

# The Europeanisation of the German System of Government

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## **Abstract**

In this second policy paper within the **German European Policy Series (GEPS)** the author Roland Sturm shows that throughout the European integration process Germany has been integrated into the institutional dynamism of the European Union. Up to date, this fact has immediate impact on every facet of German policy. Sturm argues that the German political system has become imbued with European politics and the European Union has become a constant presence in the German system of government.

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# The Europeanisation of the German System of Government

Roland Sturm

European integration is a continuing process. Even if there are no new treaties, the depth and commitment to the process of integration develops through the political practices of the European Union—that is, through the work of its institutions on a continuous basis. For Germany, this means being integrated in the institutional dynamism of the European Union. This dynamism has an immediate impact on every facet of policy in Germany, even if levels of commitment differ.<sup>1</sup>

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*“Both state and society in Germany can be seen as having changed due to the integration of the country into the European Union. Statehood has been perforated and has lost its claim to being absolute (...)”*

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The transfer of sovereignty to Brussels legitimised by the approval of the European treaties means that national politics follows European guidelines and that it also accepts the parameters defined by European guidelines. The European logic of politics has to be brought into accordance with national traditions, national processes of political decision-making and national legal systems. Both state and society in Germany can be seen as having changed due to the

integration of the country into the European Union. Statehood has been perforated and has lost its claim to being absolute; society now follows supranational European impetuses in addition to national ones. The European Union has entered into the world of German politics; the German political system has become imbued with European politics. From European legislation to the monitoring of its compliance by the European Commission through to less direct forms of discussion, coordination and a common European view of the world and European shared values, the European Union is a constant presence in the German system of government.

The term which is used in the academic world to describe this process is ‘Europeanisation’.<sup>2</sup> The literature contains several other uses of the term, for instance to describe the coming-into-being of Europe or the orientation to European standards, which can lead to misunderstandings.<sup>3</sup> In this respect, ‘Europeanisation’ should only be used in the aforementioned sense: in contrast to European integration, which is based on the transfer of competencies from the nation-state to the European Union (‘uploading’), the process of Europeanisation involves the transfer of patterns and content of European decision-making in the context of the national systems of government (‘downloading’).

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1 There are not only differences in the degree and scope of Europeanisation in the national context, but also in terms of a comparison of EU Member States. In this respect, similar countries are consolidated as groups in the literature (“clustered Europeanisation”). Refer to, inter-alia, Federica Cacciatore/Alessandro Natalini/ Claudius Wagemann: Clustered Europeanization and national reform programmes: a qualitative comparative analysis, in: *Journal of European Public Policy* 8/2015, pp. 1186-1211. The European comparison does not form part of this essay. It demonstrates, and this also applies to the case of Germany, that the path of Europeanisation depends decisively on national circumstances. See for many: Peter Bursens/ Jana Deforche: Europeanization of Subnational Polities: the Impact of Domestic Factors on Regional Adaptation to European Integration, in: *Regional and Federal Studies* 1/2008, pp. 1-18.

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2 The first basic definition of Europeanisation was provided by Robert Ladrech: Europeanization of Domestic Politics and Institutions: The Case of France, in: *Journal of Common Market Studies* 1/1994, pp. 69-89, here p. 69. He defined Europeanisation as being “a process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making.”

3 Refer to Tine Flockhart: Europeanization or EU-ization? The transfer of European Norms across Time and Space, in: *Journal of Common Market Studies* 4/2010, pp. 787-810.

Table 1: Integration and Europeanisation

	Integration	Europeanisation
<b>The decision-making process from the point of view of the nation-state</b>	Bottom up	Top down
<b>Contribution to the content-related determination of politics</b>	Uploading (transfer of competencies to Europe)	Downloading (penetration of Europe in national decision-making processes)

Source: Roland Sturm: Das europäisierte deutsche Regierungssystem, in: Klemens H. Schrenk/Markus Soldner (eds.): Analyse demokratischer Regierungssysteme. Festschrift für Wolfgang Ismayr zum 65. Geburtstag, Wiesbaden 2010, pp. 185-199, here p. 186.

Europeanisation is not a one-way street. It is a process of learning, both in terms of German administrative and parliamentary practices, as well as at the conceptual level, which in this respect also contains a bottom-up component, since European institutions can also learn from and with the state practices of the Member States (“circular Europeanisation”<sup>4</sup>). The conceptual starting point in the literature on the effects of Europeanisation is the *misfit* or *mismatch* hypothesis. This implies that reactions only occur at the national level if the European challenge is not compatible with the national decision-making procedures or opinion-forming processes, the national political culture, or the reality of national policy areas. The induced sense of irritation on the part of the nation-state is viewed as a necessary, albeit insufficient, requirement for adaptation processes on the part of the nation-state to satisfy European requirements. In recent times, the reach of the research has increased, and now also includes the effects of Europeanisation in terms of the *fit* situation, that is the compliance of the European challenge with the political logic of the nation-state.

In contrast to the assumptions of the *misfit* hypothesis, it is both conceivable and has indeed come to pass that national institutions change during the process of Europeanisation, even if there is no *misfit* between the institutional structure and the challenge of Euro-

peanisation. Efficiency adaptations of this kind do not force a general change in thinking. If, for example, the Bundestag sets up a committee to look at issues surrounding European integration, it is simply responding to the increasing relevance of Europeanisation for politics in Germany. In this respect, it does not have to overcome a structural conflict with its conventional working methods, but is only extending its existing working remit. In this case, the challenge of Europeanisation does not constitute a foreign body in the national political decision-making process. The same applies to the political opinion-forming process, for example, in view of the cooperation of German political parties within political groups of the European Parliament, or the European orientation of association policy in Germany.

