally altered the conception of the sovereignty doctrine and that according to the new understanding Finnish sovereignty was qualified in light of international and more specifically EU obligations.¹⁶³ This constitutional codification resonated with the Constitutional Law Committee, which underscored that the new Section 1 (3) Finnish Constitution established the principle of internationality, which from a legal-systematic point of view qualifies the sovereignty doctrine embedded in Section 1 (1) Finnish Constitution.¹⁶⁴ Despite the fact that the text in Section 1 (1) Finnish Constitution remained unchanged ('Finland is a sovereign republic.'), the new constitutional context and the legislator's intention to alter the conception of the principle resulted in a qualification of Finnish sovereignty.

This changed constitutional context enabled the Constitutional Law Committee to further pursue its altered understanding of Finnish sovereignty. Now, the Committee departs in its reasoning from the constitutional assumption that Finnish sovereignty is indeed qualified in light of EU membership¹⁶⁵ and it employs the concept of 'specificity of EU cooperation'.¹⁶⁶ Based on this principle, the Constitutional Law Committee appears to be more readily accepting limitations to Finnish sovereignty stemming from EU commitments given the particularly close cooperation between EU Member States, which

163 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 366; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 336; Ojanen, 'The Europeanization of Finnish Law' 154.

164 See within this Chapter under Section 2.1.; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 366; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 335; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 100.

165 Ojanen, 'The EU at the Finnish Constitutional Arena' 246; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 217.

166 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 301; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 101; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 218-219; Ojanen, 'The Europeanization of Finnish Law' 154; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 539.

is distinguished from other forms of international cooperation.¹⁶⁷ Furthermore, the Committee construes Finnish participation in EU affairs as an exercise of sovereign powers together with other sovereign countries secured by the specific arrangements at EU-level.¹⁶⁸ Moreover, as stressed by the Committee, given the increasing trends to international cooperation more generally, states are required to take decisions commonly at the supranational level in order to retain control.¹⁶⁹ Overall, the Constitutional Law Committee appears to accept EU-related limitations of Finnish sovereignty more easily, given the specific safeguards included in EU law, as well as the factual benefits stemming from acting jointly as 27 Member States in a globalized world. Since 2012, the special status of EU cooperation is reflected in Section 1 (3), which now acknowledges EU membership and it is equally reflected in the previously assessed procedural framework in Chapter 8 of the Finnish Constitution.¹⁷⁰

The new constitutional approach to sovereignty can be further deduced from the Constitutional Law Committee's opinion on the Lisbon Treaty.¹⁷¹ The Committee acknowledged the qualified status of sovereignty in light of EU membership, equally highlighting that the Lisbon Treaty is a consolidation of the EU legal order and not an entirely new form of agreement – in contrast to the previously considered EU Constitutional Treaty.¹⁷² Yet, due to the abolishment of the three pillar structure, the consequential wider reach of the CJEU's jurisprudence and changes to the institutional structure with the formal introduction of the European Council as an EU institution, the Constitutional

167 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 366- 367; Ojanen, 'The EU at the Finnish Constitutional Arena' 246; Ojanen, 'EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament' 218.

168 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 371-372; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 101; Ojanen, 'The Europeanization of Finnish Law' 156; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 541.

169 PeVL 13/2008 vp *Adoption of the Lisbon Treaty* [2008] (Finnish Constitutional Law Committee) 4-5; Thus, incorporating the factual benefits stemming from EU law into its assessment, cf. Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 334; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 371-372; Ojanen, 'The Europeanization of Finnish Law' 156.

170 As previously highlighted within this Chapter under Section 2.1.

171 *Adoption of the Lisbon Treaty* 4-5.

172 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 357.

Law Committee nevertheless required a qualified majority for the approval of the Lisbon Treaty.¹⁷³

Overall, this illustrates the fundamental transformation from absolute to qualified sovereignty, which was enabled by the constitutional reform process and implemented by the Constitutional Law Committee. As *Ojanen* points out, Section 1 (3) Finnish Constitution offered the opportunity to break with the traditional, formalistic conception of Finnish sovereignty.¹⁷⁴ The newly adopted approach especially centers around the participation at the EU-level as an exercise of sovereign powers amongst sovereign states. This conception underscores the derived nature of the EU, as it constitutes the shared exercise of sovereign powers.¹⁷⁵ In addition, the constitution-amending legislator was able to initiate these changes by introducing the mentioned Section 1 (3) Finnish Constitution. Put differently, despite the overall importance of the principle of sovereignty from a systematic and a historic point of view, this change was constitutionally permissible. Thus, the principle of sovereignty is not an insurmountable object for constitutional reforms. Taken together, it illustrates that the Finnish Parliament can overcome substantive constitutional concerns raised by the Constitutional Law Committee by amending the constitutional framework through the outlined procedures established within the constitutional text.¹⁷⁶

173 *Adoption of the Lisbon Treaty* 4, 11; Cf. as well: Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 357; Ojanen, 'The EU at the Finnish Constitutional Arena' 244.

