Decision of the German Federal Constitutional Court of October 12, 1993
In Re Maastricht Treaty

Cases 2 BvR 2134/92, 2 BvR 2159/92.

This translation is based on the translation by Wegen et al., 33 I.L.M. 388 (March, 1994).

The full text in German is reported in 89 Official Court Reports 155 [BVerfGE 89, 155].

German Federal Constitutional Court (Bundesverfassungsgericht - BVerfG)

Judgment on the Maastricht Treaty of October 12, 1993

Headnotes:

1. Art. 38 GG [Grundgesetz] forbids the weakening, within the scope of Art. 23 of the GG, of the legitimation of State power gained through an election, and of the influence on the exercise of such power, by means of a transfer of duties and responsibilities of the Federal Parliament, to the extent that the principle of democracy, declared as inviolable in Art. 79, para. 3 in conjunction with Art. 20, paras. 1 and 2 of the GG, is violated.

2. The principle of democracy does not prevent the Federal Republic of Germany from becoming a member of a compound of States [Staatenverbund] which is organised on a supranational basis. However, it is a precondition of membership that the legitimation and influence which derives from the people will be preserved within an alliance of States.

3. a) If a community of States assumes sovereign responsibilities and thereby exercises sovereign powers, the peoples of the Member States must legitimate this process through their national parliaments. Democratic legitimation derives from the link between the actions of European governmental entities and the parliaments of the Member States. To an increasing extent in view of the degree to which the nations of Europe are growing together, the transmission of democratic legitimation within the institutional structure of the European Union by the European Parliament elected by the citizens of the Member States must also be taken into consideration.

b) The important factor is that the democratic foundations upon which the Union is based are extended concurrent with integration, and that a living democracy is maintained in the Member States while integration proceeds.

4. If the peoples of the individual States (as is true at present) convey democratic legitimation via the national parliaments, then limits are imposed, by the principle of democracy, on an extension of the functions and powers of the European Communities. The German Federal Parliament must retain functions and powers of substantial import.

5. Art. 38 of the GG is violated if a law which subjects the German legal system to the direct validity and application of the law of the supranational European Communities does not give a sufficiently precise specification of the assigned rights to be exercised

and of the proposed programme of integration (see BVerfGE 58, 1<37>). This also means that any subsequent substantial amendments to that programme of integration provided for by the Maastricht Treaty or to its authorisations to act are no longer covered by the Act of Consent to ratify this Treaty. The German Federal Constitutional Court must examine the question of whether or not legal instruments of European institutions and governmental entities may be considered to remain within the limits of the sovereign rights accorded to them, or whether they may be considered to exceed those limits (see BVerfGE 75, 223).

6. When standards of competence are being interpreted by institutions and governmental entities of the Communities, the fact that the Maastricht Treaty draws a basic distinction between the exercise of limited sovereign powers and amendment of the Treaty must be taken into consideration. Thus, interpretation of such standards may not have an effect equivalent to an extension of the Treaty; if standards of competence were interpreted in this way, such interpretation would not have any binding effect on Germany.

7. Acts of the particular public power of a supranational organisation which is separate from the State power of the Member States may also affect those persons protected by fundamental rights in Germany. Such acts therefore affect the guarantees provided under the Basic Law and the duties of the Federal Constitutional Court, which include the protection of fundamental rights in Germany, and not only in respect of German governmental institutions (notwithstanding BVerfGE 58, 1 <27>). However, the Federal Constitutional Court exercises its jurisdiction regarding the applicability of derivative Community law in Germany in a "co-operative relationship" with the European Court of Justice.

8. The Maastricht Treaty establishes a compound of States for the creation of an ever closer union among the peoples of Europe, which peoples are organised on a State level (Art. A of the Maastricht Treaty), rather than a State which is based upon the people of one State of Europe.

9. a) Art. F, para. 3 of the Maastricht Treaty does not empower the Union to acquire by itself the financial or other means it believes it requires to attain its objectives.

b) Art. L of the Maastricht Treaty excludes the jurisdiction of the European Court of Justice only for those provisions of the Maastricht Treaty which do not authorise the Union to take actions to which holders of fundamental rights in the sovereign territory of the Member States are subject.

c) The Federal Republic of Germany is not, by ratifying the Maastricht Treaty, subjecting itself to an uncontrollable, unforeseeable process which will lead inexorably towards monetary union; the Maastricht Treaty simply paves the way for gradual further integration of the European Community as a community of laws. Every further step along this way is dependent either upon conditions being fulfilled by the parliament which can already be foreseen, or upon further consent from the Federal Government, which consent is subject to parliamentary influence.

German Federal Constitutional Court (Bundesverfassungsgericht)

Judgment

of the 2nd Chamber of 12 October 1993

after the hearing of 1 and 2 July 1993

-- in cases 2 BvR 2134, 2159/92 --

in the procedure concerning the constitutional complaints by

1. Mr. B... - Counsel: Prof. Dr. K. A. Schachtschneider, Hubertusstraße 6, Nürnberg - against the Act of 28 December 1992 on the Treaty on European Union of 7 February 1992 (BGBl. [Federal Official Journal], part II, p. 1251) and against the Act amending the Basic Law [Gesetz zur Änderung des Grundgesetzes] of 21 December 1992 (BGBl., part I, p. 2086) as well as the application for 'relief' according to Art. 20 para. 4 GG and the applications for interim measures

- 2 BvR 2134/92 -;

2. a) Mrs. B..., b) Mr. G..., c) Mrs. R..., d) Mr. T... - Counsel: Rechtsanwalt Hans-Christian Ströbele, Holsteiner Ufer 22, Berlin [ad a) to d)], Prof. Dr. Ulrich K. Preuß, Eichendorffstraße 15, Bremen [ad d)] – against the Act of 28 December 1992 on the Treaty on European Union of 7 February 1992 (BGBl., part II, p. 1251)

- 2 BvR 2159/92 -.

1. The constitutional complaint by the Complainant 'ad 1' against the Act of 28 December 1992 on the Treaty on European Union of 7 February 1992 (BGBl., part II, p. 1251) is unfounded. His constitutional complaint against the Act amending the Basic Law of 21 December 1992 (BGBl., part I, p. 2086) is inadmissible.
2. The constitutional complaints by the Complainants 'ad 2' are inadmissible.

Reasoning:

A. Background

B. (Partial) Admissibility

C. Merits

D. Final observations

A.

The constitutional complaints concern German participation in the establishment of the European Union by the Act amending the Basic Law of 21 December 1992 (BGBl., part I, p. 2086 and the Act of 28 December 1992 on the Treaty on European Union of 7 February 1992 (BGBl. II p. 1251).

I.

1. On 7 February 1992 the Treaty on European Union (hereinafter "Maastricht Treaty") negotiated by the Member States of the European Communities was signed in Maastricht in the Netherlands. According to the introductory article of this Treaty, the process of European integration initiated by formation of the European Communities has now reached "a new stage in

the process of creating an ever closer union between the peoples of Europe" (Art. A, para. 2 of the Maastricht Treaty).

a) Under the Maastricht Treaty the contracting parties are to form a "European Union" (Art. A, para. 1). Its task is to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and their peoples (Art. A, para. 3, sentence 2). According to the detailed stipulations under Art. B of the Maastricht Treaty, the Union shall set as its objective the creation of an economic and social area free from internal frontiers, establishment of economic and monetary union (in the long term with a single currency), and assertion of the Union's identity on an international level, in particular through implementation of a common foreign and security policy (and in the long term also by implementation of a common defence policy), introduction of a common Union citizenship, co-operation on justice and home affairs, and protection in full and further development of the "acquis communautaire". According to Art. F, para. 3 of the Maastricht Treaty the Union shall provide itself with the means necessary to attain its objectives and to carry through its policies.

The European Union is based on the three existing European Communities (European Economic Community <EEC>, now: European Community <EC>; European Coal and Steel Community <ECSC>; European Atomic Energy Community <EURATOM>), and is supplemented by two forms of co-operation introduced by the Maastricht Treaty: the common foreign and security policy (Art. B, 2nd indent, Art. J), and the co-operation on justice and home affairs (Art. B, 4th indent, Art. K) (the so-called "Three Pillar Concept", Art. A, para. 3). The European Council, in which the Heads of State or of Government of the Member States and the President of the Commission meet, gives the Union the necessary impetus for its development and defines the general political guidelines thereof (Art. D).

b) The previous "European Economic Community" is extended to a "European Community" with additional duties and responsibilities (Art. G of the Maastricht Treaty). In view thereof, the Treaty establishing the European Economic Community (EEC Treaty) is amended. In its new version as Treaty on the Establishment of the European Community (hereinafter EC Treaty), it also abides by the principle of limited individual power (Art. 3b para. 1, Art. 4 para. 1 sentence 2, Art. 4a, Art. 4b, Art. 189, para. 1 EC Treaty). In accordance with the principle of subsidiarity (Art. 3b, para. 2 EC Treaty), the Community is to act in areas which do not fall within its exclusive responsibility only if the objectives of the proposed actions cannot be sufficiently achieved by the Member States and can therefore, by reason of their scale or effects, be better achieved by the Community. Art. 3b, para. 3 of the EC Treaty determines that any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.

b1) The Maastricht Treaty introduces common Union citizenship derived from the nationality of a Member State (Art. 8 EC Treaty), and grants the rights to move and reside freely (Art. 8a EC Treaty), and to vote and stand as a candidate at municipal elections and in elections to the European Parliament within the Member State of residence, thus freeing such electoral rights from the principle of nationality (Art. 8b EC Treaty). Each Community citizen shall enjoy the subsidiary diplomatic and consular protection of any Member States in accordance with the provisions of Art. 8c EC Treaty. Furthermore, the Treaty contains provisions for a common policy on visas (Art. 100c EC Treaty; Art. K.1, No. 2 of the Maastricht Treaty).

b2) The Maastricht Treaty also creates further duties and responsibilities for the European Community with regard to policies on education (Art. 126 EC Treaty), vocational training (Art. 127 EC Treaty), culture (Art. 128 EC Treaty), public health (Art. 129 EC Treaty), consumer protection (Art. 129 EC Treaty), and trans-European networks (Art. 129 b ff. EC Treaty). In Art. 130d of the EC Treaty and in the Protocol on Economic and Social Cohesion, the parties agree to a Cohesion Fund which will provide the Community with a financial contribution to projects in the fields of the environment and Trans-European networks in the area of transport infrastructure.

b3) The economic and monetary union, planned since 1972, shall now be introduced by means of Title VI of the EC Treaty. While the economic policy of the Member States is to be co-ordinated pursuant to Art. 102 ff. of the EC Treaty and subject to Community guidelines guaranteeing the convergence of the economic performance of the Member States, a common Community monetary policy is to develop and be placed in the jurisdiction of the European System of Central Banks (ESCB) (Art. 105 ff. EC Treaty).

The first stage (convergence stage) of the economic and monetary union, which began on 1 July 1990, is to complete the European Monetary System (EMS) with the co-operation of all Member States. This is to be followed pursuant to Art. 109 e of the EC Treaty on 1 January 1994 by the second stage (transitional stage), which prepares completion of the economic and monetary union. For this purpose, the Member States shall, by means of national measures, remove all existing restrictions on capital and payment transactions before 1 January 1994 and any credit privileges or privileged access by the public sector at the central banks (Art. 109 e, para. 2, letter a, 1st indent EC Treaty), and shall adopt programmes with a view to attaining price stability, reorganisation of public finances, and an acceptable level of public debt (Art. 109 e, para. 2, letter a, 2nd indent EC Treaty). At the start of stage two the European Monetary Institute (EMI) shall be established. This is the forerunner to the European Central Bank (ECB) and prepares its activities for the third stage (Art. 109 f EC Treaty).

In the third stage, the competence of the Member States for the entire monetary policy (money, credit, interest, and exchange policies) shall be exercised by the European Community. For this purpose the ESCB and an independent ECB shall be established (Art. 4 a in conjunction with Art. 105 ff. EC Treaty). Entry into the third stage is dependent upon whether sufficient Member States fulfil certain criteria in respect to price stability, a sustainable government budget deficit, exchange rate stability, and interest rates (convergence criteria) (Art. 109 j, para. 1 EC Treaty in conjunction with the Protocol on the Convergence Criteria). By the end of 1996 at the latest the Council of the European Communities (in the composition of the Heads of State or of Government) shall decide by a qualified majority vote whether a majority of the Member States have fulfilled the necessary conditions and whether it is advisable to begin the third stage. Should this be approved by the Council, a date for the establishment of an ECB and the introduction of a common currency may be set (Art. 109 j, para. 3 EC Treaty). Otherwise, the third stage shall begin on 1 January 1999 at the latest (Art. 109 j, para. 4 EC Treaty).

c) Appended to the Maastricht Treaty is an Agreement on Social Policy concluded between the Member States of the European Community, with the exception of the United Kingdom of Great Britain and Northern Ireland. According to this, the Community supports and expands the Member States' effort to improve in particular the working environment, working conditions, informing and consulting with employees, equality between men and women with regard to the labour market and non-discrimination at the workplace, and the vocational integration of persons excluded from the labour market. To this end, the Council can, under the requirements set out in Art. 2 of the Agreement, adopt minimum requirements by means of directives.

2. The Act Amending the Basic Law of 21 December 1992 (which, among other things, added Art. 23, Art. 28 para. 1 sentence 3, Art. 52 para. 3a, and Art. 88 sentence 2 to the Basic Law) was promulgated in the Federal Official Journal, part I, of 24 December 1992 (p. 2086), and entered into force on 25 December 1992.