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*“The assumption of automatism in the adaptation to European requirements has caused the idea of resistance to European impositions in the realm of the nation-state to be blocked out.”*

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The literature also fails to address a further aspect of the effects of Europeanisation. The assumption of automatism in the adaptation to European requirements has caused the idea of resistance to European impositions in the realm of the nation-state to be blocked out. Even if the political resistance to Europeanisation has

<sup>4</sup> Sabine Saurugger: Europeanisation in Times of Crisis, in: Political Studies Review 2/2014, pp. 181-192, here p. 184.

Table 2: Effects of Europeanisation

	fit	misfit
Adaptation	Efficiency adaptation	Adaptation due to political change
Resistance	Overcoming irrational irritations	Formal adaptation and refusal to implement, as well as conflict

not had specific political consequences, these consequences remain possible. Of importance, for instance, are the implicit consequences of resistance to Europeanisation, which describes the situation in which the current European legislation is indeed adopted in the national legislation, but takes place extremely slowly, or, for all intents and purposes, remains a formality. In 2005, political parties in Germany rebelled against the budgetary stipulations of the Stability and Growth Pact, and refused to comply with the 3 percent debt target (measured annually against gross domestic product). Irrational resistance due to avowed Euroscepticism is also possible, which paradoxically puts sand into the gears of Europeanisation, despite the fact that an adaptive step required as part of the process of Europeanisation is in the national interest.

The Basic Law (*Grundgesetz/GG*) of the Federal Republic of Germany leaves the question open as to which tasks can or should be transferred into the realm of European responsibility. In this way, it is left to the federal legislator to determine the degree and intensity of the Europeanisation of politics in Germany. According to the Basic Law, the complete erosion of national sovereignty to a European government and its legislation that replaces German law is not allowed. In its Lisbon decision, the German Federal Constitutional Court (*BVerfG*) set out clear limits with regard to the Europeanisation of politics in Germany:

“ European unification on the basis of a treaty union of sovereign states may, however, not be achieved in such a way that insufficient space is left to the Member States for the political formation of the economic, cultural and social living conditions. This applies in particular to areas which shape the citizens’ living conditions, in particular the private sphere of their own responsibility and of political and social security, protected by fundamental

rights, as well as to political decisions that rely especially on cultural, historical and linguistic perceptions and which develop in public discourse in the party political and parliamentary sphere of public politics. Essential areas of democratic structuring comprise, inter-alia, citizenship, the civil and the military monopoly on the use of force, revenue and expenditure including external financing and all elements of encroachment that are decisive for the realisation of fundamental rights such as deprivation of liberty in the administration of criminal law or placement in an institution. These important areas also include cultural issues such as the disposition of language, the structuring of circumstances concerning the family and education, the ordering of the freedom of opinion, press and of association and the dealing with the profession of faith or ideology.”<sup>5</sup>

## 1. The Europeanisation of political institutions

For governments and parliaments at the state and federal levels, for the *Bundesrat* (German federal upper house of parliament) and for the Federal Constitutional Court, the challenge of Europeanisation is to define their new institutional role, to adapt their organisational structures and to thereby take into account the fact that ‘co-rulers’ now exist at the European level whose decisions claim validity in national politics.

Its relations with European institutions have handed the German Federal Government both a *misfit* and coordination problem. The *misfit* problem became particularly clear during the handling of the European financial and sovereign debt crisis. This is to be found, for example, in the fact that for reasons of domestic

5 German Federal Constitutional Court: Ruling of the second senate of 30th June 2009, in: BVerfGE 123, 267, Lisbon decision.

policy, as an instrument of crisis management, it was not possible for ideas on ‘economic governance’ (e.g. Eurobonds) to be adopted in the German context as formulated by the European Commission. This led to an institutional conflict between the German Federal Government and the European Commission, and contributed to a strengthening of the European Council vis-à-vis the Commission. To avert the effects of Europeanisation, the German Federal Government has supported competition between EU institutions. Angela Merkel has preferred intergovernmental coordination of European decision-making—‘Union method’—which she has contrasted with the ‘Community method’ of decision-making by the institutions of the European Union.<sup>6</sup>

While the *misfit* problem for the German Federal Government has been policy-related, it is linked to Europeanisation on a structural basis because of the Federal Government’s coordination problems. At the governmental level, the quality of Europeanised decision-making depends on the ability of the Federal Government to speak with a single voice in the context of European institutions. In Germany, it is far from a matter of course that this will occur. The criticism has repeatedly been made that, in questions relating to Europeanisation, the decision-making processes within the Federal Government have been extremely fragmented due to the dominating principle of departmental responsibility, and have lacked the requisite degree of coordination. In specific terms, departmental political fragmentation meant that, until the 1980s, it was the Federal Ministry for Economic Affairs, rather than the Federal Foreign Office, that played the key coordinating role in German European policy. In organisational terms, the dominance of the Ministry of Economic Affairs was expressed by the fact that it was the first, and for a long time only, department that

maintained its own directorate for Europe (division E). As a result of the expansion of the responsibilities of the European Union due to the Treaty of Maastricht, however, the level of importance has successively shifted towards the Foreign Office, where a department for Europe was set up in 1993 as a consequence of the shift towards Europeanisation. In the course of the formation of the German Federal Government in 1998, department E was transferred from the Ministry of Economic Affairs to the Ministry of Finance; with the formation of the grand coalition in 2005, however, it returned to the Ministry of Economic Affairs. Both moves occurred for party political reasons that had no connection with the consequences of Europeanisation. Since 2002, the set of European political actors has been complemented by a directorate for European policy (division 5) in the Federal Chancellery. This most recent structural adaptation to European decision-making has had the greatest impact.

