

Decision-Making and European Policy Coordination in the German Federal Government

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Abstract

The fifth paper in **the German European Policy Series** traces the history and processes of European policy coordination of the German Federal Government both internally and with respect to EU institutions. Prior to the Treaty of Maastricht and deepening integration in the 1990s, the Federal Government's European policy was largely divided between classic foreign policy and more technical and economic integration efforts. These two aspects have since become harder to isolate, with European policy developing a broader domestic, socio-political character. This ushered in a need for clear coordination mechanisms for the formulation of German positions, with various bodies responsible for arbitrating differences among federal ministries, though decentralised decision-making is pursued as far as is possible. Overall, these developments have made German European policy both more politically important and more routine."

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Decision-making and European Policy Coordination in the German Federal Government

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Keeping in mind the Treaties of the European Union after the Treaty of Lisbon entered into force, one can identify a number of actors who decide European policy in the name of Germany. According to Art. 14 of the Treaty on European Union (TEU) and Art. 223 to 234 of the Treaty on the Functioning of the European Union (TFEU), German Members of the European Parliament participate in its political groups; the *Bundestag* (German federal lower house of parliament) and *Bundesrat* (German federal upper house of parliament) enjoy the right to influence and hinder policy (Art. 12 TEU); the Federal Chancellor participates via the European Council (Art. 15 TEU); and the ministers of the Federal Government participate via the Council of the European Union in decisions relating to European policy (Art. 16 TEU, Art. 237 to 243 TFEU). One can also consider other German representatives at the EU level who, in the European Commission, the Court of Justice of the European Union or the European Central Bank (ECB), inject German positions into European politics—even when institutionally committed to a European agenda.

Despite this multitude of potential ‘German’ impulses in Brussels, the concept of German European policy¹ typically relates to the actions of the Federal Government in matters of the European Union. This has, first of all, historical rationale. The first decades of European integration can generally be considered a governmental project.² However, German federal European policy was particularly impacted by the executive, as the ‘chancellor democracy’³ both concentrated governmental action and impeded the de-

velopment of an independent parliamentary foreign policy. Throughout the decades, moreover, there was a fundamental consensus between governing and opposition parties in most questions of European policy. This further strengthened the executive’s impact on European policy. In particular, governmental positions that the German government introduced and, when necessary, asserted at the EU level were not fundamentally changed by successive governments. From both an internal and external perspective, therefore, the Federal Government is a key actor that tries to articulate, defend and assert German interests in Brussels.

1. History and institutional development

The European policy of the Federal Republic of Germany has been historically marked by the legacies of the Third Reich, German division and the Cold War.⁴ Initially, the Federal Government possessed only limited sovereignty. Enacting an independent foreign policy was impossible under the allied regime, with the foreign ministry being first established in 1955. At the centre of the Federal Government’s early integration policy stood so-called Western integration. The USA was the most important ally in this regard, while France counted as the European state with which a policy of reconciliation could be most intensely pursued. European unification, especially in a pan-European framework, thus represented the aim embedded in the policy of creating a transatlantic bloc. The signing of the Treaty of Rome (1957) and the creation of

1 See Daniel Göler/Mathias Jopp: Deutschlands konstitutionelle Europapolitik, in: Katrin Böttger/Mathias Jopp (eds.): Handbuch zur deutschen Europapolitik, Baden-Baden 2016, pp. 45-60.

2 See Desmond Dinan: Europe Recast. A History of European Union, 2nd edition, London 2014.

3 Karlheinz Noll: Kanzlerdemokratie, Paderborn 2004.

4 See Martin Große Hüttmann: Leitbilder deutscher Europapolitik, in: Böttger/Jopp (eds.): Handbuch zur deutschen Europapolitik, 2016, pp. 31-44.

the Customs Union (1968) are important milestones in this direction. However, the integration that resulted from these developments had a technical character, as market rules were decided in Brussels and subsequently put into effect via the Federal and State executives. Political debates beyond the decision-making of these milestones were seldom had; in daily business, European policy was a policy of implementation.

