

Center for European Studies
Program for the Study of Germany and Europe
Working Paper Series 06.2 (2006)

**How European Integration Impacts
on National Legislatures:
The Europeanization of The German Bundestag**

BY

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Abstract

In looking at the Europeanization of the German Bundestag, the paper brings together two different debates: the well-established debate on the democratic legitimacy of the European Union sees national Parliaments as guarantor of one branch of a “dual” legitimacy. The more recent debate on “Europeanization” addresses the impacts that European integration has had on its Member States. Analyzing the Europeanization of the German Bundestag, the paper identifies and analyzes three dimensions: *legislative Europeanization* – the extent to which legislative decision making by the German Bundestag has been influenced by European stipulations over the last twenty years; *institutional Europeanization* – how the Bundestag as an institution reacted to this loss of function by establishing institutional and procedural provisions for influencing the government’s Euro-politics; and *strategic Europeanization* – the ways in which individual MPs started more recently to develop euro-political strategies that go beyond controlling the national government. The paper shows that the Bundestag only hesitantly reacted to the increasing loss of functions through legislative Europeanization by establishing effective institutional and procedural provisions for controlling the government’s Euro-political activities. What is more, the establishment of institutions does not guarantee their effective use. All in all, Euro-politics continues to remain the activity of few MPs. These few, however, have more recently started to europeanize their strategies. The empirical findings support the claim that the traditional concept of chains of legitimacy is inadequate, both in conceptual and in empirical terms. With regard to the democratic legitimacy of EU governance, this indicates that, apart from major reform projects, especially with regard to everyday legislation, not too great a burden should be placed on national Parliaments.

Introduction¹

Like the entire German governmental system, the Bundestag (the Lower House of the German Parliament) has experienced sweeping “Europeanization,”² particularly so in the course of the last twenty years. While the process of European integration has had its effect on the Bundestag and its scope of action, the German Parliament has developed a series of institutional and strategic responses to these challenges. What is more, the Bundestag functions in an environment where actors at the European level are also intensifying their efforts to deal with the role of national parliaments in the European multi-level system.

This paper employs the example of the Bundestag to link two major debates: first, the discussion regarding the *democratic legitimacy* of governance by the European Union in general, and the *role of national Parliaments* in guaranteeing this legitimacy in particular; and second, the more recent discussion on the “Europeanization” of EU-member states, namely, the impact that European integration has on the institutional setting, among other things.

Almost all recent theories associate democracy with a major role for parliaments. The progressing integration of Europe, where competences have increasingly been transferred to the Community, however, caused decision-making responsibilities to shift especially from the Bundestag to the Federal executive branch,³ for those competences transferred to the European level are dealt with by the European Council, whose members are representatives of their respective national governments. The Council *as a whole* is not subject to any parliamentary control. Notwithstanding the fact that the role of the *European Parliament* has considerably gained in clout, it has neither the same quality nor range of procedural rights that national parliaments⁴ enjoy(ed); that is why in this context we speak of *de-parliamentarization* and hence of *de-democratization* of decision-making processes.⁵ This forms the core of the much discussed

¹I am indebted to Katrin Auel, Sven Grimm, Andrew Moravcsik, Rainer Prätorius, Tapio Raunio and Sarang D. Thakkar for their very helpful comments on an earlier version of this paper, to Johanna Elo-Schäfer for her research assistance, Alfons Holzem for language support and Andy Martin for working thoroughly over the text – in terms of both substance and language. I assume sole responsibility for this paper.

²The term “Europeanization” as used in this paper is confined to Europe as it is organized in the European Union, Beate Kohler-Koch, ‘Europäisierung: Plädoyer für eine Horizonterweiterung,’ in Michèle Knodt and Beate Kohler-Koch (eds.), *Deutschland zwischen Europäisierung und Selbstbehauptung* (Frankfurt a. M.: Campus, 2000), p. 12.

³See Rita Süßmuth, ‘Vorwort,’ in Europäisches Zentrum für Parlamentarische Wissenschaft und Dokumentation (ed.): *Seminar zur Rolle der Parlamente beim Entstehen von EG-Recht und dessen Umsetzung in nationales Recht*, Berlin, 3/4 March 1994, p. 3; Tanja A. Börzel, ‘Europäisierung und innerstaatlicher Wandel. Zentralisierung und Entparlamentarisierung?’ *Politische Vierteljahresschrift* 41,2 (2000): 230.

⁴This paper addresses primarily procedures established in the Community pillar. In the field of Common Foreign and Security Policy as well as Justice and Home Affairs/Police and Judicial Co-operation, the major lack of powers of the European Parliament aggravates the problem even more; see Andreas Maurer, ‘Nationale Parlamente in der Europäischen Union – Herausforderungen für den Konvent,’ *Integration* 25,1 (2002): 25. I am grateful for Andy Martin’s comment that basically the same holds true for both the highly insulated policy by the ECB and the Stability and Growth Pact.

⁵Annette Elisabeth Töller, *Europapolitik im Bundestag* (Frankfurt a. M.: Peter Lang, 1995); Andreas Maurer, op. cit., p. 21; Thomas König, ‘Unitarisierung durch Europäisierung?’ *Aus Politik und Zeitgeschichte* 36 (2005): 28-32.

“European democracy deficit.”⁶ Approaches to a solution of this problem are mainly based on the idea of a *dual legitimacy*. While the European Parliament – directly elected since 1979 and drawing more and more legislative competences⁷ since the Single European Act in 1987 – is generally granted legitimizing functions, at least some authors question a number of basic conditions for the legitimizing power of the European Parliament’s role in legislation.⁸ On a different note, *national parliaments* are given a substantial role in developing individual national legitimation chains, which should provide for a link between the electorate and the government representatives in the Council.⁹ For a long time, this role of national parliaments was taken for granted, without caring about the factual degree of involvement displayed by the national parliaments. Only in the mid-1990s did scholarly debate start to address the involvement of national parliaments in European politics in empirical terms.¹⁰

However, focusing the discussion on national chains of legitimacy is problematic in itself. It requires a functioning chain of control of the national governments’ European policies which, given the time and effort that most national parliaments devote to politics at the European level, is far from being real.¹¹ What is more, viewing the national governments as links in chains of legitimacy rests on a conceptualization of the European system as a “two-level system,”¹² in

⁶For critical comments on the “democratic deficit” see Andrew Moravcsik, “In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union,” *Journal of Common Market Studies* 40,4 (2002): 603-624.

⁷This increase in legislative competence, on the one hand, results from the creation of ever new procedures for EP participation in European legislation. The EP’s legislative powers were successively enhanced from consultation to cooperation to co-decision procedures. On the other hand, particularly co-decision procedure, once created, has progressively been stretched to ever more issues. The European Parliament, however, still has no right to initiate legislation.

⁸Critics see the (according to their view, lacking) existence of a European public sphere, relevant political parties and a collective European identity as a precondition for the sovereignty of the people being exercised via parliamentary representation at European level and for the application of the majority rule. See Shirley Williams, ‘Sovereignty and Accountability in the European Community,’ in Robert O. Keohane and Stanley Hoffmann (eds.), *The New European Community. Decisionmaking and Institutional Change* (Boulder CO: Westview, 1991), pp. 155-176; Rainer M. Lepsius, ‘Nationalstaat oder Nationalitätenstaat als Modell für die Weiterentwicklung der Europäischen Gemeinschaft,’ in Rudolf Wildenmann (ed.), *Staatswerdung Europas? Optionen für eine Europäische Union*, (Baden-Baden: Nomos, 1991), pp. 19-40; Peter Graf Kielmansegg, ‘Integration und Demokratie,’ in Markus Jachtenfuchs and Beate Kohler-Koch (eds.): *Europäische Integration* (Opladen: Leske & Budrich, 1996), pp. 47-71; for critical annotations see Ingolf Pernice, *The Role of National Parliaments in the European Union*, WHI-Paper 5/01, www.whi-berlin.de/.

⁹Tapio Raunio, ‘Always One Step Behind? National Legislatures and the European Union,’ *Government and Opposition* 34,2 (1999): 185; Sven Hölscheidt, ‘Mitwirkungsrechte des Deutschen Bundestags in Angelegenheiten der EU,’ *Aus Politik und Zeitgeschichte* B 28 (2000): 31-38; Ingolf Pernice, op. cit., p. 3.

