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Constitutional Reservations against Maastricht Dismissed (November 3, 1993)

The Federal Constitutional Court dismissed the complaint against the Maastricht Treaty filed by four Green members of the European Parliament and Manfred Brunner, the former chairman of the FDP in Bavaria. The complainants had asserted that the treaty violated the principle of state sovereignty. Two days after the treaty was able to take effect in the Federal Republic, the most important parts of the ruling, and the implications thereof, were explained to the federal cabinet in a handout.

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## **Joint Handout by the German Foreign Office and the Federal Ministry of Finance for the Cabinet Meeting on November 3, 1993**

### **1. Introduction**

The Federal Government welcomes the decision of the German Federal Constitutional Court [*Bundesverfassungsgericht*, BVerfG] on the constitutionality of the Treaty on the European Union (TEU). It is a pleasing confirmation and encouragement for the policies of the Federal Government.

- The BVerfG declared the TEU constitutional.
- Germany was therefore able to ratify the TEU on October 12, 1993. The deposition of the ratification certificate took place on October 13, 1993. The treaty takes effect on November 1, 1993.
- This paved the way for the development of the Union as provided for in the TEU. The extraordinary EC summit meeting on October 29, 1993, gave the heads of state and government of the member states an opportunity to confirm their desire to actualize the Maastricht Treaty quickly and concretely and to set clear priorities for the near future.
- The court has confirmed that German policy, which has been oriented toward European integration for more than four decades, is constitutional. Germany will continue to be a reliable member of the Community in the future. In close association with its European neighbors, Germany remains a driving force in the development of an ever tighter union of the peoples of Europe on the basis of the constitutional principles of democracy and the rule of law.

## 2. Ruling on the TEU by the BVerfG

### a) On the European Union

The court declared only one constitutional complaint admissible, and only insofar as it was based on a violation of Art. 38 of the Basic Law (democratic legitimation). The court rejected all other constitutional complaints as inadmissible, including those directed against amendments to the Basic Law (Articles 23, 28 Sec. 2, 88 Basic Law) in connection with the law to ratify the treaty.

The court's expansion of Art. 38 of the Basic Law into the subjective right of an individual to democratic participation constitutes a change.

The court emphasized the important role of the German Bundestag. Because the treaty establishes an association of states, not a European state, the court expects democratic participation in the European Union to be presently guaranteed primarily through the Bundestag. Therefore, the court did not accept the claim of a "democratic deficit" in the Community. At the same time, it pointed out that, with the expansion of the duties and competencies of the Community, there would be a growing need for nationally-mediated legitimation to be complemented by a European Parliament, from which supplemental democratic support for the policies of the European Union would emanate. The court already ascribes the European Parliament a "supportive function" in the present phase.

The court reserves the right to declare constitutional complaints against the legislation of the European Community admissible, if such complaints assert that the legal basis of the legislation is not covered by the law that sanctioned the treaty. With that, the court modified its earlier opinion, according to which EC legislation could not be subject to review by German courts. The court affirmed that, with regard to the protection of fundamental rights, the BVerfG and the European Court of Justice (ECJ) complement each other in the sense of a "cooperative relationship." This means that the ECJ guarantees the protection of fundamental rights in each individual case for the entire territory of the European Community, whereas the BVerfG can limit itself to a more general guarantee of inalienable fundamental rights.

The court emphasized the decisive role that the member states, which retain their sovereignty, play in an association of states. The member states remain "masters of treaties" [*Herren der Verträge*] and as such are bound to the Union treaty, which was concluded for an indefinite period of time. Ultimately, however, they can revoke their affiliation through a "contrary act." The court permits decisions based on majority voting within the Community. The principle of "Community loyalty" in the sense of mutual respect for the constitutional principles and elemental interests of the member states applies.

At the same time, the court handed down important statements on the constitutionality of future developments in the European Union, statements that agree with the position presented by the Federal Government during the proceedings and that are essentially already valid as principles of Community law:

- The necessity of transparency in the decision-making processes of the organs that exercise authority and in the respective political aims being pursued.
- The principle of *conferral* [*begrenzte Einzelermächtigung*]. This means that the Community is expressly prohibited from assuming new competencies by citing treaty objectives without obtaining a formal amendment to the treaty (no authority to extend its competencies [*keine Kompetenz-Kompetenz*]). Art. F, Sec. 3 of the TEU (Union's provision of means) is to be interpreted merely as a programmatic statement.
- New tasks can be assigned only through an amendment to the treaty, that is, a sufficiently determined stipulation of other transfers of sovereignty and of the intended integrative measures through ratifying laws.
- An emphasis on the subsidiarity principle as a means of limiting the exercise of Community competencies.
- Heeding the principle of commensurability with respect to the level of regulation of Community measures.
- The non-applicability of Community acts if competencies stated in the TEU are exceeded. Related procedural questions were not examined by the court.

The court saw no reason under the present circumstances to consider the question of whether the Basic Law allows for or prohibits German membership in a European state. Its remarks on this issue, however, do show that it considers deeper integration possible – in the presence of certain “extra-legal conditions” that could develop over time within the institutional framework of the European Union.

## **b) On the Economic and Monetary Union**

The court also supports the position of the Federal Government with respect to the economic and monetary union and confirmed that the monetary union “is conceived as a stability community whose primary task is to guarantee price stability.” This includes the following aspects:

The court agreed that the convergence criteria that decide on membership at the third stage cannot be “watered down.” The court emphasized that the latitude afforded by the treaty can only mean that it “must be possible to rule out by majority any remaining margins in estimations,

assessments, and predictions.” This, however, does not make it permissible to abandon the convergence criteria.

[ . . . ]

The court came to the overall conclusion that in ratifying the Maastricht Treaty, Germany is not subjecting itself to an “unmanageable, uncontrollable ‘automatism’ on a self-guided path toward a monetary union; the treaty paves the way for a further step-by-step integration of the European Legal Community, which is dependent at every step on either prerequisites that can be presently anticipated by the parliament or additional Federal Government approval, which can be influenced through the parliament.”

The Federal Government ensured parliamentary participation prior to its entering into the third stage through the consent given by the Federal Minister of Finance to the German Bundestag on April 2, 1993, and its announcement to the Council, Commission, and European Parliament.

### **3. Implications for the Federal Government**

The fundamental considerations of the BVerfG are conducive to the further development of the Union and keep prospects for enlarging and intensifying the Union open:

- The BVerfG has confirmed that there is room in the Basic Law for European integration. This includes the realization that our ability to use the rules of our constitution as a standard for the enlargement of the Union is limited. This also holds true for the democracy principle of the Basic Law, as long as the legitimation and influence that emanates from the people is ensured within the Union.
- The addition of Art. 23 (new) of the Basic Law (structural protection clause, participation of the Bundestag) has proven helpful in the constitutional validation of the Maastricht Treaty.
- It was affirmed that it is necessary to strengthen the role of the European Parliament to provide democratic support for the policies of the Community and to make the decisions of the Community more transparent as it is enlarged step-by-step.
- The Federal Government must ensure that the authorization standards of Community law will be respected and that the principle of subsidiarity will be taken into consideration in each case.
- The future development of the Union remains open. But the German Bundestag must retain substantive authority, if – as is presently the case – the people convey their democratic legitimation through their national parliaments in an association of states.
- Nothing specific was said on the role of the federal states, since the court rejected the corresponding censures (principle of federalism) as inadmissible from the outset.

– The concept of EMU (Economic and Monetary Union) was fully confirmed. In particular, there is no automatism governing entrance into the third stage. The EMU is a self-contained and sustainable concept; a parallelism between the EMU and a political union is not provided for under constitutional law.

– The realization of the EMU depends decisively on the evolution of convergence in the EC countries; this was confirmed by the court. Therefore, it is imperative that the individual member states now substantially increase their national efforts to achieve convergence. It is also important to take full advantage of all procedures and instruments available to increase the coordination of economic policies among the EC countries.

– The court made it clear that convergence must have priority over deadlines. It emphasized that the deadlines mentioned in the treaty should be seen as objectives, in accordance with established Community tradition.

Source: “Gemeinsame Tischvorlage des Auswärtigen Amtes und des Bundesministeriums der Finanzen zur Kabinettsitzung am 3. November 1993” [“Joint Handout by the German Foreign Office and the Federal Ministry of Finance for the Cabinet Meeting on November 3, 1993”], in *Außenpolitik der Bundesrepublik Deutschland. Dokumente von 1949 bis 1994* [*Foreign Policy of the Federal Republic of Germany. Documents from 1949 to 1994*], published on the occasion of the 125th anniversary of the Foreign Office, Cologne 1995, pp. 971-74.

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