

Folketinget — Europaudvalget

Christiansborg, den 31. januar 2007

Folketingets repræsentant ved EU

Til

udvalgets medlemmer og stedfortrædere

Den tyske forbundsdag har indgået en aftale om forbedret information fra den tyske forbundsregering

Resumé

I september 2006 trådte en aftale i kraft mellem den tyske forbundsdag og den tyske forbundsregering. Den nye procedure indfører en forstærket notifikations- og informationsforpligtelse om EU-sager.

Aftalen forskriver, at den tyske forbundsregering bl.a. skal sende alle nye EU-dokumenter i dens besiddelse (herunder dokumenter fra Kommissionens og Rådets arbejdsgrupper) samt interne notater udarbejdet af den tyske faste repræsentation, til den tyske forbundsdag. Hertil kommer, at forbundsdagen skal gives adgang til EU databaser samt kompromisforslag fremsat af andre EU medlemsstater.

Den 28. september 2006 indgik den tyske forbundsdag en aftale med forbundsregeringen om en ny procedure vedrørende kontrollen af forbundsregeringens EU-politik. Den nye procedure er et direkte resultat af forbundsdagens vedtagelse af forfatningstraktaten og dens bestemmelser om en forstærket kontrol med nærhedsprincippet. Selvom forfatningstraktaten ikke er trådt i kraft, har forbundsdagen alligevel besluttet at indføre den nye samarbejdsaftale.

Den nye procedure indfører en forstærket notifikations- og informationsforpligtelse om EU-sager.

Aftalens bestemmelser

Notifikation

Aftalen forskriver, at forbundsregeringen er forpligtet til at notificere forbundsdagen – i god tid – om alle verserende EU-sager, herunder søjle II (den fælles udenrigs- og sikkerhedspolitik) og søjle III (den mellemstatslige retspolitik) sager.

Hertil kommer, at forbundsregering er forpligtet til at notificere forbundsdagen om bilaterale såvel som multilaterale internationale forhandlinger, som er underlagt EU's kompetence. Forbundsregeringen skal informere forbundsdagen om eventuelle ændringer i "den politiske udviklingen" i EU.

Inden møder i Det Europæiske Råd og Rådet, skal forbundsdagen relevante fagudvalg orienteres. For hvert sag, der skal behandles, skal forbundsregeringen oversende en rapport til forbundsdagen baseret på Kommissionens konsekvensanalyse, samt relevante oplysninger fra andre medlemsstaterne, om forslagets mulige konsekvens.

For hvert forslag skal forbundsregeringen oversende en rapport om forslagets indhold til forbundsdagen. For så vidt angår lovgivningsinitiativer skal forbundsregeringen oversende en omfattende evaluering af forslaget, hvor der redegøres for forslagets økonomiske, finansielle, juridiske, sociale og miljømæssige konsekvenser. Der skal også redegøres for det pågældende forslag forhold til nærheds- og proportionalitetsprincippet (disse "omfattende analytiske rapporter" kan sammenlignes med den danske regerings samlenotater).

Rapporterne om ikke-lovgivningsmæssige dokumenter skal oversendes til forbundsdagen inden 10 dage fra den pågældende dokumentets vedtagelse i Kommissionen, mens rapporter om lovgivningsinitiativer skal oversendes til forbundsdagen inden påbegyndelsen af behandlingen af det pågældende forslag i Rådets organer.

Forbundsregeringen er også forpligtet til at informere forbundsdagen om andre sager af større rækkevidde, som ikke er eksplicit nævnt i aftalen. Denne forpligtelse omfatter initiativer fra forbundsregeringen, initiativer fra de tyske forbundsstater (Länder) samt om initiativer fremsat af andre medlemsstater, hvis

formål er at fremme forhandlinger i Rådet (som f.eks. kompromisforslag fremsat af Formandskabet).

Efter vedtagelsen af EU-direktiver, forordninger, beslutninger mm., er Forbundsregeringen også forpligtet til at notificere forbundsdagen herom. Hertil skal forbundsregeringen informere forbundsdagen om relevante sager ved EF-Domstolen.

