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## Sachstand

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## Parliament's Role in International Treaties

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### 1. The Parliament's Role in International Treaty Negotiations: Involvement or Scrutiny?

The German Basic Law distinguishes the competencies of negotiation and adoption of international treaties. According to Article 32 (1) Basic Law, the German Government is solely responsible for negotiating international treaties.

The German Parliament (Bundestag) is mainly responsible for the adoption of negotiated treaties and, thus, for their transformation into the domestic legal system in accordance with Article 59(2) Basic Law. There is no compulsory involvement of the Bundestag in treaty negotiations in general, rather than an **indirect, subsequent scrutiny**.

As regards matters concerning the European Union, the Bundestag and, through the Bundesrat, the *Länder* shall participate in matters concerning the European Union, Article 23(2) Basic Law. In contrast to Article 59(2) Basic Law, Article 23(2) Basic Law provides a certain degree of **prior involvement** of the Bundestag in matters concerning the European Union. I.e. the Government shall keep the Bundestag and the Bundesrat informed, comprehensively and at the earliest possible time.

The Federal Constitutional Court (*Bundesverfassungsgericht*) has developed a jurisprudence regarding the Bundestag's entitlement to be informed on matters concerning the European Stability Mechanism. It stated that the Bundestag must be informed in a way to be able to influence the decision-making process of the Government as effectively and as early as possible. Further, in case of prolonged negotiating processes, the *Bundesverfassungsgericht* does not consider it sufficient for the Government to inform the Bundestag only in the final outcome of the negotiations. The Government is rather obliged to provide information on intermediate or partial results in order to empower the Bundestag to exercise its right of participation effectively.

### 2. Existence of an Informal Role of the German Parliament in International Treaty Negotiations

There is no such practice. To a certain extent, committee members can have an indirect role in influencing treaty negotiations when it comes to exchanging views with Government representatives. The effect of such communications is, however, not clear.

### 3. Parliamentary Rights to Information

There is no rule in the German Basic Law which provides the Bundestag with the right to be informed of any **negotiating mandate** by the Government (let alone the right to amend it).

However, to prevent a rejection of the treaty at the stage of ratification by the Parliament (Article 59(2) Basic Law), the Government regularly informs the Parliament – more specifically its committees in charge – as early as possible about the **state of negotiations** (ongoing information). The committees most frequently dealing with information on ongoing treaty negotiations are the

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Committee on Foreign Affairs, the Committee on Human Rights and Humanitarian Aid, the Committee on Economic Cooperation and Development as well as the Committee on Legal Affairs.

Beyond that, the Government enjoys discretion to inform the Committee on Foreign Affairs in advance of treaty negotiations. This decision will depend on different considerations, e.g. on whether or not the negotiating mandate reveals tactics or positions which might weaken the bargaining power of the Government.

#### **4. Conditions on How to Receive Information**

There are no conditions specified in the German Basic Law or elsewhere on how to receive information.

However, according to Rule 69(1) 1 Rules of Procedure of the German Bundestag, the meetings of the Committee on Foreign Affairs are in general held *in camera*. Attendance is limited to titular committee members and their named substitutes so that information given to the Committee must be treated confidentially.

#### **5. Parliament's Procedure for Processing the Information Received**

The committees are entitled to ask questions to the members of the Government presenting information on treaty negotiations, to discuss political implications during the meetings and to reconsider certain topics at a later stage. At the end of the deliberations, the committee usually renders a recommendation to the plenary (see question 6 below).

Due to the confidentiality of most meetings and deliberations of the Committee on Foreign Affairs, the public and the press is not informed separately.

Occasionally, the Committee on Human Rights and Humanitarian Aid and the Committee on Economic Cooperation and Development do inform the public via press statements or press releases.

#### **6. Parliamentary Influence on International Treaty Negotiations**

The German Parliament cannot propose amendments to an international treaty when negotiations have formally been closed (see Rule 82(2) Rules of Procedure of the German Bundestag).

In cases, where negotiations are pending, the competent committees may render recommendations to the plenary of the Parliament. Even though these recommendations are only non-binding in nature, they can exert considerable political influence since they may direct the decision-making process in the plenary. Therefore, the Government has a keen interest in assuring itself of the agreement of the competent committee at an early stage.

As a further instrument to assert influence on ongoing treaty negotiations, the competent committee may send a letter to the Government describing its political and legal view on negotiated questions. However, in practice, this tool is very rarely used.

### **7. No Parliamentary Right to Raise Objections to International Treaties under Negotiation**

The German Parliament cannot object to international treaties under negotiation. It can only object to a treaty whose negotiations have been terminated. If there is no agreement to ratify the negotiated treaty in accordance with Article 59(2) Basic Law, the Federal President (*Bundespräsident*) will not submit the formal approval of the treaty to the other negotiating partners so that the treaty will not come into force.

### **8. Ratification of International Treaties in Germany**

Every international treaty which shall be ratified in Germany in accordance with Article 59(2) Basic Law, has to be approved by the Bundestag and the Bundesrat (“Vertagsgesetz” or “Ratifikationsgesetz”). The legislative process is the same as that of any other law: After presentation to the plenary, the draft proposal is referred to the committee in charge for deliberation. After deliberation (and, if necessary, the hearing of experts), the committee renders a recommendation on the draft proposal. If the deliberations concern important or controversial proposals, usually discussions are also held intensively within the different parliamentary groups and the coalition committee (*Koalitionsausschuss*). At the end of the procedure, the draft proposal is again presented to the plenary.

The plenary may only adopt or reject the proposal *en bloc*, i.e. it cannot adopt it in principal and object only certain parts (or even amend it).

### **9. The Legal Status of Ratified Treaties**

The ratified treaty has the legal status of a law (act) below the German Basic Law. It does not become automatically part of the domestic law as Germany follows the dualistic system. The treaty becomes part of the legal system once the “Ratifikationsgesetz” has come into force.

### **10. The Effectiveness of Parliament’s Role in International Treaty Negotiations**

When it comes to ratification of international treaties, the German Parliament has, so far, almost always given its consent to ratifying international treaties in accordance with Article 59 (2) Basic Law. There was just a single international treaty which was not ratified by the German Parliament: The treaty negotiated in 1962 by the Governments of Germany and France concerned the Mundatwald (an area in the German region South Palatinate) which should be ceded to France.

After intense discussions, the Committee on Foreign Affairs decided to object to the ratification of the treaty and, thus, did not present the draft proposal of the “Ratifikationsgesetz” to the plenary of the German Parliament.

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