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## Domestication of the Euro Crisis: Legal and Political Manifestations of Euroscepticism in Germany

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## Abstract

The euro crisis points towards the limits of the post-war pro-European integration consensus in Germany, a trend that has manifested itself in both the legal and political realms. In the legal arena, the powerful German Constitutional Court (GCC) has heard complaints on several key rescue measures, including the European Stability Mechanism (ESM) and the European Central Bank's (ECB) bond buying programme. The Court's ruminations on these initiatives both reflect and feed German eurosceptics' concerns. They also have implications for the Eurozone as a whole, insofar as they limit the German government's room to manoeuvre. In the political arena, a new eurosceptic party, *Alternative für Deutschland* (AfD), contested the September 2013 federal election and the May 2014 European parliamentary election, winning a handful of seats in the latter. AfD's emergence potentially marks a shift towards a more overtly eurosceptical political discourse in Germany. Thus, both legal and political developments have the potential to constrain the choices for the EU as a whole by reconfiguring the political and policy landscape of Germany, the Union's reluctant hegemon.

## Keywords

Euroscepticism; Germany; ESM; ECB; euro crisis

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Much has been made of the external consequences of Germany's dominant position in Eurozone decision-making, including the hardship imposed on the currency union's heavily indebted "periphery" by the German government's strict austerity focus. But what of the internal consequences of Germany's 'reluctant hegemony' (Paterson 2011)? Has the euro crisis affected the prevalence and nature of euroscepticism *within* the country? Does the greater assertiveness with which Merkel's government has acted since the first Greek bailout reflect a hardened attitude towards European integration? And, in turn, is Germany's thankless role as paymaster and dictator of terms causing its citizens and elites to more openly question the value of ever-closer union? These are some of the questions this article addresses.

To be sure, there is no simple causal relationship between Germany's greater prominence in EU policymaking and domestic euroscepticism. The two phenomena are interrelated and both are influenced by the crisis, which has left Germany as the currency union's sole economic superpower. Certainly, under Angela Merkel, the country has become less dependent on European partners (be they other member states or EU institutions) and on the consensus politics of the Community method. Merkel is less of a europhile than her predecessors and this affects her own views of European integration, as well as her ability to sell it to the electorate. However, this article is not about causation as such, but about the legal and political manifestations of euroscepticism and their potential impact on Germany's EU policies and, hence, on the integration project as a whole. It is precisely Germany's unique position in Europe that makes its attitude towards the integration project so important.

The article proceeds as follows: the introductory section discusses briefly how the crisis has changed Germany's role in Europe. The second section then tracks German attitudes towards European integration and considers how the euro crisis may have impacted on the incidence and expression of EU-critical views. The third section analyses the legal articulation of euroscepticism, focusing on the

role of the German Constitutional Court (GCC) in mediating the country's involvement in the euro rescue. The GCC has long felt comfortable articulating German national interests (as derived from the Basic Law) in its judgments; more so than successive governments, which have preferred to couch national preferences in the rhetoric of collective, European goals. The Court has maintained its politically active, interventionist approach since the onset of the crisis, its "yes, but" verdicts shaping government policy both before and after the fact.

The fourth section examines political expressions of euroscepticism in Germany, focusing specifically on a new actor – *Alternative für Deutschland* (AfD, Alternative for Germany), which was founded in 2013 as a result of discontent over the handling of the crisis. The party's core membership is drawn mainly from a conservative, bourgeois milieu that is receptive to the same sort of rule of law and financial prudence based criticisms levelled against EMU by the Constitutional Court (Starbatty 2013). Indeed, prominent AfD figure, and now MEP, Joachim Starbatty was a plaintiff in several anti-integration cases, including those contesting the euro rescue measures (*Frankfurter Allgemeine Zeitung* 2014a). Though it is a relatively small actor, AfD is interesting for a number of reasons, including its potential to shake up the party system by tapping into previously unrepresented popular sentiment, thus influencing the strategic choices of the other German parties, particularly the centre-right Christian Democratic Union (Christlich-Demokratische Union: CDU). Finally, the concluding section situates the German story in its European context, noting the growth in euroscepticism across the continent and discussing its implications for the integration project.

