FEDERAL CONSTITUTIONAL COURT

- 2 BvE 4/16 -

Pronounced
on 2 March 2021
Böttle
Amtsinspektorin
as Registrar
of the Court Registry

IN THE NAME OF THE PEOPLE

In the proceedings
on
the application to declare that

the respondent, in adopting its statement of position of 22 September 2016 (BTDrucks 18/9663) and with the resulting failure to give constitutive approval in accordance with constitutional law of the provisional application of CETA, violates the Basic Law (*Grundgesetz*) and rights of the German *Bundestag* – in particular rights following from Article 23 in conjunction with Article 20(1) and (2) and Article 79(2) of the Basic Law.

Applicant: Parliamentary group in the German *Bundestag*
DIE LINKE,
represented by its chairpersons
Dr. Dietmar Bartsch and Amira Mohamed Ali,
Platz der Republik 1, 11011 Berlin,

- authorised representative: … -

Respondent: German *Bundestag*,
represented by its President
Platz der Republik 1, 11011 Berlin,

- authorised representative: … -

the Federal Constitutional Court – Second Senate –

with the participation of Justices

Vice-President König,

Huber,

Hermanns,

Müller,

Kessal-Wulf,

Maidowski,

Langenfeld,

Wallrabenstein

held on the basis of the oral hearing of 13 October 2020:

Judgment:

The application is dismissed.

R e a s o n s:

[*Excerpt from Press Release No. 18/2021 of 2 March 2021*

In May 2016, the parliamentary group in the German *Bundestag DIE LINKE*, as well as ten members of Parliament belonging to that group, filed a motion requesting that the *Bundestag* direct the Federal Government, when representing Germany in the Council of the European Union, to vote against the proposed Council decision on the provisional application of the EU-Canada Comprehensive Economic and Trade Agreement (CETA).

In July 2016, the parliamentary group in the German *Bundestag DIE LINKE*, as well

as eight of its members, filed a motion requesting that the *Bundestag* direct the Federal Government to make sure that CETA is treated as a mixed agreement and that it is submitted to a vote in the *Bundesrat* given that it affects Member State competences and, within the federal order, encroaches on the affairs of the *Länder*.

In September 2016, the parliamentary group *DIE LINKE*, as well as eleven of its members, filed another motion requesting that the *Bundestag,* pursuant to Art. 23(3) of the Basic Law (*Grundgesetz* – GG), declare that the signing and the provisional application of CETA in its present form violate EU law and the Basic Law. They argued that the Council decisions proposed by the European Commission constituted *ultra vires* acts and violated Germany's constitutional identity. They also asserted that the provisional application of CETA were only permissible for areas falling within the exclusive competence of the EU.

The motions filed by the parliamentary group *DIE LINKE* and its members were rejected by the *Bundestag*. On 22 September 2016, the *Bundestag* – the respondent in the present proceedings – adopted a motion "in exercising its responsibility with regard to European integration" (*Integrationsverantwortung*), in which the Federal Government is requested to, inter alia, continue to provide comprehensive information to the *Bundestag* on all matters concerning CETA in a timely manner. The *Bundestag* also requested that the Federal Government pave the way for treating CETA as a mixed agreement. Moreover, it instructed the Federal Government to ensure that exceptions to provisional application are agreed between the Council, the European Commission and the European Parliament in areas falling within the competences of the Member States, which includes the area of investment protection.

By judgment of 13 October 2016 - 2 BvR 1368/16 inter alia - the Federal Constitutional Court rejected the application for preliminary injunction concerning the provisional application of CETA on condition that the reservations set forth in the reasons attached to that judgment were met. In its reasoning, the Court held that it could neither be ruled out that the Council decision on provisional application would be qualified as an *ultra vires* act in the principal proceedings nor that it would be found to encroach on the constitutional identity enshrined in Art. 79(3) GG. The Court questioned whether the European Union had, inter alia, a treaty-making competence with regard to portfolio investment, investment protection, international maritime transport services, the mutual recognition of professional qualifications and labour protection. Furthermore, it could not be ruled out that the Council decision on the provisional application of CETA might also be qualified as an *ultra vires* act to the extent that CETA is designed to transfer sovereign powers to institutions under the system of tribunals and committees established under CETA. However, the Court held that an *ultra vires* act could be avoided by providing for exceptions to the provisional application of CETA. The Court also made clear that it had to be ensured that Germany could unilaterally terminate the provisional application of CETA.

