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***Against the executive tide?***  
***The German Bundestag and its strategy with regard to Europeanization***

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**Abstract**

Various recent developments have highlighted the role of German parliament in European integration. During the 2005-2009 election period, several legislative acts strengthened the Bundestag within the institutional balance of the political system. Furthermore, a Bundestag office was opened in Brussels and now functions as a national parliamentary platform in a transnational setting. In 2009, the Constitutional Court further boosted parliament's role in European affairs.

The contribution to the panel aims at evaluating and systematizing these developments. The evaluation will take into account weights of influence, in particular the Bundestag's potential to influence and counterbalance government decisions during Brussels negotiations. The systematization refers to changing patterns of the legitimation of European policy in the governmental system which may shift the Bundestag much closer to European decision-making in the longer run.

## ***1. Introduction***

One of the conventional wisdoms of German political science concerns the secondary role of parliament with regard to European policy. Specifically, the relative weakness of the Bundestag (the lower chamber of parliament) is often stated. According to different authors, the Bundestag is perceived as a “junior partner” (Sturm/Pehle 2006: 63) whose relevance in the political system has continuously declined. Given the sheer number of comments to underline that position, it seems fair to speak of a generally shared agreement among scholars that German European policy has been largely taken over by the executive (see, among many others, Schüttemeyer 1979; Töller 1995; Weiler/Halter/Mayer 1995; Beyme 1997: 186; Börzel 2000; Saalfeld 2003; Hesse/Ellwein 2004: 235; Börzel 2006).

Recent developments, however, may bear the potential to change this position. During the EU constitutional process, a general process to strengthen national parliaments vis-à-vis EU level institutions has been started. After a first initiative in connection to the Treaty of Amsterdam, national parliaments have received an even more prominent position in the Treaty of Lisbon. Elmar Brok, one of the actors involved in the European convention, has brought up the formula of a “Treaty of Parliaments” (Brok/Selmayr 2008) – insisting that both the EP and national parliaments should be counted as the real winners of the constitutional process. Beyond this EU-wide development, specifically German events may have had the potential of strengthening the national legislative even further. In its widely discussed verdict on the Lisbon Treaty, the German Constitutional Court has pushed the German legislative sphere to solidify its position against government with regard to EU decision-making (Müller-Graff 2009). During the summer of 2009, both the Bundestag and the Bundesrat – the two chambers of German parliament – proceeded with new legislation concerning the role of parliament in European policy (Hölscheidt/Menzenbach/Schröder 2009). By and large, this new legislation followed the constitutional verdict and established safety fences against parliamentary marginalisation in EU affairs.

This text aims at evaluating and systematizing these new impulses for a stronger role of German parliament.<sup>1</sup> In order to do this, I proceed in four steps. The first two (sections 2 and 3) consist in descriptions of the pre-constitutional institutional setting and the changes that have started to take place after about the year 2005. The separation into the pre- and post-Lisbon settings is taken in order to show the continuous strengthening of parliament’s role during the last years. With other words, the changed parameters of parliamentary action are rather linked to the constitutional process as a whole than to the altogether six claims before the constitutional court in connection with treaty ratification. The third step – section 4 – then contains analysis of the new setting by looking at different dimensions of legitimation in order to judge the difference between the two settings. In a final

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<sup>1</sup> Despite Germany’s two chamber system, the focus of this text lies on the Bundestag, the lower chamber. This is where the more recent developments are located. A detailed discussion of the European dimension of the Bundesrat, the chamber of the Länder/regions of the German system, is presented by Grünhage (2007: 176-267).

step, a conclusion tries to formulate hypothesis that arise from a common perspective on the institutional setting and legitimation issues.

## ***2. The pre-constitutional setting: fragmented framework, weak actors***

When looking at the institutional structure of German European policy, the special character of the country's post-war development needs to be taken into consideration. Until 1990, when Germany regained full sovereignty after the Cold War, all important foreign policy issues were dealt with not only in the executive, but in the Chancellor's Office (Bundeskanzleramt, BK). A Foreign Ministry (Auswärtiges Amt, AA) had not even existed until 1955. Also afterwards, it used to be the Chancellor who steered foreign policy towards the four allied forces, of which two belonged to the European Community after 1973. Moreover, the Federal Republic was usually governed by coalitions, with the foreign minister always belonging to a different party than the Chancellor. The result of all these factors was a "chancellor democracy" rather than a balance between the legislative and the executive (Nielauß 2004).

Against this background, parliamentary participation in European affairs was very limited from the very beginning of European integration. In fact, for a long time it was not even taken into consideration as a possibility or even necessity. European policy was conceptually included into the broader context of foreign policy (for example, see Schöllgen 2001; Erb 2003) which in itself is usually counted as an executive domain. If 'Europe' appeared in connection to parliamentary activities, European Parliament was seen as the quasi-natural level of action. The Bundestag established a full committee overseeing EU affairs as late as 1992. Before, various constructs had been tried to integrate the EP, domestic external policy institutions and the Bundestag (Sturm/Pehle 2006: 65-70). Also afterwards, the EU Committee<sup>2</sup> never gained a dominant role in interest aggregation and/or decision making (Beichelt 2009: 252-254).

The presumed weakness of the parliamentary dimension of German European policy is, on the one hand, a consequence of these institutional circumstances. They have a historic dimension but should be seen as rooted in the general landmarks of the governmental system: coalition government and party based politics as well as cooperative policy styles with regard to parliamentarism, federalism, and interest mediation (Katzenstein 1987; Lehmbruch 2000; Schmidt/Zohlnhöfer 2006; Schmidt 2007). None of them favors autonomy of parliament as an independent actor. On the other hand, the complicated structures induce a complex set of formal and informal rules that are – at least symbolically – centered around the Bundestag as the most important institution in a parliamentary system. These rules

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<sup>2</sup> Its official name is Committee for EU Affairs (Ausschuss für die Angelegenheiten der Europäischen Union) whereas a casual title – also used by the Committee itself – is Europe Committee (Europausschuss) see <http://www.bundestag.de/service/glossar/E/europausschuss.html>, download 15.3.2010.

ensure that parliament as the major action field for political parties is never completely marginalized but remains the core institution of democratic legitimation.