174 Ojanen, 'The EU at the Finnish Constitutional Arena' 246; Ojanen, 'The Europeanization of Finnish Law' 154; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 540-541.

175 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 371-372; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 101; Ojanen, 'The Europeanization of Finnish Law' 155-156; The 'derived nature' of the EU also features in the German constitutional jurisprudence, cf. *Quantitative Easing (PSPP) Reference* para 48; *Final OMT-Judgment* paras 130-131; *ESM-Treaty and Fiscal Compact (interim relief)* para 105; Cf. as well: Martin Nettesheim, 'Art. 1 AEUV - Regelungsbereich' in Eberhard Grabitz, Meinhard Hilf and Martin Nettesheim (eds), *Das Recht der Europäischen Union - Kommentar* (67th edn, C.H. Beck 2019) para 18; Rademacher, 'Die "Verfassungsidentität" als Grenze der Kompetenzübertragung auf die Europäische Union?' 151.

176 Traditionally through exceptive enactment, as now specifically regulated in Section 94 Finnish Constitution for EU cooperation, cf. Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 372-373; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 180-181 para 57; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

4.1.3 *Application during the Eurocrisis and implications for EU fiscal integration*

Obviously, Finnish sovereignty was an important constitutional benchmark in the assessment of the various Eurocrisis-measures. As indicated, the Constitutional Law Committee was particularly concerned about the compatibility of the ESM-Treaty with Finnish sovereignty. In its initial assessment, the Committee concluded that the draft ESM-Treaty could be approved by simple parliamentary majority, given that the proposed agreement did neither modify the Finnish Constitution nor significantly alter Finnish sovereignty in the sense of Section 94 (2) Finnish Constitution.¹⁷⁷ In particular, the Committee considered that the budgetary implications of the ESM-Treaty were limited without undermining parliamentary budgetary prerogatives and the underpinning Finnish sovereignty. Importantly, the Committee had already emphasized in its assessment of the EFSF that all major decisions had to be taken unanimously by the then EFSF board of governors, which is composed of the Member States' finance ministers. Given that parliament could mandate the Finnish Minister of Finance based on Section 96 Finnish Constitution and given that the Finnish vote on an EFSF-decision was constitutive, the Committee concluded that the Finnish Parliament retained full control over EFSF-decisions.¹⁷⁸ The general structure of the EFSF was replicated by the first draft ESM-Treaty. Based on its prior constitutional reasoning, the Constitutional Law Committee emphasized the possibility to veto ESM-decisions and concluded that the proposed ESM-Treaty neither transformed the Finnish EU commitment as such – which is relevant under the Finnish sovereignty doctrine – nor fundamentally altered parliamentary budgetary prerogatives, as the Finnish Parliament retained final control over financial commitments. Therefore, the first draft ESM-Treaty could be approved by simple majority.

In the following assessment of a slightly altered version of the ESM-Treaty, the Committee then became concerned about the changed voting procedure in the ESM board of governors for emergency situations, as enshrined in Article 4 (4) draft ESM-Treaty. According to this emergency voting, the Member States' financial commitments could be increased by qualified majority vote.¹⁷⁹ The Committee was particularly troubled that the conditions and scope of this

177 *First Assessment Draft ESM-Treaty (I.)*; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 467.

178 *Amendment to the EFSF (Increase in State Guarantee) 4*; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 468.