Art. 23, para. 1 of the Basic Law [Grundgesetz, hereinafter GG] reads as follows:

The Federal Republic of Germany shall co-operate in the development of the European Union in order to realise a united Europe which is bound to observe democratic, constitutional, social and federal principles and the principle of subsidiarity, and which guarantees the protection of fundamental rights in a way which is substantially comparable to that provided by this Basic Law. The Federation may, by law, with the approval of the Federal Council, assign sovereign rights. Article 79, paras. 2 and 3 shall apply with respect to the establishment of a European Union and

amendments to its foundations by treaty, and with respect to comparable regulations, under which this Basic Law shall be substantively amended or supplemented or such amendments or supplements shall be made possible.

After Art. 28, para. 1, sentence 2 of the Basic Law, a new sentence 3 was added as follows:

Persons possessing the citizenship of one of the Member States of the European Community are, in accordance with the law of the European Community, entitled to vote and are eligible for election in district and local community elections.

Art. 52 of the Basic Law has been amended by para. 3a as follows:

In matters pertaining to the European Union, the Federal Council may establish a European Chamber whose resolutions shall be regarded as Council resolutions; Art. 51, paras. 2 and 3, sentence 2 shall apply correspondingly.

A second sentence has been added to Art. 88 of the Basic Law concerning the German Central Bank [Deutsche Bundesbank]:

Its duties and competences may, within the scope of the European Union, be assigned to a European Central Bank which is independent and which undertakes to attain the overriding objective of price stability.

3. On 2 December 1992 the Federal Parliament [Bundestag] adopted in the final reading the Law approving the Maastricht Treaty (Sten.Ber. 12/126 pp. 10879 ff.) by 543 out of 568 votes cast; on 18 December 1992 the Federal Council [Bundesrat] approved the law by a unanimous vote (BR-Drs. 810/92, Sten. Ber. of the 650th session of 18 December 1992). The law was promulgated on 30 December 1992 in the Federal Official Journal and entered into force on 31 December 1992 (BGBl II pp. 1251 ff.). In the session of 2 December 1992, the Federal Parliament adopted a resolution on the economic and monetary union which reads:

[3]. The Federal Parliament recognises that the Treaty on European Union creates a foundation for a stable European currency in the future, in particular by assuring the independence of the European Central Bank and the Agreement on Stability Criteria for the Participating Member States.

Upon entry into the third stage of the economic and monetary union the stability criteria shall be defined narrowly and strictly. The decision on whether to enter into the third stage may only be reached on the basis of proven stability, the synchronisation of economic criteria, and proven permanent stability of the budgetary and financial policy of the participating Member States. It must be based not on expediency, but on real economic facts. The nature of the criteria means that their fulfilment is not only to be ascertained statistically; it must be credible that these criteria will be fulfilled in the long term, beyond the convergence stage. The future European currency must be and remain as stable as the Deutsche Mark.

The Federal Parliament will resist all attempts to weaken those stability criteria which were agreed upon at Maastricht. It will ensure that the transition into the third stage of the economic and monetary union abides strictly by these criteria.

The transition to the third stage of the economic and monetary union also requires an evaluation by the Federal Parliament. The Federal Government's votes on recommendations of the Council pursuant to Art. 109 j, paras. 3 and 4 of the Treaty establishing the European Union require an affirmative vote by the Federal Parliament. The vote by the Federal Parliament relates to the same subject matter as the opinion of the Council of the Economic and Finance Ministers and of the Council resolution regarding the composition of the Heads of State or of Government.

4. The Federal Parliament requests that the Federal Government declare that it will respect this opinion given by the Federal Parliament.

5. It requests the Federal Government to inform the contracting parties as well as the European Commission and the European Parliament of this course of action.

6. The Federal Parliament requests that the Federal Government submit an annual report beginning in 1994 on the development of convergence in the European Union. . .

(BT-Drs. 12/3906; Sten.Ber. 12/126 p. 10B79 ff.).

In its session of 18 December 1992 the Federal Council adopted a resolution which was largely identical (BR-Drs. 810/92 pp. 6 f.).

On 2 April 1993 Dr. Waigel, the Federal Minister of Finance, sent a letter to Dr. Hellwig, Chairman of the European Committee of the Federal Parliament, in which he stated:

[I]n the plenary session of the Federal Parliament on 2 December 1992, I declared that the Federal Government shall ensure that it has the "backing of the legislative forum" before it takes the important step into monetary union. I also referred to the "affirmative vote" which is discussed in the corresponding resolutions of the Federal Parliament and Federal Council.

I also stated that I am prepared to inform our partners in the Community in co-operation with the Foreign Minister of the procedure chosen by the Parliament and Federal Government.

Such notification should be issued as soon as possible after deposit by the Federal Government of the instrument of ratification which constitutes the conclusion of our ratification procedure. . .

4. Pursuant to Art. R., para. 1 of the Maastricht Treaty, the Treaty is subject to ratification by all Member States in accordance with their respective constitutional requirements. The instruments of ratification are to be deposited with the government of the Italian Republic.

After the complainants had filed an application for the issuance of a temporary injunction in order to prevent the Federal Republic of Germany from being bound by the Maastricht Treaty under international law, the Federal President explained via the Chief of the Office of the Federal President that he would not sign the instrument of ratification until the Federal Constitutional Court had reached a decision on the main issue. The Federal Government gave an assurance that the instrument of ratification would not be deposited for the time being.

II.

The constitutional complaints relate to the Act of Consent to ratify [Zustimmungsgesetz] to the Maastricht Treaty and to the Act Amending the Basic Law. Complainant 'ad 1' claims that his fundamental rights and constitutional guarantees equivalent to fundamental rights arising from the following provisions of the Basic Law have been violated: Art. 1 para. 1, Art. 2 para. 1, Art. 5 para. 1, Art. 9 para. 1 in conjunction with Art. 21 para. 1 sentence 2, Art. 12 para. 1, Art. 14 para. 1, Art. 38 para. 1, and Art. 20 para. 4 in conjunction with Art. 93 para. 1 no. 4 a. The Complainants 'ad 2' are elected Members of the European Parliament from the Federal Republic of Germany; however, they raise a constitutional complaint as citizens of the Federal Republic of Germany and are, in principle, asserting an infringement of their constitutional rights equivalent to fundamental rights pursuant to Art. 20 para. 4 and Art. 38 paras. 1 and 2 of the GG.

1.a) Complainant 'ad 1' argues that his right under Art. 38 of the GG, which guarantees every citizen the right to democratically legitimate representation in the Federal Parliament and protects his right to participate in the exercise of State power, has been violated (Art. 20, para. 2, sentence 2 of the GG). He states that this right of participation is substantially diminished by the fact that the Maastricht Treaty assigns substantial powers of the Federal Parliament to governmental institutions of the European Communities, and even grants the Union in Art. F, para. 3 of the Maastricht Treaty an exclusive competence for jurisdictional conflicts [Kompetenz-Kompetenz]

which it can use to assume any further responsibilities it may require. According to this extension of the responsibilities of the Community, State power in Germany will no longer be exercised by the elected representatives of the entire German people in the Federal Parliament, and thus will no longer be exercised by the German people.

In addition, he states that Art. 38 of the GG is also violated because of a lack of democracy at the Community level. The actual legislator in the European Union is the Council, i.e. the governments and thus the Heads of Government; the European parliament has, in principle, merely an advisory function. Thus the principle of democracy and the requirement of legitimacy which applies to governmental administration would be distorted to mean just the opposite, because the governmental administration which enforces the laws would itself make them. This deficiency is not compensated for by sufficient co-operation from the parliaments of the Member States in the making of laws at the Community level.

By contrast, the complainant claims, every citizen has the right to ensure that an election maintains its substantial function, i.e., to elect the actual legislative body. He claims that he is restricted in his freedom to vote and to stand as a candidate in elections because citizens of the Union from other Member States are granted the right to vote and to stand as candidates in local German elections.

b) The complainant claims further that his fundamental rights have been violated under the following provisions of the GG: Art. 1 para. 1, Art. 2 para. 1, Art. 5 para. 1, Art. 9 para. 1 in conjunction with Art. 21 para. 1 sentence 2, Art. 12 para. 1, and Art. 14, para. 1.

He states that the Act of Consent to ratify the Maastricht Treaty relinquishes German State control in numerous areas of basic legal relevance to fundamental rights, or at least restricts it substantially, and thereby displaces the holders and guarantors of the constitutional protection of fundamental rights. The protection of human rights changes fundamentally if, instead of the German people, the people of the European Union (Art. 8 ff. EC Treaty) exercises State power, even if this does not lead to a deterioration in the quality of the protection. The complainant bases a violation of his general rights to freedom, in particular of a "basic civil right to constitutional legislation", on the fact that laws made after the Maastricht Treaty has entered into force will not comply sufficiently with German constitutional law and will not be democratically legitimate to a sufficient degree. Furthermore, he claims, he thereby loses the protection of fundamental rights by the Federal Constitutional Court. He argues that there is an unconstitutional gap in the legal protection of rights insofar as Art. L of the Maastricht Treaty excludes the jurisdiction of the European Court of Justice. Furthermore, the complainant claims that his political and economic freedom is violated because he is now subject to European governmental institutions and European legal instruments, and is integrated into a common European institution and the process of forming political will [Willensbildung].

This is demonstrated particularly, he claims, by the unconstitutional introduction of a monetary union. The complainant states that every German citizen thereby loses the economic basis of trust arising from specific monetary conditions based upon the Deutsche Mark. Upon entry into the third stage of economic and monetary union the complainant will no longer receive payment in Deutsche Marks, nor will he be able to save money or conduct financial transactions in that currency. This would be an immediate and direct violation of his fundamental rights pursuant to Art. 2, para. 1 and Art. 14 of the GG, because after the Maastricht Treaty has entered into force, Germany enters "automatically" into the monetary union from which it may not withdraw, and because a reservation of consent in favour of the Federal Parliament and Federal Council in respect of the contracting parties would be legally irrelevant. Germany's exercise of its right to vote in the Council regarding the third stage of the economic and monetary union is not a suitable object of the constitutional complaint; the Federal Republic of Germany could also be overruled thereon.

The complainant justifies his complaint based on Art. 5, para. 1 of the GG by arguing that the conditions for communication would alter considerably if influence had to be exercised on European rather than on German institutions.

Furthermore, the complainant claims that Art. 138 a of the EC Treaty violates his freedom, constitutionally protected by Art. 9, para. 1 in conjunction with Art. 21, para. 1, sentence 2 of the GG, to establish parties and to participate in them, since political parties would be required to form an awareness throughout Europe.

c) Finally, the complainant bases his constitutional complaint on Art. 20, para. 4 in conjunction with Art. 93, para. 1, no. 4 a of the GG. He interprets these provisions as assigning an extraordinary responsibility to the Federal Constitutional Court, in its role as "protector of the Constitution", to make possible further remedy upon application from any German citizen, if there is a danger of the constitutional principles set out in Art. 20, paras. 1 to 3 of the GG being abolished. According to the substance of the imperative of peace [Friedensgebotes], all Germans must be able to apply for this remedy in order to make non-peaceful resistance superfluous pursuant to Art. 20, para. 4 of the GG.

In particular, the complainant discerns the intention of eliminating the constitutional order of the Basic Law in certain amendments made to the Basic Law by the Act of 21 December 1992, which he simultaneously accuses of being unconstitutional. According to him, Art. 23 of the GG (revised version) offers no constitutional basis for the granting of sovereign rights because it is itself unconstitutional. Art. 23 of the GG recognises the sole right of the Federal Government to make a decision on German co-operation in legislative acts of the European Union. In view of the responsibility for setting guidelines granted to the Federal Chancellor and of his legal status vis-a-vis the ministers, a corresponding principle of purely executive leadership has been included in the Basic Law.

In addition, the complainant believes that his right to vote has been violated because the newly-inserted Art. 28, para. 1, sentence 3 of the GG authorises the introduction of the right to vote in municipal elections by nationals from other EC Member States, and Art. 8 b of the EC Treaty exercises this authorisation.

Furthermore, the complainant argues that the acts amending the Basic Law (Art. 23, paras. 2, 4 to 6 of the GG (revised version) in conjunction with Art. 52, para. 3 a of the GG (revised version)), the Act of Consent, and the Maastricht Treaty violate the principle of federalism. The restriction on the participation of the federal states in legislation conflicts with Art. 79, para. 3 of the GG; this is not compensated for by the rights of participation of the Federal Council provided for by Art. 23 of the GG (revised version). In addition, the assignment of responsibility of the Federal Council to the European Chamber provided for by Art. 52, para. 3 a of the GG (revised version) reduces the rights and status of the federal states.

The principle of a social State based upon the rule of law [Sozialstaatsprinzip] is, the complainant says, violated by the Maastricht Treaty because Germany's social responsibility is extended to the whole of the European Union. The principle of the German social State based on the rule of law could only, however, in any case be overcome by a re-enactment of the constitution rather than by an amendment to it.

2.a) In the opinion of the Complainants 'ad 2' the Act of Consent to ratify the Maastricht Treaty violates fundamental principles of the Basic Law which, pursuant to Art. 79, para. 3 of the GG, are exempt from any amendment to the constitution; Art. 20, para. 4 of the GG in conjunction with Art. 93, para. 1, no. 4 a, on the other hand, presents the possibility of a constitutional complaint.