CETA was ultimately treated as a mixed agreement by the EU institutions. In Octo-

ber 2016, the Council of the European Union adopted the decision on the signing and provisional application of CETA. Parts of the agreement, including the provisions on investment protection, were exempted from provisional application.

The applicant seeks a declaration that the position of 22 September 2016 adopted by the respondent violates the Basic Law and rights of the *Bundestag* given that the respondent did not confer a specific mandate on the German representative in the Council by adopting a separate 'authorising act' (*Mandatsgesetz*) and accompanying legislative instruments to that effect.

End of excerpt]

[…] 1-52

The application in *Organstreit* proceedings (dispute between constitutional organs) is inadmissible. 53

1. Pursuant to Art. 93(1) no. 1 GG in conjunction with § 13 no. 5 and §§ 63 ff. of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz* – BVerfGG), the Federal Constitutional Court decides on the interpretation of the Basic Law in the event of disputes concerning the scope of the rights and obligations of the highest federal organs or other parties vested with own rights under the Basic Law or under the rules of procedure of one of the highest federal organs. 54

a) Such applications in *Organstreit* proceedings must be directed against an act or omission. The challenged act or omission must be of legal significance or at least be capable of giving rise to an act or omission of legal significance that affects the applicant's legal position (cf. Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE 13, 123 <125>; 57, 1 <4 f.>; 60, 374 <381>; 97, 408 <414>; 118, 277 <317>; 120, 82 <96>; 138, 45 <59 f. para. 27>; 150, 194 <199 f. para. 17>; 152, 8 <19 f. para. 27>). The applicant must demonstrate that the challenged act specifically affects their legal sphere (cf. BVerfGE 124, 161 <185>; 138, 45 <59 f. para. 27>; 150, 194 <199 f. para. 17>). Mere preparatory or implementing acts cannot be challenged in *Organstreit* proceedings (cf. BVerfGE 97, 408 <414>; 120, 82 <96>; 150, 194 <199 f. para. 17>). 55

b) Pursuant to § 64(1) BVerfGG, an application in *Organstreit* proceedings is only admissible if the applicant asserts that an act or omission on the part of the respondent violates, or directly threatens to violate, rights and obligations conferred by the Basic Law on the applicant or on the organ to which the applicant belongs. In the present case, the applicant, as a parliamentary group, is entitled to assert its own rights, and to assert rights of the German *Bundestag* by way of vicarious standing, i.e. standing to assert the rights of others in one's own name (established case-law; cf. BVerfGE 152, 8 <18 para. 25> with further references). 56

Organstreit proceedings are adversarial disputes between parties (cf. BVerfGE 126, 57

55 <67>; 138, 256 <258 f. para. 4>; 150, 194 <200 para. 18>; 152, 8 <20 para. 28>). This type of proceedings primarily serves to delineate the competences between constitutional organs or their constituent parts in a relationship governed by constitutional law. By contrast, the purpose of *Organstreit* proceedings is not to review the objective constitutionality of specific action taken by a constitutional organ (cf. BVerfGE 104, 151 <193 <193 f.>; 118, 244 <257>; 126, 55 <67 f.>; 140, 1 <21 f. para. 58>; 143, 1 <8 para. 29>; 150, 194 <200 para. 18>; 152, 8 <20 para. 28>). Rather, its main purpose, in respect of an applicant's position, is the enforcement of the applicant's own rights or rights of others asserted by the applicant (cf. BVerfGE 67, 100 <126>; 124, 78 <113>; 143, 101 <132 para. 104>; 150, 194 <200 para. 18>; 152, 8 <20 para. 28>; […]). Thus, an act or omission cannot be challenged in *Organstreit* proceedings solely on grounds of objective unconstitutionality (cf. BVerfGE 118, 277 <319>; 126, 55 <68>; 138, 256 <259 para. 5>; 140, 1 <21 f. para. 58>; 150, 194 <200 para. 18>; 152, 8 <20 para. 28>). *Organstreit* proceedings do not allow for a general or comprehensive abstract review of the constitutionality regarding the challenged act, independent of the applicant's own rights (cf. BVerfGE 73, 1 <30>; 80, 188 <212>; 104, 151 <193 f.>; 118, 277 <318 f.>; 136, 190 <192 para. 5>; 150, 194 <200 para. 18>; 152, 8 <20 para. 28>). The Basic Law does not provide for a general right to demand enforcement of a law or the Constitution upon which an application in *Organstreit* proceedings could be based ([…]). Nor can applicants use this type of constitutional dispute to ensure respect for other (constitutional) provisions; *Organstreit* proceedings only serve to protect the rights of constitutional organs in relation to each other, rather than to provide general constitutional oversight (cf. BVerfGE 100, 266 <268>; 118, 277 <319>; 150, 194 <200 f. para. 18>; 152, 8 <20 f. para. 28>). Under the Basic Law, the German *Bundestag* acts as a legislative organ, not an all-powerful "legal oversight authority" vis-à-vis the Federal Government. Therefore, the Basic Law does not confer upon the *Bundestag* a right to compel the Federal Government to refrain from any act that would be substantively or formally unconstitutional (cf. BVerfGE 68, 1 <72 f.>; 126, 55 <68>; 150, 194 <201 para. 18>).