179 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391; Tuori and Raitio, 'Finland' 328; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 464.

emergency voting procedure were not sufficiently limited. It feared that financial commitments could be increased against the explicit will of the Finnish Parliament which would significantly affect parliamentary budgetary prerogatives and, furthermore, constitute a major interference with Finnish sovereignty. Notably, Finland would be deprived from taking an independent decision and instead be bound by the decision of a majority of Eurozone Member States. According to the Constitutional Law Committee, this would modify the relationship between Member States and the EU,¹⁸⁰ given that the EU could determine national financial commitments without support of the Member States. In addition, an increase of the Finnish financial commitment could ultimately impact the state's ability to fulfil its constitutionally enshrined obligations.¹⁸¹ Therefore, the Committee established that the second draft of the ESM-Treaty could only be approved by qualified parliamentary majority under Section 94 (2) (2) Finnish Constitution.¹⁸²

Given that the Finnish Government feared it could not achieve the required parliamentary majority,¹⁸³ Finnish representatives at the EU-level successfully re-negotiated the ESM-Treaty to escape the stricter majority requirement. Subsequently, the Constitutional Law Committee was confronted with a final draft version of the ESM-Treaty. In its assessment, the Committee reiterated that the envisaged Treaty needed parliamentary approval under Section 94 Finnish Constitution given that it affected budgetary prerogatives. The Committee considered the possible impact of the financial commitments under the envisaged ESM-Treaty on the Finnish state budget. In order to determine this impact, the Constitutional Law Committee conducted a detailed assessment of the financial commitments (roughly € 12.5 billion callable capital, thereof € 1,44 billion paid-in capital) in relation to the overall volume of the Finnish state budget – which, as an orientation, amounted to around € 54 billion in

180 *Second Assessment Draft ESM-Treaty (II.)* 2; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Tuori and Raitio, 'Finland' 328; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 464; This reasoning features equally in subsequent decisions, cf. *Commission's Draft EU Recovery Plan and MFF Planning* 17-18; Cf. as well: Leino-Sandberg, 'Who is ultra vires now? The EU's legal U-turn in interpreting Article 310 TFEU'.

181 Cf. for example: PeVL 12/2018 vp *On the Establishment of a European Monetary Fund* [2018] (Finnish Constitutional Law Committee) 3-4.

182 *Second Assessment Draft ESM-Treaty (II.)* 2; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 467.

183 Tuori and Raitio, 'Finland' 328; Jokela, *Finland and the Eurozone Crisis* 35-36; Jokela and Korhonen, *A Euroscletic Big Bang - Finland's EU Policy in Hindsight from the 2011 Elections* 4.

2015¹⁸⁴ – and the Finnish state debt level – which, to put it in perspective, amounted to 63,2% of the Finnish GDP in 2016.¹⁸⁵ It concluded that although the financial commitment was considerable compared with both indicators, the commitment was sufficiently limited and that the Finnish Parliament could influence ESM-decisions. The most important question for the Committee appeared to be to determine whether the Finnish budget remained ‘under the control’ of the Finnish Parliament.¹⁸⁶ Different to the previous draft, national financial commitments could no longer be increased by qualified majority, which thus ensured sufficient Finnish parliamentary influence, as it could mandate the Finnish Minister representing Finland at the ESM.¹⁸⁷ The Constitutional Law Committee also pointed out that the financial commitment of up to € 12.5 billion could potentially negatively impact the ability of the Finnish State to fulfil its constitutional obligations, including to provide for social welfare as established in Sections 19, 88 Finnish Constitution.¹⁸⁸ Although this risk did ultimately not manifest in relation to the ESM-Treaty, future financial commitments at the EU-level will have to comply with this constitutional benchmark – or would otherwise have to be approved by a qualified parliamentary majority under Section 94 (2) (2) Finnish Constitution.

In addition to considering the extent of the financial commitments, the Committee focused extensively on the question whether the modified ESM-Treaty involved a conferral of competences that is relevant under the Finnish sovereignty doctrine. The Committee reiterated that, in order to determine a potential violation of the Finnish sovereignty doctrine, the extent and the nature of the delegated powers are of particular relevance.¹⁸⁹ In a first step, based on the previous decisions, it examined the voting procedure applicable

184 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 392; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 466.

185 Eurostat Online Publications, ‘Government Finance Statistics’ (*Eurostat*, 2020) <<https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1137.pdf>> accessed 20 December 2020.

186 *Final Assessment Draft ESM-Treaty (III.)* 4; *Second Assessment Draft ESM-Treaty (II.)* 2; *First Assessment Draft ESM-Treaty (I.)*.

187 *Final Assessment Draft ESM-Treaty (III.)* 3; Cf. as well: Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 391-392; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 464.

188 *Final Assessment Draft ESM-Treaty (III.)* 3; Cf. as well: Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 466.