Therefore, it is not surprising to see a broad range of legal norms which have underlined the importance of parliament in European matters. The first law to ensure parliamentary participation was enacted in 1957 already.<sup>3</sup> Constitutional changes following the Maastricht Treaty did not only introduce an own article on European integration (article 23 of the Basic Law) but established the EU Committee and its functions in the Basic Law (article 45). Article 23 in paragraph 2 foresees that parliament – Bundestag and Bundesrat – “participates” in EU affairs and is extensively and as early as possible “notified” by the government. Furthermore, the government has to “take into consideration” positions of both chambers of parliament when negotiating decisions in Brussels.

The German term in article 23 of the Basic Law to characterize the Bundestag’s role is “mitwirken”. The Langenscheidt dictionary presents three English words to translate the term: to cooperate, to contribute, and to participate. These are in fact the three core principles of political practice. Since options are multifaceted, there was a need for further specification which took place in two laws enacted after the German Constitutional Court’s Maastricht verdict in 1993: the “Law on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union” (EUZBBG); and the “Law on Cooperation between the Federation and the Länder in European Union Matters concerning the European Union” (EUZBLG).<sup>4</sup> Both in the political and scientific spheres, observers are united in the position that this legal framework has, despite its solid symbolic value, failed to establish parliament as a truly cooperating actor. If at all, parliament has managed to develop some powers to exert an ex-post control on government (see Töller 1995; Hansmeyer 2001; Hölscheidt 2001; Töller 2004; Auel 2006).

Before things gradually started to change in the mid-2000s, parliamentary function in European affairs therefore suffered from fragmentation. Despite common roots in one party system, actors were busy on three levels in trying to get hold of executive decision-making powers: in the EP, the Bundestag, and the Bundesrat. Whereas the EP and Bundesrat were able to develop more or less coherent strategies vis-à-vis national government and the European executive (see Grünhage 2007), the Bundestag remained caught in the ambivalence of coalition logics. While government was on the one hand to be controlled and circumscribed in European affairs, this same government was at the same time supported by the parliamentary majority which controlled the committees of the Bundestag.

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<sup>3</sup> BGBl. 1957 II, 753.

<sup>4</sup> The two laws target the cooperation between Bundestag und Bundesrat on the one side and the government on the other. The first is called „Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union“ (EUZBBG) and can be found in BGBl. 1993 I, S. 311-312, 1780. The law on the Bundesrat bears the name „Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union“ (EUZBLG), BGBl. 1993 I, S. 313-315.

Actual cooperation and control therefore depended to a high extent on contingent action by the parliamentarians themselves. These, however, were until recently focused on a further deepening of integration and therefore did not push for a more prominent role of the Bundestag (Weßels 2003; 2005). If at all, most German parliamentarians preferred a stronger role of parliament rather on the EP level than within the Bundestag (Weßels 2003: 375). In general, members of parliament were said to have “an inadequate interest in EU affairs” (Weber-Panariello 1995: 283). With all these factors taken together, it seems fair to attribute a general weakness to the Bundestag in the post-Maastricht setting.

### ***3. The way to Post-Lisbon: towards a strong framework and evolving actors***

Between 1986 and 2001, four intergovernmental conferences had brought upon four new EU treaties (Single European Act, Maastricht, Amsterdam, Nice). Each of them was marked by substantive steps of ‘deepening’ European integration. As a consequence, more and more policy areas previously belonging to the national political sphere were touched or even taken over by European decision-making. An erosion had well taken place. Moreover, accelerated EU integration had brought many decisions into the sphere of Qualified Majority Voting (QMV) in the Council. As a result, governments were much more busy in negotiating among each other in an institutional setting where only executive players – namely members of national EU delegations in Brussels – had their place. By the end of the 1990s, the Bundestag had several reasons to try to reclaim the ground the constitutional court had attributed to it in 1993 (Steffani 1995).<sup>5</sup>

A window of opportunity opened after 2001, when the European Council issued the declaration of Laeken which would eventually lead to the European Convention and the centennial goal of a European Constitution. The Convention was explicitly designed to be more than an intergovernmental conference. A huge machinery of societal inclusion was built up, and it should not be forgotten that more than two thirds of the Convention’s 105 members were parliamentarians (Hölscheidt 2008a: 259). Therefore, it was no surprise to see the constitutional debate develop towards a strengthening of national parliaments. Article 12 of the new EU treaty now states that national parliaments “contribute actively to the good functioning of the Union”. In this article and together with two protocols,<sup>6</sup> the Lisbon treaty with regard to national parliaments now declares subsidiarity an important principle.

However, in some ways these new treaty provisions do not offer much more to Bundestag parliamentarians than was already codified in the post-Maastricht laws.

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<sup>5</sup> In its famous verdict, the constitutional court had insisted that “tasks of substantial weight” had to remain with the Bundestag in order for European treaties to be in accordance with the Basic Law, see BVerfG 89, 155 §102.

<sup>6</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0201:0328:EN:PDF>, there protocols (1) and (2); C115 203-209, download 15.3.2010.

Also before, parliaments had a right to be informed about Brussels processes, and they were able to insist on their function as legitimacy basis for their respective governments. Differences to the pre-Lisbon setting consist in the ability to appeal to the European Court of Justice to act on infringement of the principle of subsidiarity. Also, the treaty offers more generous time limits (now eight weeks) EU institutions have to wait for comments from national parliaments. Some authors are therefore confident to attribute more transparency and democracy (Chardon 2008). However, there are reasons to remain reluctant. The new instruments may not be bound to lead to a thorough reorganization of parliamentary practice. The negotiation machinery in Brussels will still function by its own complex rules if a few regular pauses in order to wait for parliamentary positions will be introduced. Since the practice of declaring a parliamentary reserve position has frequently been used before by other member states, the principle is not new to EU decision making. Again, things depend more on the Bundestag's will to implement new participatory and control mechanisms than on the legal framework itself.