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*“All key European policy decisions make it onto the cabinet agenda for detailed discussion.”*

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According to the tone of the available literature, it would appear to be the case that the “department principle” (*Ressortprinzip*), as specified in Art. 65, para. 2 GG, according to which every minister in the Federal Government leads their personal remit independently and on the basis of their own personal responsibility, has shaped the appearance of the German Federal Government on the European stage over the long term. Partially out of concern for their corresponding coalition partners, Federal Chancellors have handled their power to set policy guidelines in a very restrained way. All key European policy decisions make it onto the cabinet agenda for detailed discussion. The cabinet agenda only includes items for discussion, however, that have already been coordinated between the ministries in question. The coordination

<sup>6</sup> Refer to Roland Sturm: Beyond the ‘ever closer union’. National interests, institutional power shifts and threats to the ‘permissive consensus’ in Germany, in: Riccardo Fiorentini/Guido Montani (eds.): *The European Union and Supranational Political Economy*, London/New York 2015, pp. 81-97, here p. 83.

processes are organised in a very hierarchical manner. They start at the so-called working level between the specific heads of division. It is incumbent upon the responsible ministry to prepare the meetings between the different ministerial councils in Brussels and to liaise with all of the other affected ministries. The initiative therefore starts with the key departmental manager in the corresponding department.

It is only the topics that remain disputed at the level of the department that are ‘flagged up’ – by the sub-departmental and departmental managers – and forwarded to the level of the secretary of state. The minister only becomes personally involved if the secretaries of state are unable to find any agreement. These horizontal, multilateral processes of coordination are part of the day-to-day routine during the preparation of legislation. With regard to European policy, it is particularly important that they work. However, in view of the fixed decision-making deadlines in the Brussels Council of Ministers, there is no possibility to take the topic from the cabinet agenda if it remains a source of dispute between the participating ministries until the dispute has been resolved. This is the reason why the coordination mechanisms for European policy appear especially ‘sophisticated’ and have reached a degree of formalisation which is otherwise absent from the day-to-day business of the German Federal Government.

The Foreign Office is responsible for the Permanent Representatives Committee (the *Comité des représentants permanents*) COREPER II, while the Ministry for Economic Affairs is responsible for COREPER I. What may appear to be an ingenious procedure is far less efficient in practice, however. The coordination work between departments is partially superimposed with party political differences between departments and cross-fire from the *Länder* (federal states). On the whole, the decision-making apparatus has proven to be cumbersome, so that it is not always possible to formulate a German instruction for the appropriate

COREPER representative. The alternative approach: that of making Europeanisation more efficient with an independent Ministry for Europe, not only fails due to the problem of the positioning of such a steering ministry—with competencies from almost every policy area—in the structure of the Federal Government, but also due to the interests of coalition partners, who do not want the competencies of their department to be impinged upon by a minister from a different party. Improving the efficiency of the work of the German Federal Government in terms of the challenge posed by Europeanisation has only achieved a moderate degree of success. It appears to be the case, however, that due to the strengthened role of the Federal Chancellery in handling the process of Europeanisation, an informal reduction in the complexity of the decision-making process is occurring.<sup>7</sup> In the Federal Chancellery, division 503 coordinates the European policy of the German Federal Government. The Foreign Office also has its own EU coordinating group (EU-K), and each federal ministry has its own unit for European policy issues.

In the context of Europeanisation, questions are raised for the German Bundestag on the impact and limits of its competencies, and on its internal organisation for handling the agenda arriving from the European Union and—in the event of an infringement of the principle of subsidiarity—its rebuttal. The Bundestag has less to decide as it has relinquished competencies to European institutions. In the competencies that it has lost, it implements directives and regulations in the national legislation and thereby carries out the process of Europeanisation. In the scope of directives, it also has structuring possibilities, which it does not always make use of in a particularly confident or creative manner. In its ruling on the European Arrest Warrant in 2005, the Federal Constitutional Court reminded the legislator of their responsibility for the shaping of Europeanisation in this context:

<sup>7</sup> Refer to Andreas Rinke: Kanzleramt entreißt Westerwelle Europapolitik, in: Handelsblatt, 22.2.2010. The idea of relieving the Foreign Office of its responsibility for European policy has failed to come to fruition, however.



“ The legislator was obliged in any case to use the latitude as concerns incorporation into national law that the framework decision leaves the Member States in a manner that is considerate with the fundamental rights. (...) A framework decision does not entail direct effect (...), its national validity still depends on its being incorporated into national law by the Member States.”<sup>8</sup>

The actual proportion of laws that are triggered by the process of the Europeanisation of policy areas remains disputed. Some say that an average of 80 percent of German legislation presently originates from the European level. The starting point of this 80 percent myth was a speech by the then-President of the EU Commission Jacques Delors on 6 July 1988 at the European Parliament, in which he predicted that, within a decade, 80 percent of economic legislation, and possibly tax and social legislation as well, would be of common origin. The debate on Europeanisation in Germany appears to have reinterpreted this statement to mean all European legislation and altered the time frame to today. It has also been occasionally postulated that the level of Europeanisation increases and falls according to the number of laws that originate from EU level.<sup>9</sup>

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*“The existing level of Europeanisation does not simply disappear when it is not possible to identify any legislation originating from the EU in a corresponding area in one particular year.”*

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The mistake in reasoning is clear, however. The existing level of Europeanisation does not simply disappear when it is not possible to identify any legislation originating from the EU in a corresponding area in one

8 German Federal Constitutional Court: Ruling of the second senate of 18th July 2005, in: BVerfGE 133, 273-348, European Arrest Warrant.