189 *Final Assessment Draft ESM-Treaty (III.)* 4.

to decisions by the ESM board of governors.¹⁹⁰ As outlined, given that the final ESM-Treaty did not provide for a possible increase in the Member States' financial commitments by qualified majority vote within the ESM, the Constitutional Law Committee concluded that the Finnish financial commitment was sufficiently confined and limited.¹⁹¹ In addition, the Committee underscored that Eurocrisis-measures, such as the ESM-Treaty, were necessary steps that had to be taken to guarantee the stability of the Eurozone. Obviously, Finland as member of the Eurozone has a particular interest in stabilizing the Euro. The Constitutional Law Committee summarized that Finnish participation in the ESM constituted a joint exercise of national sovereignty of the Euro Member States, which enhanced the stability of the single currency to the benefit of the Finnish state.¹⁹² Therefore, the Committee found that neither the parliamentary budgetary prerogatives nor Finnish sovereignty were significantly limited and that the final ESM-Treaty could be adopted by a simple majority in the Finnish Parliament.

More recently, the Constitutional Law Committee had to determine the compatibility of the proposed Next Generation EU recovery strategy.¹⁹³ In its decision, the Committee reiterated its conception of sovereignty established during the Eurocrisis, which appears to emphasize the importance of budgetary and financial decision-making powers for the Finnish Parliament as protected under the sovereignty doctrine.¹⁹⁴ Following this conception, the Committee focused in its constitutional appraisal on the possible financial responsibilities and limits to budgetary decision-making, which entailed the evaluation of the overall Finnish financial liabilities at the EU-level, the level of Finnish parliamentary influence as well as the likelihood that these liabilities ultimately materialize.¹⁹⁵ Moreover, the Committee reiterated the importance of strictly limited Finnish financial liabilities to secure Finnish parliamentary budgetary

190 *Second Assessment Draft ESM-Treaty (II.)* 2; Cf. final assessment: *Final Assessment Draft ESM-Treaty (III.)* 4; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392.

191 *Final Assessment Draft ESM-Treaty (III.)* 3; Cf. as well: Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 464; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

192 Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 464.

193 *Commission's Draft EU Recovery Plan and MFF Planning* 10; Leino-Sandberg, 'Who is ultra vires now? The EU's legal U-turn in interpreting Article 310 TFEU'.

194 Which the Committee terms 'budgetary sovereignty', cf. *Commission's Draft EU Recovery Plan and MFF Planning* 11; PeVL 13/2018 vp *Proposal for Council Directive Laying Down Provisions for Strengthening Fiscal Responsibility and the Medium-Term Budgetary Orientation in the Member States* (COM (2017) 824 final) [2018] (Finnish Constitutional Law Committee) 8.

195 *Commission's Draft EU Recovery Plan and MFF Planning* 12; Cf. as well: *Proposal for Council Directive Laying Down Provisions for Strengthening Fiscal Responsibility and the Medium-Term Budgetary Orientation in the Member States* (COM (2017) 824 final) 8; *On the Establishment of a European Monetary Fund* 3-4.

sovereignty.¹⁹⁶ Regarding Next Generation EU, the Committee raised specific concerns regarding the envisaged funding through EU borrowing, which according to the Committee constituted a crucial modification in EU cooperation as such a recovery strategy including the proposed design could not have been anticipated when Finland ratified the EU-Treaties, as it seemingly extends the Treaty-mandate given to the EU in Article 310 TFEU and as it can thus not be classified as a 'normal evolution' of EU membership.¹⁹⁷ Overall, the Committee concluded that the envisaged recovery strategy, and more specifically the proposed Own Resources Decision which would authorize EU borrowing, constituted a significant interference with Finnish (budgetary) sovereignty that would likely require approval by a two-thirds majority, which the Grand Committee, however, rejected in its final position as *Leino-Sandberg* highlighted.¹⁹⁸ At the same time, it should be emphasized that the Committee then only considered the draft version submitted by the European Commission and therefore an additional evaluation of the final recovery strategy can be expected.

Taken together, the constitutional appraisal of Next Generation EU and the ESM-Treaty, both illustrate the advantages of the Finnish constitutional assessment. It allows for an institutionalized and formal dialogue between the Constitutional Law Committee, the Finnish Parliament and the Finnish Government on envisaged EU commitments during the on-going negotiations at the national as well as the EU-level. Therefore, the *ex ante* review exercised by the Constitutional Law Committee may be seen as a constructive and goal-oriented means to design EU integration steps in compliance with the Finnish constitutional requirements. It allows to evaluate the national constitutional implications of debated EU matters before possible unsurmountable conflicts manifest. In that regard, one could even argue that the *negative* opinion of the Constitutional Law Committee on the second draft version of the ESM-

196 *Commission's Draft EU Recovery Plan and MFF Planning* 10; Also apparent in relation to the ESM and the possible increase of liabilities by unanimity, which was considered to require the support of a qualified majority under Section 94 (2) (2) Finnish Constitution, cf. *Second Assessment Draft ESM-Treaty* (II.) 2; Cf. as well: Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Tuori and Raitio, 'Finland' 328; Leino and Salminen, *Constitutional Change Through Euro Crisis Law: 'Finland'* VIII.1; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 464; Ojanen, 'The EU at the Finnish Constitutional Arena' 247.

