

---

# A Germany of Continuities?

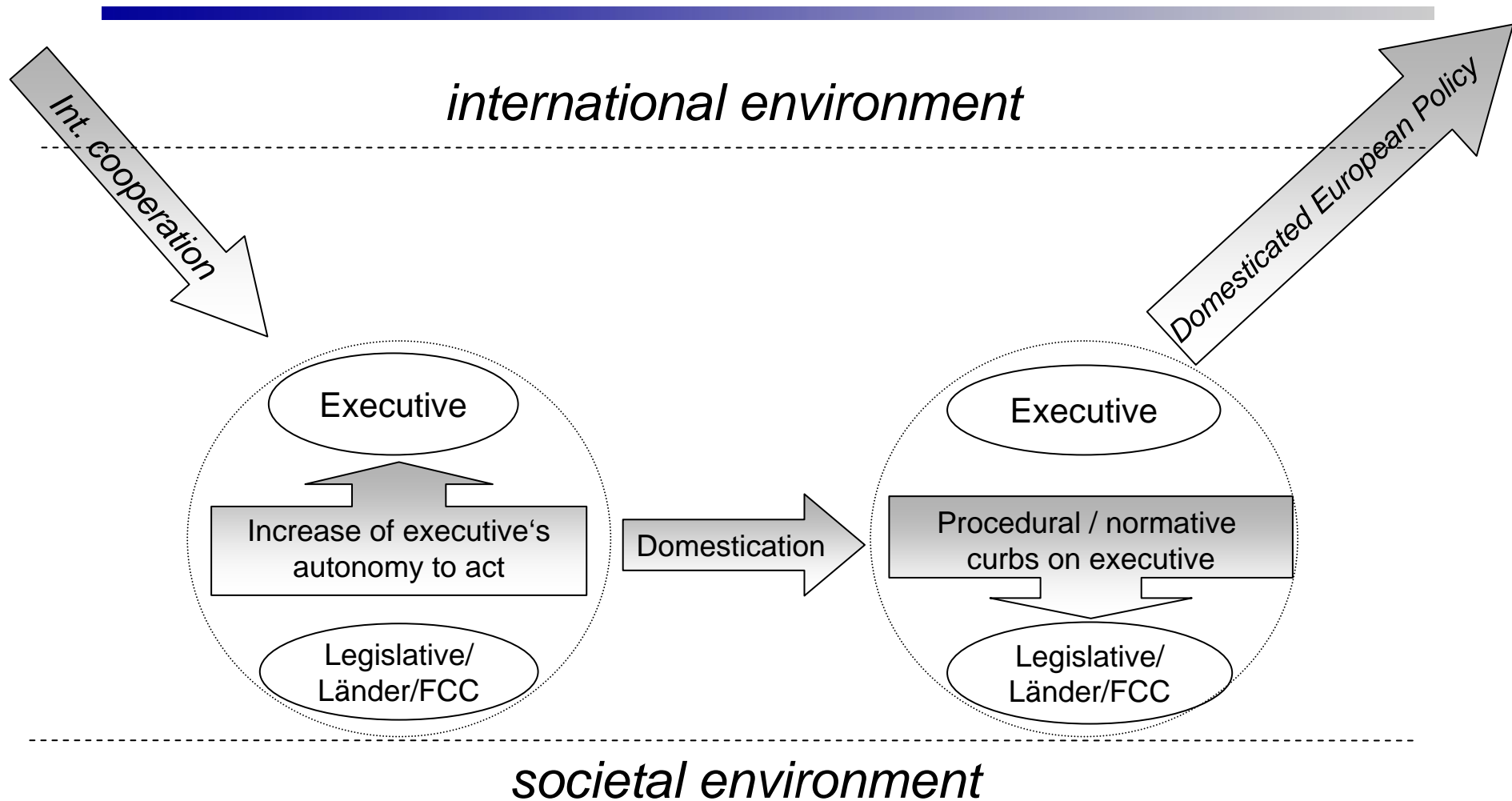
*Presentation at the conferences  
„Germany and the Future of Europe:  
The Constitution Debate and the German Presidency“  
Europa Institute, University of Edinburgh*

# The Argument

---

1. Pro-integrationist policies in international institution are partially self-defeating. Since executives tend to benefit most, other actors (Parliaments, Courts) will try to limit the relative loss of their competences by “domesticating the executive’s policies”.
2. Since the 1970s Germany’s traditionally pro-integrationist European policies have triggered both “domesticating actions” and efforts by the Federal Constitutional Court and Länder to assert their influence directly in the EU policy process.
3. The domestication of the federal executive’s integration policies in the 1990s have been the primary driving forces for the “Constitutionalisation of the European Union”.
4. Domestication strategies are not de-europeanizing strategies. While they may limit further integration in some policy areas and assert pressure towards „institutional resemblance“ between the subject and object of the integration process, they regularly do not call for a roll back of previous integration.