9 Refer to Annette Elisabeth Töller: Measuring and Comparing the Europeanization of National Legislation, in: Journal of Common Market Studies 2/2010, pp. 417-444, here p. 439.

particular year. At least three things have become clear in the intense debate on the extent of the Europeanisation of legislation: (1) assumptions about the extent of Europeanisation (whether, for example, policy at the *Länder* level or the processes of ‘Framing’ should also be included, meaning the normative preliminary decisions of the German legislator) influence the result. (2) In the case of work by critics of the 80 percent myth, the choice of the data basis poses problems. (3) Even if it is not possible to determine the exact proportion of Europeanised German legislation, it can be assumed that, in quantitative terms, Europeanised legislation predominates in the German Bundestag.<sup>10</sup>

The Europeanisation of national legislation reveals little about the efficiency of the implementation of European requirements, even if the European Union ascertains a possible *misfit* in terms of national administrative practices and therefore defines rules which aim to determine the limits of the creativity of the nation-state in the implementation of European rules and carries out ‘ex-ante’ and ‘ex-post’ checks.<sup>11</sup> ‘Compliance’ research has attempted to find explanations for the hesitant implementation of stimuli towards Europeanisation.<sup>12</sup> In terms of the speed of the implementation of European legislation, Germany was middle-ranking among the 12 EU Member States. All in all, increased compliance on the part of Member States is visible. While in 1997, 27 percent of directives were not implemented in one or several Member States, by 2009 this proportion had fallen to 5 per-

10 Refer to, inter-alia, Thomas König/Lars Mäder: Das Regieren jenseits des Nationalstaats und der Mythos einer 80-Prozent-Europäisierung in Deutschland, in: Politische Vierteljahresschrift 4/2008, pp. 438-463; Annette Elisabeth Töller: Zur Messung der Europäisierung der Gesetzgebung des deutschen Bundestages jenseits des 80-Prozent-Mythos, in: Zeitschrift für Parlamentsfragen 1/2008, pp. 3-17. In this case, we follow the convincing arguments of Sven Hölscheidt/Tilmann Hoppe: Der Mythos vom „europäischen Impuls“ in der deutschen Gesetzgebungsstatistik, in: Zeitschrift für Parlamentsfragen 3/2010, pp. 543-551.

11 Refer to Fabio Franchino: Delegation and Constraints in the National Executive of the EC Policies: A Longitudinal and Qualitative Analysis, in: West European Politics 4/2001, pp. 169-192.

12 Refer to Bernard Steunenbergh/Mark Rhinhard: The transposition of European law in EU Member States: between process and politics, in: European Political Science Review 3/2010, pp. 495-520.

cent.<sup>13</sup> According to research conducted into six directives in the EU-15 in the social policy area, Germany does not have a strong culture of compliance.<sup>14</sup> Above all else, steps towards Europeanisation in the world of German politics appear to be linked to national preferences and the associated political interests. The progress in implementation in the area of individual aspects of social policy is correspondingly different. These findings are confirmed by research completed by Haverland/Romeijn.<sup>15</sup> According to their data, only 42.7 percent of directives in the social policy area of the European Union are implemented on time; in Germany the figure is 41.3 percent. 39.7 percent of the directives in Germany suffer from a slight delay, while with 10.9 percent there is a problematic situation due to a complete disregard for the specified time frame.

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In the case of Germany, national preferences are clear, since over half of the social policy directives relating to the issue of health and safety in the workplace are implemented on time, while with other aspects of social policy, such as working time regulations, equality in the workplace, workers' rights and the rights of foreign workers, less than 20 percent of directives are implemented on time. The findings from one policy area (social policy) should not be generalised, however, since it is clear that the speed and timely imple-

mentation of European legislation can be seen to vary, depending on the respective policy area. The profile of Germany demonstrates that, across different policy areas, a rapid implementation of European legislation is most likely to occur in the social policy area,<sup>16</sup> and even more so in the regulation of financial services.<sup>17</sup> In the scope of the committee system (comitology), with which the Council of Ministers monitors and influences the implementing powers of the European Commission, German officials from the federal and state ministries can be seen to play an active role. They participate in the fine political tuning of Europeanisation during the implementation phase of the European legislation.

With regard to its internal organisation, the German Bundestag has proven able to respond in a structurally compatible way to the Europeanisation of legislation. The same applies to the Bundesrat. The appropriate structure is the committee level, which nevertheless reveals little about whether this structure is efficient enough to ensure the Bundestag and Bundesrat can make optimum use of their potential for discussing European legislation. With the German Committee on the Affairs of the European Union in the Bundestag (Art. 45 GG) and the Chamber for European Affairs in the Bundesrat (Art. 52 GG), the Basic Law establishes two committees which aim to speak flexibly on behalf of their appropriate institutions. They have the special right to be able to decide on behalf of the plenary assembly of their institutions. In constitutional practice, however, these steering committees have not been able to assert themselves against the committees and decision-making processes that are oriented to policy areas, and, in their decision-making, they have also proven to be insufficiently adept at keeping up with the pace of the legislation from Brussels. In the Bundesrat, this has led to a situation in which the Cham-

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13 Refer to David Howarth/Tal Sadeh: The ever incomplete single market: differentiation and the evolving frontier of integration, in: *Journal of European Public Policy* 7/2010, pp. 922-935, here p. 924.

14 Refer to Gerda Falkner/Oliver Treib/Miriam Hartlapp/Simone Leiber: *Complying with Europe? The Impact of EU Minimum Harmonisation and Soft Law in the Member States*, Cambridge 2005.

15 Refer to Mark Haverland/Marleem Romeijn: Do Member States Make European Policies Work? Analysing the EU Transposition Deficit, in: *Public Administration* 3/2007, p. 757-788.

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16 Refer to Markus Haverland/Bernard Steunenberg/Frans van Waarden: Sectors at Different Speeds: Analysing Transposition Deficits in the European Union, in: *Journal of Common Market Studies* 2/2011, pp. 265-291.