Dokumenter

Ifølge aftalen skal følgende dokumenttyper, som forbundsregeringen er i besiddelse af, overføres til forbundsdagen:

- Alle dokumenter fra Kommissionen og Kommissionens tjenestegren, såfremt disse dokumenter er adresseret til forbundsregeringen. Denne forpligtelse omfatter også "udkast" til forslag og såkaldte "non-papers", som forbundsregeringen har modtaget.
- Alle dokumenter fra Rådet og Det Europæiske Råd, herunder dokumenter, som er udarbejdet i forbindelse med afholdelse af uformelle møder.
- Alle rapporter og beretninger udarbejdet i EU's institutioner.
- COREPER dokumenter og dokumenter udarbejdet i Rådets arbejdsgrupper.
- Dokumenter udarbejdet i Kommissionens konsultative organer (komiteer).
- Beretninger fra den tyske faste repræsentation om:
 - Møder i Rådets arbejdsgrupper og uformelle ministerielle møder.
 - Møder i Europa-Parlamentet.
 - Afgørelser vedtaget af Kommissionen.
 - Udkast til forslag, som endnu ikke fremsat.

Ifølge aftalen er forbundsdagen forpligtet til at betragte følgende dokumenttyper, som fortroligt:

- Dokumenter og information om uformelle initiativer – herunder udtalelser fra forbundsregeringen om verserende sager og instruktionerne til medarbejdere i den tyske faste repræsentation.

- Dokumenter fra visse Rådsarbejdsgrupper, som f.eks. "friends of the presidency", Antici-gruppen, Artikel 36 og 133 udvalg samt den speciale udvalg om landbrug.

Forbundsregeringen er også forpligtet til at give forbundsdagen adgang til EU's databaser, som er tilgængelige for forbundsregeringen.

Udtalelser fra Forbundsdagen

Ved starten af forhandlinger er forbundsregeringen forpligtet til at give forbundsdagen mulighed for at afgive en udtalelse om nye forslag eller initiativer. I denne forbindelse er Forbundsregeringen forpligtet til at notificere forbundsdagen om en dato for hvornår udtalelsen skal afgives.

Forbundsregeringen er forpligtet til at basere dens forhandlinger om udtalelsen fra forbundsdagen. Såfremt forhandlingssituationen ændre sig, skal forbundsregeringen notificere forbundsdagen, således at en ny udtalelse kan afgives.

Udtalelser kan enten vedtages af forbundsdagen i salen, ellers kan salen beslutte at bemyndige forbundsdagen Europaudvalg om at afgive en forpligtende udtalelse. Indtil nu har forbundsdagen kun i begrænset omfang benyttet sig af den eksisterende mulighed for at vedtage "bindende" udtalelser i salen eller i Europaudvalget. Det er på nuværende tidspunkt uvist, om forbundsdagen vil vedtage flere bindende udtalelser, eller om forbundsdagens Europa- og fagudvalg blot vil orientere forbundsregeringen om deres holdninger til verserende EU-sager.

Under alle omstændigheder skal det dog bemærkes, at forbundsregeringen har mulighed for at afvige fra forbundsdagens udtalelse, såfremt der er tvingende udenrigs – eller integrationsmæssige grund herfor. I sådan tilfælde er forbundsregeringen forpligtet til at informere forbundsdagen herom.

Oprettelsen af et kontor i Bruxelles

Som en konsekvens af den nye aftale har forbundsdagen oprettet et kontor i Bruxelles, som skal bistå forbundsdagen med oplysninger om verserende EU-sager. Aftalen forskriver, at den tyske faste repræsentation og ambassade, er forpligtet til at bistå kontoret i sit arbejde.

Selvom Tyskland var en af de sidste medlemsstater til at oprette et kontor for dets parlament i Bruxelles, er dens kontor i dag langt større end de øvrige nationale parlamenter. Der er faktisk tale om hele to kontorer: et i Europa-Parlamentet, som er placeret sammen med de øvrige nationale parlamenter, og et ud i byen.

I Europa-Parlamentet har forbundsdagen i øjeblikket to medarbejdere – en ”almindelig repræsentant”, som har nogenlunde de samme opgaver som Folketingets faste repræsentant, og en medarbejder i COSAC-sekretariatet. Hertil kommer, at forbundsrådet har også udsendt en medarbejder til COSAC-sekretariatet.

Som et supplement til forbundsdagens repræsentant i Europa-Parlamentet har forbundsdagen besluttet at udsende flere medarbejdere til Bruxelles. På grund af pladsmangel i Europa-Parlamentet er kontoret blevet oprettet i byen. På det eksterne kontor, som officielt skal åbnes den 5. februar 2007, er der i øjeblikket syv medarbejdere: to faste akademiske medarbejdere samt fem medarbejdere fra forbundsdagens politiske grupper. Formålet med kontoret er at bistå forbundsdagens repræsentant i Europa-Parlamentet samt at indhente oplysninger om aktuelle EU-sager gennem opbyggelsen af et politisk netværk.