# Process of Domestication

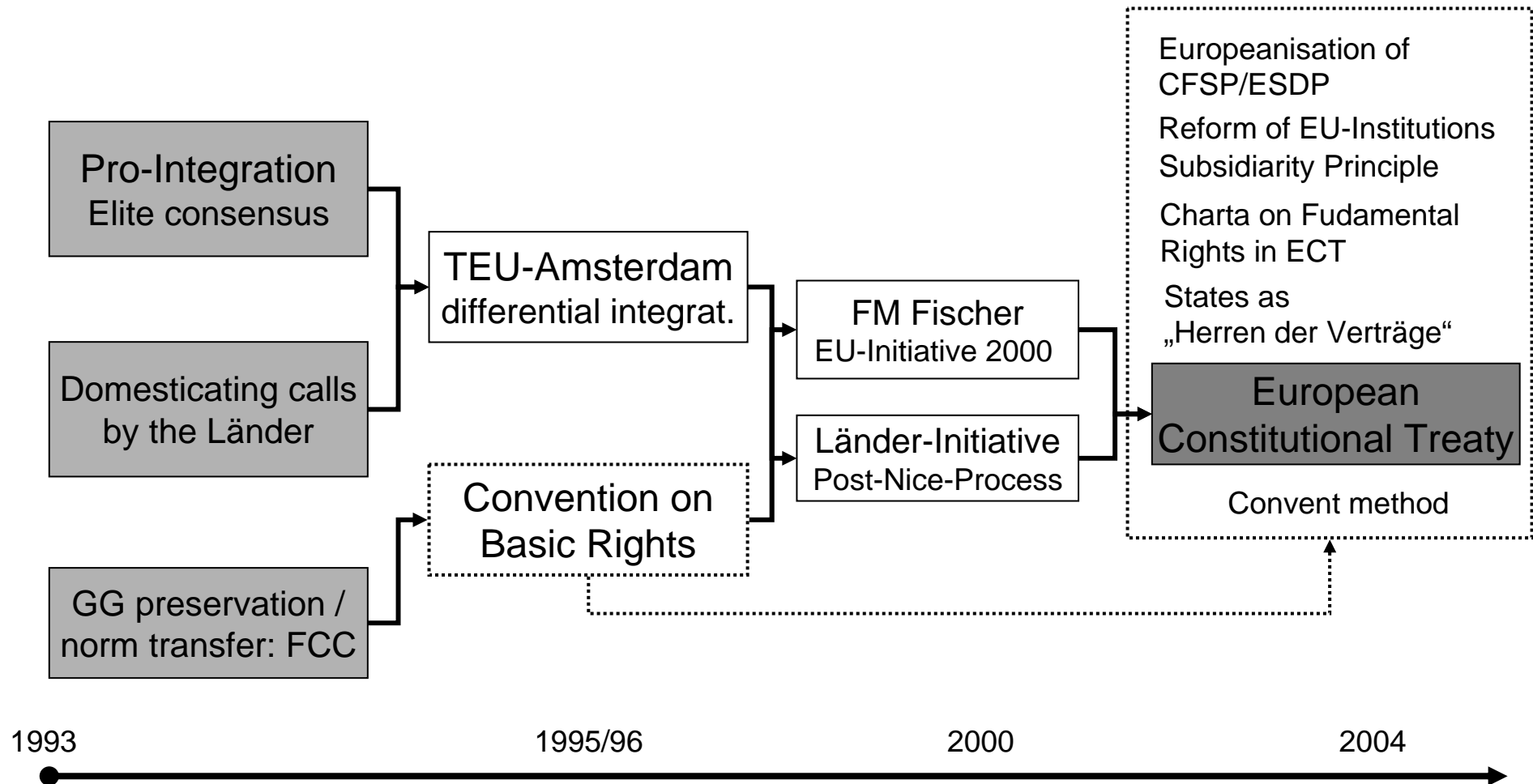


# Definition: Domestication

---

„Domestication is a process by which domestic political actors aim at limiting the executive's autonomy in foreign policy through improved procedural participation and normative preservation guarantees in both legislative acts and constitutional law.“

# Germany's Constitutionalisation Policy for the EU: Initiatives und Policy outcomes



## FCC Judgement on European Arrest Warrant 18.07. 2005

---

1. German law on EAW is unconstitutional, because the Bundestag has not sufficiently ensured that the domestic implementation of the European framework decision protects the basic rights of German Citizens (Leitsatz 3).
  - Judgment rejects the idea of a partial improvement of the law and demands a general revision of the German EAW law.
  
2. Judgement argues that a „limited reciprocal acceptance“ of national legal systems is possible - as in the case of the EAW - if these Framework decision protect the „national identity and statehood“ in a unified European legal system (Leitsatz 2).
  - Judgement again supports the so-called „Lückentheorie“, which means that Germany has not transferred sovereignty through the EAW but that the law had only opened the German constitutional space for the (temporal) implementation of European law.
  
  - FCC calls for structural conformity between Germany and the EU (i.e. the EU's member states) if integration touches the inner core of the Grundgesetz.

## FCC Judgement on European Arrest Warrant 18.07. 2005: Institutional preservation and institutional resemblance

---

- “As a qualified proviso of legality, Article 16.2 sentence 2 of the Basic Law permits the extradition of Germans only “as long as the rule of law is upheld”. Such prerequisite for an extradition not merely repeats the validity of the principle of the rule of law, which is not open to restrictions of fundamental rights anyhow, and in particular of the principle of proportionality. It rather constitutes an expectation referring to the requesting Member State and to the international court in terms of **structural correspondence**, as has also been set out in Article 23.1 of the Basic Law. When permitting the extradition of Germans, the legislature must examine in this context whether the prerequisites of the rule of law are complied with by the requesting authorities.”

[http://www.bundesverfassungsgericht.de/entscheidungen/rs20050718\\_2bvr223604en.html](http://www.bundesverfassungsgericht.de/entscheidungen/rs20050718_2bvr223604en.html)

---

[www.sebastian-harnisch.de](http://www.sebastian-harnisch.de)