### COMING TO GRIPS WITH A CHANGED ROLE: GERMANY IN THE EURO CRISIS

The financial and economic crisis of the Eurozone thrust Germany into the unfamiliar position of political leader – a role it was neither quick nor enthusiastic in embracing. Under the leadership of Chancellor Angela Merkel, Germany has consistently opted for a pragmatic, step-by-step approach to problem solving, rather than articulating and advocating bold new agendas for political and economic union. As well as impacting on the severity of the crisis in the worst affected states, German equivocation also influenced *domestic* attitudes towards EMU and the EU, more broadly. By going about the "*alternativlos*" ("no alternative") business of putting out euro area spot fires without offering any big picture justification beyond the rather negative 'if the euro collapses, so does the EU', the government depicted EMU as a burden that must be borne, rather than as a collective good. In a similar vein, media emphasis on a narrative of wrongdoing by Southern European states tended to reinforce a mentality of German victimhood and injustice, which was not counterbalanced by a clear explanation of the many benefits that Germans have derived, and continue to derive, from their membership in the currency bloc (Guerot 2012; Habermas 2011).

Therefore, the crisis – particularly as it has involved apparently flagrant violations of the EU's own rules – has tested Germans' appetite for solidarity with the heavily indebted countries of Europe's periphery. For much of the legal and economic establishment, as well as many ordinary Germans, there is concern that the country's European obligations are turning into open-ended liabilities, for which German taxpayers will ultimately be responsible. There are also fears that actions taken in, or by, EU institutions to mitigate the crisis conflict with cherished – and, in some cases, legally entrenched – political and economic values, such as price stability, central bank independence, fiscal prudence, the rule of law, and democratic statehood.<sup>1</sup> These national preoccupations are informed by Germany's historical memory of the hyperinflation of the Weimar Republic, as well as its ordoliberal economic tradition (Guerot and Dullien 2012). They are further compounded by indignation at the thought that euro "cheats", such as Greece, are not being sufficiently punished for their wrongdoing, and are instead free-riding off the system (Guiso et al. 2013).<sup>2</sup>

All of these factors point to an interesting contradiction between the external and internal dimensions of the euro crisis and Germany's role in managing its consequences. Many of the European-level stabilisation measures were designed to suit German preferences, including, for example, the Treaty amendment to support the ESM (on which the German government insisted in order to preempt an adverse assessment of the fund's legality by Karlsruhe), the focus on austerity in indebted countries, and the ruling out of debt mutualisation. However, this fact has not necessarily assuaged concerns within the country over the direction Europe is taking. Therefore, in this article, I offer a preliminary analysis of the impact of scepticism towards European integration on the German political and constitutional system.

### **GAUGING GERMAN DISCONTENT WITH EUROPE: IS THE EURO CRISIS A FACTOR?**

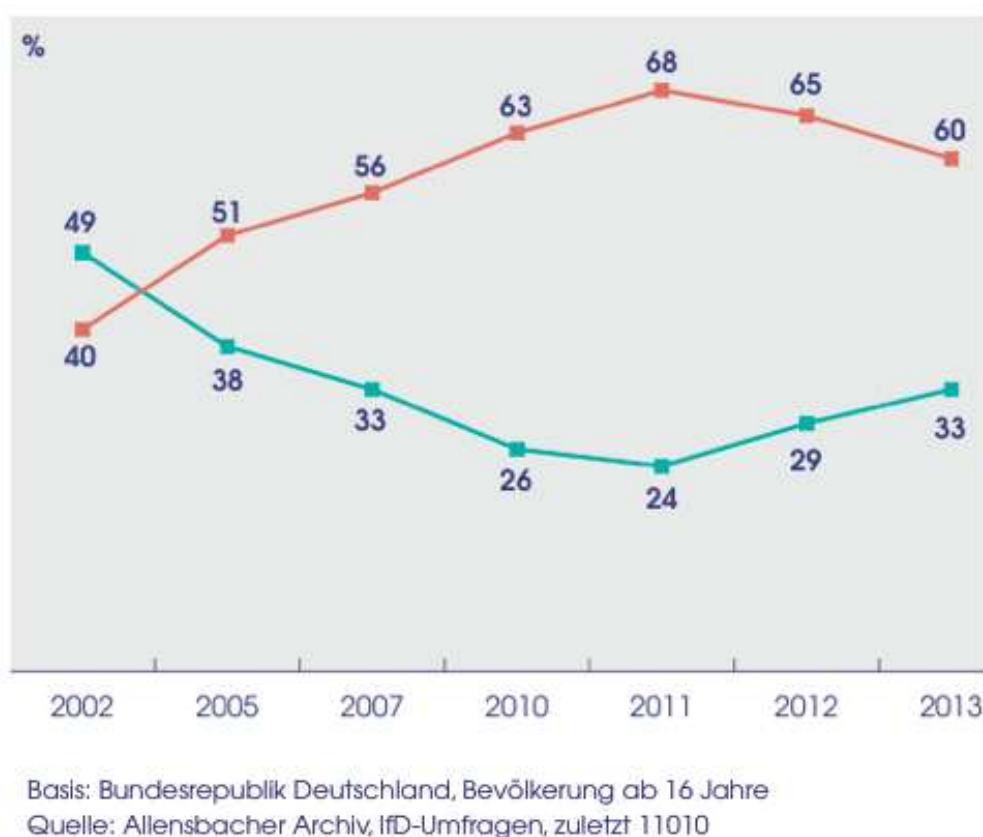
European integration has not typically been a very salient issue in German electoral politics. However, in the lead up to the federal election of September 2013, surveys indicated that the crisis was weighing on voters' minds despite Germany's continued strong economic performance. Data from the German Longitudinal Election Study (GLES) showed that, in the months prior to the election, slightly fewer than 20 per cent of Germans nominated the euro crisis as the most important problem facing the country and just over 30 per cent nominated it as one of the top two problems. For both indicators, the euro crisis was second only to social welfare/justice as the issue of greatest concern (Schmitt-Beck 2013). Furthermore, on the specific issue of bailouts, whilst the average German position was broadly in line with official government policy (i.e. permitting bailouts to debt-stricken euro states, but only under strict conditions), a considerable minority of Germans opposed them altogether (Schmitt-Beck 2013).