In the mid-1980s, European policy within the whole of German foreign policy developed its own weight for the first time. The Single European Act (1986/87), the Treaty of Maastricht (1991/93) and the steps towards further integration in the 1990s and 2000s do not simply represent milestones of European integration; they also contributed significantly to the legal status of the European Communities (later the European Union) and thus entailed a new type of governmental action, which was to continue consolidating in the coming years.⁵ Ever more legal acts influenced national legislation. The high degree of European regulation resulted in internal institutionalisation. With the transition from the European Communities to the European Union, the European level as a whole became increasingly important. From European policy grew a European domestic policy. Within this paradigm, decision-making in European policy orients itself on a double-horizon: on the one hand, there are domestic policy goals with a European component, and on the other hand, there are European policy goals that might indicate repercussions on the German arena at a later stage.

The institutional set-up of German European policy mirrored the stages of historical development. From its beginnings until the 1980s—essentially, during the Cold War—the main features of European policy were the responsibility of the Federal Chancellery. Indeed, individual ministers were ostensibly responsible for their department according to the department princi-

ple of Art. 65 of the *Grundgesetz/GG* (Basic Law). However, foreign, defence and economic policy needed to be tightly interlocked with one another as a result of the global political circumstances. Thus, the Federal Chancellery exercised political supervision as long as the technical aspects of the common European market were not affected.

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As such, the Federal Chancellors, and not the representatives of individual departments, shaped the first decades of European policy. It is not without reason that Konrad Adenauer, Helmut Schmidt and Helmut Kohl are characters whose reputations and legacies are closely interwoven with the Europe-oriented policy of Western integration. This finding certainly does not, however, exclude the fact that individual foreign ministers (such as Willy Brandt from 1966 to 1969, Walter Scheel from 1969 to 1974 and Hans-Dietrich Genscher from 1974 to 1992) pursued a decidedly pro-integration agenda and were likewise considered as ‘Europeans’. This is all the more true in comparison with their more nationally oriented colleagues in other large EC/EU Member States, such as Great Britain or France.⁶

The potential for conflict grew with the Treaty of Maastricht and the founding of the European Union. The Federal Government’s European policy could no longer be divided into the high-level arena of alliance policy on the one hand and technical market design on the other hand. As a consequence, the institutional

⁵ See Simon Bulmer/Charles Jeffery/Stephen Padgett (eds.): *Rethinking Germany and Europe. Democracy and Diplomacy in a Semi-Sovereign State*, Basingstoke 2010.

⁶ See David Allen: *The United Kingdom: Towards Isolation and a Parting of the Ways?*, in: Simon Bulmer/Christian Lequesne (eds.): *The Member States of the European Union*, 2nd edition, Oxford 2012, pp. 108-133; Olivier Rozenberg: *France: Genuine Europeanization or Monnet for Nothing?*, in: Bulmer/Lequesne (eds.): *The Member States of the European Union*, 2012, pp. 57-84.

structuring of European policy within the Federal Government became a politically-charged question. Between central governance—via the authority to issue directives—and technical design entered European policy coordination, with which the increasingly differentiated political preferences of the Federal Government and the complicated decision-making in Brussels were intended to be brought into unison.

After the Treaty of Rome, responsibility for European policy coordination initially lay with the *Bundesministerium für Wirtschaft und Energie/BMWi* (Federal Ministry for Economic Affairs and Energy). This constellation was maintained for a long time, as a certain natural expertise in regard to the European single market—the core of the European Community—existed there. However, when the Treaty of Maastricht rendered the second and third pillars of the European Union no longer exclusively the areas of economic policy, a change in the institutional set-up seemed likely. But since the same CDU/CSU and FDP coalition governed from 1982 to 1998 in Bonn and Berlin, the occasion to take into account the structural requirements did not occur. A window of opportunity opened in 1998 as the first SPD and Bündnis 90/Die Grünen coalition saw itself confronted with the task of playing through the consequences of the Euro's introduction for Berlin politics. The designated Federal Minister of Finance Oskar Lafontaine claimed the EU coordination from the BMWi with his demand of a pan-European economic governance, including fiscal policy. Simultaneously, the *Auswärtiges Amt/AA* (Federal Foreign Office) was ascribed the responsibility of coordinating justice and domestic policy in addition to foreign and security policy.