Forbundsdagen har også oprettet et EU-Sekretariatet, som skal bistå forbundsdagens medlemmer om EU-sager. Dette kontor har seks medarbejdere, som bl.a. skal bistå forbundsdagen i at analysere alle de nye dokumenter, som forbundsregeringen skal oversende til forbundsdagen.

Retsgrundlag

Den nye aftale har retsgrundlag i en ny lov, som blev vedtaget med i hjemmel i den tyske forfatnings artikel 23, som forskriver, at forbundsdagen skal deltage i beslutninger fra Den Europæiske Union. Den nye lov blev vedtaget sammen med forbundsdagens vedtagelse af forfatningstraktaten, og er baseret på forfatningstraktatens bestemmelser vedrørende de nationale parlameters rolle i forbindelse med kontrollen af nærhedsprincippet. Selvom den nye lov ikke vil træde i kraft før (eller hvis) forfatningstraktaten træder i kraft, er det blevet besluttet, at aftalen mellem forbundsregeringen og forbundsdagen skal implementeres med det samme.

Hovedårsagen til at det er lykket forbundsdagen at indgå aftalen med forbundsregeringen er, at den er baseret på en eksisterende aftale mellem forbundsrådet og forbundsregeringen. Det skal her bemærkes, at som følge af Tysklands forbundssystem, har de tyske delstater en del kompetence på EU-sager (for så vidt det angår sager, hvor delstater har national kompetence). Som følge heraf, er den tyske forbundsregering forpligtet til at dele kompetence og dermed oplysninger - med delstaterne.

Under forhandlinger med forbundsregeringen har forbundsdagen argumenteret, at fordi Tyskland har et to-kamre system, skal begge kamre have adgang til samme oplysninger fra forbundsregeringen. Da forbundsregeringen allerede havde aftalt at fremsende alle relevante EU dokumenter til delstaterne gennem forbundsrådet, skulle de folkevalgte i forbundsdagen ligestilles med delstatsmedlemmer i forbundsrådet.

Med venlig hilsen

Mongin Forrest
(11168)

**Agreement
between the German Bundestag and the Federal Government
on cooperation in matters concerning the European Union
in implementation of section 6 of the Act on Cooperation
between the Federal Government and the German Bundestag
in Matters concerning the European Union**

I Notification of the German Bundestag

1. The Federal Government shall notify the German Bundestag in good time, continuously and, as a rule, in writing of all projects in the framework of the European Union (see Annex 1: list of projects).

This notification requirement shall also include the provision of information on the common foreign and security policy as well as on the European security and defence policy and notification of measures in the field of police and judicial cooperation and trade policy.

The Federal Government shall also give prior notice of bilateral and multilateral international agreements between the Federal Republic of Germany and Member States of the European Union where such agreements provide for closer cooperation in areas of policy that also fall within the sphere of responsibility of the European Union.

In addition, the Federal Government shall inform the German Bundestag of current political developments within the framework of the European Union; such notifications shall include information conveyed by way of political early warning.

2. The aforementioned notifications shall be made in accordance with sections 3 and 4 of the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union, hereinafter referred to as "the Act", particularly through the transmission of the following items in the possession of the Federal Government:

(a) documents

- from the Commission and its departments, provided that the documents are addressed to the Council or have otherwise been made officially accessible to the Federal Government; the department of the Federal Government responsible for the matter in question shall ensure that preparatory papers from the Commission which are in the department's possession and which may be significant in the parliamentary decision-making process are made available to the German Bundestag; this shall also apply to unofficial documents, known as non-papers;
- from the European Council, the Council, the informal ministerial meetings and Council bodies;

(b) reports and communications from institutions of the European Union for and about

- meetings of the European Council and the Council and informal ministerial meetings;
- meetings of the Permanent Representatives Committee and of other committees or working groups of the Council;

- meetings of consultative bodies of the Commission;
- (c) reports from the Permanent Representation on
- meetings of the Council and its working groups, informal ministerial meetings and meetings of the Permanent Representatives Committee;
 - sittings of the European Parliament and meetings of its committees;
 - decisions adopted by the Commission;
 - planned legislative acts;
 - early-warning reports on planned legislative acts;

the German Bundestag shall ensure that these reports are treated confidentially;

- (d) documents and information about formal initiatives, opinions and explanations addressed by the Federal Government to institutions of the European Union, plus the catalogue of instructions for the Permanent Representatives Committee and formal initiatives proposed to the Council and the Commission by the governments of other Member States where their content has been made officially accessible to the Federal Government; the German Bundestag shall ensure that these documents and information are treated confidentially, taking due account of the special security requirement for material relating to pending confidential negotiations.