Eurobarometer surveys also captured high levels of discontent with European integration amongst Germans. In Autumn 2013, around the time of the federal election, only 29 per cent of Germans polled tended to trust the EU, while 59 per cent tended to distrust it. In the same survey, only 25 per cent of Germans thought that the EU was heading in the right direction, as compared to 43 per cent who thought it was heading in the wrong direction. Germans were also shown as being fairly pessimistic about the economic outlook in the EU. Only 19 per cent of those surveyed thought that the next 12 months would be better, while 33 per cent believed they would be worse (Standard Eurobarometer 80 2013).

This is not to say that the German electorate has become eurosceptic *en masse*. For one thing, the German figures quoted above are broadly in line with EU averages, as recorded by Eurobarometer. For another, the country's citizens have always had a complicated relationship with the EU, though this has often been obscured by the pro-integration consensus of the political elite. Opinion surveys show that popular support for the integration project has risen and fallen over the years, sometimes dramatically, while, at the same time, a significant undercurrent of euroscepticism has been ever present. The euro crisis did not greatly alter these basic patterns, though there was a spike in some measures of distrust and dissatisfaction with the EU in 2011, when the Greek crisis was at its peak.

The impact of the crisis, then, is not so much on the magnitude of euroscepticism as on its salience and on the opportunities for its aggregation, expression and normalisation (it is in this respect, in particular, that AfD's creation is significant). Data from the Allensbach Institute, for example, shows fluctuations in levels of trust in the EU between 2002 and 2013. In the graph below, the orange line indicates the percentage of respondents who had 'not very high/low/very low' levels of trust in the EU, while the green line indicates respondents who reported 'high/very high' levels of trust (Petersen 2013).

Figure 1: Trust towards the EU



German perceptions of European integration have certainly improved since 2011, as is evident from the graph. However, one should be cautious in extrapolating too much from these results, which are predicated on the questionable assumption that the euro crisis has been resolved. Should conditions in the Eurozone deteriorate again, one could expect an upswing in critical sentiment, particularly now that there are political elites willing and able to channel and magnify such views. Thus, I now turn to discuss whether and how citizens' concerns over the euro crisis and its handling were articulated in the legal and political spheres, respectively.

## ARTICULATING EUROSCPTICISM THROUGH THE LEGAL SYSTEM: THE ROLE OF THE GERMAN CONSTITUTIONAL COURT

### *The Court and European integration: A tale of conflicting imperatives*

The German Constitutional Court's relationship to the European Court of Justice (ECJ) and to EU law has not always been comfortable. The long-running dialogue between the two powerful judicial authorities reveals one of the paradoxes of Germany's relationship to the European project. Whereas there has been historically a high degree of compatibility between German political interests and the integration project (Wessels 2003: 135), the GCC's attitude towards legal integration has always been much more ambivalent, to the point where it is sometimes described as a eurosceptic actor (Paterson 2011: 66-67).