¹⁰David Judge, ‘The Failure of National Parliaments,’ *West European Politics* 18,3 (1995): 79-100; Winfried Steffani and Uwe Thaysen (eds.), *Demokratie in Europa: Zur Rolle der Parlamente*, Opladen, 1995; Annette Elisabeth Töller, op. cit.; Philipp Norton (ed.), *National Parliaments and the European Union*, London: Routledge, 1996.

¹¹Tapio Raunio, ‘Holding governments accountable in European affairs: Explaining cross-national variation,’ *Journal of Legislative Studies* 11,3-4 (2005): 319-342. Katrin Auel and Arthur Benz, ‘The politics of adaptation: The Europeanization of national parliamentary systems,’ *Journal of Legislative Studies* 11:3-4 (2005): 372-393; Katrin Auel, ‘The Europeanization of the German Bundestag: Institutional Change and Informal Adaptation,’ *German Politics* 16,3 (2006, forthcoming).

¹²Robert D. Putnam, ‘Diplomacy and Domestic Politics: The Logic of Two-Level Games,’ *International Organization* 42,3 (1988): 427-460; Andrew Moravcsik, ‘Preferences and Power in the European Community:

which national governments are the key actors on the European level, preparing their positions in a national aggregation process and putting them forward in Brussels. This notion, in turn, is linked with the idea of legitimacy developing in a hierarchical structure, which is reflected by the term “chain of legitimacy.” This concept, however, may be considered outdated since at least the end of the 1990s. Even though the multi-level approach is at best a “descriptive metaphor,” it illustrates quite clearly that relations among actors are a lot more complex than the two-level model may suggest.¹³ Notwithstanding the fact that it does feature hierarchical elements (particularly European law), the structure of the EU institutional setting is heterarchical as a whole, which has implications for the question of legitimacy. In a heterarchical environment, legitimacy can and indeed must originate from various sources.¹⁴ This, however, puts the legitimizing role of hierarchical relations into perspective.

Yet, considerations like these are no reason not to address the legitimizing role of national parliaments. Instead, they emphasize the need to empirically examine this role in the European multi-level system. However, since this role may be much more complex than conventional approaches would make us believe, it ought to be considered separate from the rigid conception of the chains of legitimacy.¹⁵

The second subject area of this paper is the multifaceted scholarly discussion on “Europeanization.” Beyond all the disputes on how to conceptualize the term, Radaelli’s understanding seems to help. He describes “Europeanization” as the impacts that European policies have on

A Liberal Intergovernmentalist Approach,’ in Simon Bulmer and Andrew Scott (eds.), *Economic and Political Integration in Europe: Internal Dynamics and Global Context* (London: Blackwell, 1994), pp. 29-80.

¹³Edgar Grande, ‘Multi-Level Governance: Institutionelle Besonderheiten und Funktionsbedingungen des europäischen Mehrebenensystems,’ in Edgar Grande and Markus Jachtenfuchs (eds.), *Wie problemlösungsfähig ist die EU? Regieren im europäischen Mehrebenensystem* (Baden-Baden: Nomos, 2000), p. 12; Like this quotation, all German quotations are translated by the author of this paper. Regarding the multi-level approach, see: Gary Marks, Lisbet Hooghe and Kermit Blank, ‘European Integration from the 1980s: State-Centric v. Multi-level Governance,’ *Journal of Common Market Studies* 34 (1996): 341-378.

¹⁴See Annette Elisabeth Töller, *Komitologie* (Opladen: 2002), pp. 151, 195. More recently, the debate has therefore focused on aspects other than (only) the creation of legitimation chains by representative parliamentary assemblies. See, e.g., Annette Elisabeth Töller, op. cit., pp. 195, 207; Hubert Heinelt, ‘Civic Perspectives on a Democratic Transformation of the EU,’ in Jürgen R. Grote and Bernard Gbikpi (eds.), *Participatory Governance. Political and Societal Implications* (Opladen: Leske & Budrich, 2002), pp. 97-120; Claudio Radaelli, ‘Democratising Expertise?’ in Jürgen R. Grote and Bernard Gbikpi, op. cit., pp. 197-212.

¹⁵In parallel with the discussion on the European ‘democratic deficit,’ the debate on the dwindling importance of national parliaments predominated among practitioners. As for the Bundestag, the 1993 *Maas-trichturteil* of the Federal Constitutional Court had a significant catalyst function. As a result, the effects of European integration on the functions and competence of national parliaments in general, and the Bundestag in particular, and possibilities of countering such losses, have been increasingly addressed since the mid-1990s (early on: Suzanne S. Schüttemeyer, ‘Funktionsverluste des Bundestags durch europäische Integration?’ *Zeitschrift für Parlamentsfragen* 10,2 [1979]: S. 261-278). Not least against this background have younger analysts mainly pursued a comparative approach and investigated the reason for the considerable variance in the extent and form of Europeanization of different European parliaments. Looking primarily at the extent of euro-political activities, Germany holds but a mid-field rank in Europe; comparing the type of control that is exercised, the German Bundestag is reputed to be rather consensus-oriented. See Katrin Auel, ‘Europäisierung der Arbeit nationaler Parlamente,’ in Edgar Grande and Rainer Prätorius (eds.), *Politische Steuerung und neue Staatlichkeit*, (Baden-Baden: 2003), pp. 259-280; See Tapio Raunio, ‘Always One Step Behind?’; Matthias Zier, *Nationale Parlamente in der EU* (Göttingen: 2005).

national governmental systems, including polity, politics and policies.¹⁶ Starting from this understanding, I would like to elaborate further on these impacts on the national *institutional* setting. These may be impacts that the institutions in the national political system “sustain,” as it were, which would make them “objects” of Europeanization. These impacts, however, cause a reaction among the institutions that – for instance by changing procedures and strategies – then become “subjects” of Europeanization. With this definition in mind, this paper is to be seen as a contribution to the discussion on “Europeanization” – not in the sense that it will (or even could) establish the all-round clarity that the debate has lacked so far. It deliberately avoids isolating one specific dimension of Europeanization. Instead, the paper will take the Bundestag as an example to carry out an analysis of the *different* dimensions of Europeanization, identify interrelations among them and highlight lines of development. In doing so, the following three dimensions of Europeanization will be addressed:

- *Legislative Europeanization* describes the restriction of legislative options resulting from European policies, with a particular impact on the Bundestag as the key legislative actor.
- *Institutional Europeanization* covers the development of institutional and procedural provisions to organize and permit influence on the national government’s European policies.
- *Strategic Europeanization* consists in national MPs taking the European Union as a decision-making center into account – but also as an addressee for their action – and in adjusting action patterns and routines accordingly.

Whereas in the case of legislative Europeanization, the Bundestag is the object of Europeanization, institutional and strategic Europeanization make the Bundestag and/or its elements the subjects of Europeanization.

Another dimension of Europeanization consists in the European Union itself increasingly recognizing national parliaments as actors, be it by trying to facilitate their participation in European decision making by European rules or by assigning to them roles in the European governmental system (we could call this “Europeanization of Europeanization”). This dimension, in which the Bundestag is both the subject and object of Europeanization, is outside the purview of this paper.

Legislative Europeanization

Under the concept of legislative Europeanization, this section will address the ever narrowing restrictions of legislative action in Germany which, as a matter of course, affect the Bundestag as the key legislative institution.

In parliamentary democracies, the legislative function is regarded as one of the chief tasks of parliament (along with the functions of forming a government and holding it accountable, as well as exercising representative and communicative tasks). Over the past few decades there have been three trends that predominantly subjected this function to a good deal of change: the massive *growth of state activities* and – consequently – of legislative tasks; the *informalization* of politics, for instance through negotiations and agreements among governments and societal

¹⁶Claudio Radaelli, ‘Whither Europeanization? Concept stretching and substantive change,’ *EIOP* 4,8 (2002): <http://eiop.or.at/eiop/texte/2000-008a.htm>; on the general debate on Europeanization, see Kevin Featherstone and Claudio M. Radaelli (eds.), *The Politics of Europeanization* (New York: Oxford, 2003).

corporative actors; as well as *Europeanization and internationalization*, which have had the aggregate effect of weakening the position of parliaments vis-à-vis governments.¹⁷

To determine the effects of European integration on national parliaments, the question to be raised is what makes the European Union different from other forms of regional or international organizations. The European Economic Community did indeed start with the Treaty of Rome in 1957 as an international treaty among sovereign states. During the 1960s, however, mainly through the jurisdiction of the European Court of Justice, it turned into a *community of law* with a series of legal doctrines which today fundamentally distinguish the European legal order from the logics of international law (the law applicable between sovereign states): by virtue of its jurisdiction, the European Court of Justice developed doctrines on the *Autonomy*, the *Direct Effect* and the *Primacy of Community Law* as necessary principles for the European legal order to achieve the intended effects.¹⁸ These qualities of European law imply far-reaching obligations for member states and, consequently, for their parliaments as legislative bodies.¹⁹

For the Bundestag (as for all the other national parliaments) this entails an obligation to translate directives into national law which, as a two-stage instrument, set political goals but leave the choice of means to the respective member states. This confronts the Bundestag with the paradoxical situation of being unable to exert (any more) influence on the directive but of “still being politically responsible for its content to the people.”²⁰ In areas where the Bundestag may normally take legislative action, the European Treaty and secondary European law impose substantial restrictions on national policy choices. Particularly the provisions on the Single European Market leave national legislators precious little room to decide by what measures they want to achieve particular political goals. The Bundestag can no longer act at all in those areas already addressed by European regulations; where there is a Community competence but not yet a regulation, Member States often have to notify the Commission of their policy plans and to adjust the content of measures under certain conditions. Sometimes they may not pass a planned measure at all.²¹ Finally, intergovernmental procedures so far established in the second and third pillar have increasingly tightened national lawmakers’ scope for action.