17 Refer to Emiliano Grossmann/Patrick Leblond: European Financial Integration: Finally the Great Leap Forward?, in: *Journal of Common Market Studies* 2/2011, pp. 413-435, here p. 417.

ber for European Affairs has been largely ignored as a decision-making body. For matters appertaining to the European Union, the Bundesrat primarily works with its Committee on European Union Questions.<sup>18</sup>

As institutions at the European level, the Bundestag and Bundesrat play a secondary role. The fact that the Bundestag has maintained a liaison office in Brussels (since 2007) is a sign of its independent role in the acquisition of relevant information in the context of the flood of information that arrives from Brussels. This does not alter the fact that Europeanisation has reduced the political importance of the Bundestag, however. Since the Treaty of Lisbon, with the use of subsidiarity monitoring, the Bundestag and Bundesrat have been able to counter the loss of competencies due to the Europeanisation which is not implicit in the European treaties. As a result of the decision by the Federal Constitutional Court on the Lisbon Treaty, regarding the responsibility for integration, the German Bundestag is also able to influence changes to the rules governing the responsibility of the European Union as well as its decision-making processes.<sup>19</sup> The question of whether this has actually led to a 're-parameterisation' for German politics counter to the trend of 'de-parameterisation', is highly controversial.<sup>20</sup> For the Bundesrat, it rapidly became clear that it would not be able to find a European 'representative' which is equipped with rights of co-determination that correspond to its domestic rights of co-determination. The Committee of the Regions, which came into being with the Treaty of Maastricht and on which the German federal states have a seat and vote, is not a decision-making body. At best, it is able to provide advice on European legislation. In this respect, the Bundesrat has had to accept a loss of competencies

due to Europeanisation without any compensation from the EU. For the federal states, the 2006 reform of the federal system also led to their entry into the national community of liability, with possible penalty payments due to the insufficient compliance on the part of Germany regarding the implementation of European legislation (Art. 104A, para. 6 GG) and compliance with the annual deficit limits in the scope of the convergence criteria (Art. 109 para. 5 GG).

At every level of the German federal system of government, Europeanisation presents a challenge to parliaments. They find themselves in a defensive situation. Multi-party democracy already replaced the classic dualism of parliament and government in the 19th century. In the process of Europeanisation, the new dualism is between national governmental representatives and Brussels' institutions. Citizens see themselves confronted with a multi-level governance system with limited transparency that practically prevents them from ascertaining the location of political decision-making, since it no longer occurs at just one place. As proposed several times in political debates, unravelling this lack of transparency could constitute a new priority of the parliaments in a Europeanised system of government. Instead of pursuing information and decisions at the European level in vain, parliaments should become places where the consequences of Europeanisation can be made clear on a specific basis, namely in relation to individual political decisions during political discourse. This would be certain to make an important contribution to understanding how politics work today. For parliamentarians, however, this is an unattractive idea. They would bemoan their limited ability to make decisions, and the associated lack of possibilities to take actions that draw the support of voters. In this respect, it seems more convenient and politically more rewarding to ignore the increasing Europeanisation of parliamentary decisions and to focus on ensuring their personal reelection in the (increasingly smaller) remit of national decision-making by pursuing traditional pork-barrel

18 Refer to Roland Sturm/Heinrich Pehle: *Das neue deutsche Regierungssystem. Die Europäisierung von Institutionen, Entscheidungsprozessen und Politikfeldern in der Bundesrepublik Deutschland*, 3rd edition, Wiesbaden 2012, p. 96.

19 Refer to BVerfGE 123, 267, Lisbon decision.

20 For the discussion refer to, inter-alia: Birgit Eberbach-Born/Sabine Kropp/Andrej Stuchlik/Wolfgang Zeh (eds.): *Parlamentarische Kontrolle und Europäische Union*, Baden-Baden 2013.

politics.

The Court of Justice of the European Union has the authority to decide on the compatibility of a national legal regulation with a Community one. In other words: its rulings are able to draw limits for the scope of action which remains at the national level with the achieved degree of Europeanisation. This means that in Europeanised policy areas, the responsibility for national judicial review has been transferred to the supranational court. German courts are able to reject national legislation due to its ‘incompatibility with Community law’, but they are not able to invalidate supranational legislation due to its incompatibility with German law. From the legal perspective, the transfer of responsibilities in the area of jurisprudence is not yet complete, at least in relation to questions concerning the relationship between the Court of Justice of the European Union and the Federal Constitutional Court.

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The primacy of European law and European jurisprudence as set out in the treaties has long since gone unrecognised by the Federal Constitutional Court. The Maastricht decision can be seen as being exemplary for the problems here. A constitutional appeal was submitted against the law approving the Maastricht Treaty. The appeal was largely based on the argument that the rights of the appellant resulting from Art. 38 GG to democratically legitimate representation in the German Bundestag, and their right to exercise public authority according to Art. 20 GG were infringed. This occurred because the European Union was trans-

ferred new and fundamental responsibilities. In particular, this applied to the introduction of the single European currency, since with the Treaty on European Union (TEU), Germany became subject to an irreversible automatism. In other words: with the Treaty of Maastricht the Bundestag was ‘deprived of power’ to an extent which was no longer covered by the Basic Law. This would render the law approving the Treaty of Maastricht, and parts of the treaty itself, unconstitutional.

In its decision, the Federal Constitutional Court stated that the Bundestag would have to keep “functions and powers of substantial political weight” in the process of European integration.<sup>21</sup> For itself, the court drew the following conclusion: “The Federal Constitutional Court will examine whether legal acts of the European institutions and bodies remain within the limits of the sovereign rights conferred upon them or whether they exceed them”.<sup>22</sup> This statement is most notable, since the court is only able to operate upon petition. Therefore, in saying that it would examine the European legal acts, this could only be understood as being an invitation to further constitutional complaints and judicial referrals. Although the court said that it would consider practicing its EU-related jurisdiction in a ‘co-operative relationship’ with the Court of Justice of the European Union, it in fact attempted to establish itself as something of a ‘European Court of Justice of the Highest Instance’ for Germany.

It therefore appears as though the Federal Constitutional Court has recognised the risks inherent with its jurisprudence. It is anxious to develop its cooperative relationship with the Court of Justice of the European Union by common accord. In 2014, the Federal Court of Justice approached the Court of Justice of the European Union for the first time, requesting a preliminary ruling in the disputed question as to whether the decision by the Council to enable the European Central

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21 Federal Constitutional Court: Ruling of the second senate of 12th October 1993, in: BVerfGE 89, 155, Maastricht decision.