The principle of democracy and the division of powers required by the principle of the State governed by the rule of law [Rechtsstaatsprinzip] are violated, according to the complainant, if the Maastricht Treaty removes large areas of legislation and the regulation of fundamental

questions of substance from the Federal Parliament and transfers them to the executive. Community law-making is a matter dealt with by the Council and the Commission as elements of the executive; the European Parliament is not a legislator. In contrast to the Federal Parliament, the "EC legislator" does not possess any direct democratic legitimation at the Community level; instead it derives this from the indirect democratic legitimation which is allocated to the members of the governments of the Member States.

The complainant also states that the existence of the Federal Republic of Germany as an independent, sovereign State exempt from constitutional amendments pursuant to Art. 79, para. 3 of the GG is threatened upon the entry into force of the Maastricht Treaty, since this Treaty would bring about a new step towards integration which would lead irrevocably towards the gradual formation of a European federal State. Upon the establishment of monetary union, constraints would also be created which would render the progress towards European union practically irreversible. The duties and responsibilities of the Community would be extended, beyond the scope of the former European Economic Community, to all matters significant for a State entity. The legislator would therefore claim responsibilities to which only the people, as subject of the authority creating the constitution, would be entitled.

The complainant argues that pursuant to Art. 20, para. 4 of the GG, all Germans have "the right to defend the constitutional order" when it is necessary to defend that core of the constitution which is exempt from amendment. The reference to the right to resist as one of those rights upon which a constitutional complaint may be based as listed in Art. 93, para. 1, no. 4 a of the GG does not only signify that the right to resist as such may be "sued upon" (which would be practically meaningless), but also opens up the constitutional complaint as a possible "further remedy" which counteracts actual use of the right to resist and therefore the risk of a civil war.

b) Furthermore, the complainants claim that their own constitutional rights equivalent to fundamental rights pursuant to Art. 38, paras. 1 and 2 of the GG are violated directly and immediately; these rights may be used as the basis for a constitutional complaint pursuant to Art. 93, par. 1, no. 4 a of the GG and § 90, para. 1 of the BVerfGG [Bundesverfassungsgerichtsgesetz, Law Concerning the Federal Constitutional Court]. In their opinion the Act of Consent to ratify the Maastricht Treaty should not have been enacted without legitimation by the people as the subject of the authority creating the constitution, since, like the recently-adopted Art. 23 of the GG, it interferes with that core of the constitution contained in Art. 79, para. 3 of the GG which is exempt from amendment.

Finally, it is alleged that the right of participation in the process of forming political will, regulated by Art. 38, para. 2 of the GG, must also be applied to a referendum. Art. 38 of the GG therefore provides, in addition to the individual right to hold an election for the Federal Parliament and the right to participate in the democratic implementation of State power, a fundamental right to hold a referendum when such action is required under constitutional law.

III.

1. Of those parties entitled to express their views pursuant to § 94, para. 4, in conjunction with § 77 of the BVerfGG, the Federal Government, the Federal Parliament, and the Federal Council have issued statements. Such parties consider the constitutional complaints to be inadmissible, or at least to be unfounded.

2. For informational purposes the Senate heard testimony from Dr. Helmut Schlesinger, President of the German Central Bank, and Dr. Wolfgang Rieke, Director of the Central Bank, regarding matters of economic and monetary union. The Commission of the European Communities, upon the Senate's request, sent the head of its legal service, Director-General Jean-

Louis Dewost, to participate in the oral hearing, where he commented on the interpretation of certain provisions of the Treaty.

B.

The constitutional complaint filed by Complainant 'ad 1' against the Act of Consent to ratify the Maastricht Treaty is only admissible to the extent that it claims that rights arising from Art. 38 of the GG have been violated. Otherwise, the constitutional complaints are inadmissible.

A constitutional complaint is only admissible if the complainant claims that he has suffered direct and immediate violation of a right upon which a constitutional complaint may be based as a consequence of the sovereign act contested (Art. 93, para. 1, no. 4 a of the GG, § 90, para. 1 BVerfGG). The complainant must provide sufficient substantiation such that it appears possible that a violation occurred (see BVerfGE 28, 17 <19>; 52, 303 <327>; 65, 227 <232 f.>).

1. Complainant 'ad 1' has explained sufficiently that the Act of Consent is apt to violate his right arising from Art. 38, para. 1 of the GG.

a) Art. 38, paras. 1 and 2 of the GG guarantee to a German who is entitled to vote the individual right to participate in the election of members of the German Federal Parliament (see BVerfGE 47, 253 <269>). In the act of voting the State power derives from the people. The Federal Parliament thereby exercises State power as a legislative body, which, at the same time, elects the Federal Chancellor and controls the government (Art. 20, para. 1, sentences 1 and 2 of the GG). Art. 38 does not only guarantee that a citizen shall have the right to vote in the German Federal Parliament and that the constitutional principles of the right to vote are observed in an election. Such guarantee is also extended to the fundamental democratic content of this right: any German citizen with the right to vote is guaranteed the individual right to participate in the election of the German Federal Parliament, and thereby to co-operate in the legitimation of State power by the people at a federal level, and to influence the implementation thereof. In this respect such right requires more detailed explanation, which, however, is only necessary insofar as the exercise of sovereign power by supranational organisations within the scope of the realisation of a united Europe (Art. 23 GG) is being considered.

Should the German Federal Parliament relinquish its duties and responsibilities, in particular concerning legislation and the election and control of other holders of State power, then this affects the area to which the democratic content of Art. 38 of the GG relates. With regard to the European Union and the communities belonging thereto, Art. 23, para. 1 of the GG entitles the federal legislator, under the conditions of the European Union named therein, to transfer to the European Union the independent discharge of State responsibilities within the limits of Art. 79, para. 3 of the GG (Art. 23, para. 1, sentence 3 of the GG). This constitutional provision has been created by the legislator amending the constitution specifically for European integration and the progress thereof. This provision also determines the content of the guarantee of the right which arises under Art. 38. Art. 38 of the GG forbids the weakening, within the scope of Art. 23 of the GG, of the legitimation of State power gained through an election, and of the influence on the exercise of such power, by means of a transfer of duties and responsibilities of the Federal Parliament, to the extent that the principle of democracy, declared as inviolable in Art. 79, para. 3 in conjunction with Art. 20, paras. 1 and 2 of the GG, is violated.

The complainant's right arising from Art. 38 of the GG can therefore be violated, if the exercise of the responsibilities of the German Federal Parliament is transferred so extensively to one of the governmental institutions of the European Union or the European Communities formed by the governments, that the minimum, inalienable requirements of democratic legitimation

pursuant to Art. 20, paras. 1 and 2 in conjunction with Art. 79, para. 3 of the GG relating to the sovereign power to which the citizen is subject can no longer be complied with.

b) The complainant states, relying on the assessment of the President of the Commission of the European Communities Mr. Delors (speech in the European Parliament on 4 July 1988, Bulletin EC 1988, no. 7/8, pp. 124) and Mr. Bangemann, Member of the Commission (in: Bruckner <ed.>, Europa transparent: Information, Daten, Fakten, Hintergrunde, 1991, p. 5), that until now nearly 80% of all regulations in the field of commercial law have been established by means of Community Law and that almost 50% of all German laws have been prompted by Community Law. The complainant also states that the Maastricht Treaty would now substantially expand these responsibilities of the Council as an executive, legislative body and would, to a large extent, take away from the German Federal Parliament the responsibility for making decisions, in particular those within the scope of the future monetary union (which would actually result in a financial and even a social union), as well as in the fields of education and vocational training, culture, public health, consumer protection, visa policies, and the construction and development of trans-European networks in the areas of transport, telecommunications, energy infrastructures, and industrial policy. The Treaty would thus establish a principle of majority rule for the Council with regard to several areas of competence, and would thereby permit a system of executive law-making for Germany, even against the will of those German governmental institutions involved. In the monetary union, monetary policy would be removed from all parliamentary influence and other democratic legitimation. The responsibilities and authority of the German Federal Parliament would in the end be completely depleted by means of Art. F, para. 3 of the Maastricht Treaty, which would grant to the Union an exclusive competence for jurisdictional conflicts, in which it would be empowered to provide itself with the necessary competences and authorities.

Finally, the complainant argues that the Maastricht Treaty is based on a system of continuous and irreversible expansion of responsibilities, arising in particular from Art. B, para. 1, 5th indent and Art. C of the Maastricht Treaty, and from the Protocol on the Transition to the Third Stage of Economic and Monetary Union.

c) In conclusion, it appears possible, according to the complainant's allegations, that the Act of Consent to ratify the Maastricht Treaty violates the complainant's rights under Art. 38 of the GG.

2. The constitutional complaint filed by Complainant ‘ad 1’ is inadmissible, insofar as he claims that his fundamental rights have been violated under Art. 1 para. 1, Art. 2 para. 1, Art. 5 para. 1, Art. 12 para. 1, and Art. 14 para. 1 of the GG.

a) Insofar as he states that his fundamental rights under Art. 12, para. 1 and Art. 14, para. 1 of the GG are violated by statutory accession to the monetary union, it is not apparent that such fundamental rights would preclude the Deutsche Mark being replaced by the ECU. Art. 88, sentence 2 of the GG expressly provides that the duties and competences of the German Bundesbank may be transferred to the European Central Bank within the scope of the European Union. By this authorisation the development of a European Monetary Union is recognised constitutionally; this regulation, introduced specifically for the formation of the European Union, also implies that the use of such authorisation is not inconsistent with a person's fundamental rights.

b) The complaint filed by the complainant which states that his fundamental rights would be violated since they would not only be guaranteed for Germany and by German governmental institutions, and that they would, as fundamental rights under European law, be given a new meaning, is also inadmissible. The openness towards European integration which is set forth in the Preamble of the Basic Law and governed by Art. 23 and Art. 24 of the GG means that infringements of fundamental rights may also derive from European governmental institutions, and that protection of fundamental rights for the entire territory of application of such measures must correspondingly be guaranteed; in particular, this would result in an extension of the

territorial scope of application of the rights of freedom and of a comparative perspective regarding the rule of equality [Gleichheitssatz].

This cannot be linked to a significant reduction of standards relating to fundamental rights. The Federal Constitutional Court guarantees through its jurisdiction (see BVerfGE 37, 271 <280 ff.>; 73, 339 <376 f.>) that effective protection of the fundamental rights of the inhabitants of Germany is generally assured, also in respect to the sovereign power of the Communities, and that such protection of fundamental rights is to be considered equal to that which is mandated by the Basic Law, especially since the substance of such fundamental rights is generally guaranteed. In this way the Federal Constitutional Court secures the substance of fundamental rights, even in respect of the sovereign power of the Community (see BVerfgGE 73, 339 <386>). Acts of the particular public power of a supranational organisation which is separate from the State power of the Member States may also affect those persons protected by fundamental rights in Germany. Such acts therefore affect the guarantees provided under the Basic Law and the duties of the Federal Constitutional Court, which include the protection of fundamental rights in Germany, and not only in respect of German governmental institutions (notwithstanding BVerfGE 58, 1 <27>). However, the Federal Constitutional Court exercises its jurisdiction regarding the applicability of derivative Community law in Germany in a "co-operative relationship" with the European Court of Justice, in which the European Court of Justice guarantees the protection of fundamental rights in each individual case for the entire area of the European Community; the Federal Constitutional Court can therefore limit itself to a general guarantee of mandatory standards of fundamental rights (see BVerfGE 73, 339 <387>).

c) The complainant's allegation that Art. L of the Maastricht Treaty creates an unconstitutional gap in the protection of rights, since no jurisdiction of the European Court of Justice has been created for acts of the European Union, is incorrect. Art. L of the Maastricht Treaty excludes the jurisdiction of the European Court of Justice only for those provisions of the Maastricht Treaty which do not authorise the Union to take actions to which holders of fundamental rights in the sovereign territory of the Member States are subject. If, in the future, measures of legal relevance to fundamental rights are foreseen within the framework of co-operation pursuant to Art. J and Art. K of the Maastricht Treaty, this would require a further Act of Consent which can then be examined for any possible deficiencies in the protection of rights.

The Federal Government has affirmed that it agrees completely with the Member States that Art. L of the Maastricht Treaty will not lead to any deficiencies in the protection of rights.

c1) Arts. A to F of the Maastricht Treaty do not contain any authorisation to take action of any kind against the holders of fundamental rights. In the Titles concerned with the common foreign and security policy (Title V, Art. J to J.11 of the Maastricht Treaty) and with co-operation on justice and home affairs (Title VI, Arts. K to K.9 of the Maastricht Treaty), the Council is empowered merely to define a common position (Art. J.2 para. 2, Art. K.3 para. 2 sub-para. a of the Maastricht Treaty). From the outset, these activities do not impose upon the individual an obligation which affects his fundamental rights.

c2) The fact that Titles V and VI of the Maastricht Treaty provide for the Council to be able to resolve upon joint action and to adopt joint positions for the implementation of co-operation on justice and home affairs does not lead to a different result. Notwithstanding the fact that the Member States are bound under international law by these Council resolutions (see Art. J.3, para. 4; without express provision, Art. K.3, para. 2, sub-para. b of the Maastricht Treaty), which are either passed unanimously or which must at least be based upon a Council resolution which was passed unanimously (Art. J.3 para. 2; Art. J.8 para. 2; Art. K.3 para. 2 sub-para. b; Art. K.4 para. 3 of the Maastricht Treaty), it is not possible to use such Council resolutions as a basis upon which to implement law in the Member States which is directly applicable and which pre-empts other law.