To date, these actual restrictions of national legislative action have neither been qualified nor quantified in a reliable way,²² and this paper cannot entirely fulfill this major desideratum either.

¹⁷See Klaus von Beyme, ‘The Bundestag – Still the Centre of Decision-Making?’ in Ludger Helms (ed.), *Institutions and Institutional Change in the Federal republic of Germany* (Basingstoke: Macmillan, 2000), pp. 32-47.

¹⁸Joseph Weiler, ‘The Transformation of Europe,’ *The Yale Law Journal* 100 (1991): 2403-2483; Anne-Marie Burley and Walter Mattli, ‘Europe Before the Court: A Political Theory of Legal Integration,’ *International Organization* 47,1 (1993): 41-75.

¹⁹This obligation is not seen as legally binding for parliaments, instead the obligation devolves on the member states in toto.

²⁰Deutscher Bundestag, Wissenschaftliche Dienste, *Europa Aktuell* 2., Berlin, 2002, pp. 4, 9.

²¹Armin von Bogdandy, ‘Links Between National and Supra-National Institutions: A Legal View of a New Communicative Universe,’ in Beate Kohler-Koch (ed.), *Linking EU and National Governance* (New York: Oxford University Press, 2003), pp. 24-52.

²²In his article of 1996, Schmitter quantifies the “issue arenas and levels of authority in Europe,” Philippe C. Schmitter, ‘Imagining the Future of the Euro-Polity with the Help of New Concepts,’ in Gary Marks, Fritz W. Scharpf, Philippe C. Schmitter and Wolfgang Streeck (eds.), *Governance in the European Union* (London: Sage, 1996), p. 125. It is, however, not quite clear how these figures were obtained and what ex-

Table 1: The Percentage of Bundestag Legislation Influenced by a "European Impulse" from 1983 to 2005

<i>Subject Area</i>	<i>10th ET</i> <i>(1983-87)</i>	<i>11th ET</i> <i>(1987-90)</i>	<i>12th ET</i> <i>(1990-94)</i>	<i>13th ET</i> <i>(1994-98)</i>	<i>14th ET</i> <i>(1998-2002)</i>	<i>15th ET</i> <i>(2002-2005)</i>
Home Affairs	4.4	2.3	14.5	11.9	19.2	12.9
Justice	9.8	35	20	21.6	34.1	42.2
Finance	22.9	25.6	22.7	25.0	38.0	36.2
Economics	16.7	15	9.5	34.8	42.4	40.0
Food & Agriculture	58.8	28.6	52.0	65	79.2	75.0
Labor & Social Policy	6.0	5.9	11.0	15.8	23.3	15.6
Family & Health	26.1	26.1	37.8	19.4	23.8	37.5
Transport	40	37.5	26.1	36.4	28.6	40.0
Post a. Telecomm.	33.3	0	50.0	71.4	-	-
Regional Planning	0	10	9.1	9.1	-	50.0
Education & Research	0	0	25	12.5	0	0
Environmental Policy	20	66.7	75	54.6	69.2	81.3
Average	16.8	19.9	24.1	25.9	34.5	34.6

Source: Johanna Elo-Schäfer/Sven Grimm/Annette Elisabeth Töller, *European Impulses in the Bundestag's legislation from 1983 to 2005*, Evaluation based on GESTA (German Bundestag, Federal Legislation Update), set of data, Helmut Schmidt University/University of the Federal Armed Forces, Hamburg, 2006. The evaluation covers only those areas with a genuinely "domestic" task, as opposed to the fields of defense, foreign relations and development. A "-" represents departments that no longer existed in the respective electoral term. Over the five electoral terms certain changes in the portfolios took place. Data were evaluated accordingly.

actly they express. Also, in some points the values appear to be implausible. In the field of environmental policy, for instance, a mean value of 3 ("policy decisions at both national and EC level") for 2001 seems rather low, national leeway is in fact increasingly disappearing. The same criticism applies to the data presented by Manfred G. Schmidt, 'Die Europäisierung der öffentlichen Aufgaben,' in Thomas Ellwein and Everhard Holtmann (eds.), *50 Jahre Bundesrepublik Deutschland. Rahmenbedingungen - Entwicklungen - Perspektiven* (Opladen: Westdeutscher Verlag, 1999), p. 390-391. Andrew Moravcsik suggested that a better method for measuring the Europeanization of policymaking is to look at who decides over the funding. This would, however, lead to an underestimation of EU-impact, since in EU policy there is a strong bias in favor of regulatory (instead of [re-]distributive) policies. Whereas with the data presented I only want to give an idea of the Europeanization of German *legislation*, a reliable method for measuring the *Europeanization of public policies* has yet to be found.

Before measuring *functional restrictions*²³ on the Bundestag's legislative options caused by European policies, we have to distinguish two categories of restrictions: the options will be *restricted in total* wherever European legal regulations no longer allow the Bundestag to exercise legislative functions. *Partial restrictions* will apply wherever Bundestag legislation is possible, but bound by more or less stringent substantial specifications. While it is difficult to provide exact figures for the former category, the latter, in which legislative activities are possible (or even necessary) but subject to European requirements, can be quantified quite reasonably. An evaluation of the "Federal Legislation Database" (GESTA) with regard to those measures that featured a "European impulse,"²⁴ produced the following picture: (broken down by policy fields for the time from 1983 to 2005, i.e., from electoral terms ten to fifteen).

A first glance at how the share of European impulses on overall legislation developed reveals that until the early 2000s it had grown steadily from 16.8 percent in the tenth electoral term (ET) to almost 20 percent in the eleventh, 24.1 percent in the twelfth, 25.9 percent in the thirteenth, and reached 34.5 percent in the fourteenth electoral term. Whereas these days, well over one-third of all acts passed in Germany are influenced by a European impulse, this share did not grow in the last election period from 2002 to 2005 but remained constant.

A closer look at the individual policy areas during the past electoral term shows that at present legal acts in environmental policy (81.3 percent), and agriculture (75.0 percent) have the highest percentage share of European impulses. Regarding the development in the individual spheres of policy throughout twenty-two years, none of them displayed a steady increase. Between electoral terms ten and fourteen, the figures in most spheres of policy rose overall but were also subject to fluctuation. Between 1987 and 2002 the areas that particularly experienced a noticeable increase were Home Affairs, Economics and Labour, Social Affairs and Agriculture. In other areas the relative share of European Impulses fluctuated around an intermediary value (Health and Transport). In the fields of Justice, Family and Health (especially due to health related issues), Regional Planning (including construction), Transport and Environmental policy the share of acts with a European impulse increased (further) from the fourteenth to the fifteenth electoral period, whereas in all other areas that had risen previously (e.g., Home Affairs, Finance, Economics, Agriculture), a slight decrease in measurable Europeanization – even though on a high level – can be identified. The data presented broadly correspond with the development of Community competences and policies during the time under review.

