

The Federal Constitutional Court is becoming an increasingly important actor in Germany's European policy

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On 21 June German President Joachim Gauck's spokesman announced that the president would refrain from signing laws ratifying the treaties on the European Stability Mechanism (ESM) and the fiscal compact. Both documents will be subject to votes in the Bundestag and Bundesrat on 29 June and will be adopted by a two thirds majority votes due to the support pledged by the opposition. The ESM was supposed to come into force from 1 July 2012. This will, however, require it to have already been ratified by the states which taken together guarantee 90% of its capital. So far only Belgium, France, Greece, Portugal and Slovenia have adopted the appropriate laws (together they account for less than 30% of the capital, with Germany guaranteeing 29.07%).

Commentary

- President Joachim Gauck has refrained from signing the laws which would ratify the ESM and the fiscal pact until the complaints submitted to the Federal Constitutional Court of Germany in Karlsruhe are dealt with. President Gauck's decision affects Chancellor Angela Merkel and her plan to ratify both agreements before the parliamentary recess. The German chancellor has been personally involved in negotiations with the opposition in order to rally the majority of two thirds of votes and insisted that the vote in the Bundestag and Bundesrat take place at the turn of June and July. Obtaining support from the SPD and the Greens was linked with the necessity of making concessions, including: the announcement of measures to be taken in order to introduce taxes on financial transactions in the EU and the promise that the federal government will take over possible financial fines for excessive debts incurred by the German states and communes; and the announcement that common bonds will be issued by the German states and the federation from 2013.
- President Gauck was legally able to ratify the two agreements and make it possible for them to enter into force. The announced complaints regarding the agreements and the fact that they are to be settled in the Federal Constitutional Court would not for the time being suspend their validity. The president's decision was influenced by the verdict issued by the court on 19 June. The Federal Constitutional Court once again was favourable to the complaint submitted by Bundestag deputies in which they stated they

had been insufficiently informed by the government about the actions to be taken on the European arena. The court called upon the government to present the Bundestag and Bundesrat – in written form – even drafts of planned laws and results of initial debates within the EU, and documents produced by EU institutions and other EU countries.

- The Federal Constitutional Court of Germany is emerging as an increasingly important actor in Germany's European policy; one that protects the sovereign powers of the Bundestag. Consequently, suggestions are being made more and more frequently (including by the finance minister Wolfgang Schäuble, and former SPD finance minister Peer Steinbrück) calling for an amendment in the German constitution and the introduction of provisions which would transfer the sovereign powers to EU institutions to a greater extent than is currently the case. A new constitution would have to be approved in a referendum. Both proponents of a further transfer of the sovereign powers to the EU level and the detractors of this solution are in favour of the idea that a referendum should be held on it. Chancellor Merkel is distancing herself from the plan of holding a referendum in the immediate future. According to Merkel, the present German constitution guarantees sufficient freedom in introducing necessary reforms in the EU.