The working groups of the Council include in particular the Friends of the Presidency Group, the Antici Group, the coordinating committee set up pursuant to Article 36 of the EU Treaty, the special committee appointed under Article 133 of the EC Treaty and the Special Committee on Agriculture.

The Federal Government shall brief the competent committees of the German Bundestag orally on meetings of the Eurogroup, the Political and Security Committee and the Economic and Financial Committee.

The briefing shall include notice of proposals intended for adoption in the form of decisions by representatives of the Member States meeting in the Council framework. Information on other matters or supplementary information shall be conveyed orally through permanent contacts.

3. Before meetings of the European Council and the Council, the competent committees of the German Bundestag shall receive comprehensive notification. For each subject of deliberation on the agenda, this notification shall include an outline of the relevant facts and the current state of negotiations as well as the negotiating line to be pursued by the Federal Government. After each Council meeting the Federal Government shall brief the competent Bundestag committees on the outcome.
4. By means of the notification prescribed by section 4 of the Act, the Federal Government shall communicate the information provided by the Commission and the available information from Member States on the expected effects, particularly the legal, economic, financial, social and environmental effects, of planned legislation in the framework of a legislative impact assessment.

5. On each project, the Federal Government shall transmit a report set out in accordance with the report form reproduced in Annex 2. In the case of proposed legislative instruments it shall also transmit a comprehensive evaluation. This evaluation shall be made on the basis of the information available to the Federal Government. Besides verifying the authority of the European Union to enact the proposed legislative instrument and its adherence to the principles of subsidiarity and proportionality, the evaluation shall, in the framework of a comprehensive assessment of the impact of the proposed instrument on the Federal Republic of Germany, contain statements, especially from a legal, economic, financial, social and environmental perspective, on the substance of the planned legislation, on alternatives, on the cost and administrative input entailed by in the project and on the need for its transposition into German law. In the case of other projects, including those involving the preparation of legislative instruments, the evaluation shall be made at the request of the German Bundestag.

The report form is to be transmitted within ten working days of the communication of information on the project, and the comprehensive evaluation is to be transmitted no later than the start of deliberations within Council bodies. In the case of urgent submissions, the time margin shall be reduced so as to ensure that the Bundestag is notified in sufficient time to be able to deliver its opinion. Where a project requires a particularly comprehensive evaluation, the time limit may be extended with the consent of the German Bundestag.

6. The Federal Government shall transmit the documentation to the German Bundestag at the earliest possible time by the quickest possible means.
7. The federal ministries shall provide the German Bundestag with access to databases on European Union projects, subject to the applicable data-protection provisions. The Federal Government shall also provide the German Bundestag with access to EU databases that are accessible to the governments of the Member States.
8.
 - (a) The Federal Government shall notify the German Bundestag of measures not covered by point 1 of this Agreement which are of fundamental importance or which have significant implications for the interests of the Federal Republic of Germany.
 - (b) Such notification shall include information about the Federal Government's own initiatives, initiatives taken by the federal states (*Länder*) and by the Bundesrat and initiatives taken by the Member States where these initiatives are designed to advance the process of deliberation and decision-making within the competent institution of the European Union.
9. The Federal Government shall ensure that it is suitably represented at the political level on the committees of the German Bundestag.

II Opinion of the German Bundestag

1. At an early stage in negotiations, the Federal Government shall give the German Bundestag the opportunity to present its opinion. The time limit for delivery of the opinion must be set in such a way that the German Bundestag has sufficient opportunity to deal with the submission from the Government. Depending on the current state of negotiations, the Federal Government shall also communicate to the German Bundestag the latest date on which its opinion can be taken into consideration in the light of time constraints arising from the procedural schedule of the European Union.