22 BVerfGE 89, 155, Maastricht decision.

Bank (ECB) to make Outright Monetary Transactions (OMT) was unlawful.<sup>23</sup> Despite this, explicit recognition of the Europeanisation of final judicial decisions has not resolved the dilemma of a possible overlapping of competencies in European legislation. For the Federal Constitutional Court, the Basic Law remains the point of reference, which in its view cannot quite simply be ‘Europeanised’. In its decision on the Lisbon Treaty of 2009, the ruling therefore highlighted the following in particular:

“ The Federal Constitutional Court reviews whether legal instruments of the European institutions and bodies, adhering to the principle of subsidiarity under Community and Union law (...) keep within the boundaries of the sovereign powers accorded to them by way of conferred power (...). Furthermore, the Federal Constitutional Court reviews whether the inviolable core content of the constitutional identity of the Basic Law (...) is respected (...). The exercise of this review power, which is rooted in constitutional law, follows the principle of the Basic Law’s openness towards European law, and it therefore also does not contradict the principle of sincere cooperation.”<sup>24</sup>

## 2. The Europeanisation of associations and parties

In terms of their organisation, their setting of priorities and their presence in Brussels, Germany’s associations are oriented to the consequences of the process of Europeanisation for political decisions. The Europeanisation of associations has been the logical result of efforts towards the efficient realisation of their interests. Even if, in terms of its treaty-based configuration, the decision-making system of the European Union is based on an intense collaboration between the European Commission and the European association federations, the direct representation of German associations at the European level has always been a key

part of its strategy. European Union bodies frequently seek contact not only with European associations but also with national organisations.

In addition to this is the possibility of European associations on the basis of a European initiative for the founding of an association. This means that the Commission has repeatedly provided support to get European associations off the ground. In this respect, it has become involved when, on the basis of prevailing circumstances, the association structure that exists in certain sectors has appeared to be insufficient. For instance, during the steel crisis in Europe in the first half of the 1970s, it became clear that overcapacity in steel production would have to be reduced. To this end, the Commission wanted to facilitate the agreement of production quotas and price agreements, but, due to the fragmented nature of the wider interests, was unable to find a partner for an appropriate program. For this reason, the Commissioner responsible for industrial affairs, Étienne Davignon, asked European steel manufacturers to form an umbrella association (European Confederation of Iron and Steel Industries). The attempts to restructure interests in the area of the environment, in which numerous environmental protection groups competed for influence, date from the same era. The foundation of the European Environmental Bureau in 1976, which now counts more than 140 non-governmental organisations from all of the member countries, was also established on the initiative of the European Commission.

While there is no lack of evidence for the Europeanisation of associations, the relevance of Europeanisation of national parties and party systems has long since been disputed. It has been argued that it is not possible to talk of a Europeanisation of national parties or of ‘European parties’ in the proper sense (for example, with respect to individual membership, presence in the European public sphere or recruitment of political personnel for European institutions). Indeed, the first direct elections to the European Parliament in 1979

<sup>23</sup> See German Federal Constitutional Court: Ruling of the second senate of 14th January 2014, in: BVerfGE 134, 366, OMT ruling.

<sup>24</sup> BVerfGE 123, 267, Lisbon decision.

proved to provide the impetus for the founding of European party associations by national political parties that continued to be autonomous. No anchoring of these party associations in European elections as the ‘home’ of the candidacies occurred; the themes of the European elections did not prove to be especially European either. The upgrading of European political parties in the Treaty of Maastricht finds its origins in a shared initiative between the leaders of European parties which aims to achieve the express recognition of the role of European parties in the process of European integration and democratisation. It finds reflection in article 10, para. 4, TEU. This is as follows: “Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.” Above all else, this enabled the European financing of political parties. This is regulated by the passing of the party statute of the European Union in 2004.

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*“In Germany the organisational structure of the political parties has changed very little with the Europeanisation of politics.”*

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Researchers have examined the effects of Europeanisation in the following areas: regarding a possible programmatic change and changes in the organisational structure of national parties, regarding national party political competition, regarding tensions within political parties due to the dual role of governments as the driving force behind Europeanisation on the one hand and their attachment to a party political basis which does not think in terms of categories of Europeanisation on the other hand, and also regarding the relations between political groups in the European

Parliament and national political parties.<sup>25</sup> In Germany, the organisational structure of political parties has changed very little with the Europeanisation of politics. In partisan political competition, parties critical to Europe initially appeared to have little success. The Alliance of Free Citizens (*Bund Freier Bürger / BFB*), which was established by opponents of the Maastricht Treaty, proved to be short lived (1994 until 2000) and failed to achieve any electoral success. It is only *Alternative für Deutschland / AfD* (Alternative for Germany), which was established in 2013 and criticised the rescue package for the crisis in the Eurozone, that has had an impact on party politics in Germany, with successes in the 2014 European elections and in the elections to the federal state parliaments. Since 2015, its Eurosceptic views have been shared by the *Allianz für Fortschritt und Aufbruch / ALFA* (Alliance for Progress and Renewal), which split from the AfD. Tensions have emerged within the established parties since the instigation of the payment of economic aid to Greece in 2010.<sup>26</sup>

This was the first time that a topic relating to European politics enjoyed widespread national attention. In the Europeanised scope of the Eurozone, it proved necessary for German responsibility to be conveyed by the parties at the domestic level. This has gradually resulted in a Europeanised general public in terms of the perception of politics. It was along these lines that the idea of contesting the 2014 European elections with Europeanised parties emerged. The starting point was the following provision from the Treaty of Lisbon (Art. 17, para. 7 TEU):

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25 Refer to inter alia Robert Ladrech: Europeanization and political parties, in: Living Reviews in European Governance 1/2009, available at: <http://www.livingreviewp.org/lreg-2009-1> (Most recently accessed: 17.11.2015); Thomas Poguntke/Nicholas Aylott/Robert Ladrech/Kurt Richard Luther: The Europeanisation of national party organisations: A conceptual analysis, in: European Journal of Political Research 4/2007, pp. 747-771.

