

OPAL Country Reports

The German Parliament and EU Affairs

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OPAL Country Report on the German Parliament¹

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I. General Position of Parliament in the Constitutional Balance of the Member State: Constitutional and institutional factors	
This section looks at the role of Parliament in the political system, to help us understand the relative power position of the legislature.	
1.1	What is the type of government in the political system of your member state? (i.e. parliamentary or semi-presidential)
	Parliamentary System
1.2	Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.
	The parliament is bicameral, with a comparatively strong second chamber (currently involved in ca. 39% ² of all legislation). The <i>federal states</i> ³ have certain exclusive competences, such as police, education and broadcasting. Furthermore, they are involved in all legislative processes which affect their financial resources.
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?
	Germany has a federal system. No asymmetrical federalism exists although Bavaria, Thuringia and Saxony are 'Freistaaten' (free states). But this is just a historical distinction without current political relevance.
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	<p>Bundestag: Mixed form of proportional representation: 299 members are elected in single-member constituencies by first-past-the-post voting. A further 299 members are allocated from state-wide party lists to achieve a proportional distribution in the legislature. To a very limited extent so-called 'surplus mandates' exists, meaning that a party has won more direct seats in constituencies than votes on the actual party list.⁴</p> <p>Bundesrat: The Bundesrat consists of representatives of the governments of the federal states. It is therefore a parliament of state governments. Elections to the state parliaments take place every four or five years. In constitutional parlance it is therefore a "permanent body" whose composition continually changes. The federal governments send representatives into the Bundesrat. The votes of the federal states are weighted, ranging from three to six votes per</p>

¹ This country report provides some basic data that has been collected in the context of the research for a chapter to be published in C. Heffler, C. Neuhold, O. Rozenberg, J. Smith & W. Wessels (Eds.). (forthcoming in 2014). *The Palgrave Handbook of National Parliaments and the European Union*. London: Palgrave, Macmillan.

² http://www.bundesrat.de/cn_109/nm_101828/DE/parlamentsmaterial/statistik/statistik.html (last retrieved July 3rd 2012).

³ In German: Bundesländer.

⁴ Due to a recent judgement by the German Constitutional Court the number of 'surplus mandates' has to be limited, see: BVerfG, 2 BvF 3/11 from July 25th 2012, No. 1 – 164.

	<p>federal state (Art. 51 (2) of the German Basic Law).</p> <p>The Bundesrat has 69 official members. Every member of a federal state government can represent his or her federal state in the Bundesrat. Therefore, there are approximately 170 official and alternate members of the Bundesrat.⁵</p>
1.5	<p>What (f)actors can prevent the parliament agreeing on EU legislation and/or treaty reform? (e.g. a constitutional court, or public referenda on questions of EU integration)</p>
	<p>The Federal Constitutional Court has a very strong position in the German political system. It has an ex-post control as all nationally adopted legislation can be part of a Federal Constitutional Court's legal review. It also assesses whether changes in the EU primary law are in compliance with the German Basic Law.</p> <p>According to the Lisbon Judgment, the German Constitution sets limits to further European integration. Further transfers of sovereignty may require a referendum on a new Constitution in the long run.⁶ However, this discussion is on-going and disputed among lawyers and politicians. Public referenda are foreseen in the German constitution on two occasions only: Article 29 (2) regulates the new delimitation of the <i>Länder</i>: "Revisions of the existing division into <i>Länder</i> shall be effected by a federal law, which must be confirmed by referendum". Furthermore, Article 146 stipulates that the "German Basic Law [...] shall cease to apply on the day on which a constitution freely adopted by the German people takes effect." Thus, referenda do not apply for European questions.</p>

<p>2. General Position of Parliament in the Constitutional Balance of the Member State: Political Factors</p>		
<p>This section is about the basic political factors which might influence parliament's strength in relation to the government.</p>		
2.1	<p>What is the type of government after the most recent elections e.g. single party, minority, coalition, oversized coalition government?</p>	
	<p>Since October 2009 there is a coalition government of the Christian Democratic Union (CDU), the Christian Social Union (CSU) and the Free Democratic Party (FDP).</p> <p>Coalition governments have been the norm in the last decades, with only one legislative period in which a single parliamentary party group could govern alone (CDU/CSU between 1957 and 1961).</p>	
2.2	<p>When were the most recent general elections and what were the results? Could you please give a short list of the parliamentary groups, their no. of seats in parliament and ideological position?</p>	
	<p>Latest election in the LOWER HOUSE:</p>	<p>September 27, 2009</p>
	<p>Name of the party</p>	<p>No. and percentage of seats in parliament</p> <p>Ideological position (e.g. Communist, left liberal, socialist, liberal, right liberal, conservative, christian democrat, extreme right, ethnic minority or regionalist party)</p>

⁵ See for instance: http://www.bundesrat.de/cln_109/nn_11006/EN/organisation-en/plenum-en/plenum-en-node.html?_nnn=true (last retrieved: June 29th 2012).

