# ABSTRACTS*

***Wiefelspütz, Dieter*: Primacy of parliament. To the *Danckert/Schulz*-decision of the German Federal Constitutional Court concerning the European Financial Stability Facility.**

In reaction to the severe debt crisis of some of its member states the European Monetary Union created the eurozone bailout fund. On May 22, 2010 the German Bundestag adopted a bill (Stabilisierungsmechanismusgesetz – StabMechG) which laid down the national legal provisions to grant financial aid. According to section 3 paragraph 3 StabMechG, in cases of particular emergency and confidentiality a special body was supposed to give consent instead of the plenum. This special body was declared to a large extent illegal by the German Federal Constitution Court. The Court's judgment has a remarkable impact on parliamentary law. It is strengthening and deepening the rights of members of parliament as well as the Bundestag's capacity to determine its own organization and operational procedures. [ZParl, vol. 43, no. 2, pp. 227 – 250]

***Schröder, Hinrich*: In the wake of EUZBBG: the German Bundestag's participation in EU-affairs in practice – a short commentary.**

The substance of the term "Affairs of the European Union" is fundamental to the scope of the Act on Cooperation between the Federal Government and the German Bundestag in Matters Concerning the European Union (EUZBBG). Apart from including activities within the institutional framework of the EU, this term also comprises the intergovernmental cooperation between the member states provided that such a cooperation pursues objectives defined by the EU-Treaties. The federal government is obliged to notify the Bundestag comprehensively, as early as possible, continuously and, as a rule, in writing of all projects on matters concerning the European Union. To make these basic principles of information policy manageable, the EUZBBG contains rules stating the categories of documents that have to be conveyed. In practice, the law has proved its worth, but in some cases legal loopholes became obvious. Furthermore the EUZBBG takes into consideration that the Bundestag may submit opinions to the federal government on every kind of EU project and not only to draft legislative acts. Their binding effects depend on the nature of the EU-document they refer to. [ZParl, vol. 43, no. 2, pp. 250 – 277]

***Wichmann, Richard*: The binding effect of opinions issued by the German parliament on the German government in issues regarding the European Union.**

Art. 23 III GG and § 9 EUZBBG stipulate that the Bundestag may issue opinions on legislative acts of the European Union. Contrary to the prevailing view in legal publications, these opinions are regarded here as are certainly legally binding. Taking a strict view on the literal meaning of § 9 IV EUZBBG, the government can only derogate from the parliamentary opinion to a limited extent, which indicates that already according to the current legis-

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lation the Bundestag can strongly bind the government. If applied this way in practice, the right to issue opinions can be regarded as being in balance, in its own right as well as compared to mandatory participation rights in EU matters. A stricter binding effect of opinions is therefore not necessary. Moreover, decisional authority over the government might not be in line with the German constitution and European Union policy. [ZParl, vol. 43, no. 2, pp. 278 – 293]

***Daiber, Birgit*: The German Bundestag's application of the Integrationsverantwortungsgesetz (Responsibility for Integration Act).**
Contrary to what was expected, the Responsibility for Integration Act (IntVG), in force only since September 2009, has already been applied several times: First an amendment to the treaties, which permits the establishment of a stability mechanism within the euro area (ESM), has been set in motion in accordance with the simplified revision procedure. This amendment does not require the (two-thirds) majority for constitutional amendments – as long as an embodiment of this mechanism in line with the German constitution (GG) is possible. The flexibility clause (Art. 352 TFEU) has even been applied a few times. In addition the German Bundestag and the Bundesrat, the second chamber, have already exercised their right to objection on ground of subsidiarity – set out in Germany in the IntVG as well – a number of times. Furthermore the treaties have been amended in accordance with the ordinary revision procedure governed likewise by Art. 23 GG. The same is also true for non-binding acts within the framework of the flexibility clause. Overall parliament has a number of possibilities how to empower the EU to make use of this clause. [ZParl, vol. 43, no. 2, pp. 293 – 312]

***Sinner, Stefan*: The German Bundestag as the central constitutional body in the recent jurisdiction of the Federal Constitutional Court.**
In a series of decisions the Federal Constitutional Court has emphasized that the German Bundestag as the only constitutional body with immediate democratic legitimization in all matters – i.e. on a national, supranational and international level – has to be the central place of debate and decision. The parliament's broad rights and duties extend beyond its function of parliamentary scrutiny and its legislative function. Especially in connection with the European integration process and the monetary union, the Federal Constitutional Court has strengthened the rights of the Bundestag to participate and to decide in terms of an overall directive function. In connection with these rights, the parliament's responsibilities have thus grown broader. The Federal Constitutional Court draws a classical and at the same time a modern picture of the Bundestag as the central constitutional body. However, the Bundestag in its actions and decisions is subject to scrutiny by the Court. [ZParl, vol. 43, no. 2, pp. 313 – 323]