197 *Commission's Draft EU Recovery Plan and MFF Planning* 18; Cf. as well: Leino-Sandberg, 'Who is ultra vires now? The EU's legal U-turn in interpreting Article 310 TFEU'.

198 Leino-Sandberg, 'Who is ultra vires now? The EU's legal U-turn in interpreting Article 310 TFEU'.

Treaty¹⁹⁹ increased the authority of the Finnish position in the supranational negotiation process.²⁰⁰

The analyzed decisions of the Constitutional Law Committee indicate that budgetary and financial commitments have a close connection to Finnish sovereignty – apparent from the Committee’s terminology ‘budgetary sovereignty’ – given that the ability to decide on budgetary and financial commitments is construed as an important sovereign prerogative of the Finnish Parliament. Therefore, each modification of EU commitments with financial implications requires anew Finnish parliamentary involvement. In addition, conferring such budgetary or financial competence irrevocably to the EU-level would according to the Committee significantly alter the characteristics of EU cooperation,²⁰¹ which would require the confirmation by a qualified parliamentary majority following Section 94 (2) (2) Finnish Constitution. At the same time, such conflict appears not to be a constitutional hard limit, as it can be overcome by complying with the prescribed procedural requirements.

Taken together, the assessment illustrates that the Constitutional Law Committee appears to have developed the concept of essential features of the parliament’s budgetary competences based on Finnish sovereignty.²⁰² Notably, the Committee specified in its appraisal of the ESM-Treaty and subsequently of Next Generation EU that an overall assessment of the financial impact of the proposed EU obligations had to be undertaken. In these decisions, the benchmarks for the assessment were the annual Finnish state budget and the overall debt level in order to determine whether the Finnish state would be able to fulfil its constitutional obligations²⁰³ as well as the level of parlia-

199 *Second Assessment Draft ESM-Treaty (II.)* 2.

200 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 391-392; Jokela, ‘Finland: Towards a More Cautious Europeanization’ 49.

201 On the conception of Finnish sovereignty and the special form of cooperation in the EU, cf. Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 366-367; Ojanen, ‘The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism’ 101; Ojanen, ‘The Impact of EU Membership on Finnish Constitutional Law’ 541.

202 As recently emphasized by the Constitutional Law Committee, cf. *Commission’s Draft EU Recovery Plan and MFF Planning* 13; PeVL 12/2020 vp *EIB Proposal for EU Covid-19 Guarantee Fund* [2020] (Finnish Constitutional Law Committee) 4; Also described as Finnish budgetary autonomy, cf. Tuori and Raitio, ‘Finland’ 328; Cf. as well: Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 391-392.

203 Cf. Section 19 in conjunction with Section 88 Finnish Constitution; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 467; Ojanen, ‘The EU at the Finnish Constitutional Arena’ 247.

mentary control and the likelihood that financial liabilities would manifest.²⁰⁴ This benchmark is highly relevant when determining the feasibility of EU fiscal integration steps in Finland. Overall, it can be submitted that the concept of 'budgetary sovereignty' is a relevant benchmark to identify the applicable parliamentary majority requirement, without, however, constituting an absolute or legally insurmountable constitutional *red line* for the constitution-amending legislator regarding EU fiscal integration.

4.2 Finnish democracy

The principle of Finnish democracy is enshrined in Section 2 (1) and (2) Finnish Constitution. Considering its systematic positioning within the Finnish Constitution, democracy occupies a primary position amongst the 'fundamental principles',²⁰⁵ which is reflected in the central position that the Finnish Parliament enjoys in the overall constitutional framework.²⁰⁶ The constitutional importance of the principle of democracy is underscored by Section 94 (3) Finnish Constitution, which excludes EU cooperation that conflicts with the basic understanding of Finnish democracy. The emerging question is whether Finnish democracy has an additional substantive core which extends beyond the outlined procedural guarantees that secure parliamentary involvement in EU matters and beyond the constitutional protection afforded by Finnish sovereignty.