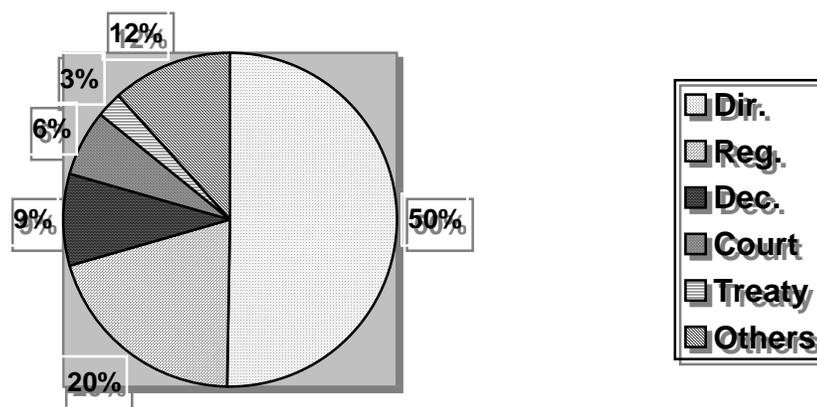
Let us take a closer look at what exactly is covered by the notion of "European impulses" by evaluating the 112 European impulses identified in the fifteenth electoral term, from 2002 to 2005 (see table 2): exactly one-half concerned directives that were to be translated into German legislation (either one single directive, two or more at a time or a directive plus a regulation or, e.g., an action plan); 20.5 percent were regulations that German law had to be adjusted to (a single regulation, several ones or a combination of a regulation and, e.g., a white book). 8.9 percent of the European impulses were Council decisions including framework-decisions that

²³A restriction of *competence* depicts the competences transferred to the Community by virtue of the Community Treaties. It fails to state, however, the extent to which the Community does actually use these competences and the degree of resulting restrictions of the Bundestag's scope of action, cf. Suzanne S. Schüttemeyer, op. cit. Therefore, my focus is on the actually gaugeable restriction of legislative function, as opposed to the concept of restriction of competence, cf. Annette Elisabeth Töller, *Europapolitik im Bundestag*, op. cit., p. 45.

²⁴"European Impulse" is not an established term in German political science language. It was invented by those organizing the database. See below on what exactly is covered by the label "European Impulse."

were introduced in 1997 by the Amsterdam Treaty (Art. 34 2b) as the instrument of Police and Judicial Co-operation.²⁵ Some 6.3 percent referred to decisions by the European Court of Justice; 2.7 percent of the European impulses referred to stipulations of the Treaty itself. Another 11.6 percent of the cases concerned “other impulses.” These range from rather precise stipulations such as requirements for regional aid, guidelines for state aid or employment policies to rather vague notions such as “demands” by the Community for certain standards or “requests” by the Commission to meet certain demands arising from the Treaty.

**Table 2: European Impulses to German Legislation
in the 15th Electoral Period**



However, when looking at the data shown in table 1, the following caveats must be made:

1. As mentioned before, these statistics refer to partial restrictions of Bundestag legislation but fail to include fields of total restriction where, owing to the constraints of European law, the Bundestag can take no more legislative action.
2. The data reflect neither the significance of the specific laws nor the quality and intensity of the respective European impulse. What is more, these figures fail to indicate the qualitative change that the European impulses produce in comparison with previous legislation, e.g., with regard to the style of regulation.²⁶

²⁵Whereas these decisions are taken by the Member State Representatives in the Council without decision-rights by the European Parliament, in its effect these framework-decisions resemble directives, inasmuch as they are binding regarding their objectives but Member States can choose the means when translating them into national law.

²⁶In the field of environmental policy, for instance, the effects of European on German environmental policy has triggered a considerable change from clear “command and control,” i.e., regulatory law with prohibitions, orders and sanctions, to include procedural instruments (e.g., as a consequence of the Environmental Impact Assessment Directive or the Eco-Audit Regulation), see Hubert Heinelt, Tanja Malek, Randall Smith and Annette E. Töller (eds.), *European Union Environment Policy and New Forms of Governance* (Aldershot: Ashgate, 2001). It has become apparent that such “unfamiliar” regulatory styles can be integrated only at considerable frictional losses.

3. The predominance of particular legal instruments in specific sectors (e.g., regulations in agriculture, directives in environmental policy) may influence the results in the individual spheres of policy. In contrast to regulations which frequently exclude national legislation, directives do indeed call for it – which may affect the figures concerning the “European impulses” to a degree where the exact extent of influence of European policy is not necessarily reflected.

4. The survey makes only little (if any) reference to those fields where European impulses have a “hidden effect.” A new bill, for instance, may be worded specifically to allow the implementation of a foreseeable directive, or national regulations may be prepared to be a forerunner with regard to expected European regulatory processes (“regulatory competition”).²⁷

The qualifications just made show that the presented percentages of German legislation as influenced by European policies reveal only the “tip of the iceberg.” Thus it can be stated that they give proof of a clear Europeanization and – in its wake – restriction of the legislative function of the German Bundestag.

However, restrictions on its legislative functions have not hit the Bundestag like the proverbial bolt out of the blue. Instead, under the principle of limited attribution of competences, the Community requires explicit norms of competence in the Treaties to take any action. Those international treaties that founded and subsequently changed the Treaties, and which bestowed upon the Community substantial and fresh competences with each step it took since the Single European Act in 1987, could not take effect until ratified in accordance with the provision of each member state. Under German constitutional provisions²⁸ the Bundestag (among other bodies) has to give its consent, i.e., a majority of its members agreed to each transfer of competence to the European Community/Union. This does not mean, however, that the Bundestag when ratifying the Treaties was always fully aware of the implications they had and fully accepted each element of its own deprivation. Rather, there is a considerable *momentum* in the integration process, as indicated by both the aforementioned emergence of legal dogmas through the jurisdiction of the European Court of Justice and the development following the signing of the Single European Act. Amidst the rationality of harmonization in the Single Market and sectoral “spillovers,” the competences actually delegated to the Community were interpreted extensively, particularly by the European Commission. To a fair extent this development also was driven by national governments, which tend to pursue political options that would hardly find a national majority at the European level instead, and not always bothering much about limitations stipulated by the treaties.²⁹

What is more, the right of ratification of national parliaments does not automatically offer the possibility of exerting *influence* on the contents of the treaty. At the ratification stage MPs can only say either *yea* or *nay*. Apart from the fact that a treaty once negotiated by an intergovernmental conference is usually based on a complex package deal which will not produce a clear

²⁷Sabine Pag, ‘Alltagsgeschäft EG: Die Umsetzung von EG-Vorschriften in der Bundesrepublik Deutschland,’ *Integration* 11,3 (1988): 130; Adrienne Héritier, Christoph Knill and Susanne Mingers, *Ringing the Changes in Europe: Regulatory Competition and the Transformation of the State: Britain, France, Germany* (Berlin/New York: Walter de Gruyter, 1996).

²⁸Until 1992 it was Article 24 of the German Basic Law which demanded a simple majority. From the constitutional amendment in late December 1992 the new Article 23 of the German Basic Law has required a two-thirds majority in the Bundestag and the Bundesrat (see below).

²⁹Ingolf Pernice, *op. cit.*, p. 15.

winner or loser, any rejection by a national parliament during the ratification phase will create serious problems for the entire Community, as could be observed recently. This puts parliaments under a lot of pressure to agree to the amendment.³⁰ Real influence on the content of the amendment would have to be exerted at an earlier stage. So far, at least, the wording of treaties has been negotiated by national executives (with a certain degree of influence by the Commission and, recently, the Convention) at intergovernmental conferences. Cases of national parliaments seriously exerting influence on treaty development – and having some extent of success at that – have become apparent in recent years only, particularly so in the European Convention.³¹

Institutional Europeanization

As we have seen, the Bundestag has lost a fair amount of its autonomous legislative function and power. It could compensate for this loss primarily via the indirect way: by influencing the Federal Government's European politics. Establishing a claim to information vis-à-vis the Federal Government, setting up special institutions, building capacities to process the abundance of EU-related information, and creating approaches to handle procedures technically at the European level are considered essential prerequisites for the Bundestag to exert influence on the Federal Government's position on European politics.³²

It was as early as 1957 that the Ratification Act of the Rome Treaty gave the Bundestag a claim to information vis-à-vis the Federal Government in matters of European politics. Article 2 of the Act reads:

The Federal Government will ensure a continuous flow of information to the Bundestag and *Bundesrat* ... on developments in the Council. If a Council decision necessitates German legislation or ... establishes directly enforceable law, information to that effect shall be supplied prior to the Council's decision-making.³³

The responsibility of forming a political opinion within the Bundestag – if the attempt was made – initially devolved upon the technical committees which dealt with EC documents in the Bundestag; in this context the dual mandate of MEPs until 1979 provided an opportunity for integration. In the early 1970s, the number of documents from the EC sharply increased,³⁴ which triggered criticism among the members of technical committees who claimed that dealing with

³⁰Tapio Raunio, op. cit., p. 190; Sven Hölscheidt, op. cit., p. 38; Katrin Auel, op. cit.