26 Refer to Roland Sturm: Doch nicht „alternativlos“? Die EU-Krisenpolitik im Parteienwettbewerb, in: Eckhard Jesse/Roland Sturm (eds.): Bilanz der Bundestagswahl 2013. Voraussetzungen, Ergebnisse, Folgen, Baden-Baden 2014, pp. 511-530.

Table 3: The Europeanisation of policy areas

Policy Area	Europeanisation on a scale of 1 (national autonomy) to 10 (European state)	Fit / misfit
Competition policy	9	From fit to misfit
Currency policy	9	Fit with tendency to misfit
Agricultural policy	9	Partial misfit
Transport policy	3	Misfit
Environmental policy	8	From fit to misfit
Regional policy	8	Misfit
Justice and domestic policy	7	Misfit

Source: Sturm/Pehle: Das neue deutsche Regierungssystem, 2012, p. 351.

“ Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. (...)”

With the naming of candidates, the aim was to make the results of the European elections binding for the European Council in terms of the choice of the President of the Commission. It would be an exaggeration, however, to describe the European elections as being evidence of a Europeanised competitive party political system or a close interfacing between national and European parties. Just eight percent of those surveyed in the European Union were able to name Jean-Claude Juncker as the candidate of the European People’s Party (EPP) for Commission President without any help, although after some prompting this figure rose to 26 percent.<sup>27</sup>

### 3. The Europeanisation of the policy areas

So far, Europeanisation has had the greatest impact, and become most tangible for citizens, in policy areas. The Europeanisation of currency, the Euro in one’s

wallet: it is just as much a part of daily life as being able to visit a foreign country without showing a passport. If the European Union is defined by its role in the fulfilment of tasks, it is omnipresent across a variety of policy areas. The European Union is increasingly taking on the role of a body that takes the initiative with political reform projects (for example, compensation for rail passengers when trains are delayed, warranty periods for electrical equipment and roaming charges for mobile phones), which subsequently triggers controversy and identifies new problems. Formulated differently, the political system of the Federal Republic of Germany is in the midst of a constant process of Europeanisation which takes place in several policy areas in small steps, but is therefore to a great extent relevant in everyday life.

**Table 3** provides examples of the different levels of Europeanisation in policy areas and the compatibility of national and European policy (*fit/misfit*). Europeanisation cannot be automatically equated with an increase in the influence of the nation-state in specific policy areas. Europeanised decision-making rules can relate to both the dismantling of national regulations governing state intervention and the determination of new ones. For example, the withdrawal of the state from many areas of public service from telecommunications to the supply of energy to aviation is closely associated with European initiatives. Irrespective of

<sup>27</sup> Refer to Sara B. Hobolt: A vote for the President? The role of Spitzenkandidaten in the 2014 European Parliament elections, in: Journal of European Public Policy 10/2014, pp. 1528-1540.

whether the influence of Brussels ultimately leads to an increased or reduced presence of the state in the fulfilment of government tasks, all the policy areas have one thing in common, which is that EU institutions are increasingly the place of final decision.

In terms of policy areas that are almost completely Europeanised, there are two that have a long tradition of European affiliation. In 1957, the Treaties of Rome made agricultural policy and competition policy key areas of European decision-making. This does not mean that no changes have occurred here in the intervening period – on the contrary. The changes did not lead to a renationalisation of decision-making processes, but were based on European assumptions. In the agricultural policy area, the reforms of 1992 (the MacSharry reforms), 2003 (the Fischler reforms), 2008 and the subsequent (Health Check) and 2014 reforms led to a steady convergence of pricing in the area of agriculture to world market prices and strengthened the importance of direct payments to farmers instead of the support for the prices of agricultural products by the European Union. The European Union has introduced mechanisms for the provision of support for further goals, such as rural conservation, nature conservation and organic farming. The more detailed such regulations become, the greater the risk of a *misfit* with national interests and priorities. The German position is not conflict-free, for instance, in terms of the level of transfer payments from Brussels' coffers or in terms of the criteria for direct payments, in the context of which the German Federal Government has to stand up for family-run agricultural businesses as well as for large-scale agriculture in eastern Germany, the successor organisations of the collective farms in the former German Democratic Republic (GDR).

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*“German competition law has become increasingly Europeanised in terms of its contents through amendments to the law preventing restrictions to competition.”*

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European competition policy is linked directly to the development of a European single market as a policy for protecting the market from the constraints of economic competition. The European Commission is responsible for monitoring compliance with rules regarding competition. It is the European competition authority. Strict limits apply to the possibilities of independent national decision-making. European competition law also applies in Germany. German competition law has become increasingly Europeanised in terms of its contents through amendments to the law preventing restrictions to competition. In the area of cartel control, the German Federal Cartel Office only applies European law. The Commission is responsible for the monitoring of major company mergers. The Federal Cartel Office is only able to process cases of limited importance and those in which more than two thirds of the collective turnover are generated in a single country. German competition policy has not only adapted to European requirements from an organisational point of view, but also in terms of its alignment, and attempts to resolve *misfit* problems.

In the course of Europeanisation, German competition policy has been increasingly characterised by the extension of instruments of competition control such as the leniency program with market agreements, the extension of the use of econometric models to determine the damaging impact of the actions of market participants on competition, the segmentation and/or stronger case-related assessment of anti-competitive behavior or the use of private complaints for the determination and monitoring of infringements of compe-



Table 4: German competition policy and the model of Europeanisation

Principles of German competition policy	Specifics of the model of Europeanisation
Orientation to long term efficiency / structural decisions	Orientation to short term efficiency / case-by-case decisions
Monitoring by state institutions (and courts)	Greater role of private enforcement of rules / private complaints
<i>Ex-ante</i> inspection of risks to competition	Ex-post inspection
<i>Per-se</i> rule / market structures criteria	Rule of reason / consumer welfare criteria
Dominance of the legal and political discourse	Dominance of the economic discourse
Traditional investigative procedures	Leniency program

Source: Sturm/Pehle: Das neue deutsche Regierungssystem, 2012, p. 212.

tition law.<sup>28</sup> The fact that the European single market requires a Europeanised form of competition policy is not disputed. From a German point of view, the new competition philosophy that has been applied at the European level has posed problems. It has replaced the *ordo-liberalism* which, due to German influence, was once the guiding principle in the Commission Directorate General for Competition with a ‘more economic approach’, meaning the orientation of competition policy to the effects of competition, particularly consumer welfare. **Table 4** provides a summary of the principles of German competition policy and compares them with a simplified model of Europeanisation. The Europeanisation model shows the direction that German competition policy is taking.

