

Maastricht, German Constitutional Court decision from 12 October 1993, BVerfGE 89, 155; Brunner v European Union Treaty CMLR [1994] 57.

In 1993 the German Constitutional Court following a constitutional complaint, gave a ruling confirming the legality of Germany's ratification of the Treaty on European Union. The Court declared the Maastricht Treaty to be compatible with the German constitution. It confirmed though that the European Court has the primary responsibility for protecting fundamental rights but hinted that if that Court failed to carry out the task adequately the German Constitutional Court would do so (cf. Solange II). The Constitutional Court also asserted the right to review the legal instruments of European institutions and agencies to see whether their acts remain within the limits of the rights conferred on them (control of ultra-vires acts). This assertion of a general power to constrain the competence of the Union institutions undermines the supremacy of Community law and the sole competence of the European Court to determine the legality of acts of the institutions within the framework of the European Communities. The Constitutional Court specifically warned that it would carefully review the use of Article 235 of the EC Treaty as a legal basis for measures. Legislation passed under that Article would not be binding in Germany if it was used as a basis for harmonization within the areas of new Community competence under Articles 126 to 129, or if it constituted a de facto amendment to the Treaty.