³¹See Andreas Maurer, op. cit.

³²Annette Elisabeth Töller, op. cit.; Katrin Auel, op. cit. In principle there are six different domains where the Bundestag could exert Euro-political influence: 1. decisions at constitutional level (treaty amendments and accessions); 2. decisions on the overall political direction other than of a constitutional or legislative nature; 3. the adoption of secondary law; 4. the translation of this European legal instrument into national law; 5. the application and operationalization of European legal instruments at European level (e.g. by the Commission and Comitology), as well as 6. European personnel policy, cf. in detail: Tapio Raunio, op. cit., p. 189; on personnel policy see Herwig C. H. Hofmann, 'Parliamentary Representation in Europe's System of Multi-Layer Constitutions: A Case Study of Germany,' *Maastricht Journal of European and Comparative Law* 10,1 (2003): 1-23. In the context of this paper, only amendments to treaties, decisions on the overall political direction and legislative decisions are addressed.

³³Bundesgesetzblatt, 1957, Part II, p. 753.

³⁴While in electoral term six (1969-1972) the Bundestag was concerned with 745 EC bills, their number more than doubled to 1,759 in electoral term seven (1973-1976); Peter Schindler, *Chronik Deutscher Bundestag: Gesetze - Statistik - Dokumentation. 10. Wahlperiode 1983-1987* (Bonn: 1987), p. 998.

such documents in parliament was increasingly utilizing resources without showing any actual result. MPs also thought that the need for them to identify the important bills among the mass of proposals and documents submitted was making undue demands on them. Frequently the plenary did not take a decision until the legislative act had long been adopted by the Council of Ministers.³⁵ A change in the rules of procedure in 1977 was intended to facilitate the selection of proposals and documents by their significance and to streamline the procedure. It did, on the whole, improve the flow of information, but failed to enable the Parliament to exert *influence* on the Federal Government's European policy.³⁶ Even subcommittees for EC-related concerns set up in some technical committees did not solve the problem.

In the course of the 1980s (after all dual mandates had expired), repeated attempts were made to employ a specialized body to tackle those coordination problems in dealing with EC documents that had become painfully obvious.³⁷ The establishment of a Bundestag "Commission on European Affairs" in 1983 was but a stopgap solution: formally established as a commission of inquiry under its rules of procedure, the Commission could submit the result of its work to the plenary only as a report and not as a recommendation for decision, which denied it direct access to parliamentary procedures.³⁸ At the beginning of the eleventh electoral term (1987), there was consensus that a new model was needed, but the opposition of foreign policy specialists at the parliamentary and governmental levels prevented the establishment of an independent and specialized committee. Eventually the only agreement reached was to add to the Foreign Affairs Committee a subcommittee for EC-related concerns. Tension, however, arose in conjunction with the Foreign Affairs Committee's scope of competence and the (truly "domestic") tasks of the subcommittee, and from the fact that a subcommittee cannot really function independently and enjoys no political status of its own. Finally the work of the Committee was discontinued for "reputation-, procedural and competence-related" reasons.³⁹

The preparations for the Intergovernmental Conferences on the European Union and the Economic and Monetary Union got under way late in 1990. At this same time the newly elected twelfth German Bundestag was facing enormous pressure to act since MPs were not inclined to let the crucial decisions due to be taken on further integration pass them by. It seemed that now the so far controversial issue of what institutional shape a specialized board ought to have was less significant than the fact that it was established in the first place.

The specialized independent committee, established on September 4, 1991, was to deal with the amendment of the EC Treaties, institutional matters, cooperation with the EP and other national parliaments, and the deliberation of EC documents.⁴⁰ One particular aim was to "keep constant

³⁵Horst Ferdinand, 'EG-Vorlagen im Plenum,' in Hans-Achim Roll (ed.), *Plenarsitzungen des Deutschen Bundestages* (Berlin: Duncker & Humblot, 1982), pp. 146ff.

³⁶Klaus Hänsch, 'Europäische Integration und parlamentarische Demokratie,' *Europa-Archiv* 41,7 (1986): 197.

³⁷Michael Fuchs, 'Der Ausschuss für die Angelegenheiten der Europäischen Union des Deutschen Bundestages,' in *Zeitschrift für Parlamentsfragen* 35: 1 (2004): 3-24.

³⁸Peter Mehl, *Die Europa-Kommission des Deutschen Bundestags* (Kehl: Engel, 1987), p. 46.

³⁹Uli Brückner, 'Der deutsche Bundestag im europäischen Maßstab: Neue Anforderungen durch die Europäische Integration,' in Dietrich Herzog, Hilke Rebenstorf and Bernhard Weßels (eds.), *Parlament und Gesellschaft. Eine Funktionsanalyse der repräsentativen Demokratie* (Opladen: Westdeutscher Verlag, 1993), p. 227; Alwin Brück, 'Europäische Integration und Entmachtung des Deutschen Bundestages: Ein Unterausschuss ist nicht genug,' *Zeitschrift für Parlamentsfragen* 19,2 (1988): 223.

⁴⁰Bundestag official publications 12/739; Annette Elisabeth Töller, op. cit., p. 74.

track of intergovernmental conferences rather than merely ratify the treaty in the end.”⁴¹ The committee was a novelty inasmuch as it was the first genuine *interdisciplinary committee* (apart from the traditional committees on Rules, Petitions and Budget). Soon, however, it became apparent that this institutional response to the problem could not meet the claim to an effective European policy either. The fact that the EC Committee would only be officially in charge of European issues “where no other technical committee was” turned out to be a particular hitch. The Committee was actually not once in charge of dealing with EC-documents that were of decision-making relevance.⁴² In a relevant number of cases it deliberated on documents only after they had been approved in Brussels.⁴³ Finally, to work out the Ratification Act for the Maastricht Treaty (the most prominent event in European politics during the twelfth electoral term), a special committee was set up because the Foreign Affairs Committee, the Economic Affairs Committee, the Finance Committee and the Legal Committee could not agree which of them should be in charge – they agreed, however, that the EC committee was not to be in charge.⁴⁴

The establishment of the *Committee on European Union* (EU Committee) in the thirteenth German Bundestag on December 14, 1994, must be seen against the background of the ratification of the Maastricht Treaty: for one, legal experts voiced serious doubts as to whether the provisions of the former Article 24 of the German Basic Law, which had so far been the basis for transferring competences to the EC “could still legitimize what [...] was about to emerge in the sense of a European Union within the near future.”⁴⁵ For another, the *Länder* (federal states) in particular were intent on linking a further restriction of their legislative rights to the explicit approval of the Bundesrat and to its participation whenever such competences are exercised at the European level. In connection with this process, the Bundestag took its time considering its European political interests and only cautiously went along with the activities of the Bundesrat.⁴⁶ As a result, the new Article 23 became part of the German Constitution, which now provides that any transfer of sovereign rights to the EU/EC requires the support of two-thirds majority votes both

⁴¹Süssmuth, as quoted by Annette Elisabeth Töller, op. cit., p. 76.

⁴²Bundestag official publication 12/739; Annette Elisabeth Töller, op. cit., p. 91. Being formally in charge (the German “Federführung”), however, is the central procedural resource allowing committees to formulate for the plenum an independent recommendation for decision on a certain issue and to assert their position vis-à-vis other committees.

⁴³Ibid., p. 101.

⁴⁴Ibid., p. 137.

⁴⁵Udo Di Fabio, ‘Der neue Art. 23 des Grundgesetzes. Positivierung vollzogenen Verfassungswandels oder Verfassungsneuschöpfung?’ *Der Staat* 32,2 (1993): 193.

⁴⁶See Claus Dieter Classen, ‘Maastricht und die Verfassung: kritische Bemerkungen zum neuen “Europa-Artikel,”’ *Zeitschrift für Rechtspolitik* 26,2 (1993): 57; Franz Möller and Martin Limpert, ‘Informations- und Mitwirkungsrechte des Bundestages in Angelegenheiten der Europäischen Union,’ *Zeitschrift für Parlamentsfragen* 24,1 (1993): 22. In the debate it has been frequently ascertained that the Bundesrat has been much quicker and more systematic than the Bundestag at assessing the impact of European integration as well as taking and politically enforcing the necessary compensatory measures. Only ostensibly, however, are the Bundesrat and the Bundestag two institutions similarly affected by integration. In actual fact, behind the Bundesrat measures we find the far-reaching problem of the power shift between the central state and the Länder resulting from integration (cf. Tanja A. Börzel, op. cit., p. 238). As far as resources are concerned, the Bundesrat enjoys the backing of sixteen Länder executives (which, in turn, exert pressure on their Länder parliaments). Thus, the situations of the Bundesrat and the Bundestag will not stand direct comparison.

of Bundestag and Bundesrat (as opposed to only a simple majority of the Bundestag that was required before).