Since the introduction of the single European currency, the Euro, currency policy has also been Europeanised. The Europeanisation of the German Central Bank (*Bundesbank*) made it a member of the European System of Central Banks (ESCB). Its president is a member of the Governing Council of the ECB. In addition to administrative functions, the Bundesbank itself only has structural functions in the area of banking supervision, which it realizes in cooperation with the German Federal Financial Supervisory Authority. As a consequence of the loss of importance suffered

by the Europeanised Bundesbank, it has been reorganised, and its staff and executive teams have been reduced in size.

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*“As a consequence of the loss of importance suffered by the Europeanize Bundesbank, it has been reorganised, and its staff and executive teams have been reduced in size.”*

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For Germany, the Europeanisation of its currency was associated with the pledge to ensure that the European currency was as stable as the German Mark (DM). Reforms to the Stability and Growth Pact which aimed to ensure that this was the case, and above all else the failure to comply with deficit limits that this has caused, as well as the role now played by the ECB in economic policy, have provoked criticism of the policies surrounding the single European currency on the part of Germany. The Europeanisation of currency policy appeared to especially correspond to the *fit* model of German and European institutions, since the ECB was conceptualised according to the model of the German Bundesbank and is based in Frankfurt am Main. The misfit problem which now exists is primarily a result of the politicisation of the currency policy of the European Union.

<sup>28</sup> Refer to Angela Wigger/Andreas Nölke: Enhanced Role of Private Actors in EU Business Regulation and the Erosion of Rhenish Capitalism: the Case of Antitrust Enforcement, in: Journal of Common Market Studies 2/2007, pp. 487-513.

Regional policy, structural policy and environmental policy are largely organised from a European perspective. The former represents an exception in terms of competition policy, since regional policy allows for aid which would otherwise be banned in the single market due to its disruptive impact. All aid is controlled by the Commission. The Commission develops structural and regional political initiatives in collaboration with national and regional governments. German regional policy, in the scope of the community task of “improving regional economic structures” (Art. 91A GG), requires the permission of the Commission. Due to its Europeanisation, German environmental policy has experienced a change in direction. It no longer focuses on preventing emissions (the original German model), but achieving environmental quality goals, in the context of which the Commission focuses less on the detailed specification of means and ways, but rather on monitoring the attainment of goals.

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*“Due to its Europeanisation, German environmental policy has experienced a change in direction. It no longer focuses on preventing emissions (the original German model), but achieving environmental quality goals (...)”*

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There has been a lesser degree of Europeanisation in the areas of transport policy and social policy. In such areas, there is a partial lack of competencies at the European level. Europeanisation partially falls back on a different instrument which allows for free will and structuring possibilities on the part of Member States: the Open Method of Coordination. This means that a long term goal is defined at the intergovernmental level, which the Member States then try to achieve with their own strategies. Justice and domestic policy can be seen as becoming increasingly Europeanised.

This is an area which is of fundamental importance for national sovereignty, and which renders the finding of European solutions difficult, as shown by the example of asylum policy.<sup>29</sup>

## 4. Concluding remarks

Europeanisation has seen significant changes in the German system of government – most strongly in the policy areas. It is naturally the case that the parameters set by the European Union for national policy must also be seen in the context of international policy. In the area of economic policy, for instance, the European Union has to rise to the strategic challenges posed by globalisation, whether this relates to the supervision of the banking sector (the Basel Convention) or to treaty-based free trade agreements with the USA and Canada. The European Union is able to help accelerate the pace of market integration for Member States, but can also help to maintain social accomplishments. Governing in a Europeanised system of government is always, at its core, referential. Regardless of which European legislation Germany follows, it is necessary to comply with a European framework which can differ in terms of its scale and scope.

To be able to do this efficiently, national institutions, and to a certain extent, the processes of opinion-forming, have adapted to these new conditions with differing degrees of intensity. In terms of national party political competition in particular, the Europeanisation of German politics remains underdeveloped. In view of the lack of a functioning European public sphere, this has led to political upheavals, and to a certain extent of Euroscepticism among citizens who are

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<sup>29</sup> Refer to Dimiter Toshkov/Laura de Haan: The Europeanization of asylum policy: an assessment of the EU impact on asylum applications and recognition rates, in: *Journal of European Public Policy* 5/2013, pp. 661-683.

obliged to abide by regulations that were discussed either little or not at all at the national level when they were adopted.

National parliaments are changing in terms of their role as legislators in the process of Europeanisation. They are responsible for implementing increasing amounts of European legislation at the national level, but, in most cases, without the communicative output which is otherwise necessary in terms of the content of the law. The federal states and municipalities see themselves confronted with the consequences of Europeanisation in a variety of policy areas, without always being aware of them. In recognizing its subordination, the Federal Constitutional Court uses the term 'cooperation' in describing its relationship with the Court of Justice of the European Union. It has stated that, as long as the Basic Law applies, Europeanisation cannot continue to the extent that the scope for national decision-making disappears.

Does this mean that there are limits to Europeanisation? Such limits will not come from the process of Europeanisation, but from the process of integration. The agreed competencies of the European Union invariably find their way into the politics of Member States. Yet it makes a considerable difference whether our starting point is the current level of integration or, for example, an actual United States of Europe.

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