The fields of foreign and security policy and justice and home affairs are indeed part of European co-operation within the framework of the Union, but they have deliberately not been incorporated into the supranational jurisdictional order in the European Communities by the contracting parties. Even the specification of the bases of the Union contained in Art. A, para. 3 of the Maastricht Treaty draws a distinction between the (supranational) European Communities and the new policies and forms of cooperation which are introduced by Titles V and VI of the Maastricht Treaty and which supplement the European Communities. This distinction is confirmed by Art. E of the Maastricht Treaty, which states that European governmental institutions shall exercise their powers either under the conditions provided for by the basic legal instruments establishing the European Communities, as amended, or, on the other hand, by the other provisions of the Maastricht Treaty. Accordingly, when it is acting in the fields of foreign and security policy and of justice and home affairs, the Council is not entitled to resort to the supranational procedures of European Community law. The only areas in which such procedures may be employed are those for which the Maastricht Treaty states that provisions of the EC Treaty may be applied. Art. J.11, para. 1 and Art. K.8, para. 1 of the Maastricht Treaty provide for validity to be extended to some of the provisions of the EC Treaty, but exclude Art. 189 of the EC Treaty, which defines those legal instruments of the EC which are of general application.

For Title VI, Art. K.9 demonstrates that the transfer into the supranational competence of the European Community of that intergovernmental co-operation with which Title VI is concerned requires a (simplified) amendment of the Treaty, which must be ratified by all of the Member States.

c3) The statement contained within Art. K.2, para. 1 of the Maastricht Treaty to the effect that matters subject to co-operation on justice and home affairs shall be dealt with in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Geneva Convention Relating to the Status of Refugees does not imply that Title VI of the Maastricht Treaty is intended to make possible direct interference in fundamental rights. In fact, Art. K.2, para. 1 of the Maastricht Treaty confirms those obligations in terms of human rights which are incumbent upon all Member States and which are, in the case of joint action, to be observed even prior to direct interference with fundamental rights, if the implementation of such joint action by the Member States could result in interference with fundamental rights.

c4) If the co-operation on justice and home affairs for which Art. K.3, para. 2, sub-para. c of the Maastricht Treaty provides takes place in the form of treaties under international law, such treaties may stipulate that the European Court of Justice shall have jurisdiction (Art. L, para. b of the Maastricht Treaty). . In this respect, it is not possible at present for there to be any unconstitutional deficit in legal protection. Conventions of this nature are, in any case, subject to a further act of ratification, which, in turn, is subject to review by the Federal Constitutional Court.

c5) In cases in which joint action and measures pursuant to Titles V and VI of the Maastricht Treaty impose a binding obligation upon the Member States under international law to interfere with fundamental rights, any such interference which takes place in Germany may be subjected to full review before the German courts. In this respect the protection of fundamental rights for which the Basic Law provides is not eclipsed by supranational legislation which may take precedence. Any obligations imposed upon the Federal Republic of Germany under international law may not diminish that protection of fundamental rights which is incumbent upon German State power, and any European standards for intervention by German sovereign power in fundamental rights resolved upon pursuant to Title V or Title VI of the Maastricht Treaty may not, therefore, restrict protection of fundamental rights by the German courts. To this extent, the same rule applies as to any treaty under international law: constitutional law prohibits the domestic implementation of a treaty which would violate fundamental rights.

If a Council resolution passed pursuant to those criteria for which Title V or Title VI of the Maastricht Treaty provide is implemented by means of a legal instrument of the European Communities (for example, based upon Art. 228 a of the EC Treaty) and fundamental rights are thereby infringed, the European Court of Justice and otherwise the Federal Constitutional Court would provide sufficient protection of fundamental rights (see BVerfGE 73, 339 <387>). In this case, too, the Federal Constitutional Court and the European Court of Justice stand in a co-operative relationship which ensures the protection of fundamental rights and which allows them to complement one another.

d) The violation by the Act of Consent to the Maastricht Treaty of Art. 5, para. 1 of the GG which is asserted by the complainant must be rejected from the outset. Freedom of communication protects uninhibited participation in an open process of communication; it does not, however, provide guarantees either for specific conditions for the exchange of opinions or that such participation will be successful. The freedom of the individual to gain information from European sources and to influence public opinion in the Member States, and therefore to influence the European process of communication, is not affected by the Treaty instrument; the linguistic difficulties that arise result from the linguistic diversity within the European Union, and for that very reason do not constitute an impediment to the exercise of this fundamental right which has to be independently evaluated.

e) The complainant's constitutional complaint is also impermissible to the extent that it claims that Art. 138 a of the EC Treaty violates Art. 9 and Art. 21 of the GG. It is not clear how the recognition of political parties, as a factor of integration in the Union, can specify or restrict, in a legally binding fashion, the schedule and objectives of an individual party or its members.

f) To the extent that the complainant interprets regulations of the Maastricht Treaty as being in contravention of the principle of the social State based upon the rule of law and of the principle of federalism, these complaints are impermissible pursuant to Art. 93, para. 1, sub-para. 4 a of the GG.

3. The constitutional complaint of Complainant 'ad 1' which attacks, based on Art. 38 of the GG, the Act Amending the Basic Law of 21 December, 1992 and its addition of Art. 23 and Art. 28, para. 1, sentence 3 (revised version) to the Basic Law, is inadmissible.

a) Art. 23, para. 1 of the GG sets forth special powers for participation in the development of the European Union and the realisation of a unified Europe (see the Statement of Reasons given by the Government of the Federal Republic of Germany for the Draft Act Amending the Basic Law, BT-Drs.. 12/3338, p. 6). Pursuant to Art. 23, para. 1, sentence 3 of the GG, however, these powers are confined expressly by the restrictions contained within Art. 79, para. 3 of the GG; these restrictions define the limits imposed upon any authority amending the Basic Law. Therefore, it is not possible for a conflict to arise between the essential democratic content of Art. 38 of the GG and the new Art. 23 of the GG.

b) The complaint to the effect that those structural principles of the European Union which are listed in the new version of Art. 23, para. 1, sentence 1 of the GG have not been realised is also inadmissible. It is not possible to derive from Art. 38 of the GG directions as to how the institutional framework of the European Union is to be structured.

c) The complainant's complaint that the Act Amending the Basic Law of 21 December, 1992, through Art. 28, para. 1, sentence 3 of the GG, grants the power to introduce a right to vote in local elections for citizens of other EC Member States, that Art. 8 b of the EC Treaty makes use of this power, and that this constitutes a violation of his right to vote and right to stand for election, is also inadmissible. Art. 38 of the GG does not grant any individual right to the holder of the right to vote in local elections, in the exercise of his right to vote and right to stand for election, to use a "rival's complaint" [Konkurrentenklage] based upon electoral law to resist non-German candidates or voters.

4. The constitutional complaints are also inadmissible to the extent that they are based on Art. 20, para. 4 of the GG, and to the extent that they seek "other remedies" from the Federal Constitutional Court. Irrespective of the manner in which Art. 20, para. 4 of the GG is to be interpreted, questions regarding the right to resist do not arise, because, as the present proceedings demonstrate, there are constitutional opportunities available to the complainants to resist ratification of the Maastricht Treaty.

5. The constitutional complaints filed by the Complainants 'ad 2' are inadmissible. To the extent that they rely on Art. 20, para. 4 of the GG, this has already been demonstrated above. The further complaint that the Act of Consent to ratify the Maastricht Treaty violates a right to the implementation of a referendum which accrues to the complainants either directly or by analogy from Art. 38 of the GG, because the Act of Consent affects that core of the constitution which, pursuant to Art. 79, para. 3 of the GG is immune from amendment, is also inadmissible. The Basic Law grants personal rights within the framework of the constitutional order only; it does not, however, grant them with respect to either the procedure or the contents of a re-enactment of the constitution. Art. 79, para. 3 of the GG links the development of the State in Germany to that core of the constitutional order which it itself describes, and thus seeks to secure the prevailing constitution against any development which endeavours to establish a new constitution; by itself, however, it does not impose a normative restriction on the power which creates constitutional law. Accordingly, it imposes restrictions upon the power to amend the constitution, and therefore formally excludes the possibility of legitimating by means of a referendum any act amending the constitution which affects that core of the Basic Law that is exempt from amendment. Art. 146 of the GG also does not establish an individual right upon which a constitutional complaint may be based (Art. 93, para. 1, sub-para. 4 a of the GG).

C.

To the extent that the constitutional complaint filed by Complainant 'ad 1' is admissible, it is unfounded. The only criterion which the Federal Constitutional Court may apply in examining the granting of sovereign powers to the European Union and to those Communities associated with it in this case is that of the guarantee contained in Art. 38 of the GG (see I. below). This guarantee is not violated by the Act of Consent, as the content of the Treaty demonstrates. The Treaty establishes a European community of States which is borne by the Member States and which respects the national identities of those Member States; it is concerned with Germany's membership in supranational organisations, and not with membership in a single European State (II.1.). The functions of the European Union and the powers granted for its realisation are standardised by the Treaty in a manner sufficiently foreseeable to ensure that the principle of limited individual powers is observed, that no exclusive competence for jurisdictional conflicts is established for the European Union, and that the assertion of other functions and powers by the European Union and the European Communities is dependent upon amendments and supplements to the Treaty and therefore to the consent of the national parliaments (II.2.). The process of forming political will in the European Union and in the governmental institutions of the European Communities set forth in the Treaty and the scope of the functions and powers granted do not weaken the responsibilities for decision-making and control of the Federal Parliament in such a way that the principle of democracy which is declared inviolable by Art. 79 para. 3 of the GG is infringed (II.3.).

I.

1. The right granted by Art. 38 of the Basic Law to participate, by means of elections, in the legitimation of State power and to influence the implementation of that power, precludes, within the scope of application of Art. 23 of the GG, such right being weakened by reassignment of the functions and the authority of the Federal Parliament in such a way that the principle of democracy declared inviolable by Art. 79 para. 3 in conjunction with Art. 20 paras. 1 and 2 of the GG is infringed (see B.1.a. above).

2. Pursuant to Art. 79 para. 3 of the GG, it is an inviolable element of the principle of democracy that the performance of State functions and the exercise of State power derive from the people of the State and that they must, in principle, be justified to that people. This sequence of responsibility may be created in various ways, not just in a single specific way. The crucial factor is that a sufficient proportion of democratic legitimation, a specific level of legitimation, is achieved (see BVerfGE 83, 60 <72>).

a) If the Federal Republic of Germany becomes a member of a community of States which is entitled to take sovereign action in its own right, and if that community of States is entrusted with the exercise of independent sovereign power (both of which the GG expressly permits for the realisation of a unified Europe, Art. 23, para. 1 of the GG), then democratic legitimation cannot be effected in the same way as it can within a State regime which is governed uniformly and conclusively by a State constitution. If sovereign rights are granted to supranational organisations, then the representative body elected by the people, i.e., the German Federal Parliament, and with it the enfranchised citizen, necessarily lose some of their influence upon the processes of decision-making and the formation of political will. Accession to a compound of States has the consequence that any individual member of that community is bound by decisions made by it. Of course, a State, and with it its citizens, which is a member of such a community also gains opportunities to exert influence as a consequence of its participation in the process of forming political will within the community for the purpose of pursuing common (and with those, individual) goals. The fact that the outcome of these goals is binding upon all Member States necessarily assumes that each Member State acknowledges the fact that it is bound.

The willingness to be bound within a community under international law and within the close legal alliance of a compound of States is appropriate for a democratic State which (as the Preamble to the GG assumes and Art. 23 and Art. 24 specifically provide) wishes to participate as an equal member in intergovernmental institutions in general and in the development of the European Union in particular. The Member States participate in the process of forming the political will of the alliance of States, on the basis of the organisational and procedural law of the alliance, but are also bound by the consequences of this process of forming political will, irrespective of whether or not their own participation contributes to such consequences. The fact that sovereign powers are granted to an alliance means that the exercise of such powers is no longer always dependent upon the will of a single Member State. To regard this as a violation of the principle of democracy contained within the Basic Law would not just be in conflict with the openness toward integration which the Basic Law evidences, and which the framers of the Basic Law sought to and succeeded in expressing in 1949, but would also assume a concept of democracy which would render any democratic State unable to become part of an integrated inter-governmental community unless the principle of unanimity were adopted. The imposition of unanimity as a general requirement would, by definition, give the will of the individual State priority over that of the inter-governmental community and would therefore bring into question the very structure of such a community. Such a conclusion is not compatible with the wording or with the sense of Art. 23 or Art. 24 of the GG. Legislation must be enacted before the granting of sovereign rights which the said articles make possible may be implemented; the requirement of legislation (Art. 23 para. 1 sentence 2, Art. 24 para. 1 of the GG) shifts the political responsibility for consent to grant sovereign rights to the Federal Parliament (together with the Federal Council) as the national representative body. The Federal Parliament is required to discuss and to decide upon the far-reaching consequences, not least in relation to the powers of the Federal

Parliament itself, associated with consent of this nature. The democratic legitimation of both the existence of the inter-governmental community, and of the powers of that community to enter into majority votes which are binding upon the Member States, is based on an Act of Consent to such a compound of States. The majority principle is, however, restricted by the constitutional principles and the fundamental interests of the Member States, which, pursuant to the principle of mutual consideration arising from allegiance to the community, must be respected.

b) The principle of democracy does not, therefore, prevent the Federal Republic of Germany from becoming a member of a compound of States which is organised on a supranational basis. However, it is a precondition of membership that the legitimation and influence which derives from the people will be preserved within an alliance of States.

b1) According to its own definition as a union among the peoples of Europe (Art. A, para. 2), the European Union is an alliance of democratic States which seeks to develop dynamically (see Art. B para. 1 final indent; Art. C para. 1 of the Maastricht Treaty); if it performs sovereign tasks and exercises sovereign powers, it is in the first instance the peoples of the individual States which must, through their national parliaments, provide democratic legitimation for such action.