The “participation” of the Bundestag in European decision making requires the Federal Government to inform it “comprehensively and at the earliest point in time possible” and enable the parliament to submit its opinion before a decision is adopted at European level. The Federal Government must take this comment “into account” during negotiations.⁴⁷ What is more, Article 45 of the German Basic Law stipulates the establishment of a Committee on European Union which – apart from the fact that it is enshrined in the constitution – is particular because the Bundestag can empower the committee to “exercise the Bundestag’s rights in relation to the Federal Government in accordance with Article 23.” The rules of procedure have been adjusted accordingly and now give all committees ample rights to take up EU issues on their own initiative. The Federal Government on its part made an interdepartmental arrangement to provide for the necessary procedures.⁴⁸ The government is now obliged to inform the Bundestag extensively, for instance, about the progress of legislative decision making on European level. The size of the committee secretariat (“European Office”) was augmented considerably.

The practical work of the EU Committee has been focused on questions regarding the revision of the Treaty or other major reform projects. For instance, the Committee was in charge of dealing with the Agenda 2000, the Act Ratifying the Amsterdam Treaty, the EU enlargement, the Charter of Basic Rights and the Constitutional Treaty.⁴⁹ The Committee (co-)deliberates proposals for legislative acts only if they are of particular concern to European integration policy. Also, it usually does not deal with the translation of European directives into national law, which is considered to be the task of the technical committees.⁵⁰ However, members of the EU Committee tend to be dissatisfied with the resources that their colleagues in technical committees – except for the committees for agriculture and for environmental policy – invest in European policies.⁵¹

Strikingly enough, the EU Committee has only rarely used its formal rights, e.g. to commit the Government with an opinion pursuant to Article 23, paragraph 3, second sentence of the Constitution.⁵² There are various reasons for this: first, the procedures linked to the special rights are still too complicated. In response to the limited suitability of formal procedures, the Committee worked out a “semi-formal approach”: after deliberations among Committee members had been completed and a broad political consensus reached on a specific topic, the Govern-

⁴⁷As for the regulations on the rights of the Bundestag and the differences in wording between Article 23 and the implementing law, compare Article 23 of the German Basic Law and the Act on the Co-operation Between the Federal Government and the German Bundestag in Matters of the European Union, cf. Franz Möller and Martin Limpert, op. cit., p. 27; Sven Hölscheidt and Thomas Schotten, op. cit., p. 131, Matthias Zier, op. cit., pp. 196-197.

⁴⁸See Sven Hölscheidt, op. cit., p. 32.

⁴⁹Christian Sterzing and Stefan Tidow, ‘Die Kontrolle der deutschen Europapolitik durch den EU-Ausschuss des Bundestags – Bilanz und Reformpotenziale,’ *Integration* 24,3 (2001): 278; Friedbert Pflüger, ‘Der Europaausschuß des Deutschen Bundestages in der 14. Legislaturperiode,’ *Integration* 25,4 (2002): 325-330; Matthias Zier, op. cit., p. 235, p. 328.

⁵⁰See Christian Sterzing and Stefan Tidow, op. cit., p. 279, Matthias Zier, op. cit., p. 199.

⁵¹Matthias Zier, op. cit., p. 282.

⁵²Sven Hölscheidt, op. cit.; Christian Sterzing and Stefan Tidow, op. cit., p. 281; Wolfgang Ismayr, *Der Deutsche Bundestag im politischen System der Bundesrepublik Deutschland*, 2nd rev. ed. (Opladen: Leske & Budrich, 2001), p. 296; Matthias Zier, op. cit., p. 201, gives examples.

ment was notified in writing of the Committee's position and requested to take it into account accordingly. This clearly effective approach, however, was torpedoed by the intervention of the Rules Committee, which classified this practice as an unacceptable bypassing of formal procedures.⁵³

Second, the Committee will have to make a point of maintaining good relations with the technical committees and avoiding competition with them. Obviously, insisting on procedural privileges would hardly help things.⁵⁴

Third, the majority situation in the EU Committee reflects that prevailing in the entire Bundestag, i.e., the Federal Government can rely on its political majority there as well. Thus, due to the logic of parliamentary systems, the majority of members on the Committee – on the whole – are not interested in unduly restricting the government by a formal mandate.⁵⁵ In some instances, formal resolutions were even adopted in order to support the government's position; by the same token there are rare cases in which opinions were expressed to oppose it.⁵⁶ All in all, the Committee tends to avoid confrontation with the government.⁵⁷

Yet European politics do not follow strongly the usual distinctions according to party lines. There tends to be a stronger antithesis of Parliament and government than in other, nationally defined technical fields.⁵⁸ One reason is that at least in case of treaty revisions finally a supermajority of two thirds in the plenary is needed.⁵⁹ Another reason is that whereas European integration has never been a controversial issue in the Bundestag, in times of decreasing public support for Europe, the Committee sees itself rather as a defender than a critic of the EU.⁶⁰ Thus the working style in the Committee tends to be rather consensus-oriented.

In contrast to the field of preparation of treaties and other major decisions where the EU Committee at least to a certain extent established itself as a central parliamentary actor and brought the Bundestag's influence to bear, the situation with respect to European legislation is somewhat different. The EU Committee virtually makes no use of the formal procedures of influencing the Federal Government's activities in this field. Recommendations for decisions to the plenary in matters of EU legislation are few (in the thirteenth Bundestag, for instance, they reached 8 percent of all EU-related issues), and in a mere 1.5 percent of all cases did the plenary discuss the topic.

⁵³Cf. Christian Sterzing and Stefan Tidow, op. cit., p. 278-80; Roland Sturm and Heinrich Pehle, *Das neue deutsche Regierungssystem* (Opladen: Leske & Budrich, 2005, 2nd ed.), p. 78.

⁵⁴Cf. Christian Sterzing and Stefan Tidow, op. cit., p. 279; cf. Tapio Raunio, op. cit., p. 193; Matthias Zier, op. cit., p. 232.

⁵⁵Annette Elisabeth Töller, op. cit.; Katrin Auel, op. cit.; Tapio Raunio, op. cit., p. 191. This is what Thomas König does not acknowledge when he models this constellation as a principal-agent-problem, see Thomas König, op. cit. p. 29.

⁵⁶As in the case of the Convention's working method, see Christian Sterzing and Stefan Tidow, op. cit., p. 280; Katrin Auel, op. cit..

⁵⁷Matthias Zier, op. cit., p. 234, 289.

⁵⁸This is among other things displayed by the fact that the EU Committee tends to be an "opposition committee," usually – but not always – chaired by a member of the major minority fraction in Parliament.

⁵⁹Matthias Zier, op. cit., p. 338.

⁶⁰Matthias Zier, op. cit., p. 364.

The overall involvement of plenary sessions with European issues has been low. Whereas Saalfeldt observed that the number of discussions regarding European aspects of particular issues (in the frame of parliamentary questions in plenary) has risen recently,⁶¹ Zier attributes this to the Convention and the Constitutional Treaty and expects a renormalization on a rather low level afterwards.⁶²

As in other areas, also in European policies we can observe informal procedures of “co-steering”⁶³ between majority parliamentary fractions and the government. A key arena where parliamentary influence is exerted on European politics is that of parliamentary working groups, which are the issue-specific sub-organizations at the fraction level. Also with regard to European politics, it is at this level that “the Federal Government is most likely to make concessions.”⁶⁴ Yet the significance of such control relations, i.e., whether such procedures represent the exception or the rule, remains to be assessed.⁶⁵

At the end of the day, European policy remains the domain of a small group of MPs. Saalfeldt observes a clear discrepancy between the great importance that MPs attach to issues of European politics and the moderate resources they are prepared to invest in it. The explanation is found in a series of factors:⁶⁶ the reluctance of most MPs to deal with European issues in depth can be explained by the perception that it is not worth investing scarce resources (especially time) for activities unlikely to boost your chances of being reelected. Although many questions covered by European legislation are of immediate concern to the constituencies, they are mostly of a complex nature and do not sell very well. Also, MPs are used to investing resources that yield somewhat predictable results. This does not apply in the field of European politics. In national parties alike, European politics and politicians have played but a minor role. After all, many German MPs view the creation of legitimacy for European politics as a prime task for the European Parliament.⁶⁷

Finally, we are confronted with another structural problem that results from the different characteristics of the various parliamentary procedures: while, under original national legislation, the Bundestag has procedural sovereignty and thus ample formal resources,⁶⁸ its possibilities of exerting influence on European legislation are limited to the mechanisms and resources of parliamentary control, irrespective of whether they are employed by way of formal control mecha-

⁶¹On all figures mentioned in this paragraph see Thomas Saalfeldt, ‘The Bundestag: Institutional Incrementalism and Behavioural Reticence,’ in Kenneth Dyson and Klaus Goetz (eds.), *Germany, Europe and the Politics of Constraint* (Oxford, 2003), pp. 86-88.

