

(Draft press release, do not quote or circulate;)



Bundesverfassungsgericht

> Homepage > Press > The EU Banking Union respects and supports the Sovereignty of the Federal Republic.

The sovereign authority of the Federal Republic of Germany and of its People is indivisible.

It rests upon The Federal Republic's representative structures and legislative acts, *and* upon those of the European Union. In the latter, its nationals are represented as Germans and as Europeans at once.

Sovereignty is *secured* through the Federal Republic's executive and judicial authorities, with those of other member states and those of the European Union.

The EU Banking Union respects and supports the Sovereignty of the Federal Republic.

Press Release No. 50/2019 of 09 May 2019,

Order of 01 April 2019;)

2 BvR 1685/14, 2 BvR 2631/14

The Second Senate of the Federal Constitutional Court has dismissed constitutional complaints against the foundational acts of the EU Banking Union and the Federal acts authorizing the approval of these acts.¹

The Second Senate has clarified its position concerning the relationship of the Federal Republic and the European Union, including the institutions of both.

- a) The European Union's *executive* bodies and their acts may help secure the Federal Republic's sovereign authority.
- b) The European Union's legislative bodies, notably the European Parliament,

¹ The Single Supervisory Mechanism (SSM, (SSM, Regulation (EU) No. 1024/2013 – Single Supervisory Mechanism Regulation) and the act of approval authorising the approval of the proposal for the mechanism by the German representative in the Council of the European Union (Act on the Proposal for a Council Regulation Conferring Specific Tasks on the European Central Bank Concerning Policies Relating to the Prudential Supervision of Credit Institutions, *Gesetz zum Vorschlag für eine Verordnung des Rates zur Übertragung besonderer Aufgaben im Zusammenhang mit der Aufsicht über Kreditinstitute auf die Europäische Zentralbank* of 25 July 2013; Federal Law Gazette, *Bundesgesetzblatt* – BGBl II p. 1050), and against the Single Resolution Mechanism (SRM, Regulation (EU) No. 806/2014 – Single Resolution Mechanism Regulation) and other acts of EU secondary law (“Banking Union”).

represent the Germans as such and in their status of EU citizens, together with the citizens of other member states. Thus, European Union legislation expresses the German People's sovereign authority, among that of other Member States.

c) In its judicial rulings, the European Court of Justice may give expression to German Sovereign authority as it may express that of other Member States .

Facts of the case

The constitutional complaints were primarily directed against the two EU regulations (SSM Regulation, SRM Regulation) which form the core elements of the Banking Union. The SSM Regulation provides a new framework for banking supervision, which confers supervisory powers on the European Central Bank vis-à-vis “systemically important banks” in the Member States of the euro area. The SRM Regulation has established, and provided financial means for, a single resolution mechanism, including a single resolution fund (the Fund), which is still being developed.

In their constitutional complaint, the complainants claimed a violation of their fundamental rights and their rights equivalent to fundamental rights (*grundrechtsgleiche Rechte*) under Art. 14(1) in conjunction with Art. 88 second sentence of the Basic Law (*Grundgesetz – GG*) and under Art. 38(1) first sentence in conjunction with Art. 20(1) and (2) GG. They submitted that the legal acts that form the basis of the Banking Union were *ultra vires* acts, and also violated the Basic Law in other respects.

Key considerations of the Senate:

The Second Senate has recognized that its position concerning the Federal Republic's sovereignty in the European Union may seem to come at odds with factual, political and legal developments, may raise incorrect expectations with complainants and may even affect the Constitutional Court's authority. It has proceeded to clarify that position.

I. In fact. German sovereignty has developed and strengthened from the foundation of the Bundesrepublik in 1949 until today. Originally the Federal Republic's sovereignty was lacking (*mangelhaft*), *first*, in plenitude of authority, due to limitations imposed by the occupying powers; *second*, in substantial control over crucial resources, such as coal and steel, and, *third*, in territorial and popular scope, due to the division of the German territory and population as of 1949.