The GCC's outlook on European integration is chiefly informed by its reading of Germany's constitution, the Basic Law (*Grundgesetz*). Both the Basic Law and the Court, itself, are cornerstones of post-war German democracy. In fact, the GCC has been consistently rated as one of Germany's most popular and trusted federal institutions. A 2012 study by the Allensbach Institute for Public Opinion Research found that 75 per cent of respondents had a high or very high level of trust in the Court. Compared to various other institutions, the Court was second only to the Basic Law (78 per cent), and was much more highly trusted than political institutions such as the Federal Parliament (39 per cent) and the German Federal Government (38 per cent). Furthermore, in the same study, 68 per cent of respondents were in favour of the Court deciding on Germany's participation in the euro rescue efforts, whilst only 17 per cent thought that such matters should be left to politics alone (Köcher 2012).

Thus, various legal, political and historical factors explain the Court's record of judicial activism and its willingness to adjudicate on major political controversies, including those involving the EU. However, reconciling the imperatives of national constitutional integrity and participation in the integration project has not proved a straightforward task. On the one hand, the Basic Law enshrines Germany's sovereign democratic statehood and the right to democratic representation of the German people (Article 20(1) and (2) of the Basic Law). So sacred are these rights that they are rendered inviolable by the so-called "eternity clause" (*Ewigkeitsklausel*) in Article 79(3), which prohibits their amendment. The GCC has repeatedly warned that the process of European integration cannot be allowed to compromise these constitutional values, meaning that a certain core of sovereignty must be retained by the national parliament.<sup>3</sup>

On the other hand, the Basic Law also evinces a pro-integration disposition ("*Europarechtsfreundlichkeit*"), primarily in Article 23(1), which compels German institutions (including the Court) to participate constructively in the development of the EU. Articles 24 and 25 also predispose Germany towards international cooperation and permit the transfer of sovereign powers to international organisations. Those clauses reflect the context of the Basic Law's adoption in 1949. At that time, Chancellor Konrad Adenauer enthusiastically pursued a policy of *Westbindung* (establishing close links with the West, including through European integration) in order to facilitate West Germany's economic and political rehabilitation after the Second World War.

This conflict between the permissive and restrictive strands of German constitutionalism has grounded a European integration jurisprudence that is confrontational – even hostile – in word, but accommodating in deed. The GCC's verdicts on integration-related matters are, in fact, a series of conditional approvals wherein the Court indicates that the scope for integration *is* limited, but that those limits have not yet been reached. In its *Maastricht*<sup>4</sup> and *Lisbon*<sup>5</sup> decisions, the Court went as far as claiming for itself the authority to review EU law (in direct contradiction to ECJ jurisprudence), but it has never exercised this jurisdiction (Doukas 2009: 868-869). The Court's pronouncements on the euro rescue measures have so far continued this pattern, though its preliminary referral of the ECB's Outright Monetary Transactions (OMT) programme to the ECJ hints at a tougher line.<sup>6</sup>

### ***The Court and the euro crisis: Assessing the legality of the European Stability Mechanism and the Fiscal Compact***

In 2012, the GCC assessed the constitutionality of the proposed Fiscal Compact (an intergovernmental treaty aimed at tightening fiscal rules and oversight procedures for Eurozone members) and the European Stability Mechanism (ESM, the Eurozone's permanent bailout fund). The plaintiffs; some 37,000 people, including ordinary citizens, academics, and parliamentarians from *Die Linke*, asked the Court to issue a preliminary injunction preventing ratification of the treaties pending the final determination of their claims.

At issue was whether or not the German government's participation in these undertakings was consistent with the constitutional protection of German democratic statehood. More specifically, questions were raised as to whether the provisions of the Fiscal Compact, including its requirement that signatory states pass balanced budget laws (which, as a matter of fact, Germany already has) and its grant of budgetary oversight powers to the European Commission, so infringed the economic competences of the German parliament as to be unconstitutional. This was particularly relevant since the GCC had previously declared fundamental fiscal decisions relating to revenue and expenditure to be part of the hardcore of national competences, without which democratic government would not be possible.<sup>7</sup>

Doubts were also raised about the legality and accountability of the ESM, which was to be established 'among the euro-area Member States as an intergovernmental organisation under public international law', for the purposes of 'mobilis[ing] funding and provid[ing] financial assistance, under strict conditionality, to the benefit of euro-area Member States' (European Council March 2011: 22). Unsurprisingly, the ESM – which, if activated, could create large liabilities for the taxpayers of creditor states – has been much criticised by eurosceptics in Germany, including Bernd Lucke, who later founded AfD (Lucke 2011).