As the functions and powers of the Community are extended, the need will increase for representation of the peoples of the individual States by a European Parliament that exceeds the democratic legitimation and influence secured via the national parliaments, and which will form the basis for democratic support for the policies of the European Union. The common Union citizenship established by the Maastricht Treaty forms a legal bond between the citizens of the individual Member States which is designed to be lasting; it is not characterised by an intensity comparable to that which follows from common membership in a single State, but it does lend legally binding expression to that level of existential community which already exists (see in particular Art. 8 b para. 1 and para. 2). The influence which derives from the citizens of the Community may develop into democratic legitimation of European institutions, to the extent that the following conditions for such legitimation are fulfilled by the peoples of the European Union:

If democracy is not to remain a formal principle of accountability, it is dependent upon the existence of specific privileged conditions, such as ongoing free interaction of social forces, interests, and ideas, in the course of which political objectives are also clarified and modified (see BVerfGE 5, 85 <135, 198, 205>; 69, 315 <344 ff.>), and as a result of which public opinion moulds political policy. For this to be achieved, it is essential that both the decision-making process amongst those institutions which implement sovereign power and the political objectives in each case should be clear and comprehensible to all, and also that the enfranchised citizen should be able to use its own language in communicating with the sovereign power to which it is subject.

In cases where they do not already exist, actual conditions of this kind may be developed, in the course of time, within the institutional framework of the European Union. A development of this kind is dependent not least upon the nations concerned being kept informed of the objectives of the Community institutions and of the decisions made by those institutions. Political parties, trade associations, the press, and broadcasting stations are both a medium and a factor in this process of information, in the course of which a European public opinion should develop (see Art. 138 a). The European Council is also endeavouring to achieve more clarity and transparency in the European decision-making process (see Statement of Birmingham: A Citizen's Community, sub-paras. 2,3, BullBReg. No. 115 of 23 October, 1992, p. 1058; conclusions drawn by the President of the European Council in Edinburgh <11 and 12 December, 1992>, Part A, Section 7 and Annex 3, BullBReg. No. 140 of 28 December, 1992, p. 1278, 1284 f.).

b2) Within the community of States which is the European Union, democratic legitimation is by necessity effected by the parliaments of the individual Member States receiving information on the activities of the European institutions. To an increasing extent in view of the degree to which the nations of Europe are growing together, the transmission of democratic legitimation within

the institutional structure of the European Union by the European Parliament elected by the citizens of the Member States must also be taken into consideration. Even at the present stage of development, legitimation by the European Parliament has a supportive function, which could be strengthened if the European Parliament were elected on the basis of a uniform electoral law in all Member States pursuant to Art. 138, para. 3 of the EC Treaty and if its influence on the policy and law-making of the European Communities were to increase. The important factor is that the democratic foundations upon which the Union is based are extended concurrent with integration, and that a living democracy is maintained in the Member States while integration proceeds. If too many functions and powers were placed in the hands of the European inter-governmental community, democracy on the level of the individual States would be weakened to such an extent that the parliaments of the Member States would no longer be able to convey adequately that legitimation of the sovereign power exercised by the Union.

If the peoples of the individual States (as is true at present) convey democratic legitimation via the national parliaments, then limits are imposed, by the principle of democracy, on an extension of the functions and powers of the European Communities. State power in each of the States emanates from the people of that State. The States require sufficient areas of significant responsibility of their own, areas in which the people of the State concerned may develop and express itself within a process of forming political will which it legitimates and controls, in order to give legal expression to those matters which concern that people on a relatively homogenous basis spiritually, socially, and politically (see H. Heller, Politische Demokratie und soziale Homogenitat, Gesammelte Schriften, Vol. 2, 1971, p. 421 <427 ff.>).

All of this leads to the conclusion that the German Federal Parliament must retain functions and powers of substantial import.

c) The exercise of sovereign powers by a compound of States such as the European Union is based upon authorisation by States which retain their sovereignty, and which regularly act through their governments in international affairs and thereby control integration. Therefore, the exercise of sovereign powers is largely determined by governments. If community powers of this nature are based upon the democratic process of forming political will conveyed by each individual people, they must be exercised by an institution delegated by the governments of the Member States, which are themselves subject to democratic control. Notwithstanding the requirement for democratic control of the governments, the enactment of European rules of law may also rest with an institution comprised of representatives of the governments of the Member States, i.e. an executive body, to a greater extent than would be acceptable under the constitutional law of the individual States.

3. Since an enfranchised German exercises, by means of elections to the German Federal Parliament, his right to participate in the democratic legitimation of those governmental entities and institutions which are entrusted with the implementation of sovereign powers, the Federal Parliament must also make decisions about Germany's membership in the European Union, and about the continuation and development of such membership.

Art. 38 of the GG is therefore violated if a law which subjects the German legal system to the direct validity and application of the law of the supranational European Communities does not give a sufficiently precise specification of the assigned rights to be exercised by the European Communities and of the proposed programme of integration (see BVerfGE 58, 1 < 37>). Unless the extent and the scale to which the German legislator has consented to the reassignment of sovereign rights are clear, it would be possible for the European Communities to exercise functions and powers which are not mentioned. This would amount to a general authorisation for the exercise of such functions and powers, and would therefore amount to renunciation of those rights, against which Art. 38 of the GG protects.

However, in view of the fact that the text of a Treaty under international law has to be negotiated between the contracting parties, the demands placed upon the precision and solidity of the Treaty

provisions cannot be as great as those which are prescribed for a statute according to the principle of parliamentary prerogative [Parlamentsvorbehalt] (see BVerfGE 77, 170 <231 f.>). The important factor is that the Federal Republic of Germany's membership and the rights and obligations which arise from it, in particular the legally binding direct activity of the European Communities in the domestic legal territory, have been defined foreseeably for the legislator in the Treaty, and that the legislator has standardised them to a sufficiently definable level in the Act of Consent to the Treaty (see BVerfGE 58, 1 <37>; 68, 1 <98 f.>). This also means that any subsequent substantial amendments to that programme of integration provided for by the Maastricht Treaty or to its authorizations to act are no longer covered by the Act of Consent to ratify this Treaty (see BVerfGE 58, 1 <37>; 68, 1 <98 f.>, mentioned above; Mosler, in: Handbuch des Staatsrechts, Vol. VII <1992>, § 175, Annotation 60). If, for example, European institutions or governmental entities were to implement or to develop the Maastricht Treaty in a manner no longer covered by the Treaty in the form of it upon which the German Act of Consent is based, any legal instrument arising from such activity would not be binding within German territory. German State institutions would be prevented by reasons of constitutional law from applying such legal instruments in Germany. Accordingly, the German Federal Constitutional Court must examine the question of whether or not legal instruments of European institutions and governmental entities may be considered to remain within the limits of the sovereign rights accorded to them, or whether they may be considered to exceed those limits (see BVerfGE 58, 1 <30 f.>; 75, 223 <235, 242>).

II.

Those elements of the Maastricht Treaty subject to examination in the present proceedings satisfy these requirements.

As has already been stated, the Maastricht Treaty establishes a compound of States for the creation of an ever closer union among the peoples of Europe, which peoples are organised on a State level (Art. A), rather than a State which is based upon the people of one State of Europe. In view of these facts, the question raised by Complainant ‘ad 1’ as to whether or not the GG allows or excludes German membership in a European State does not arise. Only the Act of Consent to Germany's membership in a compound of States need be judged here.

1.a) The Member States have established the European Union in order to perform some of their duties and to exercise some of their sovereignty jointly. In the resolution which they passed at Edinburgh on 11 and 12 December, 1992 (Part B, Annex 1, BullBReg. No. 140 of 28 December, 1992, p. 1290), the Heads of State or of Government which belong to the European Council stressed that independent and sovereign States have, within the framework of the Maastricht Treaty, resolved, of their own free will and in accordance with existing treaties, to exercise some of their powers jointly. Accordingly, the Maastricht Treaty takes account of the independence and sovereignty of the Member States, in that it imposes an obligation upon the European Union to respect the national identities of its Member States (Art. F, para. 1; see also the conclusions drawn by the President of the European Council in Birmingham on 16 October, 1992, BullBReg. No. 115 of 21 October, 1992, p. 1057), and grants the European Union and the European Communities specific powers and responsibilities only, on the basis of the principle of limited individual powers (Art. E Maastricht Treaty, Art. 3 b para. 1 EC Treaty). By so doing, it has elevated the principle of subsidiarity to the level of a binding legal principle for the European Union (Art. B, para. 2, of the Maastricht Treaty) and the European Community (Art. 3 b, para. 2, EC Treaty).

The term “European Union” may indeed suggest that the direction ultimately to be taken by the process of European integration after further amendments to the Treaty is one which will lead

towards further integration, but in fact the actual intention expressed does not confirm this (Delors, Entwicklungsperspektiven der Europaischen Gemeinschaft, in: Aus Politik und Zeitgeschichte <Annex to “Das Parlament”> 1/93, p. 3 <4>). In any case, there is no intention at the moment to establish a “United States of Europe” comparable in structure to the United States of America (see the speech made by the Chancellor of the Federal Republic of Germany on 6 May, 1993 in Cologne, BullBReg. No. 39 of 17 May, 1993, p. 341 <343 f.>). The new Art. 88-1 inserted into the French constitution to take account of the Maastricht Treaty also makes reference to Member States which will act jointly in the European Union and the European Communities in the fulfilment of their responsibilities.

If they are exercised by the observation of sovereign rights, the responsibilities and powers attributed to the European Union and to the communities associated with it remain essentially the activities of an economic community. The central areas of activity of the European Community are the customs union and free movement of goods (Art. 3, letter a of the EC Treaty), the internal market (Art. 3, letter c of the EC Treaty), the approximation of the laws of the Member States to the extent required for the functioning of the common market (Art. 3, letter h of the EC Treaty), the co-ordination of Member States' economic policies (Art. 3 a, para. 1, of the EC Treaty), and the development of monetary union (Art. 3 a, para. 2, of the EC Treaty). Outside the European Communities, co-operation shall remain inter-governmental, in particular with regard to foreign and security policy as well as justice and home affairs (see B.2.c above).

Therefore, even after the Maastricht Treaty has entered into force, the Federal Republic of Germany remains a member of a compound of States, the authority of which is derived from the Member States and has binding effect in German sovereign territory only by virtue of the German command to apply the law [Rechtsanwendungsbefehl]. Germany is one of the “High contracting parties” which have given as the reason for their commitment to the Maastricht Treaty, concluded “for an unlimited period” (Art. Q), their desire to be members of the European Union for a lengthy period; such membership may, however, be terminated by means of an appropriate act being passed. The validity and application of European law in Germany derive from the order governing application of law contained in the Act of Consent. Germany is therefore maintaining its status as a sovereign State in its own right as well as the status of sovereign equality with other States in the sense of Art. 2, sub-para. 1 of the UN Charter of 26 June, 1945 (BGBl. 1973 II p. 430).

b) The required influence of the Federal Parliament is guaranteed in the first instance by the fact that Art. 23, para. 1 of the GG makes it necessary for an act to be passed before Germany may become a member of the European Union, or before such membership may develop further by an amendment to the basic treaty instruments or an extension of the European Union's powers; if the conditions shown in sentence 3 are fulfilled, an act of this nature requires the affirmative vote for which Art. 79, para. 2 of the GG provides. Furthermore, the Federal Parliament also has a part to play in the maintenance of Germany's rights as a member of European institutions. The Federal Parliament contributes, under the terms of Art. 23, paras. 2 and 3 of the GG and those of the Act on Co-operation between the Federal Government and the German Federal Parliament on Matters concerning the European Union of 12 March, 1993 (BGBl. I, p. 311), which was adopted for the purpose of its implementation, to the process of forming the Federal Government's political will in such matters. These interdependent responsibilities are to be fulfilled by the Federal Government and the Federal Parliament in the sense of the duty of mutual allegiance for governmental institutions [Organtreue].

Finally, the Federal Parliament also influences the Federal Government's European policy, because the Federal Government is answerable to parliament (Art. 63, 67 GG - see BVerfGE 68, 1 <109 f.>). This function of control and creation, which the Federal Parliament, as a matter of course, performs in public sessions, brings the public and the political parties into contact with

the Federal Government's European policy, and therefore becomes a factor in the decision which citizens have to make on how to cast their votes.

By signing the Maastricht Treaty, the governments of the Member States have also emphasised the substantial importance attached to national parliaments within the European Union. Their Statement on the Role of National Parliaments in the European Union (BGBl. 1992 II p. 1321) emphasises the need of increased involvement of the parliaments of the Member States in the activities of the European Union, and imposes an obligation upon the governments to inform their respective parliaments in due time of proposals made by the Commission, so that the parliaments may investigate such proposals.