In any case, the Bundestag started to correct the alleged imbalance of the post-Maastricht phase about at the same time when the European framework opened towards national parliaments. In a first reform phase around the years 2005/2006, two acts were decided: the Law on Extending and Strengthening the Bundestag and the Bundesrat in EU Affairs<sup>7</sup> (November 2005) and the "Agreement of Bundestag and Government on Cooperation in EU Affairs"<sup>8</sup> (September 2006). Beyond overall EU political developments, they should be interpreted as reactions towards obvious malfunctions of parliament-government relations on the basis of the EUZBBG and the EUZBLG. These two laws were not removed by the 2005/06 legislation but renewed in their essence. New rules concerned the obligation of government to keep the Bundestag informed in much more detail (for example with reference to time frames of Brussels proceedings), to establish direct links between lower-level working units of government in Brussels/Berlin and parliament, and to specify the obligation to inform about all Brussels events of actual relevance (for example about informal meetings). Judgments on the 2005/2006 reforms are mixed. On the one hand, some of the actually concerned actors see some progress (Schäfer/Roth/Thum 2007: 47). On the other, several voices are still complaining about parliamentarians' reluctance to use all the instruments that are available now (Hölscheidt 2008b).

In order to become a more relevant EU player, the Bundestag also re-organized its structure with regard to EU policy making. In effect, the idea of the EU Committee being the central player was tacitly given up. First, the Committee's function as the recipient for all EU level documents was given to a new unit of the Bundestag administration (unit PA-1) which now 'prioritizes' EU documents and directly distributes them to those Bundestag committees in charge of given legislation. Its role is quite important: in the year 2007, only about 800 out of 20.000 pieces of EU documents – about 4% – were handed on to parliamentarians (Wolter 2008: 34, 60). Second, in early 2007 the Bundestag opened a liaison office in Brussels

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<sup>7</sup> BGBl. 2005 I, S. 3178-3180.

<sup>8</sup> BGBl. 2006 I, S. 2177-2180.

with the task to inform the Bundestag independently about developments in Brussels. The office is furnished with about a dozen employees each both from the Bundestag administration and from parliamentary factions (Beichelt 2009: 257-258). Despite the competition between administration and factions on the one hand and between factions on the other, there is a general atmosphere of cooperation (ibid.) which results in division of labor and, therefore, in a rather sophisticated early warning mechanism. As a result, parliament is no longer generally uninformed about happenings on the EU level.

The Lisbon Treaty case before the constitutional court then gave the Bundestag another boost, albeit mostly in the dimension of psychological politics. A few parliamentarians and constitutional lawyers had pledged for incompatibility of Treaty related legislation – notably with regard to alleged disempowerment of German parliament – with the Basic Law (see Schachtschneider 2008).<sup>9</sup> The unfolding debate which took place in newspapers and academic journals (for example, see Mayer 2008) had the effect of turning a public spot on executive dominance in EU policy making. Consequently, parliamentarians who had for years demanded greater parliamentary attention to EU legislation were encouraged.

In the end, there were several new laws which were debated and finalized during the parliamentary summer vacation of 2009 (overview in Schröder/Hapel/Last 2009). Most importantly, a new “Responsibility for Integration Law” aims at regulating the participation of both parliamentary chambers in amendments of primary law which are not subject to national ratification procedures (Hölscheidt/Menzenbach/Schröder 2009). This had been the main point of the Constitutional Court verdict:<sup>10</sup> the erosion of parliamentary control with regard to sovereignty losses beyond treaty revision, for example in form of the simplified treaty revision procedure (article 48.6 EUV), the general bridging clause (article 48.7 EUV), and the flexibility clause of article 352 EUV. Also, the law defines rules for the procedures of subsidiarity objections and specifies the Bundestag’s right to make known opposition regarding specific bridging clauses. All these procedures are certainly important for the overall balance between the EU, its nation states and their internal balance towards the EU. Still, it is not likely that they will be of practical relevance in many cases (Hölscheidt/Menzenbach/Schröder 2009: 773). Not all of the EU procedures targeted are new, and none of them has been used very often in practice. Also, and possibly even more important, German political elites are until today considered to be comparatively EU friendly. Conflicts around extra ratification acts will probably crystallize in other national parliaments – for example in Denmark (Schymik 2008) – before they reach Berlin.

Among the other laws adopted in September 2009, many things remain familiar. Three further acts are reformulations of previous legislation, namely the “Law on Extending and Strengthening the Rights of the Bundestag and of the Bundesrat in Matters concerning the European Union“, the Law on Amending the EUZBGG,

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<sup>9</sup> Karl Abrecht Schachtschneider belonged to the complainants at the Constitutional Court.

<sup>10</sup> See [http://www.bundesverfassungsgericht.de/entscheidungen/es20090630\\_2bve000208.html](http://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208.html). A mostly critical discussion can be found in Müller-Graff (2009).

and the Law Amending the EUZBLG. The most remarkable issue of the first of the just mentioned acts consists in its status: it has been promoted from an agreement to a law (as demanded by the Constitutional Court). In substance, the agreement has been mostly preserved since its last revision in 2008. Some changes concern government's obligation to inform the Bundestag on issues of Common Foreign and Security Policy as well as Defense Policy (Schröder/Hapel/Last 2009: 2). But as in the case of the amendments to EUZBGG and EUZBLG, there are only limited changes with regard to the substance of government-parliament relations: the Bundestag is in theory able to use a broad range of instruments to actively participate in the governmentally dominated procedures of Brussels decision making.

Again: why have German parliamentarians been so reluctant to use the devices attributed to them? The most important reason can be found in the character of parliamentary systems, where frictions rather exist between coalition parties plus government on the one hand and parliamentary opposition forces on the other. No accompanying EU policy legislation is able to change this situation. However, the future may well show that relative weights have started to change *within* the executive, with elected politicians supported by parliament on the one side and civil servants on the other. Clearly there is more readiness today to hold politicians more accountable of decisions taken on the EU level, where national governments almost always have an opportunity of blocking undesirable legislation. Some observers remain skeptic with regard to the change potential induced by Lisbon (Hölscheidt 2008a; Brosius-Linke 2009). However, all developments of the last five to eight years point into the direction of a symbolical revaluation of the Bundestag in EU politics. Eventually, parliamentary actors may also be attracted by the growing internal weight of EU affairs within domestic legislation and then be more ready to take over the scene from administrative actors.

#### ***4. The Bundestag and Europe: dimensions of legitimation***

How can we assess these developments? Is it possible to make statements about the consequences of the symbolic revaluation of Bundestag beyond the obvious point that much depends on political actors' behavior in the future? The suggestion made in this following section consists in applying one of the new major theoretic debates of EU studies, namely the discussion on how the European polity is legitimized. With the prominent role national parliaments have played in the Convention debate, they now clearly have to be seen as integral parts of the EU political system. As such, they are subject to normative considerations which can be used to judge the adequateness of the political structure.