On 12 September 2012, the Court declined the plaintiffs' application for temporary injunctive relief, approving the entry into law of both the ESM Treaty and Fiscal Compact.<sup>8</sup> The final ruling that followed a full 18 months later, in March 2014, largely confirmed the preliminary verdict. The Court's focus in both rulings was on the ESM Treaty (TESM), which it acknowledged as having the potential to undermine the *Bundestag's* budgetary responsibility and, hence, the constitutionally guaranteed precept of democracy. Nevertheless, the Court concluded that the TESM did not involve an impermissible transfer of budgetary sovereignty, because adequate safeguards already existed in EU and German law.<sup>9</sup>

In reaching its decision, the GCC specified two provisos. Firstly, the Court held that Germany could only ratify the TESM if the government ensured that Germany's contribution to the Stability Mechanism's capital stock (currently set at 190 billion euro) could not be increased without the agreement of the German representative to the ESM.<sup>10</sup> He or she, in turn, could not authorise an increase without the prior approval of the *Bundestag*, as is already provided by German law. Secondly, the Court stipulated that the TESM provisions on the inviolability of ESM documents and professional secrecy of staff must be interpreted so as not to infringe on the German Parliament's right to be comprehensively informed about the activities of the Stability Mechanism.<sup>11</sup> Thus, both conditions aimed at securing a constitutionally permissible level of parliamentary oversight over the disposal of German taxpayers' money in the ESM.

The GCC considered and dismissed several other concerns raised by the plaintiffs, employing legal reasoning in a way that suggested a strong desire to endorse government policy. For example, the GCC rejected the plaintiffs' assertion that the ESM could become a vehicle for unconstitutional state financing by the ECB. The Court reasoned that since state financing by the ECB is prohibited by Article 123 TFEU, the TESM could only be interpreted as not permitting the ESM's involvement in such borrowing operations.<sup>12</sup> This reasoning appears almost circular: the TESM cannot be interpreted as contravening a provision of EU Treaty law, because to do so would contravene EU Treaty law. The line taken by the Court is perhaps an admission of lack of jurisdiction over the actions of EU institutions, as well as an indication of its unwillingness to interfere with a hard fought political bargain negotiated by the German government and endorsed by the German Parliament. Yet, there was something of a warning in the Court's words – a foreshadowing of its negative assessment of the legality of ECB interventions in euro area bond markets. This became clearer in February 2014, when the GCC surprised everyone by making its first ever referral to the ECJ under the Article 267 TFEU procedure.

### ***From “yes, but” to “probably not”? Passing judgment on the ECB***

Before it was even handed down, the Court’s preliminary ruling on the ESM and Fiscal Compact was affected by external events. On 6 September 2012, ECB Chief, Mario Draghi, announced a plan by the Bank to buy unlimited quantities of government bonds of struggling Eurozone members, under strict conditions (the so-called Outright Monetary Transactions (OMT) programme). This development was greeted in Germany almost immediately by another legal challenge, brought by Peter Gauweiler of the Christian Social Union (*Christlich-Soziale Union*: CSU). Gauweiler filed an urgent motion requesting that the GCC delay its verdict in order to consider the ECB’s move, which, he argued, ‘created a “totally new situation” for assessing the constitutionality of the ESM Treaty’ (*Frankfurter Allgemeine Zeitung* 2012).

The Court rejected Gauweiler’s motion, opting to hand down its verdict on 12 September, as planned. However, it did reserve to itself the right to consider whether or not the ECB had exceeded its competences in the course of the main proceedings. The issue was explicitly not considered during the preliminary review, though, as noted, the Court’s statement that the ESM cannot collaborate with the ECB on state financing operations because to do so would breach EU law, has been interpreted in some quarters as a warning to the Eurozone’s political leaders and central bankers that they may already be engaging in illegal practices (Jahn 2012). The Court held oral hearings on the ECB’s activities on 11-12 June 2013, during which *Bundesbank* President, Jens Weidmann criticised the OMT programme as a violation of ECB independence and the prohibition on central bank financing of state deficits (Charter 2013). In the reasoning that accompanied its referral to the ECJ, the German Constitutional Court appeared to agree with Weidmann, thus setting up a potentially fascinating showdown with its supranational counterpart.

At first glance, it appeared that the GCC had decided *not* to decide, preferring to pass the buck to the ECJ by referring to it several questions on the compatibility of the Central Bank’s OMT decision with EU treaty law. However, the majority judgment that accompanied the referral was clear and sharp in its criticism of OMT. The judges contended that the Bank had exceeded its monetary policy mandate and encroached upon the field of economic policy, which should primarily be a matter for national governments, and that the OMT decision also violated the prohibition on monetary financing of state budgets.<sup>13</sup> Having transgressed EU law in this way, the GCC suggested that OMT met the highly restrictive criteria for a finding of *ultra vires*. That is, the programme constitutes a “manifest violation” of powers that causes a “structurally significant shift” in the allocation of competences between the national and supranational levels.<sup>14</sup> An *ultra vires* ruling would mean prohibiting German institutional involvement in the impugned programme – dealing a major blow to its economic viability and bringing Germany into direct conflict with the EU’s legal system.