⁶²Matthias Zier, op. cit. 239-240, 329.

⁶³Manfred Schwarzmeier, *Parlamentarische Mitsteuerung. Strukturen und Prozesse informalen Einflusses im Deutschen Bundestag* (Wiesbaden: Westdeutscher Verlag, 2001).

⁶⁴Interview, Katrin Auel, op. cit..

⁶⁵Katrin Auel, ‘The Europeanization of the German Bundestag: Institutional Change and Informal Adaptation,’ *German Politics* 16:3, (2006, forthcoming); Matthias Zier, op. cit. 235, 289.

⁶⁶Cf. Thomas Saalfeldt, op. cit., pp. 74, 89; Annette Elisabeth Töller, op. cit., p. 154; Matthias Zier, op. cit., p. 283.

⁶⁷Richard S. Katz, ‘Representation, the Locus of Democratic Legitimation and the Role of the National Parliaments in the European Union,’ in Richard S. Katz and Bernhard Weßels (eds.), *The European Parliament, the National Parliaments and European Integration* (Oxford and New York: Oxford University Press, 1999), pp. 28-29; Matthias Zier, op. cit., 308.

⁶⁸Particularly the option of revising and amending drafts, cf. Roland Sturm and Heinrich Pehle, op. cit., p. 78.

nisms or informal “co-steering” processes. This reveals an imbalance between the means and the end, which does not really motivate MPs to become active in Europolitics.

Strategic Europeanization

As has been outlined above, the commitment of German MPs in matters of European politics has been quite limited. Nonetheless, recent research on this subject, especially by Auel, identified several changes in the development of strategies, constituting a shift not to be underestimated, particularly compared to the situation of only few years ago.⁶⁹

The first change concerns the sources of information: In contrast to the mid-1990s, when reliable information links between MPs and actors at European level were the exception rather than the rule, members of the Bundestag nowadays have more often direct contacts with European authorities. Both the offices of MEPs and the members of the Commission act as the parliamentarians’ “early warning systems” that notify them, sometimes even at a very early stage, about initiatives planned by the Commission.⁷⁰ National MPs increasingly seize the opportunity provided by the European Parliament to take part in meetings of its committees, and visit the EP predominantly to establish informal personal contacts.⁷¹ Yet, unlike several other national parliaments, the Bundestag did not decide to have an “outpost,” i.e., a small office directly at the European Parliament in Brussels.⁷²

What is more, national MPs from other member states can be important suppliers of information. Particularly members of opposition parliamentary groups benefit from contacts to parliaments in which the “sister party” is part of the governing majority – and thus has better access to information.⁷³

The second change occurred in terms of the MPs’ horizon: the need to make the government consider the position of parliament (or of the parliamentary majority) in the Council is no longer the only point of concern. Instead, MPs choose areas where they expect commitment to be rewarding, to determine – upon consultation with parliamentarians from other Member States – the positions of Council members so they can figure out options for coalitions and textual leeway.⁷⁴ This approach virtually enables MPs to stand their ground against government representatives who represent the national position in the Council. Back in the mid-1990s any such look beyond one’s own national horizon would have been highly unlikely for national MPs.

⁶⁹Esp. Katrin Auel, op. cit.; as compared to Annette Elisabeth Töller, op. cit..

⁷⁰Katrin Auel op. cit.; cf. also Thomas Saalfeld, op. cit., p. 83..

⁷¹Karlheinz Neuenreither, ‘The European Parliament and National Parliaments – Conflict or Cooperation?’ *Journal of Legislative Studies* 11,3-4 (2005): 466-489. In view of the frequent use of these offers by national MPs, Neuenreither reports that occasionally differing views prevail among MEPs: In an interview, the term ‘overkill’ was used to characterize the amount of formal and informal EP/NP contacts. The NPs, the same critical voice added, would better spend their time at home and organize effective scrutiny of their respective governments.

⁷²Matthias Zier, op. cit., p. 274.

⁷³E.g., Austrian People’s Party MPs are important contact points for members of the Christian Democratic parliamentary fraction in the *Bundestag*, Katrin Auel, op. cit.

⁷⁴Katrin Auel, op. cit..

The third change consists of MPs taking “the direct way”: a small but growing number of Members of the Bundestag – affectionately referred to by Auel as “Euro Foxes” – have become active on European scale. These MPs utilize direct contacts with the Commission and MEPs to influence the development of secondary community law at European level at a very early stage – and quite successfully so, as they state.⁷⁵ This applies particularly to opposition politicians who obviously have no access to the above avenues of informally influencing the Federal Government.

The particular features of the more recent strategies by Members of the Bundestag become even more apparent when compared to MPs in other countries. While the Danish Folketing has a clear right of veto regarding the negotiating position of the Danish Government in Brussels, and the British House of Commons is primarily concerned with creating a public forum for such issues, German MPs have developed “by-pass strategies” instead.⁷⁶ Focusing on the European political scene this way exonerates MPs from troublesome intra-parliamentary procedures and the requirement to make the government cooperate, and also tends to reduce the uncertainty about the effect of resources employed. Even though these approaches may not necessarily make Members of the Bundestag systematic and frequent actors in European politics, i.e., “multi-level players,” such strategic Europeanization will enrich the dimensions discussed so far by a new one that is bound to be the subject of further empirical analysis.⁷⁷

Conclusion

This paper addresses the Europeanization of the German Bundestag against the background of two theoretical discussions. The *discussion on the democratic legitimacy* of governance in the EU has so far addressed national parliaments predominantly under the expectation that they would contribute to the legitimacy of Council decisions by creating legitimation chains. Publications that deal with the theory of integration and that conceptualize the European Union as a complex multi-level system, insinuate, however, that the idea of chains producing legitimacy corresponds to the concept of a two-level game, which itself is an inadequate device for understanding reality. Conversely, this discussion is criticized for taking the legitimizing role of national parliaments for granted without scrutinizing empirically whether the parliaments do indeed perform the function they were given, i.e., to monitor the European policies pursued by their governments. One of the points made in the context of the theoretical *discussion on Europeanization* was that once the concept of Europeanization is narrowed down to the impacts that European integration has on national governmental systems, it may be useful to pick out a concrete example (in our case the Bundestag) to look at several dimensions of Europeanization, and to examine them in their interdependence on the one hand and their theoretical implications on the other.

Notwithstanding the reservations that have to be made regarding the explanatory range of the data, the analysis of *legislative Europeanization* revealed that in the course of the past twenty years the Bundestag’s legislation has been clearly “Europeanized” and its scope of action has been reduced considerably. Even where the Bundestag is still allowed to pass national bills, after the ratification of the EEA in 1987 already one-fifth of its legislative decisions were subject to

⁷⁵Ibid., p. 13; Matthias Zier, op. cit.

⁷⁶Katrin Auel, ibid., p. 18.

⁷⁷Ibid., op. cit.

explicit restrictions under supranational European law (or at least under the action of supranational institutions), a rate that has since risen to one-third.

The transformation of the Bundestag from *object* to *subject* of Europeanization turned out to be a lengthy procedure. For many years (indeed up to 1994), formal *institutional reactions* in the shape of specialized committees were unable to prevail against the protection-of-vested-rights mentality borne by the members of technical committees, which could also be attributed to the general consensus on the fundamental direction of European integration in Germany. Only after the famous Maastricht judgment by the German Federal Constitutional Court and in the wake of action by the Bundesrat did the Bundestag set up a committee in 1994 that – in terms of its competence and procedural rights – seems generally suitable to exert relevant influence on European policies on behalf of the Bundestag.