4.2.1 A normative core of Finnish democracy?

In the course of the Finnish constitutional reform process, EU matters were assigned to the government under the control of the Finnish Parliament, instead of labelling these as foreign affairs under the control of the Finnish

204 Commission's Draft EU Recovery Plan and MFF Planning 12; Proposal for Council Directive Laying Down Provisions for Strengthening Fiscal Responsibility and the Medium-Term Budgetary Orientation in the Member States (COM (2017) 824 final) 8; On the Establishment of a European Monetary Fund 3-4.

205 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 281-282; Lämsineva, 'Fundamental Principles of the Constitution of Finland' 115.

206 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 282; Jokela, 'Finland: Towards a More Cautious Europeanization' 44; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 453; Ojanen, 'The EU at the Finnish Constitutional Arena' 248; Ojanen, 'The Europeanization of Finnish Law' 162; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 547.

President.²⁰⁷ Obviously, given the continuous process of EU integration, this resulted in increasing parliamentary influence. Overall, this indicates the evolutionary potential of Finnish democracy, which evolved from being semi-presidential by the end of the 20th century to being increasingly parliamentary especially in EU affairs. This evolution is underscored by the Constitutional Law Committee, which, for example, accords primary importance to parliamentary participation rights in EU matters.²⁰⁸

The highlighted evolution equally illustrates that constitutional amendments to the principle of democracy are permissible in Finland. Neither an absolute normative nor systematic limit to protect Finnish democracy against EU fiscal integration is apparent. As will be argued in the subsequent part, even Section 94 (3) Finnish Constitution could be constitutionally amended. Taken together, the conception of Finnish democracy seems to focus on the high degree of discretion that the Finnish Parliament enjoys in domestic and EU affairs.²⁰⁹ This discretion regarding the content of parliamentary decisions seemingly resulted in a focus on procedural elements, notably to ensure that parliamentary decisions are based on the correct procedure, instead of developing substantive requirements or limitations to these decisions. This procedural focus translates into a detailed constitutional framework on parliamentary rights and prerogatives *vis-à-vis* the EU embedded in Chapter 8 of the Finnish Constitution.

Furthermore, the previous outline of Finnish sovereignty indicates the close interconnection between Finnish sovereignty and democracy. Notably, parliamentary budgetary prerogatives appear to be institutionally relevant for parliament, as noted in Section 3 (1) Finnish Constitution. These prerogatives are equally democratically relevant, as Section 2 (2) Finnish Constitution establishes that individuals have the right to influence societal developments which arguably includes decisions on revenue and expenditure. And finally, these competences are also relevant for Finnish sovereignty, as budgetary competences are characterized as essential sovereign powers to shape the state.

207 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 285; Ojanen, 'The EU at the Finnish Constitutional Arena' 247-248; Ojanen, 'The Europeanization of Finnish Law' 162.

208 Jokela, 'Finland: Towards a More Cautious Europeanization' 44; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 452-453; Ojanen, 'The EU at the Finnish Constitutional Arena' 248; Ojanen, 'The Europeanization of Finnish Law' 162; Ojanen, 'The Impact of EU Membership on Finnish Constitutional Law' 547.

209 Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 452-453; Ojanen, 'Constitutional Amendment in Finland' 109; Ojanen, 'The Europeanization of Finnish Law - Observations on the Transformations of the Finnish Scene of Constitutionalism' 106; Lavapuro, Ojanen and Scheinin, 'Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review' 509.

4.2.2 Consequences for EU fiscal integration steps

The consequences for EU fiscal integration proposals appear to be mainly procedural in nature. As concluded, proper parliamentary participation is a key requirement to secure the functioning of the Finnish parliamentary democracy. This parliamentary participation in relation to EU integration consists of different layers. First, parliamentary approval is required for the transfer of constitutionally relevant powers to the EU, as established in Section 94 Finnish Constitution. Second, the Finnish Parliament can mandate Finnish representatives at the EU-level following Section 96 Finnish Constitution. And finally, the parliament enjoys a comprehensive right to receive information on EU, as laid down in Section 97 Finnish Constitution. This suggests that the principle of democracy is operationalized through detailed procedural involvement and parliamentary participation in EU affairs.