2. The Maastricht Treaty satisfies the requirements in terms of precision, because it regulates to a sufficiently foreseeable degree the procedure for future exercise of the sovereign powers granted (see BVerfGE 58, 1 <37>; 68, 1 <98 f.>), based upon the parliamentary accountability provided for by the Act of Consent. The concern expressed by the complainant, i.e. that, in view of its far-reaching aims, the European Community could, unless new parliamentary orders governing application of law are issued, develop into a political union with sovereign rights which cannot be ascertained in advance, is without foundation. The Maastricht Treaty adopts and confirms that principle of limited individual powers which applied previously to the European Communities (a); this principle is not brought into question by Art. F, para. 3 of the Maastricht Treaty, which does not establish any exclusive competence for jurisdictional conflicts (b); the opportunities for the allocation of other duties and powers to the European Union and the European Community are restricted by regulations which are sufficiently precise (c); furthermore, to the extent that development of European Monetary Union is regulated, these regulations are of a sufficiently precise nature (d, e, f).

a) Pursuant to Art. B, para. 2 of the Maastricht Treaty, the objectives of the Union shall be achieved as provided in the Treaty and in accordance with the conditions and the timetable set out therein. Pursuant to Art. E, the European Parliament, the Council, the Commission, and the Court of Justice may act only insofar as a provision of the Treaty empowers them to fulfil responsibilities and exercise powers. Pursuant to Art. D, the European Council shall be restricted to providing the Union with the necessary impetus, and for defining the general political guidelines, for its development. If it proves necessary for laws to be enacted, the existing principles of authorisation contained within the Treaty shall be applied.

The establishment of new fields of activity for the European Communities has always been based upon the principle that the Communities may act only as provided by the Treaty Establishing the Economic Community and in accordance with the timetable set out therein (Art. 3 of the Treaty Establishing the Economic Community, now: Art. 3 of the EC Treaty; Art. 2 of the Treaty Establishing the European Atomic Energy Community (EAEC)), which means that it is not permissible to deduce the existence of a power based only on the existence of a function. This will remain true even after the Maastricht Treaty has entered into force. This principle of limited individual powers (see Oppermann, Europarecht, 1991, Annotation 432) is confirmed by Art. 4, para. 1, sentence 2 of the EC Treaty and by Art. 3, para. 1, sentence 2 of the EAEC, whereby each Community institution shall act within the limits of the powers conferred upon it by the Treaty, and by Art. 189, para. 1 of the EC Treaty and Art. 161, para. 1 of the EAEC, which permit the Community institutions to enact legal instruments within the limits conferred upon them by the Treaty only. The opening sentence of Art. 3 of the Treaty Establishing the European Coal and Steel Community (ECSC), which provides for Community institutions to fulfil their duties within the limits of the powers conferred upon each of them, and Art. 5, para. 1 of the same treaty, which commits the Community to fulfil by limited intervention its function under those conditions for which the Treaty provides, also remain unaffected by the Maastricht Treaty.

The new Art. 3 a of the EC Treaty, which is added to these established regulations, makes it clear that, in its future economic (para. 1) and monetary policy (para. 2), the European Community will

act only as provided in the Treaty and in accordance with the timetable set out therein. Art. 4 a of the EC Treaty extends this principle to the ESCB and the ECB, while Art. 4 b extends it to the European Investment Bank.

The first paragraph of the new principle contained within Art. 3 b of the EC Treaty also states that the Community shall act only within the limit of the powers conferred upon it by the Treaty and the objectives assigned to it therein. The regulations on the principle of subsidiarity (Art. 3 b, para. 2 of the EC Treaty) and on the principle of proportionality (Art. 3 b, para. 3 of the EC Treaty) which follow thereafter are intended to define the limits of the Community's powers. The European Council which met in Edinburgh on 11 and 12 December, 1992 stressed, in an overall concept for application of the principle of subsidiarity (Part A, Annex 1 of the conclusions drawn by the President <BullBReg. No. 140 of 28 December, 1992, p. 1280>), that Art. 3, para. 4 of the EC Treaty imposes strict limits upon the activities of the Community. It said that the requirement for powers to be assigned by means of treaties has always been a fundamental element of Community law, and that while the attribution of powers to the individual States is the general rule, the attribution of powers to the Community is the exception.

The EC Treaty also draws a clear distinction between the nature and intensity of the powers attributed. Art. 105 to Art. 109 m of the EC Treaty specify the three-stage process of monetary union, giving details of the conditions governing its establishment and its increasing functions; the single economic policy, on the other hand, remains primarily a matter for co-ordination (Art. 3 a, Art. 102 a ff., EC Treaty). In certain areas of activity (Art. 3, sub-paras. m, n, o, p and s of the EC Treaty), the Community shall be confined to “promotion” or making a “contribution”; the only Community measures permitted in this context are those which further co-operation between Member States or which enhance or extend action taken by them in such areas (see, on Art. 126, Art. 128 and Art. 129 of the EC Treaty, the conclusions drawn by the President of the European Council in Edinburgh, id., p. 1281, Footnote 1). In the new provisions contained within Art. 126 to Art. 129 of the EC Treaty, the activities of the EC in the fields of education, vocational training, youth, culture and public health are restricted to encouragement of co-operation between Member States and to support for their actions; in these areas harmonisation of the legal and administrative provisions of the Member States is expressly precluded. For this reason, Art. 235 of the EC Treaty may not be used to justify measures of harmonisation in the sense of the specific objectives of these Articles (as stated by the European Council in Edinburgh, id.).

b) Art. F, para. 3 of the Maastricht Treaty does not breach or disturb this system of regulations. The requirement of sufficient statutory definition of the sovereign rights granted, and therefore of parliamentary responsibility for their granting, would, however, be violated if Art. F, para. 3 of the Maastricht Treaty were applied to grant an exclusive competence for jurisdictional conflicts to the European Union as a community of sovereign States. Art. F, para. 3 of the Maastricht Treaty does not, however, empower the Union to acquire by itself the financial or other means it believes it requires; Art. F, para. 3 merely states the political intention that the Member States forming the Union wish to provide it, within the scope of the required procedures, with the means necessary to attain its objectives and carry through its policies. If European institutions were to interpret and administer Art. F, para. 3 of the Maastricht Treaty in a manner which conflicts with its substance, which has been assumed into the German Act of Consent, such conduct would not be covered by the Act of Consent and would therefore not be legally binding within Germany, which is one of the Member States. German State institutions would be forced to refuse compliance with any legal instruments based upon an interpretation of Art. F, para. 3 of the Maastricht Treaty of this nature.

b1) The very fact that there is no point in the Maastricht Treaty at which it is clear that the contracting parties have agreed to establish the Union as an independent legal entity with powers of its own conflicts with the view that an exclusive competence for jurisdictional conflicts has been established. According to the interpretation applied by the Federal Government, the Union

does not have a distinct legal personality either in terms of its relationship with the European Communities or of its relationship with the Member States. This interpretation was confirmed by Mr. Dewost, the Director-General, during the oral hearing.

b2) It is also not possible to deduce the existence of an exclusive competence for jurisdictional conflicts from the wording of Art. F, para. 3 of the Maastricht Treaty, which states that the Union shall provide "itself" with the means necessary to attain its objectives and carry through its policies. The Union provides "itself" with means in the same way as it sets "itself" objectives in Art. B: the Maastricht Treaty construes the Union as a name for the Member States acting in concert, not as an independent legal entity. It is the Member States which, through the Treaty, provide the means and set the objectives for the Union.

b3) An interpretation of Art. F, para. 3 of the Maastricht Treaty which assigned an exclusive competence for jurisdictional conflicts to the Union would also conflict with the intention expressed throughout by the contracting parties to set forth the principle of limited individual powers in the Treaty and to limit individual powers clearly. If it were used as a basis for an exclusive competence for jurisdictional conflicts, Art. F, para. 3 would overlap with and render largely irrelevant the entire system of powers provided for by the Maastricht Treaty, including the Treaties Establishing the European Economic Community, the subsequent Treaties, and any acts modifying or supplementing such treaties. Art. M of the Maastricht Treaty also conflicts with an interpretation of this nature, as it precludes implicit amendment of the existing Treaties by the Maastricht Treaty.

b4) To deduce an exclusive competence for jurisdictional conflicts from Art. F, para. 3 of the Maastricht Treaty would also be in conflict with the conscious decision of the Member States to exclude foreign and security policy and justice and home affairs from the supranational decision-making structure. If it were possible to achieve the objectives listed in Art. B, second and fourth indent of the Maastricht Treaty by the sovereign powers of the Union with reference to Art. F, para. 3 of the Treaty, it would be incomprehensible why Art. K.9 renders dependent upon prior ratification by the Member States the simplified reassignment of some elements of justice and home affairs to the jurisdiction of the European Community. Accordingly, Art. B, 5th indent of the Maastricht Treaty provides, in respect of the further development of the "acquis communautaire", for an examination to be carried out in accordance with the procedure contained in Art. N, para. 2 of the Maastricht Treaty (i.e., in the same way as for those Treaty provisions for which revision is provided), in order to determine to what extent the policies and forms of co-operation introduced by this Treaty need to be revised to ensure the effectiveness of Community mechanisms and institutions.

b5) Finally, Art. F, para. 3 of the Maastricht Treaty lacks the supplementation under procedural law which could convert it into a standard on competence. For standards on competence, the Community treaties assign to specific institutions specific rights to pass resolutions and regulate decision-making procedures, in particular in terms of the participation of other institutions; furthermore, the majority required to pass a resolution is often also set down. The provision for the expansion of powers contained in Art. 235 of the Treaty Establishing the European Economic Community is an example of this. Art. F, para. 3 of the Maastricht Treaty does not exhibit a structure of this nature.

The complainant may also not resort to Art. 145 and Art. 148, para. 1 of the EC Treaty to supply Art. F, para. 3 of the Maastricht Treaty with the determination of institutional jurisdiction and of the decision-making procedure which are imperative for a standard on competence. Both of these provisions are valid within the scope of the EC Treaty only; the only way in which they may become valid with regard to the other pillars of the Union is by means of express orders issued under the Treaty. The standards of reference contained in Art. J 11, para. 1 and Art. K 8, para. 1 of the Maastricht Treaty do not, however, mention Art. 145 and Art. 148, para. 1 of the EC Treaty. These provisions cannot elevate Art. F, para. 3 to the status of an exclusive competence

for jurisdictional conflicts, even within the scope of the EC Treaty. Art. 145, 2nd indent of the EC Treaty does not provide the Council with a power to take decisions; it assumes that any such right is established otherwise "in accordance with the provisions of this Treaty" (see also Art. 4, para. 1, sentence 2 of the EC Treaty). Art. 148, para. 1 of the EC Treaty provides as a collective norm [Auffangnorm] for other decision-making powers of the Council to be subject to a resolution being passed by a simple majority, but does not affect the basic principle of the grant of specific powers.

b6) Accordingly, it is not just the Federal Government or the Federal Parliament, but also the Member States and the Commission of the European Communities which have expressed the legal opinion that the Maastricht Treaty does not establish any exclusive competence for jurisdictional conflicts for the Union. The conclusions drawn by the President of the European Council in Edinburgh on 11 and 12 December, 1992 do not conflict with this.

In its response to the constitutional complaints, the Federal Government explained that Art. F, para. 3 of the Maastricht Treaty does not establish an exclusive competence for jurisdictional conflicts for the Union, but contains simply a declaration of intent as to the programme to be pursued. Ms. Seiler-Albring, the Minister of State in the Department for Foreign Affairs, described the provision before the "European Union (Maastricht Treaty)" Special Committee of the Federal Parliament as a declaration of intent which has still to be finalised in the course of negotiations (see Protocol of the 2nd Session of the Special Committee on 29 October, 1992, Protocol 2/15).

In the recommended resolution and report of the "European Union (Maastricht Treaty)" Special Committee of 1 December, 1992 (BT-Drs. 12/3895), the German Federal Parliament was of the same opinion:

The committee emphasised the view that Article F, paragraph 3, according to which the Union shall provide itself with the means necessary to attain its objectives and carry through its policies, does not establish an exclusive competence for jurisdictional conflicts for the Union. It stated that this is a declaration of intent, rather than a standard on competence. Article F, paragraph 3 should, it argued, be read in conjunction with the final paragraph of Article B, which links the activities of the Union with the conditions and the timetable set out in the Treaty and with respect for the principle of subsidiarity. (id., p. 17)

The Federal Government has ascertained and informed the Senate that its opinion on the interpretation of Art. F, para. 3 of the Maastricht Treaty is shared by the other Member States.