In 2005, with the beginning of the grand coalition of CDU/CSU and SPD, the first part of the coordination function reverted to the BMWi. This was rooted, in part, in coalition strategy. The AA (with the Federal Minister for Foreign Affairs Frank-Walter Steinmeier), as well as the *Bundesministerium der Finanzen/BMF*

(Federal Ministry of Finance with the Federal Minister of Finance Peer Steinbrück), were given to the SPD. The Union parties CDU/CSU, which supplied Michael Glos as Federal Minister for Economic Affairs and Energy, could thus justifiably insist on maintaining their involvement in the co-ordination of European policy. Since 2005—that is, including beyond the Treaty of Lisbon—the allocation of coordination within the Federal Government has remained unchanged.⁷

2. The cooperation of actors⁸

In order to be able to understand the governmental aspects of European policy, it is necessary to distinguish two factors, which nevertheless share a logical connection: their content-strategic and administrative-organisational components. Both play a role in the Federal Government's most important involvement in European policy, namely regarding the formulation and negotiation of so-called German positions in the structure of the Council of the European Union.

1. Content-strategic composition of the Federal Government

There are many dividing lines within the Federal Government that determine its European policy actions. First of all, an important role is played by the tense relationship between the department principle and the Federal Chancellor's authority to issue directives. In general, the Federal Chancellery always comes into play when questions of fundamental significance arise on the political agenda; it is then quite easy to determine which dossiers they are. They arise on the

⁷ See Bernd Hüttemann: Das „Schwarze Loch“ der deutschen Europapolitik – Lobbyismus und europapolitische Koordinierung in Deutschland, in: Daniel Göler/Alexandra Schmid/Lukas Zech (eds.): Europäische Integration. Beiträge zur Europaforschung aus multidimensionaler Analyseperspektive, Baden-Baden 2014, pp. 175-196.

⁸ The analysis in this section is based on Timm Beichelt: Deutschland und Europa. Die Europäisierung des politischen Systems, 2nd edition, Wiesbaden 2015, pp. 251-294.

agenda and in the conclusions of the European Council. In European policy, then, the leadership role of the Federal Chancellery is based on the institutional order of the European Union. There are also, however, other aspects that prompt the Federal Chancellor to intervene without direct cause from the European Council—e.g. for internal policy reasons. Finally, there also exist conflicts between coalition partners or within large parties, such as the CDU or SPD, in which the Federal Chancellor sees her- or himself prompted to take position. Political conflicts are, when related to agenda-setting, predominantly carried out over mass media or in other forms of public discourse. If they arise during a later phase—for instance, when the legislative process has already begun at the German or EU level—bureaucratic actors also become involved. The Federal Chancellery is, of course, also integrated into administrative processes. In order to assume the political leadership role of the Federal Chancellor, a Directorate General “European Policy” exists within the Federal Chancellery. In part, the Directorate General is responsible for conducting arbitrage between individual ministries, thereby ensuring that the Federal Chancellor’s political poise is represented regarding positioning at the EU level. Moreover, it is also responsible for content. For example, the preparation of meetings of the European Council lies within its exclusive responsibility—necessarily in coordination with the departments

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All things considered, however, the resources of the Federal Chancellery are limited. There are only around 20 officials in the Europe department who mirror the activities of all ministries. Of particular importance are the Secretary of State and the Head of Department;

they are present during sessions of coordination (see below), and are authorised to signal the demands of both the (political) leadership and the (administrative) authority to issue directives.

The Council of the European Union’s organisation produces a further division within the Federal Government. The Council is currently subdivided into ten configurations,⁹ which meet in differing constellations. In the Employment, Social Policy, Health and Consumer Affairs Council, for example, the Minister of Labour and Social Affairs is present on some occasions, while the Minister of Health is present on others. This differentiation generates activity networks that, though perhaps not isolated from one another, are each impacted by internal procedures.

The complexity of the system is further increased when taking into account the dual nature of the Council in Brussels. On one side are the more ‘technical’ councils, which are predominantly present in those policy areas that previously belonged to the first pillar of the European Union (at that time, the European Communities). These stand in contrast to the ‘political’ councils, above all the General Affairs Council, but also the Councils of the Ministers of Foreign Affairs, Finance and Home Affairs and Justice.¹⁰ In order to be able to consolidate and align the decisions of the different councils, there exists a mid-level body—the Permanent Representatives Committee (*COREPER*)—in which the member states’ ambassadors to the EU sit. Every decision formally taken by the Council must pass through this body. *COREPER* itself meets in two configurations, following the distinction between ‘technical’ Community and ‘political’ Union matters established during the time of the Maastricht Treaty:

9 See Council of the European Union: Council configurations: Agriculture and Fisheries; Competitiveness; Economic and Financial Affairs; Education, Youth, Culture and Sport; Employment, Social Policy, Health and Consumer Affairs; Environment; Foreign Affairs; General Affairs; Justice and Home Affairs; Transport, Telecommunications and Energy, available at: <http://www.consilium.europa.eu/en/council-eu/configurations/> (last accessed: 28.10.2015).