In the last decade, the terms 'legitimacy' and 'legitimation' have arguably replaced the notion of 'democracy' as the most important normative benchmark in European politics. Seminal contributions were Scharpf's "Governing in Europe" (Scharpf 1999) and a shorter text by Richard Bellamy and Dario Castiglione declaring a "normative turn in EU studies" (Bellamy/Castiglione 2003). They reacted to the new political options of the Maastricht Treaty, among others the potential of



outvoting democratically elected governments during Brussels decision making. Although this practice has in reality never been used extensively (Mattila 2004), the mere possibility of such a situation removed democracy as the final reference for normative considerations. An alternative was needed: whereas democracies are usually assumed to be based on a mechanism that guarantees a normative foundation, decision making among democratically elected governments needs additional provisions in order to be legitimate (Kielmansegg 1996). While majority voting is a general principle of political decision making in national democracy, this does not automatically apply to the transnational context of the EU. Accordingly terminology shifted from a regime specific language to notions which carried a similar normative weight but can be used in non-state and non-democratic contexts as well. The terms ‘legitimacy’ and ‘legitimation’ were able to fill that hole (Weiler 1992; Zürn 1992; 1998).

The conceptual debate on the two notions mainly consists in differentiations between different types of legitimation and legitimacy (see overview in Wimmel 2008: 48-52). Christopher Lord and Paul Maignette presented four “vectors” of legitimation (Lord/Maignette 2004): indirect legitimation reaching from nation states into the EU structures, parliamentary legitimation, technocratic legitimation, and procedural legitimation. Bellamy and Castiglione in the already cited text distinguish between internal and external legitimation, both of which can be directed toward the institutional order and toward the decision making system (Bellamy/Castiglione 2003). Andreas Føllesdal sees four conceptions, four mechanisms and six objects of political legitimation in Europe (Føllesdal 2006).

*Table 1: Dimensions of legitimation*

Concepts of legitimation	Objects of legitimation	Variables of legitimation	Standards of legitimation
<ul style="list-style-type: none"> <li>• Legality</li> <li>• Acceptance</li> <li>• Normative justification</li> </ul>	<ul style="list-style-type: none"> <li>• Political order of the EU</li> <li>• EU institutions</li> <li>• EU decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Input / participation</li> <li>• Throughput / process</li> <li>• Output / results</li> </ul>	<ul style="list-style-type: none"> <li>• Counterfactual ideal type</li> <li>• Nation states</li> <li>• International organizations</li> </ul>
	<ul style="list-style-type: none"> <li>• National parliaments of EU member states*</li> </ul>		

\* The shaded field is not a part of Wimmel’s original table.

Source: Wimmel (2008: 63).

Of these suggestions, Andreas Wimmel has knitted a conceptual framework of legitimation which is inclusive to most relevant dimensions but seems at the same time better arranged than Føllesdal’s concept. It distinguishes between three basic concepts (see table 1): legality, acceptance (by involved citizens) and normative constructs which then can be applied to different objects and variables. As for the

objects and variables of legitimation, the concept picks up the major dimensions of the legitimacy debate. In addition – and in contrast to many contributions in the field –, we are reminded of the existence of different standards against which statements on the legitimacy (or not) of objects and variables can be weighed. If we now discuss the legitimation of the Bundestag as one specific object of legitimation, we are able to identify different tendencies which confirm the modestly optimistic tone of sections 2 and 3.

#### *Concepts of legitimation I: legality*

With regard to the legal conception of legitimation, the Bundestag has obviously increased its weight vis-à-vis other domestic institutions over recent years. Parliament can now rely on a much thicker set of rules in order to control government in EU affairs than in the 1990s. This concerns the input/participatory as well as the throughput/process dimensions: both information and control rights are now fixed legally. It remains specific for the regime that not all legal rules need the status of a federal law. The liaison office is only mentioned on the statute level, namely in the standing orders of the Bundestag. Still, the rules laid down there are relevant for all players in the field including government.

Another development important for the legal track of legitimation is, of course, the Constitutional Court verdict on the Lisbon Treaty. The Court's position has led to an intensive public debate, yielding harsh criticism about the *Verfassungsgericht's* alleged 'nationalism' on the one hand and reservations on allegedly exaggerated pro-Europeanness on the other. While this may turn into a problem for the Constitutional Court in the long run, the verdict has undoubtedly introduced legal certainty to the decision making process as a whole. By declaring the old cooperation agreement between government and the Bundestag non-sufficient, and by demanding that its status has to be transferred into a federal law, the Court has betaken itself of much more specific statements than in the Maastricht decision of 1993. There, the Court's comments had held a more general character whose principles were open to a wide range of interpretations. After the Lisbon verdict, it will be much harder for government officials to ignore or even discredit parliamentary developments in the field of European policy. Since German parliamentarism is until today characterized by considerable degrees of cooperation, this may well have increased the legitimation potential of parliamentary opposition as well. Again, it is too early to prove this point with specific evidence.

#### *Concepts of legitimation II: acceptance*

Unfortunately, the dimension of acceptance – legitimation by public support – is troubled by limited evidence as well. It would be ideal to rely on studies on the acceptance of the Bundestag's position in European policy, for example within the political elites. Research within German government has encountered considerable distance between government officials and parliamentarians (Beichelt 2007a; 2007b). However, since exactly this relationship may undergo change in the nearer future, these past results may not be carved in stone.

The second dimension to enquire into is political culture. Opinion polls on such a specific issue do not exist. Since there is no direct evidence, we have to rely on argumentative chains in order to assess the support for Bundestag's role in EU affairs. First, we have to remember that acceptance of the German political system is strongly linked to the reputation of parliament. Almost all political actors of real importance – for example parties and government – have their core resource basis in parliament, and there more specifically in the Bundestag (Alemann 2001). Therefore, it seems plausible to assume that distortions to the Bundestag's potential to formulate political positions should not go unremarked. With other words, the Constitutional Court's fear that the Bundestag is about to lose its central role in decision making should – if it was true – lead to a loss of acceptance in the general public.