The Commission shares the view expressed by Mr. Dewost, the Director-General, during the oral hearing, that Art. F, para. 3 of the Maastricht Treaty does not establish any powers, and certainly not an exclusive competence for jurisdictional conflicts, on behalf of the Union. The conclusions drawn by the President of the European Council in Edinburgh on 11 and 12 December, 1992 (Part A, Annex 1 <BullBReg. No 140 of 28 December, 1992, p. 1280 ff.>) do not conflict with this interpretation. There is indeed a statement in the conclusions, made in conjunction with the principle of subsidiarity, to the effect that this principle must not bring into question the rule set down in Art. F, para. 3. However, this statement is made in conjunction with a general statement to the effect that the principle of subsidiarity must not be applied in such a way as to affect the established principles of Community law (principle of limited individual powers, maintenance of the acquis communautaire, primacy of Community law). An exclusive competence for jurisdictional conflicts held by the Community is not included in these established principles. It is also expressly acknowledged, in direct association with this statement, that Community powers must be conferred by the Treaty, as specified by Art. 3 b, para. 1 of the EC Treaty. The Guidelines for application of the principle of subsidiarity also emphasise, with reference to Art. 3 b, para. 1 of the EC Treaty, the principle of powers being allocated by means of the Treaty. Above all, however, the Heads of State or of Government which make up the European Council have confirmed the general interpretation of the Member States, pursuant to which the States

themselves will retain control over the Treaties and their development (see BVerfGE 75, 223 <242>) (Part B, Annex 1 of the conclusions drawn by the President of the European Council, id., p. 1290).

c) In Art. B of the Maastricht Treaty, the Member States have set objectives for the European Union and specified that these objectives may only be achieved as provided in the Maastricht Treaty. Furthermore, they have modified the powers and functions of the three European Communities, and have limited European governmental entities and institutions to the implementation of these powers and the fulfilment of these functions (see Art. E of the Maastricht Treaty and Art. 3 b para. 1, Art. 4 para. 1 sentence 2, Art. 4 a, and Art. 4 b of the EC Treaty). Any amendments and additions to these provisions on powers and functions are subject to formal agreement in advance from the Member States, while there are only limited prospects for a development in law based on the existing Treaty (BVerfGE 75, 223 <240 ff.>). Accordingly, Art. B, 5th indent of the Maastricht Treaty creates a link between further development of the acquis communautaire and the procedure for amendment of the treaties under Art. N of the Maastricht Treaty. Besides the formal procedure for modifications of the treaties (Art. N of the Maastricht Treaty), the agreement of the Member States may also be given under an abbreviated procedure (see in particular Art. K. 9 of the Maastricht Treaty, Art. 8 e para. 2, Art. 201 para. 2 of the EC Treaty). Each of these treaty amendments or additions requires, however, the agreement of the Member States in accordance with their respective constitutional requirements. Art. 23, para. 1, sentence 2 of the GG requires a federal law to be enacted for any further assignment of sovereign rights. Amendments to the treaty principles upon which the Union is founded, and comparable regulations which would amend or add to the content of the GG or make such amendments or additions possible, require, pursuant to Art. 23, para. 1, sentence 3 and Art. 79, para. 2 of the GG, the agreement of a two-thirds majority of the members of the Federal Parliament.

d) To the extent that it governs the development of European monetary union and the maintenance thereof, the Maastricht Treaty is, in the steps towards implementation which it contains, also subject to parliamentary accountability.

d1) Pursuant to Title VI, Chapter 2 of the EC Treaty, the monetary union is designed as a community based on stability [Stabilitatsgemeinschaft], the primary objective of which is to maintain price stability (Art. 3 a para. 2, Art. 105 para. 1 sentence 1 of the EC Treaty). For this reason, pursuant to Art. 109 e, para. 2, subpara. a, 2nd indent of the EC Treaty, each Member State shall, prior to the beginning of the second stage for achieving economic and monetary union, adopt, if necessary, multiyear programmes intended to ensure the lasting convergence necessary, in particular with regard to price stability and sound public finances. Pursuant to Art. 109 e, para. 2, subpara. b of the EC Treaty, the Council shall assess the progress made with regard to economic and monetary convergence. The factual criteria to be applied to the progress made with regard to economic and monetary convergence are explained in Art. 109 j, para. 1 of the EC Treaty, and are quantified in greater detail in the Protocol on the Convergence Criteria. Art. 6 of the Protocol makes the adoption of provisions to lay down the details of the convergence criteria subject to the unanimous adoption of a proposal by the Council. Compliance with the convergence criteria is a preliminary condition which must be fulfilled before a Member State may progress to the third stage of the monetary union.

d2) Although it is not at the moment possible to foresee in detail the course which the monetary union will take in terms of economic importance, the participating Member States, and the time schedule, the Act of Consent to ratify the Maastricht Treaty is sufficient to fulfil the requirements of parliamentary responsibility.

(1) The Maastricht Treaty constitutes an agreement under international law establishing a compound of States of the Member States which is oriented towards further development. The inter-governmental community is dependent upon the Treaty continually being constantly

revitalised by the Member States; the fulfilment and development of the Treaty must ensue from the will of the contracting parties. Art. N of the Maastricht Treaty therefore provides for all Member States to submit proposals for amendments of the Treaties, which amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements. A conference will be convened in 1996, at which representatives of the governments of the Member States will examine provisions of the Treaty for compliance with the objectives set out in Arts. A and B; these objectives include taking decisions as closely as possible to the citizen, achieving objectives as provided in the Maastricht Treaty only, and the principle of subsidiarity. However, the implementation of valid treaties is also dependent upon the willingness of the Member States to co-operate, and the economic and monetary union for which Art. 102 a ff. of the EC Treaty provides can only be realised, because of the mutual dependence of the monetary union agreed upon under the Treaty and the presupposed development towards economic union, if there is a serious willingness to co-operate on the part of all Member States.

Against the background of this mutual dependence of the contents of the Treaty and the actual convergence which must occur, the date specified for the beginning of the third stage of the economic and monetary union (Art. 109 j, para. 4 of the EC Treaty) should be considered as an objective rather than a date which can be enforced legally. It is true that the Member States are obliged under European law to make a serious effort to achieve the date set down in the Treaty. However, as Mr. Dewost, the Director-General, confirmed during the oral hearing, it is the established tradition of the Community that the purpose behind setting dates lies in prompting and accelerating the development of integration, rather than in the achievement of such dates under any circumstances (see, for example, Art. 8 a of the Treaty Establishing the European Economic Community, which was introduced by the Single European Acts, and the associated declaration made by the Closing Conference of the Representatives of the Governments of the Member States of 17/28 February, 1986).

The Treaty Establishing the European Coal and Steel Community also puts the further development of the European Union into the hands of the Member States. Pursuant to Art. A of the Maastricht Treaty, the Treaty Establishing the European Coal and Steel Community is one of the bases of the European Union; however, pursuant to Art. 97 of the Treaty Establishing the European Coal and Steel Community, this Treaty shall terminate in the year 2002, which means that the Member States will have to reach a new agreement.

(2) In addition, the obligation imposed upon the European Central Bank to make the maintenance of price stability its primary objective (Art. 3 a para. 2, Art. 105 para. 1 of the EC Treaty) is also sufficient to impose a separate constitutional obligation upon the Federal Republic of Germany as a Member State of the European Community (Art. 88, sentence 2 of the GG). This constitutional obligation is significant within the Community to the extent that the European Community is a community of laws and the principle of sincere co-operation applies within it pursuant to Art. 5 of the Treaty Establishing the European Economic Community This principle imposes not only obligations upon the Member States in their relationship with the Community, but also corresponding obligations on the institutions of the Community to comply with such principle in their relations with the Member States (see the Order of the European Court of Justice of 13 July, 1990, in case C-2/88 Imm., Slg. 1990 I, p. 3367). Mr. Dewost, the Director-General, explained this principle of sincere co-operation during the oral hearing, saying that the institutions of the Community would always take express indications by the Member States of conflicts with constitutional law seriously, and would endeavour to seek a solution which complied with the constitutional law of the Member States.

(3) The concern of the German Federal Parliament to reserve the right to make its own evaluation on the transition to the third stage of economic and monetary union, and therefore to resist any relaxation of the criteria for stability, may be based in particular on Art. 6 of the Protocol on the Convergence Criteria. In Art. 6, the regulation of details of the convergence

criteria set down in the Maastricht Treaty is made subject to a unanimous decision by the Council, notwithstanding the definitions given in the protocol. This confirms on the one hand that the criteria listed in Art. 109 j, para. 1 of the EC Treaty are not as such available to the Council, in particular since otherwise it would not be possible to realise the basic concept of the monetary union as a community based on stability (sixth consideration of the Preamble to the Maastricht Treaty; Art. 3 a paras. 2 and 3, Art. 105 para. 1 of the EC Treaty). It is also clear from Art. 6 of the Protocol on the Convergence Criteria that the decision on whether the individual Member States fulfil the convergence criteria for the introduction of a single currency, which is to serve as the basis for the Council's recommendations, may not bypass these criteria by a mere majority vote. In fact, the requirement for a majority can only mean that within the remaining scope for evaluation, assessment and forecasting, differences of opinion may be eliminated by a majority decision. The same applies when the Council, meeting in the composition of the Heads of State or of Government, has to use these recommendations as the basis for its majority decisions pursuant to Art. 109 j, paras. 3 and 4 of the EC Treaty. Notwithstanding the scope for evaluation, assessment and forecasting to which the Council is entitled, the text of the Treaty does not allow the Council to release itself from the basis for its decisions contained in the recommendations pursuant to Art. 109 j, para. 2 of the EC Treaty, and therefore from the convergence criteria specified by Art. 109 j, para. 1 of the EC Treaty and defined more precisely in the Protocol on the Convergence Criteria. This provides sufficient assurance that the convergence criteria cannot be "relaxed" without German consent (and therefore without substantial input from the German Federal Parliament).

(4) The Protocol on the Transition to the Third Stage of Economic and Monetary Union also states that the irreversible entry into the third stage is dependent upon "preparatory work" to be performed by the Member States concerned. This preparatory work is governed by the respective national constitutional laws, which may subject it to parliamentary prerogative (Oppermann, Der Maastrichter Unionsvertrag--Rechtspolitische Wertung, in: Hrbek (Ed.), Der Vertrag von Maastricht in der wissenschaftlichen Kontroverse, 1993, p. 103 <116> with reference to Pescatore, Die "neue europaische Architektur"--Maastricht und danach?, 1992, which has now been reprinted in: Die Weiterentwicklung der EG nach Maastricht, Cahiers de l'IDHEAP No. 90 < 1992>, p. 19 <27>). This is another manner in which the German Federal Parliament can exercise its will to allow the monetary union to start only if conditions of strict stability criteria are fulfilled, within the framework established by Art. 23, para. 3 of the GG, the resolution of 2 December, 1992 on the Economic and Monetary Union as a Community based on Stability (which is to be implemented within the sense of the duty of allegiance to governmental institutions), and the letter of 2 April, 1993 from the German Finance Minister.

(5) In conclusion, the Federal Republic of Germany is not, by ratifying the Maastricht Treaty, subjecting itself to an uncontrollable, unforeseeable process which will lead inexorably towards monetary union; the Maastricht Treaty simply paves the way for gradual further integration of the European Community as a community of laws. Every further step along this way is dependent either upon conditions being fulfilled by the parliament which can already be foreseen, or upon further consent from the Federal Government, which consent is subject to parliamentary influence.

e) Even after transition to the third stage, development of the monetary union is subject to foreseeable standards and thus to parliamentary accountability. The Maastricht Treaty governs the monetary union as a community committed to long-term stability, in particular to monetary stability. It is true that it is not possible to foresee whether it will actually be possible, using as a basis the provisions contained within the Maastricht Treaty, to maintain long-term stability for the ECU currency. The fear that the efforts to achieve stability will fail, which could then result in further concessions in terms of monetary policy on the part of the Member States, is, however, too intangible a basis upon which to claim that the Maastricht Treaty is legally vague. The Maastricht Treaty sets long-term standards which establish the goal of stability as the yardstick by

which the monetary union is to be measured, which endeavour, by institutional provisions, to ensure that these objectives are fulfilled, and which finally do not stand in the way of withdrawal from the Community as a last resort if it proves impossible to achieve the stability sought. Pursuant to Art. 105, para. 1 of the EC Treaty, the primary objective of the ESCB shall be to maintain price stability. Art. 107 of the EC Treaty provides the ESCB with independence to exercise the powers and carry out the tasks and duties conferred upon it. The sixth consideration in the Preamble to the Maastricht Treaty demonstrates the Member States' resolve to establish economic and monetary union on the basis of a stable currency. Art. 2 of the EC Treaty states that the promotion of non-inflationary growth and of a high degree of convergence of economic performance is part of the task of the European Community. Art. 3 a, para. 2 of the EC Treaty states that the definition and conduct of a single monetary policy and exchange rate policy for which the Treaty provides shall have the primary objective of maintaining price stability. Furthermore, the EC Treaty includes provisions to enable the Member States, in their economic policy, to support and promote the stability of the European currency. Art. 3 a, para. 3 of the EC Treaty specifies stable prices, sound public finances and monetary conditions, and a sustainable balance of payments as guiding principles for the activities of the Member States (see also Art. 102 a, sentence 2 of the EC Treaty). The economic policies of the Member States are declared to be a matter of common concern, and their broad guidelines are to be co-ordinated and regulated by means of a recommendation from the Council (Art. 103 of the EC Treaty). Art 104 of the EC Treaty prohibits national central banks from granting overdraft facilities or any other type of credit facility to bodies governed by public law or public undertakings of Member States, and from purchasing debt instruments directly from them. Except where prudential considerations are concerned, bodies governed by public law or public undertakings of Member States shall not be entitled to privileged access to financial institutions (Art. 104 a of the EC Treaty). Art. 104 b of the EC Treaty excludes the Community and any Member State from liability for and from assumption of the commitments of bodies governed by public law or of public undertakings of another Member State, which means that it is not possible for a Member State to evade the consequences of questionable financial policy. Art. 104 c of the EC Treaty, together with the Protocol on the Excessive Deficit Procedure, obliges the Member States to avoid excessive governmental deficits and subjects government debt to monitoring by the Commission. The Council may, acting on a recommendation from the Commission, decide that an excessive deficit exists in a Member State, and may take measures necessary to remedy that situation.