Therefore, the Court has ventured deep into political territory with its condemnation of OMT. This fact is reinforced by the two dissenting judges who both argued in separate opinions that the case should have been dismissed as inadmissible and beyond the realm of judicial competence.<sup>15</sup> Nevertheless, despite the GCC’s strong words, the legal ramifications of its latest step remain unclear. The case is suspended pending the ECJ’s preliminary ruling, which could take quite a while. When it does come, the ruling will have significant implications for the relationship between the two courts, whose conflicting interpretations of the origins, nature and scope of supranational legal authority have so far remained theoretical (de Witte 2009; Kumm and Comella 2005: 475).

In the meantime, the consequences of the GCC’s stance will play out in the political realm. According to the majority of the Court, the German government has a responsibility to ensure the European integration process’s compliance with the relevant laws. Thus, an *ultra vires* act ‘creates an obligation [on] German authorities to refrain from implementing it and a duty to challenge it.’<sup>16</sup> These duties are not merely theoretical – they are owed to individual voters (whose democratic constitutional rights would be imperiled by supranational usurpations of power) and they can be



enforced before the Constitutional Court.<sup>17</sup> Even without taking further legal action, the articulation of these duties is a useful tool that eurosceptics may use in order to argue the illegitimacy of key planks of the euro rescue and build their own credibility with the electorate. In fact, AfD took just such an approach, issuing a press release in response to the judgment, in which it argued that the Court had vindicated the party's views and confirmed the validity of its election slogan "*Mut zur Wahrheit*" ("courage for the truth") (*Alternative für Deutschland* 2014).

## ARTICULATING EUROSCEPTICISM THROUGH THE POLITICAL SYSTEM: NEW CHANNELS FOR AGGREGATING VOTER DISCONTENT

### *The German political landscape in the lead up to the 2013 federal election*

The German political establishment has strongly supported European integration since the creation of the Federal Republic of Germany in 1949, a disposition that was reinforced by Helmut Kohl and his successors after German reunification in 1990 (Davies 2012: 6; Wessels 2003). This stance is partly based on a historical complementarity between German and European interests. Embedding itself firmly within Europe was imperative to West Germany's post-war recovery. Likewise, ceding governmental competences to international and supranational bodies was not difficult for a divided and occupied state that was not fully sovereign anyway.

Though enduring, the pro-integration consensus is not total. There are strands of euroscepticism in some of the established parties, such as the CSU, the Bavarian sister party to Merkel's CDU.<sup>18</sup> Outside of the mainstream, *Die Linke* is also highly critical of European integration, though its electoral appeal is limited by its far-left ideology and its association with the former East German communist party. Moreover, the euro crisis has cast doubt upon the adage that German interests are European interests (Marsh 2013). Many German political figures reacted indignantly to American criticism of Germany's large trade surplus, and to suggestions from the European Commission that Germany may also have to bear some of the burden of structural adjustments (Inman 2013; Parkin 2014). Thus, there is the potential for greater divergence between the policy preferences and priorities of the German government and those of the EU institutions.

Such tensions notwithstanding, in the lead up to Germany's 2013 election, none of the major parties offered an outlet for citizens opposed to bailouts and other aspects of the euro rescue policies. In fact, despite the salience of the euro crisis for German voters, European issues hardly featured in the major parties' election campaigns. This is not entirely surprising. Merkel, perhaps, made the pragmatic calculation that there was little to gain from discussing unpopular euro rescue policies to which her government had already committed itself. For its part, the centre-left Social Democratic Party (*Sozialdemokratische Partei Deutschlands*: SPD) had supported economic assistance to struggling Eurozone members whilst in opposition, calling for less austerity and more solidarity. Indeed, the party was even willing to countenance the introduction of eurobonds, something that Merkel had ruled out. Nevertheless, SPD leader Peer Steinbrück decided not to campaign on European issues either, obviously not regarding it as a vote winner for his party.