A violation of Finnish democracy seems to occur in case the Finnish Parliament is not properly involved in the decision-making process. This considerably distinguishes the Finnish approach from, for example, the German conception of democracy, which contains a set of abstract competence areas that are declared particularly democratically relevant.²¹⁰ The *internal* reliance on procedural and participatory safeguards for the Finnish Parliament extends to the EU-level and it ultimately generates a predictable legal framework for the assessment of whether the democratic requirements were complied with. Therefore, EU fiscal integration proposals seem to be substantively compatible with the principle of Finnish democracy as long as the procedural framework is respected. Obviously, this might require that EU fiscal integration steps are designed in light of the Finnish parliamentary participatory requirements, as exemplified during the ESM-Treaty negotiations.²¹¹

4.3 Section 94 (3) Finnish Constitution: A Finnish *eternity clause*?

Of particular interest is Section 94 (3) Finnish Constitution, which requires that any form of EU cooperation respects the basic democratic fundamentals of the Finnish constitutional order. Notably, Section 94 (3) Finnish Constitution states:

210 Cf. German constitutional approach: *Lisbon-judgment* para 250; Cf. as well: Claes and Reestman, 'The Protection of National Constitutional Identity and the Limits of European Integration at the Occasion of the *Gauweiler Case*' 926-927.

211 Ojanen and Salminen, 'Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism' 391-392; Tuori, '§ 98: Verfassungsgerichtsbarkeit in Finnland' 174-175 para 39; Leino and Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' 467.

‘An international obligation shall not endanger the democratic foundations of the Constitution.’

Until now, this provision did not gain particular prominence in the constitutional debate. The Constitutional Law Committee did not conclusively position itself with regard to the normative content of this restriction and its potential procedural implications.²¹² This may either suggest that all forms of EU and international cooperation up to today were clearly in compliance with the democratic foundation of the Finnish Constitution – which would in return restrict the application of Section 94 (3) Finnish Constitution to forms of cooperation that fundamentally challenge the Finnish constitutional structure. Or it may indicate that the provision is, in fact, not enforceable, thereby merely formulating a constitutional reminder when additional competence conferrals are considered by the Finnish Parliament. In both cases it seems that Section 94 (3) Finnish Constitution is not intended to exclude certain state powers from conferral, but it is rather intended as a condition for an envisaged conferral, notably that the EU respects democratic standards and that the Finnish Parliament retains a central role in EU-related decisions.²¹³

Section 94 (3) Finnish Constitution was introduced into the Finnish constitutional order by the constitutional reform process in 2000. It is thus a relatively new constitutional provision, which might explain the rather limited constitutional application so far.²¹⁴ Furthermore, the authoritative preparatory documents drafted during the reform process merely state that the provision was new to the Finnish Constitution, without providing additional information on the protected content or the intended function.²¹⁵ Generally speaking, one may infer from the introduction of Section 94 (3) Finnish Constitution an

212 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 372-373; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 307; Leino and Salminen, ‘The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?’ 463; Husa, *The Constitution of Finland - A Contextual Analysis* 34; Hautamäki, ‘Novel Rules in the Finnish Constitution - The Question of Applicability’ 140.

213 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 373.

214 Hautamäki, ‘Novel Rules in the Finnish Constitution - The Question of Applicability’ 140; As highlighted, for now the provision was not comprehensively applied, cf. Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 372-373; Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 307.

215 Ojanen and Salminen, ‘Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism’ 372-373; Hautamäki, ‘Novel Rules in the Finnish Constitution - The Question of Applicability’ 142.

apparent shift in the constitutional focus away from sovereignty to (procedural) democracy concerns.²¹⁶ Systematically speaking, it is interesting to observe that Section 94 (3) Finnish Constitution has no equivalent provision 'internally'. This means that (internal) constitutional amendments or exceptive enactments are not restricted in a comparable manner, even in case such reforms would challenge the democratic foundation of the Finnish Constitution. Hence, Section 94 (3) Finnish Constitution is specific to EU and international cooperation. Furthermore, given that the restriction does not apply to constitutional amendments, the constitution-amending legislator could arguably alter Section 94 (3) Finnish Constitution following Section 73 Finnish Constitution.

As it stands, the function of Section 94 (3) Finnish Constitution is yet to be determined. Given that the Constitutional Law Committee did not provide guidance, it is hardly predicable whether Section 94 (3) Finnish Constitution will function as authoritative reminder for preserving democratic standards in supranational cooperation or whether it could develop into a substantive limitation for EU fiscal integration steps. It seems that Section 94 (3) Finnish Constitution could provide a degree of rigidity to the otherwise very open and flexible constitutional approach to supranational cooperation. As will be elaborated in the comparison, other constitutional systems rely on provisions comparable to Section 94 (3) Finnish Constitution to impose substantive obstacles to EU integration to protect democracy.²¹⁷

4.4 Conclusive appraisal: Substantive flexibility towards European fiscal integration

In conclusion, the assessment of Finnish sovereignty, democracy and Section 94 (3) Finnish Constitution revealed that substantive constitutional principles have a minor limiting effect on EU fiscal integration ambitions. In fact, the Finnish Parliament appears not to be limited by substantive obstacles when deciding on EU cooperation. Instead, the assessment revealed the adaptability and the evolutionary potential of these constitutional principles.