Rights within the meaning of § 64(1) BVerfGG only means the rights conferred upon the applicant or upon the constitutional organ to which an applicant belongs, and that the applicant or the organ in question can exercise themselves or in the exercise of which they can participate, or rights that must be respected as a prerequisite so as to ensure that the applicant or the organ in question can exercise their competences and that their acts are valid (cf. BVerfGE 68, 1 <73>; 150, 194 <201 para. 19>; 152, 8 <21 para. 28>). 58

For an application in *Organstreit* proceedings to be admissible, it is necessary but also sufficient to demonstrate that, based on the facts of the case as submitted by the applicant, the asserted violation of, or direct threat to, the constitutional rights invoked by the applicant appears possible in accordance with the standards developed by the Federal Constitutional Court (cf. BVerfGE 138, 256 <259 para. 6>; 140, 1 <21 f. para. 58>; 150, 194 <201 para. 20>; 152, 8 <21 para. 29>). 59

Pursuant to § 64(2) BVerfGG, the applicant must specify in their application the provision of the Basic Law that was violated by the challenged act or omission on the part of the respondent (cf. BVerfGE 134, 141 <192 para. 149>; 138, 102 <108 para. 23>; 139, 194 <220 para. 97>; 150, 194 <201 para. 21>). 60

As a general procedural provision, § 23(1) BVerfGG is also applicable in *Organstreit* proceedings. The provision requires that the application be substantiated and that detailed reasons be stated. In this regard, it is not sufficient to merely state the admissibility requirements set out in § 64(1) and (2) BVerfGG (cf. BVerfGE 24, 252 <258>; 123, 267 <339>; 152, 55 <61 para. 18>). 61

1. Constitutional review in such proceedings is limited to the subject matter set out in the application. However, when interpreting the application, the Federal Constitutional Court is not bound by its wording. Rather, what is decisive is the actual procedural relief sought with the application (cf. BVerfGE 68, 1 <68>; 129, 356 <364>; 150, 194 <199 para. 15>). In establishing the actual relief sought, the Court may also rely on the reasons provided to substantiate the application (cf. BVerfGE 68, 1 <64>; 136, 277 <301 f. para. 66>; 150, 194 <199 para. 15>). 62

Based on these standards, the applicant demonstrated and substantiated neither a possible violation of the applicant's own rights nor a violation of rights of the *Bundestag* that the applicant could invoke by vicarious standing. 63

The applicant derives from Art. 23(1) GG the requirement that a separate authorising act be adopted to confer a specific mandate on the Federal Government in EU matters beyond the scope of the Treaties. Since the Basic Law does not recognise any such requirement, it can be ruled out from the outset that failure to adopt such a law amounts to a violation of rights (see 1. below). The application also cannot be interpreted to mean that the applicant wanted to assert that the respondent's statement of position of 22 September 2016 in and of itself amounted to failure to sufficiently exercise the *Bundestag*'s responsibility with regard to European integration (*Integrationsverantwortung*). The applicant did not sufficiently substantiate that the *Bundestag* exercised its responsibility with regard to European integration in a manner that does not satisfy constitutional law (see 2. below). 64

1. The Basic Law does not recognise the concept of 'authorising acts' that could provide legitimation to the exercise of sovereign powers by the European Union or other international organisations. If the European Union or another organisation exercises sovereign powers unilaterally and contrary to the applicable European integration agenda (*Integrationsprogramm*), exceeding the competences conferred upon it in the underlying Treaties, or if its actions affect the constitutional identity, such actions are not covered by the domestic act of approval and thus run counter to the Constitution. Even if a law authorised the German representative in the Council to give their approval, such action would still be incompatible with the Constitution. A violation of the Constitution resulting from *ultra vires* acts cannot be remedied through 65

the adoption of a law unless the Treaties were amended first, and a violation of the constitutional identity cannot be remedied at all. The legislator may also not authorise the Federal Government to approve *ultra vires* acts of institutions, bodies, offices and agencies of the European Union (BVerfGE 151, 202 <297 f. para. 144>).