At the stage of the practical implementation of these formal institutional possibilities we have to distinguish between major developments (such as amendments of the Treaties) and questions of everyday legislation. In the field of Treaty revision (such cases are few and far between and therefore enjoy a certain degree of public attention) the Bundestag and its EU Committee have succeeded since the mid-1990s in influencing the Federal Government's negotiations and in implementing, in isolated cases, ideas of their own. In terms of European legislation, however, the EU Committee is not involved on a regular basis and the commitment of parliamentarians in the technical committees is generally rather limited, a fact that becomes painfully obvious when considering, e.g., the stringent Europolicy of the Danish Folketing.

This is not only due to the persistent sluggishness of formal procedures, but also linked to the fact that, in concrete processes of formulating policy, the unity between majority parliamentary groups and the Government ("government majority") common in the German parliamentary system seems to be more pronounced than in major issues of further developing the Union. This means that any influence on formulating European policy is dependent on informal "co-steering," for instance in parliamentary working groups. Nonetheless, the degree of involvement of German MPs in European policies on the whole remains low, particularly among those who are not on the EU Committee. There are various reasons for this. The problems arising from the need to process large quantities of unstructured information are far from solved; the task of making intraparlimentary procedures compatible with European decision making is a long-term challenge. For example, it is important not only to finalize deliberations on a document before it is submitted for decision in Brussels – even today, twenty percent of the European drafts discussed in the EU-Committee has already been passed in Brussels when the Committee happens to deal with it.⁷⁸ In view of the numerous stages of deliberations, especially with co-decision procedure and repeated modifications of the proposal, it must also be ensured that national parliamentary deliberations are always based on the latest update of the proposal.⁷⁹

A reason that has deeper roots is the lack of appeal of European politics that makes it relatively unattractive for German MPs, all the more so if one suggests that their (legitimate) prime concern is focused on being reelected. Issues of formulating politics at the European level are not very effective publicity. What is more, the effects of possible activities are difficult to judge for the MPs themselves. Yet we still know too little about the significance of informal "co-steering" in European politics.

⁷⁸Mathias Zier, op. cit., p. 344.

⁷⁹See also Matthias Zier, op. cit., p. 364.

Even though the institutional setting for parliamentary control of the Government's Euro-politics has been considerably improved, at the end of the day the Bundestag cannot make Government follow its positions or mandates. However, apart from that, the idea of full coverage and strict control relations between the Bundestag (or its majority parliamentary groups) and the Federal Government in questions of formulating European policies under the concept of chains of legitimacy is highly ambivalent. A clear-cut mandate would not only further complicate the Federal Government's decision making on the European level – which is already famous for being poorly coordinated⁸⁰ – but even more limit the leeway needed to settle a European compromise. This may weaken Germany's negotiating position in Brussels and, as a frequent recurrence, lead to isolation and consequently even cause the loss of all national influence.⁸¹ Another structural restriction results from the fact that even an imperative mandate will not guarantee that the parliamentary position will ultimately be taken into account when the Council decides according to the majority principle and a national veto can thus be overruled. Finally, the practical applicability of chains of legitimacy appears doubtful even from a more global point of view: a "perfect world" in which all national parliaments (twenty-five at this moment) would master the art of committing their respective governments to their position might seem desirable as far as chains of legitimacy are concerned; under aspects of decision-making effectiveness (even with majority decisions), however, it would be fatal. And, as Fritz Scharpf so aptly phrased it, "where effectiveness is near zero, there is little hope for legitimacy."⁸²

Empirical research has shown that rigid national chains of control cannot simply be created as the need arises. They are not consistent with the strong political unit of parliamentary majority and government in Germany. Also, they do not match the complex constellation in a multi-level system where different approaches, if pursued purposefully, appear to be more successful. The more recent approaches in the development of strategies including the bypassing strategies of Members of the Bundestag will not make the Bundestag a "serious actor in the European game of multi-level dominance."⁸³ However, it shows that we have to take a wider range of phenomena into account than the narrow concept of chains of control and legitimacy suggest.⁸⁴ Tendencies like strategic Europeanization – even though we might not yet be able to measure their real importance – underpin the idea of the multi-level approach: many players are involved at many levels in one way or another. In terms of democratic theory, however, and with all due scepticism about the concept of chains of legitimacy, a development in this direction does not seem to be the most desirable solution either. Such forms of participation in formulating European policies may be effective but they are not accountable to an electorate or the public.

Another dimension of Europeanization of the German Bundestag that could not be addressed in this paper concerns three trends:

⁸⁰Simon Bulmer, Charlie Jeffery and William Paterson, 'Deutschlands europäische Diplomatie – die Entwicklung des regionalen Milieus,' in Werner Weidenfeld (ed.), *Deutsche Europapolitik: Optionen wirksamer Interessenvertretung* (Bonn: Europa Union Verlag, 1998), pp. 11-103; Hans-Ulrich Derlien, 'Germany. Failing Successfully?' in Hussein Kassim, B. Guy Peters and Vincent Wright (eds.), *The National Co-ordination of EU Policy. The Domestic Level* (Oxford: Oxford University Press, 2000), pp. 54-78.

⁸¹Cf. Ingolf Pernice, op. cit., p. 7; Katrin Auel, op. cit.

⁸²Fritz W. Scharpf, 'Demokratische Politik in Europa,' *Staatwissenschaften und Staatspraxis* 6,4 (1995): 567.

⁸³Cf. Roland Sturm and Heinrich Pehle, op. cit., p. 73.

⁸⁴This criticism also holds true for the really interesting recent study by Matthias Zier.

1. The increasing standardization of the role and rights of national parliaments in relation to their governments *at European level* (by the EC Treaty or its protocols);
2. A *direct role of national parliaments in Treaty revision* as a result of the new method of the Convention;
3. The development of more or less far-reaching ideas for institutionalizing the role of national parliaments in formulating European politics, be it in third chambers or as "*guardians of subsidiarity*."⁸⁵

Considering issues of democratic theory, the first trend may be regarded as harmless and the second one seems quite welcome, while the third may appear to be highly ambiguous. Third chambers will overstretch the capacity of national parliaments *and* of the European governmental system. On the surface, the role of guardians of subsidiarity would look quite attractive if it permitted national parliaments to be involved at a very early stage of formulating European policies and improved the level of information on the whole. Yet, even this role might stunt the capacities of most national parliaments, not to mention the question of practical applicability and the legal enforceability of this principle of subsidiarity.

An overall view of the different dimensions of Europeanization of the Bundestag addressed here reveals a considerable delay between legislative Europeanization and the institutional and strategic responses which were realized in waves. Reasonably viable institutional solutions were not found until the mid-1990s, a time when approaches towards regulating the role of national parliaments at the European level were increasing, i.e., the Bundestag experienced pressure to act on a European scale, too. Strategic Europeanization as we know it, however, took place towards the end of that decade only – and its extent is still difficult to measure. It may come as no surprise that it coincided roughly with the intergovernmental conference at Nice, which most probably marked the end of traditional mechanisms of revising the Treaties. However, a comprehensive redefinition of the Bundestag's role in the European multi-level system is yet to come.⁸⁶

Some current developments are mutually dependent: the Bundestag could only act as a guardian of subsidiarity if it had access to sound communication networks at the European level. The Europeanization of information, for instance in the shape of a system documenting European legislative projects which is open to national parliaments and the general public alike (virtually an upgraded and updated version of the *observatoire législatif*) could constitute a major step forward on the road towards tackling the active Europeanization of the Bundestag and other national parliaments from an organizational point of view.⁸⁷

Finally, the scholarly and practical political discussions of Europeanization (including this paper) tend to overrate the role of institutions. On the one hand we have seen that seemingly far-reaching constitutional stipulations cannot guarantee that Parliamentary control is effectively taking place. On the other hand, if what we want is a further active Europeanization of the Bundestag (but this dogma could be subject to a more controversial debate, too), the Europeanization of *institutions* is a necessary but not a sufficient condition. What would have to be con-

⁸⁵The European Convention, Working Group IV "The Role of National Parliaments," Final report of Working Group IV on the role of national parliaments, CONV 353/02, WG IV 17, Brussels, 22 Oct 2002, <http://register.consilium.eu.int/pdf/en/02/cv00/00353en2.pdf>; see Ingolf Pernice, op. cit., p. 13.

⁸⁶See also Mattias Zier, op. cit., p. 16.

⁸⁷See also Tapio Raunio, 'Much Ado About Nothing? National Legislatures and The Constitutional Treaty,' *European Integration online Papers (EioP)* 9:9 (2005): <http://eiop.or.at/eiop/texte/2005-009a.htm>.

sidered in addition is the (further) Europeanization of *routine procedures, strategies* and the *motivation structure* among national MPs.

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