Indeed, opinion polls tell us that such a concern may well be realistic. Between 1998 and 2007 (newer data is unfortunately not available), trust of the German population into both Bundestag and the Federal Government was relatively low and rather volatile between 25% and 52% (see table 2). As has been mentioned, it is not possible to firmly link this weak support to the European dimension. There are many other variables of influence (Fuchs 1989), and since we do not have specific studies on the EU dimension of Germans' disappointment with parliament, there can also be no weighing against alternative explanations. In any case, it cannot be denied that two developments may be linked by argumentation: the transfer of sovereignty on the one hand and a lack of trust in the Bundestag in its function of being responsible for policy making.

*Table 2: Trust of Germans towards political institutions*

	1998	2000	2001	2002	2003	2004	2005	2006	2007
Bundestag	36	49	52	36	36	41	33	33	37
Government	31	47	52	30	25	26	32	28	36
Average	33.5	48.0	52.0	33.0	30.5	33.5	32.5	30.5	36.5

Source: Infratest Dimap.<sup>11</sup>

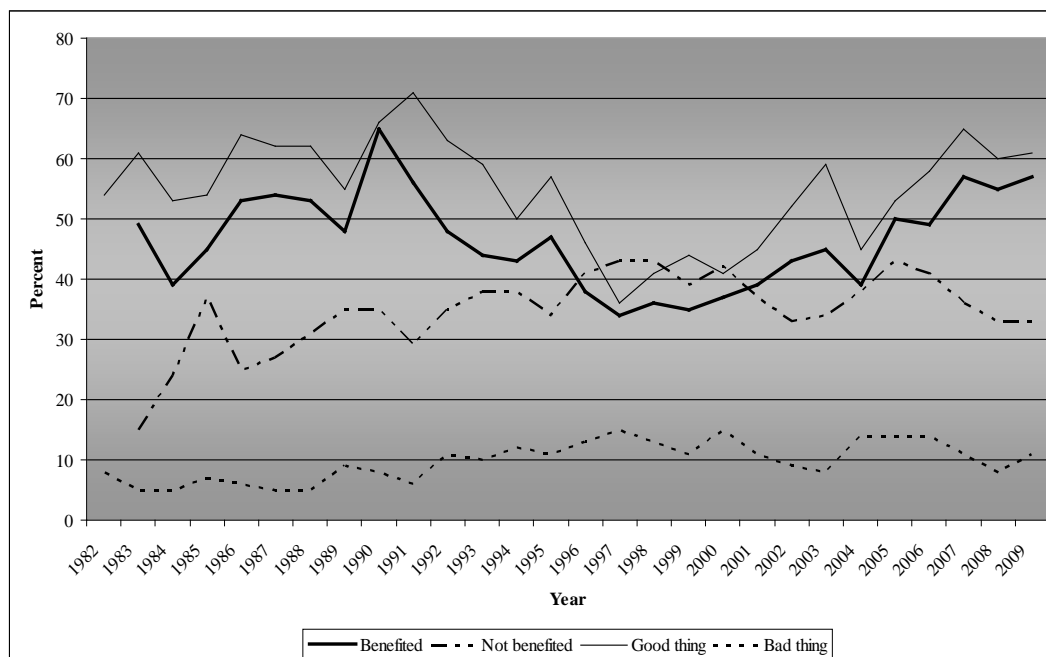
However, we are also able to find an argument which denies a negative influence of the EU on the acceptance level. If there was a considerable distortion of public will with regard to throughput and output of EU politics, this should be visible in public opinion data as well. And certainly there was a phase during which German public esteem towards the EU declined due to different reasons (Hrbek 2002; Hooghe/Marks 2005). As diagram 1 shows, this trend has been reversed during

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<sup>11</sup> The according questions were (translation TB): „I name a set of public institutions. Please tell me for each one how much trust you have in it.” The table contains the percentage of those respondents who answered to have “big” and “very big” trust in the according institution. See <http://www.infratest-dimap.de/?id=39&aid=149> (12.3.2010).

the last decade. Since about 2005, both the figures of diffuse and specific support for EU membership have been back to the levels of the “permissive consensus” (Lindberg/Scheingold 1970) in the 1980s.<sup>12</sup>

Diagram 1: Diffuse und specific support of EU membership, 1982-2007



Questions: „Taking everything into consideration, would you say that (OUR COUNTRY) has on balance benefited or not from being a member of the European Community/European Union?“ and „Generally speaking, do you think that (OUR COUNTRY’S) membership of the European Community/European Union is a (good thing / bad thing)?“

Sources: Eurobarometer 17, 19, 21, 24, 25, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 64, 66, 67, 69, 71.

If we take these two arguments together, it seems to a certain extent plausible to underline stable patterns of acceptance with regard to German parliament’s role in EU policy. On the one hand, we have a comparatively low but stable trust of the public into the Bundestag. On the other, on this basis the acceptance of EU membership and thus of EU policy making has been rising in recent years. It is therefore possible to put a question mark behind the overly pessimistic position of the Constitutional Court that a potential weakening of parliamentary sovereignty is *per se* non-democratic. There are more roads to parliamentary legitimation than legal interpretation. German parliamentarians rely as much on ex-post legitimation by outputs than on their constitutional privilege of producing laws (Patzelt 1993; 1998). Indirect evidence hints into the direction that the Bundestag’s legitimation in that dimension is not decisively distorted.

<sup>12</sup> Different, however, is the sediment of EU-sceptic positions which are at least potentially able to influence German European policy to a considerable degree (Beichelt 2009: chapter 4).

### *Concepts of legitimation III: normative justification*

This statement should be made even stronger when taking into consideration the different standards of legitimation which may be used when normatively assessing EU policy making. The nation state, or national democracy, is only one model among others. Since national democracies are not able to solve many problems that arise on the transnational level, other frames of reference are even necessary (Zürn 1996; Habermas 1998) and therefore should be taken into consideration.

This is the field where the third concept of legitimation comes into play (again, see table 1). In the dimensions of legal and acceptance legitimation, the bodies of reference to be taken into consideration are more or less clear. Laws are implemented by the state, and acceptance as directed towards a national institution (the Bundestag) bears the same allusion. With regard to norms, this frame of reference is highly debatable. With the implementation of the four freedoms of the EU Treaties, with the obvious incapability of small and medium size nation states to react to certain international challenges, and with the development of transnational identities (Kaelble 2005), we have at least three major reasons to assume alternative normative constructions of political legitimation. For example in political culture, we find considerable support for the idea that certain policy fields should be located on the EU or even international level (Weßels 2006).