It can therefore be ruled out from the outset that failure to adopt a specific authorising act violates the applicant's rights or rights of the *Bundestag*. This also holds true with regard to the other accompanying legislative instruments sought by the applicant regarding the provisional application of CETA. In the oral hearing, the applicant's authorised representative stated, when asked by the Court, that he considered the requirement of an authorising act in the present case to be based on Art. 23(1) GG, rather than on Art. 59(2) GG. Yet this does not lead to a different conclusion. 66

2. In the oral hearing, the applicant stated several times that its application is aimed at deriving from Art. 23(1) GG the requirement of a separate authorising act beyond the scope of the Treaties. It is therefore not possible to understand the application – on the basis of the submitted brief – in the sense that it were also directed against the substance of the respondent's statement of position of 22 September 2016, challenging the respondent's failure to sufficiently exercise its responsibility with regard to European integration. 67

Even if the application were interpreted to that effect, the applicant in any case did not sufficiently substantiate a violation of the respondent's responsibility with regard to European integration. The applicant neither made sufficient submissions regarding the respondent's responsibility with regard to European integration (see a) below), nor regarding the specific consequences arising from that responsibility in the present case in view of the position adopted by the respondent on 22 September 2016 (see b) and c) below). 68

a) Like all constitutional organs, the *Bundestag* bears a responsibility with regard to European integration, which is rooted in Art. 23(1) GG. According to Art. 23(1) GG, the Federal Republic of Germany participates in the development of the European Union, which must satisfy the requirements set out in that provision. In the context of the transfer of sovereign powers and the implementation of the European integration agenda, the responsibility with regard to European integration serves to ensure both adherence to the European integration agenda approved on the basis of Art. 23(1) second sentence GG and respect for the constitutional identity protected by Art. 79(3) GG. The specific obligations arising from this responsibility depend on the circumstances of the individual case. 69

Art. 23(2) and (3) GG provide that the *Bundestag* participates in matters concerning the European Union. As a specific manifestation of the principle of democracy, this gives rise to the right (cf. BVerfGE 131, 152 <196 ff.>; 132, 195 <260 para. 156, 271 f. para. 181 f.>; 135, 317 <402 f. para. 166, 420 para. 213, 428 para. 232 f.>), but also the duty (cf. BVerfGE 134, 366 <395 para. 49>; 146, 216 <251 para. 49>; […]), of the *Bundestag* to effectively exercise its responsibility with regard to European inte- 70

gration (cf. BVerfGE 134, 366 <395 f. para. 48 f.>; 146, 216 <250 ff. para. 47 ff.>).

b) When exercising its responsibility with regard to European integration, the *Bundestag* in principle has wide political latitude (see aa) below). In its case-law, the Second Senate of the Federal Constitutional Court has specified how the responsibility with regard to European integration can be exercised or, in case of *ultra vires* acts or violations of the constitutional identity, how it must be exercised (see bb) below) 71

aa) When exercising their responsibility with regard to European integration, the constitutional organs in principle decide autonomously how to fulfil their mandate of protection; in this respect, they have a broad margin of appreciation, assessment and manoeuvre (cf. BVerfGE 125, 39 <78>; 151, 202 <299 para. 148>; 154, 17 <89 f. para. 109>). They must consider existing risks and take political responsibility for their decisions (cf. BVerfGE 151, 202 <299 para. 148>). 72

A violation of Parliament's responsibility with regard to European integration, as derived inter alia from Art. 38(1) first sentence GG, is similar to a violation of (other) duties of protection following from fundamental rights in that a violation can only be found if Parliament fails to take any action at all, if the laws enacted and measures taken are evidently unsuitable or completely inadequate, or if they fall significantly short of achieving the aim of the protection (cf. BVerfGE 142, 123 <210 f. para. 169>; 151, 202 <299 para. 148>). 73

bb) The *Bundestag*'s responsibility with regard to European integration is not limited to defining the European integration agenda through the transfer of sovereign powers. Determining the European integration agenda also gives rise to a responsibility on the part of the *Bundestag* for the development of European integration made possible by such transfer of sovereign powers, and it must continue to effectively exercise this responsibility following a transfer (cf., e.g., BVerfGE 151, 202 <287 para. 121, 332 f. para. 218, 371 f. para. 312>). 74