***Barnickel, Christiane*: The Bundestag in the European Union – a view from within.**
In the scholarly debate neither notions of how to legitimize the European Union nor of the adequate role to be played by national parliaments are consensual. Based on the argument that assessments of the performance of national parliaments rest upon specific implicit or

explicit assumptions about legitimate governance, the perspective is switched from an outside to an inside view. The analysis of plenary debates on the treaty of Lisbon reveals four patterns of how members of the German Bundestag frame 'legitimacy'. These are partly based on incompatible arguments but correspond with the functions parliamentarians attribute to the Bundestag. Internal institutional cleavages are neither in-line with parliamentary groups nor do they reflect the breaking point between government majority and opposition. The results suggest the assumption that the degree to which the Bundestag accomplishes its functions does not only depend on structural circumstances but also on the (in)compatibility of notions of legitimacy. [ZParl, vol. 43, no. 2, pp. 324 – 340]

***Buzogány, Aron* and *Andrej Stuchlik*: Subsidiarity and scrutiny. National parliaments after Lisbon.**

The subsidiarity control mechanisms of the Lisbon Treaty have received much attention with their promise to redress the position of national and regional parliaments, which were seen as losers in the integration process. Two years later, beyond formal rules and good intentions, the question remains as to whether these novelties actually succeeded. Given the greater scrutiny capacity of national parliaments, the variety of member states' adaptations is assessed, such as using binding mandates, the role of second chambers but also diverse concepts of the subsidiarity principle. The record shows that while there is significant activism among legislative actors, actual change has been very limited so far. Additionally, two structural challenges are addressed: Firstly, given high thresholds to step into the EU policy cycle, national legislatures face a collective action problem when forging majorities. Secondly, incentives of individual MPs to engage in matters of subsidiarity remain limited. [ZParl, vol. 43, no. 2, pp. S. 340 – 361]

***Kirchner, Patrick*: The German Federal Government's refusal to disclose information concerning the delivery of tanks to Saudi Arabia: intentional breach of the constitution.**

In the summer of 2011 it had become known that there were plans to deliver main battle tanks to Saudi Arabia on a grand scale. In a question time of the German Bundestag the federal government was confronted with parliamentary information requests regarding the respective deliberations of the Federal Security Council. The government refused to respond to the questions, referring to the secrecy of the work of the Federal Security Council. A number of parliamentarians submitted the case to the Federal Constitutional Court. The legal foundation of the parliament's right to information cannot be seen in the right to require presence (Article 43 para. 1), but it is located in the rights of the Members of the Bundestag (Article 38 para. 1 sentence 2 of the Basic Law) and the separation of powers (Article 20 para. 2 sentence 2 of the Basic Law). Therefore the rights embodied in §§ 100 et seq. of the Rules of Procedure of the German Bundestag are founded in the constitution. Reasons that could justify the refusal of response by the Federal Government can stem from the factual impossibility to answer, from needs to protect confidentiality and privacy or from the prohibition to investigate the core area of executive responsibility. But those justifications are inappropriate in the case at hand; thus the refusal to respond has to be qualified as an intentional breach of the constitution. [ZParl, vol. 43, no. 2, pp. 362 – 372]

***Arndt, Claus*: The exceptional, but legal commentatorship on the Treaty of Moscow and Warsaw forty years ago. A witness to history remembers.**
In 1972 the author was a member of the German Bundestag. During this time he had the function as a reporter for the political, social and economic agreements made between West Germany and some Eastern bloc countries. The article demonstrates that there were two main differences compared to normal ratification procedures establishing international treaties. On the one hand the topic was mainly worked out by an agreement between the two involved committees. This took place without any allocation by the plenum of the parliament. The political arrangement was worked out by the Department of Foreign Affairs as well as by the Department of Justice. On the other hand the printed paper of the Bundestag was not designed as a synthesis of the two committee reports, instead both the report by the Department of Justice and the Department of Foreign Affairs were simply added one after the other. This procedure may have led to an additional constitutional review and to the possibility that the President might have to decide over the constitutionality of these papers. The final design of the printed paper was originally worked out for the final vote in the plenum of the parliament. However it can be stated that theses papers were constitutionally permissible. The arguments above give prove that there was no need to fear examination by the Federal President. [ZParl, vol. 43, no. 2, pp. 373 – 376]