This concept of the monetary union as a community of stability is the basis and object of the German Act of Consent. If the monetary union were not able to continually develop that stability existing upon transition to the third stage as provided by the mandate of stability which has been agreed upon, it would move away from the concept upon which the Maastricht Treaty is based.

f) Finally, the objective relationship between the monetary union and an economic union cannot serve as a basis for arguing that the content of the Treaty is indefinite. There may be justifiable grounds for suggesting that, in political terms, the monetary union may be implemented practically only if it is supplemented immediately by an economic union which exceeds simple co-ordination of the economic policies of the Member States and of the Community. In order for this addition to be made, however, the procedure for the amendment of Treaties pursuant to Art. N of the Maastricht Treaty would have to be completed, which would require further parliamentary consent. It is uncertain at present whether the monetary union will lead to an economic union of this nature, or whether the Member States' lack of desire to establish a Community economic policy and a “dominant budget” of the Community which would be associated with it (see Seidel, Zur Verfassung der Europaischen Gemeinschaft nach Maastricht, EuR 1992, p. 125 <134>) will necessitate a renunciation of the monetary union in the future and a corresponding amendment of the Treaty.

In addition to this, influential parties have pointed out that, in the final instance, a monetary union, particularly one between States which are oriented towards active economic and social

policies, may be realised only in conjunction with a political union which embraces all the essential functions of public finance, and that it cannot be achieved independently of a political union or simply as a preliminary stage towards one. Prof. Dr. Schlesinger, the Chairman of the Bundesbank, expressed this view at length during the oral hearing. This interpretation is also supported by the progressive development of a nationally-unified Germany during the 19th century, in which political unification of the national State was not preceded by unification of the currency, but in fact unification of the currency through the Monetary Act (Münzgesetz) of 9 July, 1873 (RGBl. p. 233) followed establishment of the Northern German Federation and of the German Reich in 1871. The German Customs Association had actually been in existence for several decades before, and there were also commercial treaties and economically-relevant agreements, but there was neither a unified currency nor a unit of currency (see E.R. Huber, Deutsche Verfassungsgeschichte seit 1789, Vol. IV <1969>, p. 1053 f.).

The question raised, therefore, is a political one, rather than one of constitutional law. The decision to agree upon monetary union and to implement it without at the same time or immediately thereafter entering into political union is a political decision for which the relevant governmental institutions must assume political responsibility. If it becomes clear that the desired monetary union cannot actually be achieved without political union (which is not desired at present), then a new political decision will have to be made as to how to proceed. There is room in a legal sense for a decision of this nature, because according to the current version of the Treaty, the monetary union is no more likely to bring automatically a political union in its wake than it is to bring an economic union; indeed, in order to establish a political union, the Treaty would have to be amended, and such amendment cannot be effected without a decision being made by the governmental institutions of the nation States, including the German Federal Parliament. Within the limits of what is permissible under constitutional law, political responsibility must be assumed in turn for this decision.

3. The assignment by the Maastricht Treaty of tasks and powers to European governmental institutions leaves the German Federal Parliament with sufficient tasks and powers of substantial political import. The Treaty provides a sufficiently reliable limit for the impetus towards further integration contained in it; this limit maintains the balance between the structure for governmental decisions within the European inter-governmental community and the rights to reservations on decisions and to participation in decisions held by the German Federal Parliament.

a) The Federal Parliament's, and therefore the electorate's, opportunities for exercising influence on the implementation of sovereign rights by European governmental institutions are, however, almost eliminated to the extent that the European Central Bank is provided with independence from the European Community and the Member States (Art. 107 of the EC Treaty). A substantial political sphere which supports individual liberty by maintaining the value of the currency, and influences public finances and those areas of politics dependent on them by controlling the money supply, has been withdrawn from the authority of the holders of sovereign rights and (without an amendment to the Treaty) from legislative control over functions and procedures. The fact that most of the functions of monetary policy have been rendered independent and assigned to an independent central bank releases national sovereign powers from direct State or supranational parliamentary control, in order to ensure that the currency is not vulnerable to pressure groups or to holders of political office seeking re-election (see Government Draft on the Bundesbank Act, BT-Drs. 2/2781, p. 24 f.).

This restriction of the democratic legitimation which derives from the electorate in the Member States does affect the principle of democracy, but should be regarded as one of those modifications of this principle for which Art. 88, sentence 2 of the GG provides and which is therefore compatible with Art. 79, para. 3 of the GG. The amendment made to Art. 88 of the GG to take account of the European Union allows for powers of the Bundesbank to be assigned to a European Central Bank, provided the latter complies “with the strict criteria of the

Maastricht Treaty and with the Constitution of the European System of Central Banks regarding the independence of the Central Bank and the priority to be given to monetary stability" (Recommendation for a Resolution and Report from the "European Union <Maastricht Treaty>" Special Committee of 1 December, 1992, BT-Drs. 12/3896 p. 21). The clear intention of the legislator amending the constitution was therefore to create a basis in constitutional law for the monetary union for which the Maastricht Treaty provides, but at the same time to restrict to this case only the independent powers and rights associated with it which are described here. This modification of the principle of democracy, which is designed to secure the confidence of making payment that is placed in a currency, is justifiable, because it takes account of the special factor, established in the German system and also scientifically proven, that an independent central bank is more likely to protect monetary value, and therefore the general economic basis for national budget policy and private planning and disposition, while maintaining economic liberty than are sovereign governmental institutions. Such institutions are, in their scope to act and the means by which they may act, dependent to a large extent upon the money supply, the value of money, and the short-term consent of the political powers. To this extent the fact that monetary policy has been rendered independent and placed within the jurisdiction, which cannot be assigned to other political fields, of an independent European Central Bank, satisfies those requirements under constitutional law which have to be satisfied before the principle of democracy may be modified (see BVerfGE 30, 1 <24>; 84, 90 <121>).

b) Otherwise, the functions and powers of the European Union and of the Communities which belong to it are, as has been shown, described in the Treaty and therefore in the German Act of Consent in terms of specific elements, which means that the far-reaching objectives stated in the Preamble and in Art. B of the Maastricht Treaty do not justify the exercise of sovereign rights, but simply confirm the political objective of realising an ever closer union among the peoples of Europe. The Maastricht Treaty therefore complies with the principle that arises from the increasing degree of integration, i.e., that the scope to act of European governmental institutions should not only be oriented towards particular objectives, but should also be set down in terms of the actual means available for it. The functions and powers of such institutions should, therefore, be objectively limited.

The Maastricht Treaty and in particular the EC Treaty adhere to the principle of limited individual powers (see 2.a above). Pursuant to this principle, it is indeed possible for an individual provision which accords functions or powers to be interpreted in the context of the objectives of the Treaty; however, this objective does not by itself constitute sufficient grounds for the establishment or extension of functions or powers (H.P. Ipsen, Europaisches Gemeinschaftsrecht, 1972, p. 559). Furthermore, by its express references to the requirements for an amendment to the Treaty (Art. N) or for an extension to the it (Art. K 9), the Maastricht Treaty distinguishes between development of the law contained in the Treaties (see BVerfGE 75, 223 <240 ff.> on judicial development of the law) and law-making which exceeds the limits of the Treaties and is not covered by the present law of treaties. This is the measure which Art. 23, para. 1 of the GG adopts in its requirement that an Act of Consent be passed with regard both to amendments to the treaty principles upon which the European Union is based and to comparable regulations.

The fact that the Treaties establishing the European Communities on the one hand set down defined factual circumstances under which sovereign rights are assigned, and on the other hand regulate amendments to Treaties under one regular and one simplified procedure, constitutes a distinction which is also important for the interpretation of the individual powers in the future. If to date dynamic expansion of the existing Treaties has been based upon liberal interpretation of Art. 235 of the EEC Treaty in the sense of a "competence which rounds off the Treaty" [Vertragsabrundungskompetenz], upon considerations of the implied powers of the European Communities, and upon interpreting the Treaty in the sense of the maximum possible exploitation of the Community's powers ("effet utile") (see Zuleeg, in: von der

Groeben/Thiesing/Ehlermann, EWG-Vertrag, 4th Ed. 1991, Art. 2, Annotation 3), when standards of competence are being interpreted by institutions and governmental entities of the Communities in the future, the fact that the Maastricht Treaty draws a basic distinction between the exercise of limited sovereign powers and amendment of the Treaty will have to be taken into consideration. Thus interpretation of such standards may not have an effect equivalent to an extension of the Treaty; indeed, if standards of competence were interpreted in this way, such interpretation would not have any binding effect on Germany.

c) The interpretation of this principle of limited individual powers is clarified and restricted still further by the principle of subsidiarity. The principle of subsidiarity is established for the European Community in Art. 3 b, para. 2 of the EC Treaty; the reference to it in the final paragraph of Art. B of the Maastricht Treaty extends it to policies and forms of co-operation in the Union not governed by the EC Treaty, and it is also implicit in Art. K 3, para. 2, letter b of the Maastricht Treaty. Individual powers, i.e. Art. 126, Art. 127, Art. 128, Art. 129, Art. 129 a, Art. 129 b, Art. 130, and Art. 130 g of the EC Treaty, also restrict Community activities to amendment of the policies of the Member States (which in principle take precedence).

The principle of subsidiarity does not, therefore, establish any powers for the European Community; in fact it limits the implementation of powers which have already been granted otherwise (European Council in Edinburgh, conclusions drawn by the President, id., p. 1281). Pursuant to Art. B, para. 2 of the Maastricht Treaty, the objectives of the Union may only be achieved as provided in the Treaty and in accordance with the conditions and the timetable set out therein; the principle of subsidiarity must also be taken into consideration. Accordingly, Art. 3 b, para. 1 of the EC Treaty names the conferring of powers by Treaty, the exercise of which is linked to the principle of subsidiarity by Art. 3b, para. 2 of the EC Treaty, as the condition to be fulfilled before the European Community may act.

Therefore, if a power to act is conferred by Treaty, the principle of subsidiarity shall be used to determine whether and how the European Community may act. If the Community legislator wishes to exercise a law-making power allocated to it, it must, in the first instance, ascertain and demonstrate in detail pursuant to Art. 190 of the EC Treaty that the objectives of the action under consideration could not be achieved adequately by measures taken on a national level by the Member States. The findings must then justify the subsequent conclusion that, considering the extent or the effects of such action, the objectives could be better achieved on the Community level.

The principle of subsidiarity, the observance of which is to be monitored by the European Court of Justice, is intended to protect the national identity of the Member States and to preserve their powers (European Council in Edinburgh, id., p. 1280 f.). The extent to which the principle of subsidiarity may counteract erosion of the jurisdiction of the Member States, and therefore reduction of the functions and powers of the Federal Parliament, depends largely upon the practice of the Council as the actual law-making institution in the Community (along with the case law of the European Court of Justice relating to the principle of subsidiarity). The Government of the Federal Republic of Germany must apply its influence in favour of a strict interpretation of Art. 3 b, para. 2 of the EC Treaty, and therefore fulfil the constitutional obligation imposed upon it by Art. 23, para. 1, sentence 1 of the GG. For its part, the Federal Parliament can affect the practice of the Council and influence that practice in the sense of the principle of subsidiarity via its right under Art. 23, para. 3 of the GG to participate in the process of forming German political will. By so doing, the Federal Parliament too is fulfilling a constitutional obligation imposed upon it by Art. 23, para. 1, sentence 1 of the GG. It must also be anticipated that the Federal Council will adopt the principle of subsidiarity (see Goppel, Die Bedeutung des Subsidiaritatsprinzips, EuZW 1993, p. 367).

d) The third fundamental principle of the constitution of the Community is the principle of reasonableness, which is governed by Art. 3 b, para. 3 of the EC Treaty. In the first instance, this

principle includes a fundamental prohibition of excess; however, it may also serve to limit, within the context of a compound of States not organised on a State level, the intensity of Community measures within the meaning of Art. F, para. 1 of the Maastricht Treaty, and thereby protect the national identity of the Member States and the responsibilities and powers of their parliaments against excessive European regulation. The principle of reasonableness established by Art. 3 b, para. 3 of the EC Treaty is, in contrast to the principle of subsidiarity in the more restricted sense of Art. 3 b, para. 2 of the EC Treaty, applicable to all measures taken by the Community, whether or not they are based upon "exclusive" or any other competences held by the Community.

4. In conclusion, the Maastricht Treaty regulates the restricted powers to act of the governmental entities and institutions of the three European Communities; the exercise of these powers varies, based on which action may be taken and the intensity of the regulations. The Treaty grants legally-definable sovereign rights, which grant has received parliamentary approval and thus democratic legitimation as well. The development of integration established in the Maastricht Treaty and in the Treaties on the European Communities is derived not from general objectives, but from concrete functions and powers to act.

D.

The Maastricht Treaty grants further substantial functions and powers to European institutions, in particular by extending the powers of the EC and by incorporating the monetary policy. These functions and powers have not, as yet, been supported at the treaty level by a corresponding intensification and extension of the principles of democracy. The Maastricht Treaty establishes a new level of European unification, the purpose of which, according to the express intention of the contracting parties, is to enhance further the democratic and efficient functioning of the institutions (Preamble, 5th consideration). According to this consideration, democracy and efficiency cannot be separated from one another, and it is anticipated that enhancement of the principle of democracy will improve the functioning of all institutions on a Community level. At the same time, the Union respects, pursuant to Art. F, para. 1 of the Maastricht Treaty, the national identities of its Member States, whose systems of government are founded on the principles of democracy. To this extent the Union protects and builds upon those principles of democracy which already exist in the Member States.

Further development of the European Union cannot be removed from this context. The legislator amending the constitution took this context into account in connection with this treaty by the addition of Art. 23 to the GG, which refers expressly to the development of a European Union committed to the principles of democracy, the rule of law, social principles, federalism, and the principle of subsidiarity. It is therefore crucial, both from the point of view of treaty law and that of constitutional law, that the principles of democracy upon which the Union is based are extended in step with its integration, and that a living democracy is retained in the Member States while the process of integration is proceeding.