Therefore, the traditional liberal idea of freedom and equality as located in the nation state is increasingly complemented by additional norms. They can be found in all “variables” of legitimation. In the input dimension, the inclusion of global civil society actors into policy development has been debated for many years (Held 1995; Keane 2003). In the throughput arena, advantages of intensive deliberation are discussed and weighed against short-sighted activism on inadequate decision levels (Joerges/Neyer 1997). And, last not least, there is firm empiric and theoretic knowledge that the EU is better suited to reach effective output solutions than the traditional nation state at least in some policy areas (Peterson 2004; Pollack 2005).

Altogether, there exists a variety of ways how to assess the legitimation of a national parliament as an established institution within the European political system. Obviously, they do not hint into one direction, for example into a general valuation or devaluation. Rather, different perspectives yield different positions and arguments. As a result, there is today a considerable cacophony on how to judge and evaluate the EU as a whole. The cases before the different Constitutional Courts in EU member states (with different outcomes) have illustrated this point as well as the increasing diversity of public opinion on European integration (Brettschneider/Deth/Roller 2003; Hooghe/Marks 2007). Consequently, the European polity is characterized by a growing fuzziness of expectations about the legitimacy of the political order. Competing interpretation patterns on the role of the Bundestag have to be seen against this background as well as transforming legitimacy beliefs in the national context.

## 5. Conclusion

While the role of German parliament in EU policy making has long been considered inappropriate with regard to its traditionally central role in domestic policy making, recent reforms have created a basis for recapturing some of the lost ground. Some of the dynamics of domestic reforms has to be accredited to contingent actors, for example steps of appeasement in order to take the wind out of the sails of the parliamentary complainants before the Constitutional Court. A broader look tells us, though, that parliamentary reassertion vis-à-vis national governments is a phenomenon that has started already in the 1990s in most EU member state systems (Raunio/Hix 2000: 163). In that sense, the Bundestag's legal revival should not be seen as an isolated incidence.

So far, the development of new legal rules has not significantly changed the practices of German EU policy. Rather, the legal upgrading has re-strengthened parliament on the symbolical level. Processes are unlikely to change in the short term because the logics of the parliamentary system in general do not encourage coalition parliamentarians to regularly stand up against their own government.

The highest potential for change – or rather: the greatest potential to change expectations – is located in the connection of two dimensions of legitimation. Whenever norms (and not simply legal rules or acceptance patterns) are recontextualized with a view on contingent ideal types of European politics (and not simply 'democratic' states), the legitimacy of parliamentary action is likely to be transformed into a much more relevant category than used to be the case during the permissive consensus phase. If the European polity is imagined as 'something else' beyond a state and/or an international organization, patterns of legitimation are bound to be directed towards the EU directly.

After Lisbon, this EU polity is characterized as a union of peoples *and* a union of states. Therefore, national parliaments may in the mid-term receive a firm and much more important position in the obtainment of legitimation. While the Bundestag has moved from a weak to a strong legal framework, its parliamentary actors have not completely realized yet that they find themselves in a comfortable position. Without their growing inclusion into EU policy making, the German government will not be able to play with its full potential of influence on the Brussels scene. A stronger parliament should be the consequence as Bundestag actors develop their capacities to be relevant on and for the EU level. It is too early to speak of a legislative flood in German EU policy making. On the executive side, however, the tide has started to go out.

## 6. Cited Literature

- Alemann, Ulrich von, 2001: Das Parteiensystem der Bundesrepublik Deutschland. 2. Auflage. Opladen: Leske+Budrich.
- Auel, Katrin, 2006: The Europeanisation of the German Bundestag: Institutional Change and Informal Adaptation. In: German Politics, vol. 15, no. 3, S. 249-268.
- Beichelt, Timm, 2007a: Die europapolitische Koordinierung der Bundesregierung: besser als ihr Ruf. In: Zeitschrift für Parlamentsfragen, vol. 38, no. 4, S. 751-764.
- Beichelt, Timm, 2007b: Over-efficiency in German EU policy coordination. In: German Politics, vol. 16, no. 4, S. 421-432.
- Beichelt, Timm, 2009: Deutschland und Europa. Die Europäisierung des politischen Systems. Wiesbaden: VS Verlag für Sozialwissenschaft.
- Bellamy, Richard / Castiglione, Dario, 2003: Legitimizing the Euro-Polity and its Regime. The Normative Turn in EU Studies. In: European Journal of Political Theory, vol. 2, no. 1, S. 7-34.
- Beyme, Klaus von, 1997: Der Gesetzgeber. Der Bundestag als Entscheidungszentrum. Opladen: Westdeutscher Verlag.
- Börzel, Tanja, 2000: Europäisierung und innerstaatlicher Wandel: Zentralisierung und Entparlamentarisierung. In: Politische Vierteljahresschrift, vol. 41, no. 2, S. 225-250.
- Börzel, Tanja, 2006: Europäisierung der deutschen Politik? In: Manfred G. Schmidt / Reimut Zohlnhöfer (Hrsg.): Regieren in der Bundesrepublik Deutschland. Wiesbaden: VS Verlag für Sozialwissenschaft, S. 491-509.
- Brettschneider, Frank / Deth, Jan van / Roller, Edeltraud, (Hrsg.), 2003: Europäische Integration in der öffentlichen Meinung. Opladen: Leske+Budrich.
- Brok, Elmar / Selmayr, Martin, 2008: Der 'Vertrag der Parlamente' als Gefahr für die Demokratie? Zu den offensichtlich unbegründeten Verfassungsklagen gegen den Vertrag von Lissabon. In: Integration, vol. 31, no. 3, S. 217-234.
- Brosius-Linke, René, 2009: Der Europaausschuss der 16. Wahlperiode: starke Struktur, unambitioniert in eigenen Rechten. In: Zeitschrift für Parlamentsfragen, vol. 40, no. 4, S. 731-746.
- Chardon, Matthias, 2008: Mehr Transparenz und Demokratie - Die Rolle nationaler Parlamente nach dem Vertrag von Lissabon. In: Werner Weidenfeld (Hrsg.): Lissabon in der Analyse. Der Reformvertrag der Europäischen Union. Baden-Baden: Nomos, S. 171-185.
- Erb, Scott, 2003: German Foreign Policy. Navigating a New Era. Colorado: Lynne Rienner Publishers.
- Føllesdal, Andreas, 2006: EU Legitimacy and Normative Political Theory. In: Michelle Cini / Angela Bourne (Hrsg.): Palgrave Advances in European Union Studies. Basingstoke, S. 151-173.
- Fuchs, Dieter, 1989: Die Unterstützung des politischen Systems der Bundesrepublik Deutschland. Opladen: Westdeutscher Verlag.
- Grünhage, Jan, 2007: Entscheidungsprozesse in der Europapolitik Deutschlands. Baden-Baden: Nomos.
- Habermas, Jürgen, 1998: Die postnationale Konstellation. In: Jürgen Habermas (Hrsg.): Die postnationale Konstellation. Politische Essays. Frankfurt: Suhrkamp, S. 91-170.
- Hansmeyer, Sandra, 2001: Die Mitwirkung des Deutschen Bundestages an der europäischen Gesetzgebung. Berlin: Duncker&Humblot.
- Held, David, 1995: Democracy and the Global Order: From the Modern State to Cosmopolitan Governance. Cambridge: Polity Press.