***Dohle, Marco, Christoph Blank* and *Gerhard Vowe*: Parlamentarians' perception of the influence of the media. Results from a survey of Members of the Bundestag.**
Theories such as the third-person effect and the influence-of-presumed-media-influence focus on the question, in how far people expect themselves and other persons to be influenced by media. Additionally, the theories assume that these presumed influences can have individual cognitive or attitudinal consequences. To investigate the assumptions of these approaches a survey among members of the German Bundestag ($n$ = 208) was conducted. It was measured how they estimated the media's political influence on different (groups of) individuals. The parliamentarians perceived a weak media influence on themselves. They do presume, however, that the media have a very strong influence on the general public. The more the politicians see the media as being influential on the public, the more negatively they evaluate this influence and – as a consequence of the negative evaluation – the more they demand that the influence should be restricted. [ZParl, vol. 43, no. 2, pp. 344 – 355]

***Oehmer, Franziska*: The term 'interest group' in science and research. An analysis of the terminology and characteristics of interest groups used in scientific publications.**
The research on interest groups lacks a generally accepted and uniform definition of the term 'interest group'. Depending on the scientific perspective or discipline, different kinds of actors are classified as or excluded from this category. In order to contribute to a more standardized terminology, a quantitative meta-analysis is used to identify elements of the term's definition in relevant publications in the fields of political science, sociology, law and communication studies. As this meta-analysis has shown, an interest group can be defined as a single-issue non-profit organization, formed by voluntary members, that operates on a continuing basis. Its main aim is to articulate and carry its members' interests into the political system while simultaneously keeping the members informed on current political processes

related to their field of interest. Applying this definition, interest groups can be easily distinguished from other actors such as parties, social movements or foundations. [ZParl, vol. 43, no. 2, pp. 408 – 419]

***Plottka, Julian*: The European Citizens' Initiative: Including new actors into EU politics?**

As of April 1, 2012 more than one million citizens of the European Union are given the possibility to file for a European Citizens' Initiative (ECI). By this they request the European Commission to submit a proposal for a European law. The Commission is not obliged to react on an ECI. Thus, it cannot be considered as an element of direct democracy but of participatory democracy. That notwithstanding the ECI was introduced into EU primary law to improve the Union's legitimacy. It analyses the role of new actors in the consultation on the ECI regulation, 21 test cases on the ECI and 15 intended initiatives and concludes that the ECI has the potential to increase the democratic quality of the Union by including new actors into EU politics. [ZParl, vol. 43, no. 2, pp. 419 – 428]

***Drewitz, Jan:* Do communal referendums change local politics? Structural and participatory effects of direct democracy.**

The relationship between political structure and political participation in the context of direct democracy on the local level is analyzed on the basis of case studies of two Bavarian municipalities. A combination of qualitative expert interviews, the analysis of referendum and election results of the last thirty years and a media analysis shows that a higher "supply" of direct democracy (referendums) increases the public "demand" for direct political participation only in a few cases and under specific conditions. Nevertheless, direct democracy does have a significant impact on local political institutions and their composition. [ZParl, vol. 43, no. 2, pp. 429 – 445]

***Haug, Volker M.*: Legislation by the people on virgin soil – legal questions relating to the Baden-Württembergian plebiscite over the draft law concerning the cancellation of "Stuttgart 21".**

The plebiscite held in Baden-Württemberg on November 27, 2011 fulfilled all formal requirements and was therefore legally valid. However, underlying the plebiscite was a bill implying a right to cancel the agreements entered into that does not exist and which in all likelihood was never to take effect. Therefore, the direction of action and the normative content of the bill are not easily to accept. Whether such a bill is in due form and meets the requirements of the rule of law is quite doubtful. At the same time the Baden-Württembergian plebiscite has revealed the potential problems of the necessary quorum (in case the majority would have approved the draft law concerning the cancellation of "Stuttgart 21" but nonetheless would have missed the quorum necessary for the plebiscite). Therefore, the requirements to access a plebiscite should be stressed rather than the quorum necessary for drafting the underlying bill. In this regard it needs an integrated scrutiny of both the validity of the plebiscite and the constitutionality of the draft law. This scrutiny should be carried out by the competent constitutional court either in general or at least on complaint by a voter. [ZParl, vol. 43, no. 2, pp. 446 – 466]