⁶ See <http://www.spiegel.de/politik/deutschland/politiker-halten-volksabstimmung-ueber-deutsche-verfassung-fuer-moeglich-a-840690.html> or <http://euobserver.com/1016/116744> (last retrieved June 28th 2012).

	Christian Democratic Union, CDU	194 (27,3%)	Christian democrat
	Christian Social Union, CSU	45 (6,5%)	Christian democrat
	Social Democratic Party, SPD	146 (23,0%)	Social democrat
	Free Business Party , FDP	93 (14,6%)	Liberal
	The Left, Die Linke	76 (11,9%)	Left
	Bündnis 90/ Die Grünen, The Greens	68 (10,7%)	Other: Green
	Latest election in the UPPER HOUSE:	<p>The Bundesrat does not have a legislative term. In constitutional parlance it is a "permanent body" that changes from time to time as the periodic state elections take place.⁷</p> <p>The most recent <i>Länder</i> elections at the time of writing (July 2012) took place on May 13th 2012 in North Rhine Westphalia (NRW).</p> <p>Each federal state government sends representatives to the Bundesrat (Art. 51 (2) German Basic Law). The votes of one federal state cannot be split (Art. 51 (3) German Basic Law).</p> <p>The federal government coalition lost its Bundesrat majority as a result of the state elections in NRW in May 2010.</p>	
	Name of the party	No. and percentage of seats in parliament (if applicable)	Ideological position (if not mentioned above)
	CDU/CSU/FDP	21 seats	Government coalition
	SPD/Grüne	19 seats	Opposition parties
	Grand Coalition	18 seats	Mixed coalition (government party CDU and opposition party SPD)
	SPD/ Linke	4 seats	Opposition parties
	SPD	3 seats	Opposition party
	SPD/Grüne/SSW ⁸	4 seats	Opposition parties
2.3	How polarized was the parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?		
	There was broad cross-party consensus on the Lisbon Treaty, with the exception of <i>Die Linke</i> which voted against the ratification of the Lisbon Treaty in the Bundestag and abstained from voting in the Bundesrat vote (being in a coalition with the SPD in Berlin at that time).		

⁷ http://www.bundesrat.de/cln_109/nn_1006/EN/organisation-en/plenum-en/plenum-en-inhalt.html?_nnn=true (last retrieved on June 29th 2012).

⁸ The SSW is the Danish minority party in Schleswig-Holstein, Südschleswiger Wählerverband.

3. New Provisions of the Lisbon Treaty on Direct Contact with EU Institutions

The Lisbon Treaty provides national parliaments with new opportunities for direct contact with the EU institutions. This section addresses the incorporation of the new Lisbon provisions into national law and concrete procedures. Questions 3.3 to 3.5 investigate in how far these procedures have been used.

3.1	<p>Have there been any regulations adopted by your member state to incorporate the new powers that are entrusted to the national parliaments by the Treaty of Lisbon? If so, please list the regulations in their appropriate categories:</p> <p>a. Constitutional provisions</p> <p>b. Legal provisions - Statutory provisions</p> <p>c. Parliamentary Standing Orders</p> <p>d. Other (please specify)</p> <p>Is this process complete or ongoing?</p>
Lower House	<p>a. The Basic Law had to be amended (along with the ratification process of the Lisbon Treaty)</p> <p>b. The Responsibility for Integration Act was passed and EUZZBG were reformed.</p> <p>c. The Rules of Procedures of the Bundestag were amended.</p> <p>No further changes are currently under discussion, but the implementation is still on-going (learning process). The general secretariat, for instance, is evaluating the first experiences with the reformed EUZBBG and the early warning mechanism and will probably propose recommendations.</p>
Upper House	<p>a. The Basic Law had to be amended (during the ratification process of the Lisbon Treaty)</p> <p>b. The Responsibility for Integration Act was passed and EUZBLG were reformed.</p> <p>c. The Bundesrat did not change its rules of procedure due to the Lisbon Treaty, but a number of informal agreements have been made (see 6.2 iv, Upper House)</p> <p>The Ministerial Conference of the federal states "Ministerpräsidentenkonferenz" decided that if one Land claims action against an EU proposal, it will be supported by all other 15 federal states.</p>
3.2	<p>What exactly are the rules (i.e. parliamentary bodies involved, procedure, regional parliament's involvement, cooperation in bicameral systems) for...</p>
3.2 i	<p>The "Political Dialogue" with the Commission</p>
Lower house	<p>Generally, resolutions have to be adopted with a simple majority which normally happens in plenary. Plenary may, however, empower the EAC to take decisions on its behalf (which happens only rarely within the Political Dialogue). The Bundestag is not very active in the Political Dialogue and the Bundesrat and Bundestag do not seem to cooperate on this issue, as their opinions deviate to some extent or they issue opinions on different EU legislative proposals.</p>
Upper House	<p>Resolutions have to be adopted by majority in the plenary. Only the plenary takes these decisions.</p>
3.2 ii	<p>The Early Warning Mechanism (EWM)</p>
Lower house	<p>A reasoned opinion can be adopted by a simple majority in the plenary. The plenary can</p>

