

Deutscher Bundestag ■ Wissenschaftliche Dienste

The Treaty of Lisbon: the ‘accompanying laws’

On 8 September 2009, at its 233rd sitting, the 16th German Bundestag debated and voted on five draft ‘accompanying laws’ at their second and third readings. The laws regulate the exercise of responsibility for integration by the Bundestag and the Bundesrat. The Bundestag adopted the following laws: the Act Extending and Strengthening the Rights of the Bundestag and of the Bundesrat in Matters concerning the European Union (*Gesetz über die Ausweitung und Stärkung der Rechte des Bundestages und des Bundesrates in Angelegenheiten der Europäischen Union*), an ‘article law’ which amends existing legislation and, crucially, introduces a new **Responsibility for Integration Act** (*Integrationsverantwortungsgesetz*); the Act Implementing the Amendments to the Basic Law for the Ratification of the Treaty of Lisbon (*Gesetz zur Umsetzung der Grundgesetzänderungen für die Ratifizierung des Vertrags von Lissabon*); the Act Amending the **Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union** (EUZBBG); and the Act Amending the **Act on Cooperation between the Federation and the Länder in European Union Matters concerning the European Union** (EUZBLG). The bill tabled by the Left Party parliamentary group for a law amending Articles 23, 45 and 93 of the Basic Law, the German constitution, was, by contrast, rejected.

In its judgment of 30 June 2009, the Federal Constitutional Court had declared the original accompanying law from 2008 to be partially unconstitutional, as it did not grant the Bundestag and Bundesrat sufficient rights of participation in the EU’s lawmaking and treaty amendment procedures. The subsequent legislative procedure was unusual in two respects: firstly, almost no use was made of assistance from the Federal Government in drafting the bills, and secondly the Bundestag and Bundesrat committees responsible for European Union affairs held a joint public hearing on the bills with twelve experts. Parliament dealt with this matter during its summer recess in order to ensure that Germany could ratify the Treaty of Lisbon before the second referendum in Ireland on 2 October 2009.

The **Responsibility for Integration Act** implements the requirements established by the Federal Constitutional Court. Specifically, it regulates the participation of the Bundestag and Bundesrat in amendments of primary law which are not subject to the usual ratification procedures, and in the application of legal bases in primary law for the extension of EU competences. Participation is also regulated in cases where the Member States can halt a deepening of European integration. A law pursuant to Article 23 (1) of the Basic Law is required for the Federal Republic of Germany to give its consent at EU level in the **simplified treaty revision procedure** under Article 48 (6) of the Treaty on European Union, which permits revisions in areas including the internal market, economic and monetary policy and employment policy. In addition, there are a number of **special treaty revision procedures** restricted to specific areas. In the case of the **general bridging clause** under Article 48 (7) of the Treaty on European Union, which allows a change in the voting modalities in the Council or in the legislative procedure to be applied, a law pursuant to Article 23 (1) of the Basic Law is required even for the German representative in the European Council or the Council to consent. The same applies in the case of the **clauses extending competence**, which

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include Article 83 (1) subparagraph 3 of the Treaty on the Functioning of the European Union as regards the field of criminal law. The **flexibility clause** of Article 352 of the Treaty on the Functioning of the European Union allows the EU's existing competences to be extended for a specific purpose. This also requires a law on the basis of Article 23 (1) of the Basic Law.

By contrast, a decision of the Bundestag is sufficient for the German representative in the European Council or the Council to consent to the application of **special bridging clauses** relating to specific policies. In addition, a decision of the Bundesrat is required if the legislative competences of the *Länder* (or federal states) are affected. The Bundestag – and the Bundesrat in specific cases – can, via a decision, instruct the German representative in the Council to use the **emergency-brake procedure**. This procedure allows a member of the Council to convene the European Council if it believes a draft legislative act infringes fundamental aspects of its criminal justice system or social security system. In addition, the Responsibility for Integration Act defines in more detail certain rights established in primary law, specifically the **subsidiarity objection** and **national parliaments' right to make known their opposition regarding bridging clauses**. The Responsibility for Integration Act will be amended after its entry into force to incorporate the instrument of the **subsidiarity action**, which is related to the subsidiarity objection, when the Act Implementing the Amendments to the Basic Law for the Ratification of the Treaty of Lisbon enters into force.

Within the framework of the implementation of the Federal Constitutional Court's requirements, the **agreements on cooperation on matters concerning the EU** between the Bundestag and the Federal Government on the one hand, and between the Federation and the *Länder* on the other, will be incorporated into the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union and the Act on Cooperation between the Federation and the *Länder* in Matters concerning the European Union, respectively. This gives statutory form to the agreements, whose legal status was previously not entirely clear. In terms of content, both laws regulate largely similar matters: they expand on the requirement enshrined in Article 23 (2) of the Basic Law that the Federal Government keep the Bundestag and the Bundesrat informed, comprehensively and at the earliest possible time, in matters concerning the European Union. The possibility enshrined in the Basic Law for the Bundestag or the Bundesrat to state their position in this context is also specified in greater detail. Experiences drawn from the present system, as set out in two monitoring reports by the Bundestag Administration, have been fed into the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union. For example, the obligation to inform the Bundestag regarding the Common Foreign and Security Policy and the Common Security and Defence Policy is given a clause of its own.

The *Länder* were closely involved in the drafting of the laws. The **Bundesrat** will take a decision on them at its 861st sitting, on **18 September 2009**. The Responsibility for Integration Act will enter into force one day after its publication in the Federal Law Gazette; the instrument of ratification of the Treaty of Lisbon can then be deposited with the government of the Italian Republic in Rome. If any legal challenges to the Responsibility for Integration Act are lodged with the Federal Constitutional Court, however, the process could take longer.

Sources:

- Judgment of the Federal Constitutional Court of 30 June 2009 – 2 BvE 2/08.
- Draft Act Extending and Strengthening the Rights of the Bundestag and of the Bundesrat in Matters concerning the European Union (Bundestag printed paper 16/8489; recommendation and report: Bundestag printed paper 16/8919) [original accompanying law].
- Draft Act Extending and Strengthening the Rights of the Bundestag and of the Bundesrat in Matters concerning the European Union (Bundestag printed paper 16/13923; recommendation: Bundestag printed paper 16/13985; report: Bundestag printed paper 16/13994).
- Draft Act Implementing the Amendments to the Basic Law for the Ratification of the Treaty of Lisbon (Bundestag printed paper 16/13924; recommendation: Bundestag printed paper 16/13985; report: Bundestag printed paper 16/13994).
- Draft Act Amending the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union (Bundestag printed paper 16/13925; recommendation: Bundestag printed paper 16/13986; report: Bundestag printed paper 16/13995).
- Draft Act Amending the Act on Cooperation between the Federation and the *Länder* in Matters concerning the European Union (Bundestag printed paper 16/13926; recommendation: Bundestag printed paper 16/13987; report: Bundestag printed paper 16/13996).
- Draft Act Amending the Basic Law (Articles 23, 45 and 93) (Bundestag printed paper 16/13928; recommendation: Bundestag printed paper 16/13988; report: Bundestag printed paper 16/13997).

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