



## Kurzinformation

### Agreement on security cooperation and long-term support between the Federal Republic of Germany and Ukraine

The Research Services of the German Bundestag were asked whether the *Agreement on security cooperation and long-term support between the Federal Republic of Germany and Ukraine*<sup>1</sup> signed by Chancellor Scholz and President Zelenskyy on February 16, 2024 in Berlin needs to be authorized by the Bundestag.

According to Art. 32 para. 1 of the German Constitution (called the “Basic Law”) the Federal Government is responsible for maintaining relations with other states. The Federal Government also has exclusive legislative powers for foreign affairs and defense (Art. 73 para. 1 Basic Law). Furthermore, Art. 59 Basic Law postulates:

- “(1) The Federal President shall represent the Federation in international law. He shall conclude treaties with foreign states on behalf of the Federation. He shall accredit and receive envoys.
- (2) Treaties that regulate the political relations of the Federation or relate to subjects of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. [...].”

Hence, treaties that regulate Germany’s political relations or relate to matters of federal legislation need to be authorized by the Bundestag and possibly the Bundesrat.<sup>2</sup> The German Constitutional Court (*Bundesverfassungsgericht*) requires that a treaty that regulates Germany’s political relations “must substantially and directly affect the existence of the State, its territorial integrity, its independence, its position or weight among States or the order of the international community.”<sup>3</sup> <sup>4</sup> Treaties that relate to matters of federal legislation are defined as treaties “whose subject

1 [Agreement on security cooperation and long-term support between the Federal Republic of Germany and Ukraine.](#)

2 *Sachs/Streinz*, 9th ed. 2021, GG Art. 59 para. 29.

3 BVerfGE 1, 372, 381 (Judgement from July 29, 1952 - 2 BvE 2/51), for further information see *Dürig/Herzog/Scholz/Nettesheim*, 102th supplementary delivery August 2023, GG Art. 59 para. 99.

4 Translated with the help of deepl.com.

matter could only be regulated domestically by federal law.”<sup>5</sup> <sup>6</sup> **Political Agreements** which, according to the identifiable will of the parties, are not meant to create a legal obligation, but rather a political obligation, **do not fall within the scope of Art. 59 para. 2 Basic Law.**<sup>7</sup>

The **German Foreign Ministry explicitly stated that the Agreement is only politically binding**<sup>8</sup> and media reports also spoke of it as a political agreement which is not legally binding.<sup>9</sup>

The wording of the Agreement in question (no use of phrases like “contracting parties” but rather “participants” for example)<sup>10</sup> as well as the fact that the agreement states that “Germany recalls that national budgetary provisions apply and require explicit authorization from the German Bundestag.” (see I. para. 4) furthermore, suggest that the German Government did not intend to conclude a legally binding treaty which may require the authorization of the German Bundestag and possibly the Bundesrat in the sense of Art. 59 para. 2 Basic Law, but rather an agreement of political nature.<sup>11</sup> In cases of disagreement between Members of Parliament and the Federal Government about the application of Art. 59 para. 2 Basic Law the Constitutional Court may be called upon.<sup>12</sup>

The Research Services **are not aware of any ongoing discussion concerning a possible involvement of the Bundestag with the Agreement on security cooperation and long-term support between the Federal Republic of Germany and Ukraine.**

For further information on the Bundestag’s role in international treaties please refer to:

Research Services of the German Bundestag, [Parliament’s Role in International Treaties](#), WD 2 - 3000 - 038/17, April 18, 2017 \*\*\*

5 BeckOK GG/Pieper, 57<sup>th</sup> ed. January 1, 2024, GG Art. 59 para. 32.

6 Translated with the help of deepl.com.

7 v. Mangoldt/Klein/Starck/Kempen, 7th ed. 2018, GG Art. 59 para. 53- 54.

8 Auswärtiges Amt, [“As long as it takes”: Die Sicherheit der Ukraine ist auch unsere Sicherheit](#), 16. Februar 2024.

9 Lohse, Sie brauchen einander, Frankfurter Allgemeine Zeitung, 17. Februar 2024; Halasz, [Die Stimmung ist ernst](#), Tagesschau, 16. Februar 2024.

10 For further information on the language used in legally binding treaties vs. political declarations of intent see [Richtlinien für die Behandlung völkerrechtlicher Verträge \(RvV\)](#), July 1, 2019; with technical and editorial adjustments dated February 20, 2020 and January 28, 2021, § 4, § 41.

11 The fact that the Agreement was signed by the Chancellor and not the President of the Federal Republic of Germany does not necessarily indicate that the Agreement is not a treaty in the sense of Art. 59 para. 2 Basic Law, as in practice the Federal Republic of Germany is often represented by members of the Federal Government rather than the by the President see v. Mangoldt/Klein/Starck/Kempen, 7th ed. 2018, GG Art. 59 para. 13; Sachs/Streinz, 9th ed. 2021, GG Art. 59 para. 9.

12 Jarass/Pieroth/Jarass, 17<sup>th</sup> ed. 2022, GG Art. 59 para. 8a; v. Münch/Kunig/Starski, 7th ed. 2021, GG Art. 59 para. 119.