Overall, the connecting element between sovereignty, democracy and Section 94 (3) Finnish Constitution appears to be the centrality of the Finnish Parliament. In relation to sovereignty, budgetary decisions were considered an important, sovereign competence of the Finnish Parliament, which could be affected by too far-reaching EU integration steps. In relation to democracy, the focus on procedural safeguards aims at a comprehensive involvement of the Finnish Parliament in all central budgetary decisions both at the national

216 Mutanen, *Towards a Pluralistic Constitutional Understanding of State Sovereignty in the European Union? The Concept, Regulation and Constitutional Practice of Sovereignty in Finland and Certain other EU Member States* 306-307.

217 Hautamäki, 'Novel Rules in the Finnish Constitution - The Question of Applicability' 142.

and the EU-level. And the additional protection of the Finnish Constitution's democratic fundament laid down in Section 94 (3) Finnish Constitution appears to underscore the importance of the Finnish Parliament in democratic decision-making processes. Taken together, this suggests that the effective influence of the Finnish Parliament on decisions taken in a more fiscally integrated EMU is of central importance, in order to escape the qualified parliamentary threshold and in order to be desirable for the Finnish Parliament in a generally more Euroskeptic climate in Finland.

5 RESULTING CONSTITUTIONAL SPACE: THE FINNISH ROAD TO EU FISCAL INTEGRATION

The Finnish constitutional system vests the Finnish Parliament with far-reaching discretion when deciding on EU cooperation. The assessment revealed that the Finnish constitutional system entails a specific procedure for the conferral of competences to the EU-level in Section 94 Finnish Constitution, which distinguishes between the regular conferral of competences – that are deemed required for EU cooperation – as well as more significant conferrals – that impact the Finnish Constitution or the Finnish sovereignty doctrine and that can only be adopted by a qualified parliamentary majority. Once competences are conferred, the Finnish Constitution awards parliament with an extensive right to receive information as well as a mandating system through which the Finnish Parliament can shape Finnish EU positions. This comprehensive procedural framework secures the central position of the Finnish Parliament in decision-making processes at both the national and the EU-level. Furthermore, the assessment of the Finnish constitutional appraisal of the various Eurocrisis-measures illustrated the flexible Finnish approach to increased EU cooperation in budgetary and fiscal matters. This *constitutional flexibility* appears to stem from various constitutional elements.

In the first place, it stems from the general design of the Finnish constitutional system which relies heavily on parliamentary sovereignty and which does not entail explicit limits to parliamentary discretion. This wide discretion is illustrated by the 2000 constitutional reform process, which altered core features of the Finnish Constitution including the system of governance, judicial review, the framework for EU and international cooperation, as well as essential constitutional principles, such as democracy and sovereignty. In light of the wide constitutional transformation, it can be submitted that Finnish *constitutional flexibility* appears to cover all parts of the Finnish constitutional order and it appears to result from the strong reliance on the parliament as the nucleus of constitutional decision-making.

Secondly, the Finnish mode of constitutional review provides for additional *constitutional flexibility*. This stems from the *ex ante* review that the Committee conducts, which enables the legislator to draft EU integration steps in light

of constitutional concerns rather than being *ex post* scrutinized for exceeding constitutional limits. Furthermore, as the Committee is composed of parliamentarians, its institutional approach arguably differs from a traditional constitutional court. Notably, reflecting its institutional position, the Committee refrained from imposing substantive limits to EU integration steps. Instead, the Committee focused on procedural requirements and adequate involvement of the Finnish Parliament.

Consequently, Finnish *constitutional flexibility* appears to derive from a combination of structural, conceptual and institutional features. Although the resulting flexible constitutional approach seems to allow for EU fiscal integration steps, it should be equally pointed out that such integration steps could be confronted with high procedural requirements as budgetary and fiscal competences are nevertheless construed as important national powers protected by democracy as well as sovereignty. The attainability of these procedural requirements remains uncertain in light of the highlighted more Euroskeptical political climate in Finland.