It is true that, in the order established by the Basic Law, foreign and European policy fall primarily within the remit of the Federal Government. By contrast, the *Bundestag*'s role in foreign policy matters is limited, if only for functional reasons (cf. BVerfGE 104, 151 <207>; 131, 152 <195>). Maintaining relations with foreign states, representing the state in international organisations, intergovernmental bodies and systems of mutual collective security (cf. Art. 24(2) GG), as well as ensuring the overall state responsibility for the external representation of Germany, are generally tasks that fall to the Federal Government, as the institution that permanently has the necessary personnel, resources and organisational structure to react swiftly and adequately to changing situations in external relations (cf. BVerfGE 68, 1 <87>; 104, 151 <207>; 131, 152 <195>). 75

However, the powers entrusted to the Federal Government in foreign affairs are not beyond the reach of parliamentary scrutiny (cf. BVerfGE 104, 151 <207>; 131, 152 <195>; cf. also BVerfGE 49, 89 <125>; 68, 1 <89>; 90, 286 <364>). Given the shift 76

of powers to the executive in the context of European integration, Art. 23 GG confers upon the *Bundestag* far-reaching participation rights in relation to matters concerning the European Union (cf. BVerfGE 131, 152 <196 ff.>), yet these participation rights also entail duties for the *Bundestag* arising from its responsibility with regard to European integration. In this respect, Art. 23(2) first sentence GG provides for the participation of the *Bundestag* and the *Bundesrat* in matters concerning the European Union. This is in keeping with Art. 12 TEU, which provides that national parliaments participate in the institutional framework of the European Union, including in areas governed by EU law. Accordingly, Art. 23(2) second sentence GG requires that the Federal Government notify the *Bundestag* and the *Bundesrat* of such matters comprehensively and as early as possible. A central, albeit not the only, mechanism for the *Bundestag*'s participation is the Federal Government's obligation to provide the *Bundestag* with the opportunity to submit a statement before participating in legislative decision-making of the European Union, and to take into account this statement – which is usually adopted in the form of a parliamentary resolution – in its negotiations (Art. 23(3) second sentence GG).

77 The rights of the *Bundestag* are further specified in the Act on Cooperation Between the Federal Government and the German *Bundestag* in Matters Concerning the European Union (*Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union*) and the Act on the *Bundestag*'s and the *Bundesrat*'s Responsibility With Regard to European Integration (*Integrationsverantwortungsgesetz* – IntVG).

78 The *Bundestag* has a wide array of measures at its disposal. It can work together with other competent constitutional organs to provide retroactive legitimation to an exceeding of competences by institutions, bodies, offices and agencies of the European Union; it can do so by initiating – within the limits set by Art. 79(3) GG – an amendment of EU primary law and by formally transferring, in accordance with Art. 23(1) second and third sentence GG, the sovereign powers that were exercised *ultra vires*. Should that not be possible or wanted, it is incumbent upon the *Bundestag* to use legal or political means to work towards the rescission of acts that are not covered by the EU integration agenda and – as long as these acts continue to have effect – to take suitable measures to restrict as far as possible their domestic effects (cf. BVerfGE 134, 366 <395 f. para. 49>; 142, 123 <211 para. 170>; 151, 202 <299 para. 149>; 154, 17 <89 f. para. 109, 150 para. 231>).

79 The *Bundestag* can take a range of measures to fulfil its responsibility with regard to European integration (cf. BVerfGE 142, 123 <211 f. para. 171>). Such measures include, in particular, bringing legal action before the Court of Justice of the European Union (Art. 263(1) TFEU) – through the Federal Government if necessary –, contesting the respective act vis-à-vis the acting and supervising authorities or adapting its voting policy in the decision-making bodies of the European Union, including the exercise of veto rights, proposing treaty amendments (cf. Art. 48(2) and Art. 50 TEU), as well as instructing subordinate authorities to not apply the act in question. In this