2. The Federal Government shall base its negotiations on the opinion of the German Bundestag.
3. The German Bundestag may adapt and supplement its opinion in the course of the discussion of the project by the bodies of the European Union. To this end the Federal Government shall inform the German Bundestag through permanent contacts of significant amendments to projects.
4. Where the German Bundestag takes the opportunity to state its position pursuant to the first sentence of Article 23(3) of the Basic Law (*Grundgesetz*), the Federal Government shall impose a requirement of parliamentary approval in the Council if any of the main objectives set forth in the resolution adopted by the German Bundestag is not achievable. Before the Council takes its final decision, the Federal Government shall try to reach agreement with the German Bundestag. This shall not affect the right of the Federal Government, acting in awareness of the votes passed by the German Bundestag, to take divergent decisions for compelling reasons of foreign or integration policy.
5. After the Council has made its decision, the Federal Government shall notify the German Bundestag without delay, particularly with regard to endorsement or rejection of the parliamentary opinion. If not all of the objectives enumerated in the opinion have been taken into account, the Federal Government shall explain the reasons for this. The notification shall be made even if the decision taken by the Council does not conclude the procedure in question.

III Information on European legislation

Following the adoption of European legislation, the Federal Government shall notify the German Bundestag. In the case of directives and framework decisions, the Federal Government shall provide information on the time limits to be observed for the transposition of the instrument into domestic legislation and on the need for transposition.

IV Proceedings before the European Courts

The Federal Government shall notify the German Bundestag without delay of requests for a preliminary ruling or an opinion and of proceedings to which the Federal Republic of Germany is a party which are pending before the European Court of Justice and the Court of First Instance. It shall transmit the pertinent documentation relating to proceedings in which the Federal Government is involved. This shall also apply to judgments in cases in which the Federal Government is involved.

V Introduction of majority decision-making

If the Council intends to take a decision to switch from a consensus requirement to decision-making by majority, the Federal Government shall inform the German Bundestag and brief it on the Government's own deliberations. The proposal or initiative for such a decision shall be a project within the meaning of this Agreement.

VI Accession and Treaty revision

If the Council intends to take a decision to enter into negotiations to prepare accessions to the European Union or to enter into negotiations on amendments to the contractual basis of the European Union, the Federal Government shall inform the German Bundestag and brief it on the Government's own deliberations. These negotiations shall be a project within the meaning of this Agreement.

Before the Council takes its final decision, the Federal Government shall try to reach agreement with the German Bundestag. This shall not affect the right of the Federal Gov-

ernment, acting in awareness of the votes passed by the German Bundestag, to take divergent decisions for compelling reasons of foreign or integration policy.

VII Cooperation between the Permanent Representation and the Liaison Office of the German Bundestag

The Federal Government shall assist the Liaison Office of the German Bundestag through the Permanent Representation and, where appropriate, through the German Embassy in a particular Member State in specific matters relating to the tasks of the Office as far as is needed and within the scope of its powers.

VIII Confidentiality

Documents of the European Union shall, as a general rule, be forwarded unclassified. The German Bundestag shall take heed of communications from the EU institutions regarding special confidentiality. Any national security classification that may be required for these documents or for any other documents to be transmitted to the German Bundestag under this Agreement shall be applied by the Federal Government before transmission. The reasons for such classification shall be explained on request.

IX Final provisions

The German Bundestag may waive its right to have documentation transmitted or to be notified of projects. This waiver may not be exercised if an objection is filed by a parliamentary group or by five per cent of the Members of the Bundestag.

Berlin, 28 September 2006
September 2006

(sgd) Norbert Lammert
President of the German Bundestag

Berlin, 28 Sep-

(sgd) Angela Merkel
Federal Chancellor

Annex 1

Projects

Apart from the projects referred to in the last paragraph of section I(2)(d), section V and section VI of the Agreement, the following are projects within the meaning of the Agreement:

- proposals for legislation within the first pillar, including amended proposals,
- Commission communications and opinions,
- reports,
- action plans,
- Green Papers,
- White Papers,
- political programmes,
- proposals for legislation within the third pillar, including amended proposals,
- recommendations,
- institutional arrangements, and
- the EU budget and financial plans.

Annex 2

Report form

Subject:

Area of activity:

Council document No:

COM No:

EP No:

Bundesrat No:

Evidence of admissibility for European provisions:
(verification of legal basis)

Evidence of need for European provisions:
(subsidiarity check)

Objective:

Main substantive points:

Political significance:

Where does the particular German interest lie?

Position of the German Bundestag to date:

Position of the Bundesrat:

Position of the EP:

Balance of opinion in the Council:

Procedural position (current stage of deliberation):

Financial implications:

Timetable for treatment in

(a) the German Bundestag

in accordance with Article 23 of the Basic Law and the Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union

(b) the Bundesrat:

(c) the European Parliament:

(d) the Council:

