



A comparison between the government systems of the EU and the Federal Republic of Germany.

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A) Introduction

B) Comparison between the government systems of the EU and the FRG

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C) Summary

The today's European Union is no state in the literal sense. According to the Bundesverfassungsgericht it is an intergovernmental platform, coordinating national politics. Nevertheless, the European Community, which is since the treaty of Maastricht of 1993 integrated into the European Union as its first pillar has legislative powers over its member states. Thus, it needs a political system to carry out its responsibilities stated in the treaties, especially the treaty founding the European Community of 1958. Because the European Community is not a sovereign state a complex political system emerged, representing both, supra-nationality within the European Commission and decision making bodies still based on intergovernmental agreements, like the Council of Ministers. In the following the political system of the European Union shall be compared with that of the Federal Republic of Germany. To do so, I will, firstly, compare the constitutional background and the possibilities of judicial review of both. Secondly, I will compare the law making process, also focusing on federal elements within that process. Thirdly, I will compare the executives of the EU and the FRG.

Politics in Germany is strictly bound to the basic-law, the German constitution. There is no parliament's sovereignty like for example in Great Britain. The basic principles of the German political system are stated in article 20 GG, also called "the constitution in short". Thus, Germany is a democratic, federal, social and constitutional state with a republican form of government. Although, the basic law can in principle be changed by a two-third majority in both houses of the German parliament the principles stated in article 20 are protected by article 79 GG which says that articles 1 and 20 may never be changed. Especially, the principle of the rule of law is of great importance, because it means that all institutions in Germany are bound to the law and that the fundamental rights stated in article 1-19 GG are effective law.

To secure these rights every citizen has the right to go to the Bundesverfassungsgericht. The Bundesverfassungsgericht is, unlike the Supreme Court, not the highest court of appeal, but solely responsible to control laws on their conformity with the constitution and to decide if conflicts between the constitutional organs occur. Therefore the BVerfG has two senates. The first senate is responsible for decisions concerning the violation of the fundamental rights. If a citizens is convicted by a law, which in his opinion violates the constitution he can go to the BVerfG. The other opportunity is that a judge thinks a new law violates the constitution. He can then go to the BVerfG, although there was no concrete

decision. This type of judicial review is therefore called “abstract norm-control”. The second senate decides over disputes between either constitutional organs or between the federal government and the state government or between single states.

Although, because being no state, the EU has no constitution, the treaties between its member-states constitute a constitutional framework. The articles of the treaties which state in which policy areas the EU, respectively the EC because those are mainly areas of economic policy, has legislative rights, is called the “primary-law” of the EU and has a constitution-like character. The European Court of Justice argued in its decision “Costa v. Enel” as early as 1964 that the treaties established an own legal system limiting the sovereignty of its member-states in special fields, and that the national courts are bound to EU decisions in that fields.

The European Court of Justice is responsible to ensure that European law is interpreted uniformly within the member-states. It also has, just like the BverfG, to solve disputes between either EU institutions or the EU and its member-states or between member-states. Here we can see a strong parallel between the European Court of Justice and the second senate of the BverfG. But there is also a fundamental difference. The treaties between the member-states do not include a clause ensuring the fundamental rights of its citizens. Indeed, there has been a far-reaching declaration of the fundamental rights, covering not only the classic human-rights, but also civil and especially economic and social rights, at the summit in Nice in 2000. But, unlike in Germany these rights are no binding law and the European citizen can not enforce those rights by going to the European Court of Justice. This problem would have been solved by the constitution-treaty which was given to the member-states for ratification in 2004, but the ratification failed due to negative referendums in France and the Netherlands.

As a “statute law” country in Germany the parliaments are the only formal sources of law. Germany is a federal state and the legislative is thus divided between the federal parliament and the state parliaments. In articles 73 to 75 of the basic-law the distribution of competences between the federal government and the state governments is codified. In principle, the federal government’s competences are limited to the areas of the solely federal legislation stated in article 73. The competences of the concurrent legislation and the framework legislation lay in principle within the states, but the federal government can, according to article 72, take over those responsibilities if this is necessary to maintain the economic and legal unity of Germany or to maintain an equivalent standard of living. Because of this clause today nearly only the areas of the solely state legislation are carried out by the states. The federal parliament is divided into two chambers. The Bundestag is the chamber representing the “Bund”. The states are represented by the Bundesrat in the federal legislation. Whenever the finances or the bureaucracy of the states is affected by a federal law, which is the case in about 70% of all laws, the Bundesrat has to accept the law. In all other cases the Bundesrat can file a protest. Is the protest filed with an absolute majority, the Bundestag can overcome it with an absolute majority. Is the protest filed with a majority of two-thirds of the Bundesrat, the Bundestag needs a two-thirds majority, too, to overcome it.