context, the *Bundestag* can exercise the powers it is afforded to supervise the actions of the Federal Government in EU matters, such as the right to ask questions, to debate and to adopt decisions (cf. Art. 23(2) GG). It can inform the Federal Government of its view at any time by adopting a decision (cf. Art. 40(1) second sentence GG, Rule 75(1)(d) and 75(2)(c) of the *Bundestag* Rules of Procedure) or – as it did in the case of the Act on the SSM Regulation (cf. BVerfGE 151, 202 <371 f. para. 311 f.>) – by enacting a law. Furthermore, depending on the case, it can also bring legal action asserting a violation of the principle of subsidiarity (cf. Art. 23(1a) GG in conjunction with Art. 12(b) TEU and Art. 8 of the Protocol on Subsidiarity), exercise its right of inquiry (Art. 44 GG), or hold a vote of no confidence (Art. 67 GG).

In cases in which the Federal Constitutional Court has found that a measure constitutes an *ultra vires* act or affects Germany's constitutional identity, the *Bundestag* must in any case conduct a plenary debate given that the *Bundestag* generally exercises its representative function through all of its members collectively. Decisions of considerable significance, such as a decision on how to restore the order of competences, must generally be preceded by a procedure that allows the public to form and express opinions and that requires Parliament to hold a public debate on the necessity and scope of the envisaged measures (cf. BVerfGE 142, 123 <212 f. para. 172 f.>). 80

Where measures taken by institutions, bodies, offices and agencies of the European Union affect the constitutional identity or exceed the limits of the European integration agenda in a manifest and structurally significant manner (*ultra vires* acts), it is incumbent upon the constitutional organs to actively address the question how the order of competences can be restored and to make a positive determination as to which course of action to pursue (cf. most recently BVerfGE 154, 17 <88 f. para. 107, 150 para. 231>). The *Bundestag* may not participate in an *ultra vires* act or a violation of the constitutional identity (cf. BVerfGE 151, 202 <297 f. para. 144, 321 para. 194>); rather, it is incumbent upon it to counter such acts (cf. BVerfGE 142, 123 <207 f. para. 163 ff.>; 151, 202 <276 para. 94>). In what way the *Bundestag* must do so depends on the overall circumstances of the specific case. 81

c) In the present case, the respondent had held exhaustive discussions on CETA over a considerable period of time before adopting its position of 22 September 2016. The topic had been addressed in several plenary sessions ([…]); on 6 July 2016, the *Bundestag* had also held a 'debate on matters of topical interest' (*aktuelle Stunde*) on CETA (cf. *Bundestag* Minutes of Plenary Proceedings, BT-Plenarprotokoll 18/182, p. 17934 ff.). It had debated CETA in many committee meetings (particularly on the Committee on Economic Affairs and Energy, which is the committee responsible for this topic, and ten further committees participating in the deliberations in an advisory capacity), heard experts ([…]) and liaised with the responsible actors in Canada and the EU ([…]). 82

The statement of position of 22 September 2016, which is a statement of position 83

within the meaning of Art. 23(3) GG, clearly contains substantive directions for the Federal Government's actions in the Council of the European Union. The position emphasises that in the areas falling within Member State competences, CETA may under no circumstances be applied provisionally. This reservation expressly refers to investment protection, but is not limited to it. In its statement of position, the *Bundestag* calls on the Federal Government to ensure that exceptions to provisional application are agreed between the Council of the European Union, the European Commission and the European Parliament in areas where this is necessary on the grounds that competences of the Member States are affected.

In light of the foregoing, the applicant failed to demonstrate why and how the respondent supposedly violated its responsibility with regard to European integration by adopting its position of 22 September 2016. In particular, the applicant did not sufficiently address the fact that the respondent took comprehensive action in the present case to counter the risk of a potential *ultra vires* act and of an encroachment of Germany's constitutional identity (cf. BVerfGE 143, 65 <95 para. 50 ff.>), and that it did so before the Second Senate rendered its judgment of 13 October 2016 (cf. BVerfGE 143, 65). 84

Moreover, the respondent's statement of position was adopted before negotiations on CETA were concluded, and the negotiations resulted in several changes to the draft decisions that give considerable effect to the concerns set out therein. The applicant fails to address this fact, too. 85

[…] 86

König Huber Hermanns

Müller Kessal-Wulf Maidowski

Langenfeld Wallrabenstein

Bundesverfassungsgericht, Urteil des Zweiten Senats vom 2. März 2021 - 2 BvE 4/16

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