It was under these circumstances that *Alternative für Deutschland* entered the political landscape. The party was formed in February 2013, and its name alludes to Merkel's catch-cry of "*alternativlos*", which was voted "*das Unwort des Jahres*" in 2010.<sup>19</sup> The central pillar of AfD's programme for the federal election was its call for 'an orderly dissolution' of the Eurozone, on the grounds that 'Germany doesn't need the euro' and that '[o]ther states are harmed' by it. The party's manifesto argued that either national currencies ought to be reintroduced or a smaller and more stable currency union created (*Alternative für Deutschland* 2013). In the September 2013 election, AfD fell just short of entering the *Bundestag*, securing 4.7 per cent of the vote, a remarkable result

for such a young party, and one it can build on in future election campaigns. It improved on this showing in the EP elections the following May, winning 7 per cent of the vote and gaining seven MEPs.<sup>20</sup>

### *Classifying a new political force*

A variety of labels have been applied to AfD in its short existence, reflecting the ongoing difficulty that commentators and scholars have in appropriately classifying and placing on the political spectrum parties that do not support, or have serious reservations about, the EU and its activities. As Simon Usherwood (2013: 280) has noted, the pejorative connotations of the term “Eurosceptic”, itself, hint at the tendency to dismiss opponents of European integration as ‘an uninformed and undifferentiated group of people’. “Eurosceptic”, and the terms that commonly accompany it, often serve to obfuscate, rather than illuminate, debates about the diverse causes and manifestations of anti-EU or EU-critical sentiment. It is worth briefly discussing these labels and their potential application to AfD.

Historically, it has been the case that any party within an EC/EU member state espousing a eurosceptical policy stance would necessarily belong outside of the mainstream.<sup>21</sup> This is particularly so in Germany, where, as David Marsh (2013: 64) noted, ‘dissenters from the perennial policy of more Europe are routinely castigated for their lack of political correctness’. Across the EU, governing parties have been the strongest supporters of European integration and, insofar as government tends to alternate between the centre left and centre right, this translates into a broadly pro-EU mainstream. Hence the common description of eurosceptic parties as “fringe” or “niche”.

It also follows from this that euroscepticism is closely associated with political extremes – parties of the far left and far right have been the most consistent and vocal opponents of European integration, usually for economic reasons in the case of far left parties (i.e. the project’s alleged neoliberal character) and socio-cultural reasons, connected to loss of sovereignty, in the case of far right parties (De Vries and Edwards 2009). However, opposition to further and closer European integration, in and of itself, is not an extremist position and we should be cautious about applying this label without justification. Similar problems surround use of the highly contested and often misunderstood term “populist”. Populism may be defined as ‘an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, “the pure people” versus “the corrupt elite”, and which argues that politics should be an expression of the *volonté générale* (general will) of the people’ (Mudde 2004: 543). Opposition to European integration can be a populist position, but it is not necessarily so.<sup>22</sup> Insofar as the term is increasingly used in political debates simply as an accusation or insult against one’s opponents, it is often unhelpful as an analytical category.

How, then, to classify AfD? The party’s senior membership has an air of “bourgeois respectability” (Schmitt-Beck 2013), led by founders and party speakers Bernd Lucke, an economics professor, Konrad Adam, a former *Frankfurter Allgemeine Zeitung* journalist, and Frauke Petry, a chemist and businesswoman. It is certainly not an extremist party in the mould of Greece’s Golden Dawn. Though highly euro-critical, especially by German standards, it is not an anti-EU party in the mould of the UK Independence Party (UKIP).<sup>23</sup> Whereas UKIP’s primary political objective is Britain’s withdrawal from the EU, AfD is far less hostile to the concept of integration, and instead declares itself in favour of ‘a Europe of sovereign states with a common internal market’ (*Alternative für Deutschland* 2013). Rather than European integration *per se*, the main focus of the party’s criticism is the currency union, which was the driving force behind AfD’s creation in the first place. Even before the crisis, opposition to Economic and Monetary Union (EMU) proved a popular eurosceptic cause across the EU, combining as it does the functional and symbolic dimensions of suspicion towards, and

resistance to, supranational integration (Usherwood 2013: 282). Indeed, both dimensions are evident in AfD's rhetoric. The party's statements focus heavily on the economic impact on German taxpayers of sustaining the single currency and associated financial aid, but also appeal to less tangible considerations of sovereign nationhood (*Alternative für Deutschland* 2013).<sup>24</sup>

Rhetorical references to sovereignty and the nation state aside, AfD is not a far-right party in the mould of Geert Wilders's Dutch Party for Freedom (*Partij voor de Vrijheid*: PVV) or Marine Le Pen's French National Front (*Front National*: FN). There is, however, considerable debate over the question of its political orientation. AfD's leaders have claimed that the party is neither left nor right, but some of its policy positions, such as its defence of the family as the basic unit of society and its criticism of what it views as 'disorderly immigration into the welfare system' (*Alternative für Deutschland* 2013), suggest that it leans right. The party's members and supporters also tend to come from a conservative milieu (*Süddeutsche Zeitung* 2013b). In this respect, AfD appears to be occupying the space to the right of the CDU that was opened up by the latter's move towards the centre on a range of social issues under Merkel. Hence, though founded as a single-issue, anti-euro party, there is scope for AfD to evolve into a broader conservative option.