- Hesse, Joachim Jens / Ellwein, Thomas, 2004: Das Regierungssystem der Bundesrepublik Deutschland. 9. Auflage. 2 Bände. Berlin: de Gruyter.
- Hölscheidt, Sven, 2001: The German Bundestag: From Benevolent 'Weakness' Towards Supportive Scrutiny. In: Andreas Maurer / Wolfgang Wessels (Hrsg.): National Parliaments on their Ways to Europe: Losers or Latecomers? . Baden-Baden: Nomos, S. 117-136.
- Hölscheidt, Sven, 2008a: Formale Aufwertung – geringe Schubkraft: die Rolle der nationalen Parlamente gemäß dem Lissabonner Vertrag. In: *Integration*, vol. 31, no. 3, S. 254-265.
- Hölscheidt, Sven, 2008b: The German Bundestag Must Apply Its Sound Rules More Effectively. Berlin: Manuscript.
- Hölscheidt, Sven / Menzenbach, Steffi / Schröder, Birgit, 2009: Das Integrationsverantwortungsgesetz - ein Kurzkomentar. In: *Zeitschrift für Parlamentsfragen*, vol. 40, no. 4, S. 758-773.
- Hooghe, Liesbet / Marks, Gary, 2005: Calculation, Communities and Cues. Public Opinion and European Integration. In: *European Union Politics*, vol. 6, no. 4, S. 419-443.
- Hooghe, Liesbet / Marks, Gary, 2007: Sources of Euroscepticism. In: *Acta Politica*, vol. 42, S. 119-127.
- Hrbek, Rudolf, 2002: Europa. In: Martin Greiffenhagen / Sylvia Greiffenhagen (Hrsg.): Handwörterbuch zur Politischen Kultur der Bundesrepublik Deutschland. 2. Auflage. Wiesbaden: Westdeutscher Verlag, S. 110-114.
- Joerges, Christian / Neyer, Jürgen, 1997: Transforming Strategic Interaction Into Deliberative Problem-Solving: European Comitology in the Foodstuff Sector. In: *Journal of European Public Policy*, vol. 4, no. 4, S. 609-625.
- Kaelble, Hartmut, 2005: Eine europäische Gesellschaft? In: Gunnar Folke Schuppert / Ingolf Pernice / Ulrich Haltern (Hrsg.): *Europawissenschaft*. Baden-Baden: Nomos, S. 299-330.
- Katzenstein, Peter, 1987: Policy and politics in West Germany. The growth of a semisovereign state. Philadelphia: Temple University Press.
- Keane, John, 2003: *Global Civil Society?* Cambridge: Cambridge University Press.
- Kielmansegg, Peter Graf, 1996: Integration und Demokratie. In: Markus Jachtenfuchs / Beate Kohler-Koch (Hrsg.): *Europäische Integration*. Opladen: Leske+Budrich, S. 47-72.
- Lehmbruch, Gerhard, 2000: Parteienwettbewerb im Bundesstaat: Regelsysteme und Spannungslagen im politischen System der Bundesrepublik Deutschland, 3. Auflage. Opladen: Westdeutscher Verlag.
- Lindberg, Leon / Scheingold, Stuart, 1970: *Europe's Would-Be Polity: Patterns of Change in the European Community*. Englewood Cliffs: Prentice Hall.
- Lord, Christopher / Magnette, Paul, 2004: E Pluribus Unum? Creative Disagreement about Legitimacy in the EU. In: *Journal of Common Market Studies*, vol. 42, no. 1, S. 183 - 202.
- Mattila, Mikko, 2004: Contested decisions: Empirical analysis of voting in the European Union Council of Ministers. In: *European Journal of Political Research*, vol. 43, no. 1, S. 29-50.
- Mayer, Franz C., 2008: Dichtung und Wahrheit im europäischen Verfassungsdiskurs - Anmerkungen zum Beitrag von K.A. Schachtschneider. In: *Leviathan*, vol. 36, no. 4, S. 477-489.
- Müller-Graff, Peter-Christian 2009: Das Karlsruher Lissabon-Urteil: Bedingungen, Grenzen, Orakel und integrative Optionen. In: *Integration*, vol. 32, no. 4, S. 331-360.
- Niclaß, Karlheinz, 2004: *Kanzlerdemokratie*. Paderborn: Schöningh.