10 The foreign minister sits in the General Affairs Council; however, this council should be distinguished from the Foreign Affairs Council.

COREPER I has a technical orientation, while COREPER II is political. These distinctions are relevant for the Federal Government, as it has to adapt its internal organisation to the processes in Brussels. As a historical coincidence—yet also with a certain logic—the course for this was set in 1998. When the coordination function within the Federal Government was divided between the AA and BMF, the AA received the coordination responsibilities for COREPER II while the BMF became responsible for COREPER I.¹¹

Strategically, the Federal Government finds itself faced with several problems regarding decision-making on the European policy level. The political coherence of European policy—whose content rests with the leadership of the Federal Chancellery in cases of doubt—must be preserved. However, it is not only the Federal Chancellery that acts ‘politically’; in the context of Europeanised domestic policy, all ministries are involved as well. Conflicts between ministers, which are always in competition with one another in coalition governments, must therefore likewise remain workable. All of this occurs, meanwhile, before the background of a bureaucracy in Brussels that is calibrated to leave political trend-setting decisions to a small number of council configurations and the European Council.

“The Federal Government is (...) subject to lobbying while simultaneously being drawn into the contrasting field of competing, partial interests at the EU level.”

It is, however, more than political and administrative circumstances that render a coherent and continuous federal European policy difficult. Since a large part of German legislation is pre-shaped by the EU level, those functions that are connected to the legisla-

tion are likewise affected. The Federal Government is therefore subject to lobbying while simultaneously being drawn into the contrasting field of competing, partial interests. For example, environmental and economic interests often clash in the position building process at the EU level.

In this regard, when compared to the national legislative process, the Federal Government possesses only limited possibilities for arbitrage and influencing legislative initiatives at the EU level, where the European Commission is responsible (Art. 17 para. 2 TEU). Moreover, negotiations in the Council of the European Union occur in a system of the ‘equal rotation’ of presidents,¹² and thus the Federal Government is dependent on the decisions and priority-setting of others for much of the time. Since the Treaty of Lisbon, the European Parliament has also commanded considerable influence over legislation via budgetary powers.¹³ Finally, one must also consider the Member State level because, in German federalism, the *Länder* (Federal States) are mostly responsible for implementation. The European policy coordination of the Federal Government must account for all of these aspects.

2. Internal governmental structure: European policy coordination

The formulation of the interests that the Federal Government puts forward as governmental positions at the EU level occurs in a multifaceted organisational process. This is called European policy coordination. The concept refers to the European policy actions of actors, predominantly within the Federal Government, which a) bundle the negotiated preferences of domestic politics, b) relay these preferences technically to the EU level and c) bargain them independently at

¹¹ At that time, the coordination of the Economic and Financial Affairs Council was overseen by the BMF/COREPER I; today this happens through the AA/COREPER II.

¹² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Art. 16 para. 9 TEU, in: Official Journal of the EU, No. C 115, 9 May 2008, pp. 1-388, here p. 24.

¹³ See Peter Becker: *Das Finanz- und Haushaltssystem der Europäischen Union. Grundlagen und Reformen aus deutscher Perspektive*, Wiesbaden 2014.

that level.¹⁴ Beyond the formulation of governmental positions, the interests of participating actors focus on further procedures at the EU level: (1) the development of relations with third countries (for example, the drafting of negotiation mandates for the European Commission), (2) the influencing of the Commission's case-by-case decisions, (3) the issuing of statements regarding procedures of the Court of Justice of the European Union (as long as the Federal Republic of Germany is involved as a party to the process) and (4) the issuing of all other types of public statements and briefings regarding European policy issues.

At the national level, the Federal Government appears to be, first of all, a mechanism for aggregation. Possible interests are identified, the dissolution of inconsistencies is attempted and the relevant dossiers are then negotiated at the EU level. European policy coordination is therefore a process that simultaneously occupies the national and European spheres of political decision-making. As a result, the Federal Government has won a central position in the overall system of European policy. No other political institution can possess design possibilities across all levels to an equal extent.