In 1951, the State recovered its sovereignty over the resources of coal and steel, thanks to the foundation of the European Coal and Steel Community. In 1957, the same happened with Atomic energy. In 1990, the Bundesrepublik recovered its full formal sovereignty and its territorial and popular integrity following the fall of the Berlin Wall, thanks to the *Two plus Four Treaty* and the *Unification Treaty* of that year.

In 1992 the Bundesrepublik, in acknowledgement of its strengthening sovereignty in the context of the European Community, agreed to pool its sovereign currency with those of other states of the Union through the Treaty of Maastricht.

Over the following decades, the Federal Republic has been enhancing its ranking in the international community of states from that of an outcast in 1949 to its present position among the top ten of most respected states in the world. Internally the Republic, after some convulsive developments, now figures without dispute among the soundest of democracies of the globe, with full self-determination. Its external and its internal sovereignty are thus equally undisputed as to form and substance.

This powerful evolution has proceeded in step with the Federal Republic's gradual embedding, or *Einbindung*, into the European Union, Nato and the Council of Europe.

In each step of this development the Bundesrepublik's sovereign authority was supported by a strengthening of the *executive* authority of the European Union in coherence with a strengthening of German executive authority, and by a sharing of sovereign resources with its other member states. In acknowledgement of this, in 1992 the Basic Law was amended by a new Article 23 so as to make membership of the European Union an integral element of the German constitution (*Verfassung*).

As to the Acts challenged. When in the financial and euro-crisis, the European currency and its system were attacked, and German sovereignty was on the line, the onslaught was rebuffed by the actions of the EU executive bodies, notably the European Council, the European Commission and the European Central Bank, in support of the German authorities and in coherent action under the highest of strains.

The impugned legislative instruments central to the Banking Union were initiated in this period. The Union's executive initiatives leading to their agreement into legislation and these legislative acts were crucial in defeating threats to the euro system, to upholding the European Union and, thus, to the Federal Republic's sovereignty.

II. Politically and constitutionally. The Federal Republic's constitutional evolution has followed a parallel course. From the start the Federal Republic, including its representative *bodies*, has taken a leading interest and role in the European Union's evolution of representative and democratic forms and institutions. Its own legal and political *life* has become tied up with the legal and political lives of other EU members and with that of the EU itself. All this came in support of the Republic's evolution to full sovereignty, in terms of status and of actual authority, over the five decades from its foundation.

The European Parliament's evolution from a consultative body to a directly elected and a legislative house of the European Union has been integral to the development of the Union and, hence, of German sovereignty. No modern sovereignty can evolve without the State's representative institutions evolving in step with those of executive powers and institutions.

In spite of its regressive system of attribution of seats in the European Parliament, the Federal Republic's representatives and their political groups have always taken and played a leading role in this arena of European public expression and have seen to its further evolution.

III. Legally. In its Maastricht decision of 1993, the Second Senate acknowledged a

role of the European Parliament in representing German citizens, by seeing this body as a *representative of the peoples of the member states*. This was then in conformity with the European Treaties' evolution up to and including the Treaty of Maastricht.

In 2007, the EU Member States concluded the Treaty of Lisbon, which would enter into force in 2009. This Treaty turned, formally, the European Parliament from a representative of the member states' peoples into the representative of the European citizens. In its Lissabon decision of 2009, the Second Senate did not follow this legal step in the evolution of the European Parliament's status.

At present, and in the face of challenges to representative authorities and even to the role of representation across the board of Western democracies, the Court sees fit to acknowledge that, apart from representing the peoples of the member states, the European Parliament also represents the citizens of the European Union. Even if there are weaknesses of form - in the regressive system - and of substance - in the lagging allegiance of Europeans to their Union, these facts no longer justify the full denial by this Court of a representative function clearly assigned to the European Parliament by Treaty *and by German approving legislation*.

Concluding remarks. The Second Senate finds that to acknowledge a role to European institutions in the underpinning of German sovereignty will give it greater freedom of judgement in future challenges of German and of European Union's acts as to their conformity with German sovereignty.

In short: the transfer of German powers to the European Union may be redeemed by its empowering effects on German sovereignty and by its opening up German political life through a concomitant evolution in its representative structures. Acknowledging this is in keeping with and in furtherance of a proportional use of the Court's own judicial authority under German sovereignty. <<