- Patzelt, Werner J., 1993: Abgeordnete und Repräsentation. Amtsverständnis und Wahlkreisarbeit. Passau: Rothe.
- Patzelt, Werner J., 1998: Ein latenter Verfassungskonflikt? Die Deutschen und ihr parlamentarisches Regierungssystem. In: Politische Vierteljahresschrift, vol. 39, no. 4, S. 725 - 757.
- Peterson, John, 2004: Policy Networks. In: Antje Wiener / Thomas Diez (Hrsg.): European Integration Theory. Oxford: Oxford University Press, S. 116-136.
- Pollack, Mark A., 2005: Theorizing EU Policy-Making. In: Helen Wallace / William Wallace / Mark A. Pollack (Hrsg.): Policy-Making in the European Union. Fifth Edition. Oxford: Oxford University Press, S. 13-48.
- Raunio, Tapio / Hix, Simon, 2000: Backbenchers learn to fight back: European integration and parliamentary government. In: West European Politics, vol. 23, no. 4, S. 142-168.
- Saalfeld, Thomas, 2003: The Bundestag: Institutional Incrementalism and Behavioural Reticence. In: Kenneth Dyson / Klaus Goetz (Hrsg.): Germany, Europe, and the Politics of Constraint. Oxford: Oxford University Press, S. 73-96.
- Schachtschneider, Karl Albrecht, 2008: Verfassungsrechtliche Argumente gegen den Vertrag von Lissabon. In: Leviathan, vol. 36, no. 3, S. 317-343.
- Schäfer, Axel / Roth, Michael / Thum, Christoph, 2007: Stärkung der Europatauglichkeit des Bundestages. In: Integration, vol. 30, no. 1, S. 44-49.
- Scharpf, Fritz W., 1999: Governing in Europe: Effective and Democratic? Oxford: Oxford University Press.
- Schmidt, Manfred G., 2007: Das politische System Deutschlands. München: C.H. Beck.
- Schmidt, Manfred G. / Zohlnhöfer, Reimut, (Hrsg.), 2006: Regieren in der Bundesrepublik Deutschland. Wiesbaden: VS Verlag.
- Schöllgen, Gregor, 2001: Die Außenpolitik der Bundesrepublik Deutschland. Von den Anfängen bis zur Gegenwart. München: Verlag C. H. Beck.
- Schröder, Birgit / Hapel, Simone / Last, Christina, 2009: The Treaty of Lisbon: the 'accompanying laws'. Berlin: Wissenschaftliche Analysen, Nr. 75/09 ([http://www.bundestag.de/dokumente/analysen/2009/begleitgesetzgebung\\_engl\\_uebersetzung.pdf](http://www.bundestag.de/dokumente/analysen/2009/begleitgesetzgebung_engl_uebersetzung.pdf)).
- Schüttemeyer, Suzanne S., 1979: Funktionsverluste des Bundestages durch europäische Integration? In: Zeitschrift für Parlamentsfragen, vol. 10, no. 2, S. 261-278.
- Schymik, Carsten, 2008: Der Europaausschuss des dänischen Folketing - der machtvollste Europas? Berlin: Friedrich-Ebert-Stiftung: Internationale Politikanalyse (<http://library.fes.de/pdf-files/id/ipa/05640.pdf>).
- Steffani, Winfried 1995: Das Demokratie-Dilemma der Europäischen Union. Die Rolle der Parlamente nach dem Urteil des Bundesverfassungsgerichts vom 12. Oktober 1993. In: Winfried Steffani / Uwe Thaysen (Hrsg.): Demokratie in Europa: Zur Rolle der Parlamente. Opladen: Westdeutscher Verlag, S. 33-49.
- Sturm, Roland / Pehle, Heinrich, 2006: Das neue deutsche Regierungssystem. Zweite Auflage. Wiesbaden: VS Verlag für Sozialwissenschaft.
- Töller, Annette Elisabeth, 1995: Europapolitik im Bundestag. Eine empirische Untersuchung zur europapolitischen Willensbildung im EG-Ausschuss des 12. Deutschen Bundestages. Frankfurt: Lang.
- Töller, Annette Elisabeth, 2004: Dimensionen der Europäisierung - Das Beispiel des Deutschen Bundestages. In: Zeitschrift für Parlamentsfragen, vol. 35, no. 1, S. 25-50.
- Weber-Panariello, Philippe A., 1995: Nationale Parlamente in der Europäischen Union. Eine rechtsvergleichende Studie zur Beteiligung nationaler Parlamente an der innerstaatlichen Willensbildung in Angelegenheiten der Europäischen Union. Baden-Baden: Nomos.

- Weiler, Joseph H.H., 1992: After Maastricht. Community Legitimacy in Post-1992 Europe. In: William James Adams (Hrsg.): Singular Europe. Economy and Polity of the European Community after 1992. Ann Arbor: University of Michigan Press, S. 11-41.
- Weiler, Joseph H.H. / Haltern, Ulrich / Mayer, Franz, 1995: European Democracy and Its Critique. Five Uneasy Pieces. New York: Jean Monnet Center Working Paper, <http://www.jeanmonnetprogram.org/papers/95/9501ind.html>.
- Weßels, Bernhard, 2003: Parlamentarier in Europa und europäische Integration: Einstellungen zur zukünftigen politischen Ordnung und zum institutionellen Wandel der Europäischen Union. In: Frank Brettschneider / Jan van Deth / Edeltraut Roller (Hrsg.): Europäische Integration in der öffentlichen Meinung. Opladen: Leske+Budrich, S. 363-394.
- Weßels, Bernhard, 2005: Roles and orientations of members of parliament in the EU context: Congruence or difference? Europeanisation or not? In: Journal of Legislative Studies, vol. 11, no. 3-4, S. 446-465.
- Weßels, Bernhard, 2006: Staatsaufgaben: gewünschte Entscheidungsebene für acht Politikbereiche. In: Jan van Deth (Hrsg.): Deutschland in Europa. Wiesbaden: VS Verlag für Sozialwissenschaft, S. 257-274.
- Wimmel, Andreas, 2008: Die demokratische Legitimität europäischen Regierens: ein Labyrinth ohne Ausgang? In: Integration, vol. 31, no. 1, S. 48-64.
- Wolter, Astrid, 2008: Die Europäisierung des Deutschen Bundestages. Frankfurt(Oder): Manuskript.
- Zürn, Michael, 1992: Jenseits der Staatlichkeit. In: Leviathan, vol. 20, no. 4, S. 490-513.
- Zürn, Michael, 1996: Über den Staat und die Demokratie im europäischen Mehrebenensystem. In: Politische Vierteljahresschrift, vol. 37, no. 27-55.
- Zürn, Michael, 1998: Regieren jenseits des Nationalstaates. Frankfurt: Suhrkamp.