Formally, the coordination process is composed of the instruments of early warning, operations management and missions of German embassies in the EU member states:

(1) The goal of early warning is the early identification of European political dossiers in the planning phase. These are dossiers that may cause coordinating difficulties within the Federal Government, or with which the Federal Government runs the risk of becoming isolated in the Council of the European Union in Brussels. Early warning formally takes place in reports that are prepared every three months. These reports are mentioned in the *Gesetz über die Zusammenarbeit*

von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union/EUZBBG (Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union).¹⁵

(2) The goal of operations management is the setting of the coordination bodies' agendas (see below). The principle is to entrust the next highest level of coordination with a problem only when a previous—and bilateral—solution has proven to be impossible.

(3) The missions of German embassies in EU capital cities occur in order to advocate for German positions and preferences in the responsible ministries of the member states. To this end, demarches are formally composed; with identical mandates, German officials in the embassies are requested to investigate current opinions or to win the support of a member state for the German position.

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In principle, European policy coordination within the Federal Government follows the well-known procedures of domestic decision-making.¹⁶ At the governmental level, the specialised departments of the responsible ministries are the most important units of decision-making. The respective EU division of the relevant department is concerned with the potential implications of a legislative project even before the

¹⁴ See Timm Beichelt: Die europapolitische Koordinierung der Bundesregierung: Besser als ihr Ruf, in: Zeitschrift für Parlamentsfragen 4/2007, pp. 751-764.

¹⁵ The *EUZBBG* was often changed in previous years. The version in effect at the time of editing was from 4 July 2013, Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union (*EUZBBG*), in: Bundesgesetzblatt Part I, Nr. 36, 12 July 2013, p. 2170.

¹⁶ See Joachim Jens Hesse/Thomas Ellwein: Das Regierungssystem der Bundesrepublik Deutschland, Baden-Baden 2012, pp. 118-224.

formal adoption of a draft regulation or directive (that is to say, at the EU level in the Commission stage).¹⁷ When a draft is on the table it is, in most matters relevant to European policy, a responsible specialist official, under the supervision of a division head, who develops the position of the Federal Government.

Despite the decentralised approach, the coherence of German European policy is to some extent guaranteed through the words spoken and written by each ministry's leadership during a legislative period. Individual officials can then orient themselves around these words. Moreover, the ministry leadership's general guidelines serve as a standard marking the extent to which lower officials can respond to lobbying from interest groups, that is to say in what way these may influence the concrete formulation of a directive.

All in all, this coordination functions according to the principle of the greatest possible decentralisation. In this process, the coordinating units – that is to say, the ones in the BMWi and AA, as described above – intervene as little as possible. Coordination and conflict resolution are strived for at the deepest possible level of the hierarchy, when considered necessary. This comprises a central task of coordination: allowing an autonomous formulation of directives in the individual ministries, while also being aware of possible conflicts with other ministries. The actual area of activity of European policy coordination is defined by that place where conflicts occur between units, departments or other entities of the governmental system (see **Table 1**).

If the units from different departments that participate in the formulation of a position cannot reach an agreement, the conflict becomes successively handled at three other levels: the subdivision or division leaders responsible for EU matters (level 3), the dedicated Secretaries of State for European Affairs (level 4) and the Federal Cabinet (level 5). Although the latter remains formally responsible for all decisions in Eu-

ropean matters, it is rarely concerned with questions of coordination. The conflicts that are decided in this arena bring the 'losing department' into the public eye, which may constitute a burden for single ministers as well as for different coalition constellations. The crucial coordination work therefore occurs in the next subordinated bodies, which meet at regular intervals.

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In both ministries responsible for coordination, the so-called coordination units are of great importance: the *EU-Koordinierungsgruppe EU-K* (previously known as *EK-R*) in the AA, as well as *EAI Grundsatzfragen, Koordination, Weisungsgebung, EP* in the BMWi. In a technical sense, these units are responsible for making the coordination process, as specified in **Table 1**, as effective as possible. Both units possess a comparatively high level of autonomy, but are required to engage in political coordination with other departments. They ultimately fulfill the task of leaving the resolutions of conflicted dossiers, behind which are contrary 'political' preferences and interests, to the EU Secretaries of State; these secretaries act as the (factual) final decision-makers.