	<p>empower the EAC to pass resolutions on its behalf, which happens rather rarely in practice.</p> <p>Important for the EWM is the fact that the parliamentary administration (PA1) and the federal government provide information on possible breaches of the principle of subsidiarity. They therefore have a filtering function.</p> <p>Sectoral committees then scrutinize EU documents: if they consider something a breach of the subsidiarity principle they inform the EAC.</p> <p>The EAC can consult the plenary if it has concerns with regard to the subsidiarity principle which sectoral committees have not stated.</p>														
Upper house	<p>Only a majority in the plenary can pass resolutions.</p> <p>The administrations of the federal state executives scrutinize EU proposals. The government also provides information on possible breaches of the principle of subsidiarity.</p>														
3.2 iii	The "Passarelle clause"														
Lower house	The Bundestag has to give its formal consent. Silence may not be interpreted as consent. ⁹														
Upper house	The Bundesrat has to actively state its consent to any form of passarelle clauses. The Lisbon judgment clearly states that silence on the part of the Bundestag and the Bundesrat is not sufficient for the exercise of this responsibility (see above).														
3.2 iv	The action of annulment before ECJ on breach with the subsidiarity principle (What quota of MPs is needed to enforce the action of annulment?)														
Lower house	A quarter of the members of the Bundestag is sufficient in order to take action before the Court of Justice of the European Union (minority right) (Responsibility for Integration Act, §12 (1)).														
Upper house	<p>In principle, a simple majority in the Bundesrat is sufficient in order to take action before the Court of Justice of the European Union.</p> <p>However, at a prime minister conference (Ministerpräsidentenkonferenz) the federal states agreed on a very strong minority right: if a single federal state wants to take action before the ECJ the other federal states will be supportive and organise a majority in the plenary (political agreement).</p> <p>If the Bundesrat decides to take action before the ECJ, the government has to forward the case to the Court of Justice.</p>														
3.2 v	Accession of new member states to the EU														
Lower house	<p>The Bundestag has to give its consent to the accession of a new member state.</p> <p>Before accession negotiations are opened by a European Council decision, the Bundestag has to pass a formal resolution to state its consent.</p>														
Upper house	The Bundesrat has to vote in favour of accession, with a two-thirds majority according to article 23.														
3.3	How actively does the parliament engage in the political dialogue and "early warning mechanism" with the Commission?														
Lower house	<table border="1"> <thead> <tr> <th></th> <th>2006</th> <th>2007</th> <th>2008</th> <th>2009</th> <th>2010</th> <th>2011</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		2006	2007	2008	2009	2010	2011							
	2006	2007	2008	2009	2010	2011									

⁹ See: BVerfG, 2 BvE 2/08 from June 30th 2009, no. 280, retrievable from: http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html (last accessed: June 2nd 2012).

	Opinion	1	2	2	3	6	6
	Reasoned Opinion	0	0	0	0	1	1
Upper House		2006	2007	2008	2009	2010	2011
	Opinion	6	15	18	16	23	33
	Reasoned Opinion	0	0	0	0	1	1 ¹⁰
3.4	Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?						
Lower house	No.						
Upper house	No.						
3.5	If applicable to your member state, how does parliament proceed on the ratification of: a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012 b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012						
Lower house	<p>a) The ratification process is on-going (June 2012) since the federal president still has to sign the laws. At the time of writing, the ESM was under legal review by the German Federal Constitutional Court.</p> <p>A simple majority is required, but the government tried to bring the opposition on board as well. It achieved the 2/3 majority although it believed that it was constitutionally not required. However, the governing parties did not obtain a so-called 'chancellor majority'.¹¹ The vote on the ESM took place on June 29th 2012.</p> <p>b) The ratification process is on-going (June 2012) since the federal president still has to sign the laws. Currently, the fiscal compact is under legal review by the German Federal Constitutional Court. A two-thirds majority was required in the Bundestag which the government obtained on June 29th 2012.</p>						
Upper house	<p>a) See above.</p> <p>b) See above.</p>						

¹⁰ Data from the European Commission website:

http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm, last accessed: July 23rd, 2012.

¹¹ The term 'chancellor majority' is a political term which is often used in the media. It describes the number of votes required to elect the chancellor, e.g. an absolute majority.