The legislative process within the EU is far more complex and basically based on a cooperation between the European Parliament, the Commission and the Council of Ministers. The EU has three formal methods of enacting laws: regulations, which are directly binding law and addressed to the whole European Union; decisions, which are like regulations directly binding, but addressed to single subjects, which can be states, corporations or even single persons; and directives, which only formulate goals which shall be achieved and leave the member-states the freedom to decide how this should happen. I will explain the law making process on the example of a regulation, according to article 189c TEC. The Commission, which has a supranational character and shall work on the behalf of the Union, has a monopoly to propose laws. The Commission can do that on its own initiative or on an initiative of the European Parliament. The proposal is then sent to the European Parliament which can formulate a first opinion. Following that, the Council formulates a joint position. Afterwards the proposal is resent to the Parliament which then

can, in its second reading, accept the proposal, change the proposal with a two-third-majority, or refuse the proposal with a two-third majority. If the parliament accepts the proposal the Council can enact the law with a qualified majority. Does the Parliament refuse the proposal the Council can nevertheless enact the law, but needs to do that with unanimity. If the Parliament changes the proposal the Commission decides if the original or the changed proposal is sent to the Council for acclamation. Does the Commission send the original proposal, the Council needs unanimity. Is the changed proposal sent, the Council may decide with a qualified majority. This process, which is effective since the Single European Act of 1987 does not anymore balance the interests of single states but the positions of the European Parliament, the Commission and the Council (Pfetsch, 1997, p.139). In some decisions, however, unanimity is required independently from the Parliament's decision. As we can see, the Parliament is far from being the prime decision making body, but its influence may not be underestimated. However, the Council, which represents the interests of the single states, and may be seen as an intergovernmental body, does in the end decide what becomes a law. The, in many cases necessary, requirement of unanimity does strengthen the intergovernmental character even more. Because of that, the federal element is much stronger than in the German political system. Of course, the German federal government holds full sovereignty, which the EU doesn't. But the Bundesrat may be compared with the Council. The Bundesrat represents the "Länder"-governments, the Council represents the governments of the member-states. Both organs are only indirectly legitimated. One difference has to be mentioned here, while within the Bundesrat the distribution of votes follows the geometrical principle, the Council functions after the principle "one state, one vote".

Germany has a dual federal executive. The Bundespräsident is the head of state. Due to the experiences of the Republic of Weimar his competences are very limited. He is primarily a representative of the Federal Republic of Germany to other states. He inaugurates the chancellor and his minister, but has to do this according to the parliament's vote, respectively concerning the ministers the decision of the chancellor. Beside some other representative function he has in some cases nevertheless political power. In the case of a negative vote for confidence of the Bundestag, the chancellor may ask the President to dissolve the chamber. After controlling the conformity of the procedure with the basic-law the President may then decide politically if he does so. The other case where the President gains political power is, if two election rounds for the election of the chancellor fail. After the third round the President can decide if he accepts a minority-chancellor or dissolves the Bundestag.

The Bundesregierung consists of the chancellor and his ministers. The chancellor is elected by the Bundestag, not directly by the people, and has far-reaching powers. He has the so called policy-making power (Richtlinienkompetenz) and thus formulates the guidelines of the policy of his administration. As the only elected person within the administration he also has the right to distribute the competences to the several departments, and thus create or abolish departments. He also decides about who becomes minister, although in practice all that powers are limited due to the multi-party system which often makes coalitions necessary. This strong position of the chancellor resulted in a heavy debate, if the Federal Republic of Germany could be called a "Kanzlerdemokratie". As mentioned above most competences lay, in practice, within the federal level. But, according to articles 30 and 83 of the basic-law most federal-laws are executed on the state-level, "if not mentioned otherwise within the basic-law" (Article 30 GG).

The European Union has no executive organ in the literal sense. What comes closest to such one is the European Commission. The Commission is structured just like national administrations, namely after competences. Unlike in Germany the head of this body does not appoint his commissioners. All commissioners as well as the president of the Commission are appointed from the member-states. The European Parliament must accept these appointments. As mentioned above the Commission also plays a role in the law-making process and is thus a hybrid with both, legislative and executive competences. As "Guardian of the Treaties" the Commission is responsible for the execution of European law. Just like German federal law is mostly executed by its states, European law is mostly executed by the member-states. In both entities, the EU and the FRG we can find the

principle of subsidiarity, after which laws shall be made and executed at the lowest level of government possible. Another similarity with national executives is, that the Commission represents the EU in negotiations with other states, groups of states or organizations. But since the EU is only in its first pillar, the EC, sovereign, this representation is limited to trade negotiations. If commissioners shall represent the EU in other questions than that a decision of the member-states' heads of administration is needed.

By comparing the political systems of the European Union and the Federal Republic of Germany we can find both, similarities and strong differences. Both systems have strong courts which can decide over disputes between organs or levels of the government. While in Germany the fundamental rights are binding law and every citizen has the right to enforce them by going to the federal court, in the European Union the declaration of fundamental rights is not yet binding. In Germany the parliaments are the only source of law. The states participate in the federal legislative, and have due to the Bundesrat strong influence there. In contrast, within the European Union the parliament can only influence the law making-process, and can be overruled by unanimity of the Council. The Council, which can be best compared with the Bundesrat, because it also represents the single elements of the system, is thus the final and strongest organ in the law-making process. Germany has a dual executive with a strong chancellor, who can represent Germany in any fields of policy. The EU has only an "executive-like" body, with no strong head. The Commission can represent the EU only in economic matters, in other questions it is dependent on decisions of the member states. In both systems federal, respectively European law is executed primarily on lower levels.

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Sources:

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