The Stäv enters this process as an important actor (next to the coordination units) by level 3 at the latest—that is, by the preparation of meetings of the EU department heads of the various ministries. This is mainly because decision-making at the EU level is shaped primarily by the Stäv. The Stäv, occasionally called the European Embassy, is composed of around 100 officials, who are sent from all federal ministries as well as many Länder. This core workforce conducts the negotiations in the approximately 250 working

¹⁷ See Anja Thomas/Wolfgang Wessels: *Die deutsche Verwaltung und die Europäische Union*, Brühl 2006, p. 114.

Table 1: The European Policy Coordination Entities of the Federal Government

	Level 1: Unit of the leading department
↪	Level 2: EU representatives of the departments
↪	■ No regular meetings
↪	■ Ad hoc clarification of individual questions; frequently bilateral
↪	Level 3: Heads of EU departments in the ministries
↪	■ Body has existed since 2000
↪	■ Monthly meetings
↪	■ Presidency alternates between the AA and the BMWi
↪	■ Presence compulsory for all departments plus the Ständige Vertretung der Bundesrepublik Deutschland bei der Europäischen Union/StäV (Permanent Representation of the Federal Republic of Germany to the European Union)
↪	■ Goals: identification of differences between departments; (formal) obligation to disclose differences of opinion; processing of problems for EU Secretaries of State; following-up on resolutions; early coordination of German positions
↪	Level 4: State Secretaries Committee for European Affairs
↪	■ Established in 1963
↪	■ Meeting times: monthly, when possible in 14-day rhythm alternating with EU department heads
↪	■ Coordinated by the BMWi until 1998, and has since been within the collective coordination authority of the AA
↪	■ Leadership: Minister of State at the AA (since 2000)
↪	■ Members: EU Secretaries of State of all departments, leader of the StäV as well as the Director General of the Directorate-General “European Policy” of the Federal Chancellery
↪	■ Goal: reduction of the Cabinet’s burden of European political questions
↪	Level 5: Cabinet
↪	■ Typically meets weekly, with occasional special meetings concerning EU matters
↪	■ Formal decision-making authority for all European issues

Source: Beichelt: Deutschland und Europa, 2015, p. 263; status as of 2014

parties of the Council of the European Union, in which (in principle) all Council decisions are prepared. It is not rare for them to be supported by officials coming to Brussels daily from federal or state capitals in order to participate in meetings relevant to their department.

The task of the German representatives in the working parties of the Council is to articulate and, to the greatest extent possible, assert the positions of their government – that is, of their respective ministries. This task is constrained not only by the contrary interests of other member governments, but also by the

processing power of the Council Presidency and the Council Secretariat doing the preliminary work. Relevant interests must be registered at the beginning of negotiations over a dossier; major changes of opinion during the negotiation phase are then considered only begrudgingly. Early and unambiguous positioning limits possible coordination problems in a later phase of decision-making.

If the working parties (under the rotating presidency of the member governments) are able to agree on a draft regulation or directive, then the draft is noted by either of the responsible COREPER and is then forwarded to

the Council for a formal decision. If the working parties are not able to achieve an agreement, then the ambassadors to the EU (the Permanent Representatives) possess a certain maneuvering space when it comes to finding a compromise. At this point, theories on the ‘negotiation’ of positions at the EU level, which are prominent in the literature on the Council, take effect.¹⁸

One should not overlook, however, that at both the COREPER and the Council conditions for ‘bargaining’ between individual EU Member States do not occur on a regular basis. Concrete bargaining options must be available. This is typically the case on ‘important’ occasions, such as changes to treaties. However, much of the day-to-day business of the Council runs discontinuously, such that few negotiation packages are usually in focus.

The Council system therefore only has a small number of instances where it can link issues throughout policy areas. This is possible in both COREPER I and II. They are equipped, however, with career diplomats who usually are not adequately legitimated to place meaningful national interests at their disposal; yet they must do this in order to be able to receive compensation in other areas. It should be kept in mind that at the ministerial level, it is only the General Affairs Council that formally maintains the competence to link different thematic areas. Here, then, concrete ‘contrary’ interests—that is, those between two member states—must be available at a particular time (see above). This occurs, but not as a rule.

As a consequence of this constellation, the Federal Government generally follows a different strategy from that of success-maximizing ‘bargaining’. Within the Council system, the Federal Government strives to identify and pursue German interests vis-à-vis the member governments and, particularly, the Council

Presidency at an early stage. In doing this, the Federal Government also aims to be integration-friendly. The strategy is thus to support the Council Presidency in finding compromises and to prevent itself from becoming isolated in the Council. As a result, Germany is rarely overruled in the Council; amicable decisions in the Council are thus generally both a goal and a result of German European policy in Brussels.

“Within the Council system, the Federal Government strives to identify and pursue German interests vis-à-vis the member governments and, particularly, the Council Presidency at an early stage.”

At the same time, actors located in Brussels have considerable manoeuvring space in comparison to the ministries in the capitals that, in principle, provide guidance. The StäV’s information advantage unfolds naturally. First, the benefits of Brussel’s close proximity are enjoyed. Second, in the higher-ranking Council bodies—COREPER, as well as the Political and Security Committee (Art. 38 TEU), the Standing Committee on Internal Security (Art. 71 TFEU; ex-Art. 36 TEU) and other committees (Art. 134, 150 and 160 TFEU)—there is the privilege of the negotiation leaders to implicitly subordinate certain issues when only a limited number of German positions can be presented. In a meeting of COREPER, the representative of a government has few chances to speak, and only with a limited amount of time; as such, only the ‘most important’ interests—a subjective notion—may be introduced. The selection power of a deliberately acting Permanent Representative is consequently not to be underestimated, so long as the dossiers do not gain the attention of ‘political’ actors in Berlin. In practice, the Permanent Representatives must simply be able to justify their selections in retrospect.

¹⁸ See George Tsebelis/Geoffrey Garrett: *Legislative Politics in the European Union*, in: *European Union Politics* 1/2000, pp. 9-36; Fiona Hayes-Renshaw/Helen Wallace: *The Council of Ministers*, Houndmills 2006.

3. Implementing European policy

In Germany, decisions and regulations of the European Commission are to be considered as directly applicable law. This law must be implemented, generally by the Länder “in their own right”, according to Art. 84 para. 1 GG. This is also typically the case for directives. As opposed to decisions and regulations, directives must be substantiated – that is, interpreted – by the national legislature. However, irrespective of the implementation function of the Länder, it is the Federal Government that is responsible for implementation in Germany vis-à-vis Brussels. According to §75 para. 1 of the Joint Rules of Procedure of the Federal Ministries, timely implementation is the responsibility of the respective lead Federal Ministry.

The implementation of European rules into national law thus represents the core of the implementation function perceived by the Federal Government. This function shifts between two coordinates: the achievement of policy goals, and pure legal implementation.¹⁹ At first glance, the latter seems to embody a minimum solution, as direct implementation requires no political creativity. However, one can suppose that the Federal Government had already anticipated and worked to solve the challenges of implementation during decision-making at the EU level. If the circumstances between the European and national phases of decision-making are not fundamentally changed, a pure transposition can also result in outcomes that accord with German interests.

However, the implementation of law is not the sole part of implementing European policy, but also the control of implementation by institutions at the EU level. This generates a field of activity in the Federal Government, which is political in that it affects the relationship to EU institutions and therefore affects

the general postulate of friendliness towards the EU. On the part of the EU, the translation of EU law into national law, the implementation of national law and the monitoring of the effects of EU-induced policy are being controlled.²⁰ These tasks are concentrated primarily on infringement proceedings (Art. 226 TFEU), and are essentially incumbent on the European Commission and the Court of Justice of the European Union.

Numerically, this is a subordinate problem. In 2014, 99.2 percent of all applicable directives in Germany were implemented, and since 2011 there have been only five new infringement proceedings before the European Court of Justice.²¹ These successes of the implementation of EU rules are the result of the Federal Government’s considerable coordination apparatus.

Traditionally, deadline management is the responsibility of a unit in the BMWi. When the Ministry lost the coordination function to the BMF and the AA in 1998, the monitoring system entered a crisis: Germany exhibited with particularly low implementation rates. As a reaction to this, the aforementioned *Ausschuss der Staatssekretäre für Europafragen/EU-StS* (Committee of State Secretaries for European Affairs) was reformed in 2000, with the Minister of State at the AA overtaking the latter’s permanent presidency. An explicit goal of the reorganisation was to more effectively design the implementation of EU law into German law.

Deadline management has since followed a standardised procedure. A relevant unit in the BMWi is responsible for both regularly briefing the general coordination units about new directives and requesting an implementation plan from the responsible unit. Although the individual Federal Ministries are formally responsible for timely implementation, the coordina-

¹⁹ See Beichelt: *Deutschland und Europa*, 2015, pp. 89-104.

²⁰ See James McCormick: *Policy Performance in the European Union*, in: Eleanor E. Zeff/Allen B. Pirro (eds.): *The European Union and the Member States. Cooperation, Coordination, and Compromise*, Boulder 2001, pp. 7-26.

²¹ See Beichelt: *Deutschland und Europa*, 2015, pp. 282-283.

tion units are responsible for internal control and, if applicable, briefing the Commission in the case of non-compliance with the implementation deadline (which is individually established for each directive). The procedure regarding proceedings against the Federal Republic before the Court of Justice of the European Union occurs similarly. However, while the AA pulls the strings through the presidency of the EU-StS in ordinary deadline management proceedings, the BMWi is responsible for representing the Federal Republic before the European Court of Justice. A particular mechanism exists for the prevention of ‘second round’ or redress procedures before the Court of Justice: an early-warning mechanism has existed since 2004, through which both the EU department heads and the EU Secretaries of State are informed.²²

“The German position came to be perceived as dominant; the diagnosis of ‘merkiavellianism’ became most prominent.”

Only ambivalent results are ascribable to all of these efforts to increase the efficiency of implementation, as major costs for domestic policy still arise. The increased political pressure for timely implementation moves the focus from the content to the technical level. Political actors (in parliament, for example) must pay more attention to sustaining windows of opportunity for politically influencing the implementation of directives. European policy through implementation increases the technocratic character of the European multi-level system.

4. Outlook: Ambivalent Europeanisation

European integration has transformed the internal organisation of the Federal Government to a considerable extent. Before the founding of the European Union with the Treaty of Maastricht, European policy was effectively divided into classic foreign policy (for which the AA was responsible) and rather technical coordination within the framework of the European Communities’ policies. Since then, almost all areas of German policy have maintained a European component; European policy coordination doubtlessly became more efficient. European policy thus became both more politically important and more routine.

Politicisation became apparent in recent years, above all in the context of the ‘large’ European conflicts: the Eurozone crisis and refugee policy. In both cases, the German Federal Government held a prominent position within the multi-level system. The position of the Federal Government became relevant for the political maneuvering space in Brussels, and, more than ever, in a number of member states (such as Greece). The German position came to be perceived as dominant; the diagnosis of ‘merkiavellianism’²³ became most prominent. This recognizable criticism of German European policy was, and continues to be, embedded in a general discomfort with the character of European policy as a whole. Concepts such as the ‘gentle monster of Brussels’²⁴ or the European ‘façade democracy’²⁵ represent this idea.

²² See Thomas/Wessels: Die deutsche Verwaltung und die Europäische Union, 2006, p. 127.

²³ Ulrich Beck: Das deutsche Europa. Neue Machtlandschaften im Zeichen der Krise, Berlin 2012, p. 45.

²⁴ Hans Magnus Enzensberger: Sanftes Monster Brüssel oder die Entmündigung Europas, Frankfurt 2011.

²⁵ Wolfgang Streeck: Was nun, Europa? Kapitalismus ohne Demokratie oder Demokratie ohne Kapitalismus, in: Blätter für deutsche und internationale Politik 4/2013, pp. 57-68, here p. 64.

The final balance of the Federal Government's European policy setting turns out, in this context, to be ambivalent. On the one hand, an enormous increase in efficiency and strengthening of penetrative power has been realised. Outwardly, this means that in Brussels, political initiatives would be very difficult to assert against the Federal Government's decidedly expressed interests.²⁶ Inwardly, the Federal Government has installed an apparatus that is in large part capable of efficiently absorbing particular interests, departmental concerns and needs of the Länder. In this sense, European policy coordination is functionally arranged.

On the other hand, German European policy shows an occasionally apolitical character. Legislative initiatives at the EU level and implementation at the German level are only partially based on political debates that lead to adequate political solutions for political conflicts – for example, between parties in parliament. Depoliticisation of Europeanised domestic policy is the inevitable consequence. Outwardly, the allegedly 'rational' process of interest formulation causes the misleading representation of German positions as particularly reasonable, or even without alternative. That this all too self-assured member government is considered, at the European level, as having a particular responsibility (especially regarding burden sharing) may thus be the consequence of the Federal Government's exceedingly strong position in the European political structure.

²⁶ See Simon Bulmer/William E. Paterson: Germany and the European Union: from 'tamed power' to normalized power?, in: *International Affairs* 5/2010, pp. 1051-1073.

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