### ***AfD's significance: Flash in the pan, or something more lasting?***

AfD has already had some electoral success, but its significance to the German political system goes beyond its vote share. Robert Rohrschneider and Stephen Whitefield (2013) conducted research into the European integration stances of west European political parties in 2008 and again in 2013, showing that mainstream parties hardly altered their stances in response to the euro crisis. Yet, over the same period of time, public perceptions of the EU deteriorated. One consequence of these divergent trends was that mainstream parties were less able to articulate citizens' preferences, a task that has been increasingly taken up by niche parties on the left and right.

In Germany, AfD aimed to address this representation gap by tapping into a eurosceptical strand of public opinion that previously was most strongly articulated by the extreme left (*Die Linke*) or extreme right (National Democratic Party of Germany, *Nationaldemokratische Partei Deutschlands*: NPD) – neither of which are appealing options for the moderate voter. Thus, its impact may also be measured by the extent to which it is able to make euroscepticism "respectable" in Germany – a moderate, rather than extremist position. This, in turn, will depend on the party's ability to dissociate itself from extremists that may view AfD as a vehicle for the legitimisation and dissemination their own far-right agendas (Heine 2013). This is a live and controversial issue for the party. Although Lucke insists that AfD is not a right-wing populist party, it is sometimes portrayed as such in the press (*Süddeutsche Zeitung* 2013b), and it has had problems with infiltration by far right activists, leading it to adopt more stringent membership policies (*Süddeutsche Zeitung* 2013a). Lucke, himself, has been accused of tolerating the presence of right-wing populists within the party, and even of courting the support of voters of such a persuasion (Lobenstein 2013).

Even if AfD does not establish itself as a durable political force, the party's emergence may still have an impact on German politics beyond the short term by broadening the spectrum of party stances on European integration. Finland and the Netherlands may be cited as two cases in which governing parties moved towards more eurosceptical positions, at least partly in response to shifting public opinion and to electoral challenges by factions openly hostile to further integration. In 2013, the Dutch government carried out a review of EU powers, similar to the British balance of competences exercise initiated by David Cameron. It concluded that 'the time of an "ever closer union" in every possible policy area is behind us' and instead advocated a more modest EU based on the principle of 'Europe where necessary, national where possible' (*Ministerie van Buitenlandse Zaken* 2013). Similarly, Finland's coalition government was concerned enough about the popular appeal of the

True Finns (who came third in April 2011 parliamentary elections with 19 per cent of the vote) to take a tougher stance on the euro crisis, with Finland becoming the only country to demand collateral from bailout recipients in return for rescue funds (Milne 2012).<sup>25</sup>

Germany could follow a similar trajectory, depending on how other political actors react to AfD. As Bonnie Meguid (2008) cogently argued, the behaviour of mainstream parties is a critical factor in determining the success or failure of niche parties within the same political system. Owing to their superior resources, media access and ability to mobilise voters, as well as their greater ideological flexibility, mainstream parties have a greater range of strategic choices open to them than their niche party competitors. AfD fits Meguid's description of a niche party in that it did not emerge from traditional, class-based cleavages, does not fit neatly on the left-right spectrum and was formed largely as a single-issue party. Thus, the strategic behaviour of the CDU/CSU and SPD in relation to position, salience and ownership of euro governance issues can greatly affect AfD's political fortunes.

In a speech to a party congress in January 2014, SPD Chairman Sigmar Gabriel decried rising euroscepticism as "stupid", signalling that the centre-left party would take a pro-active, pro-EU approach to the European elections (Kirschbaum 2014). The Christian Democrats, on the other hand, have so far employed what Meguid (2008) described as a "dismissive strategy" of ignoring their niche party rival. This is a potentially fruitful strategy that seeks to reduce the salience of the issues championed by AfD and to deny the party credibility as a genuine electoral contender. Whether the CDU retains its current approach remains to be seen, however, as AfD's success in the European Parliament has prompted some within the party to call for a shift towards more open contestation (Bannas 2014).

## CONCLUSION: FACING THE EUROSCEPTIC CHALLENGE IN GERMANY AND EUROPE

Across the EU, national governments will have to take the eurosceptic challenge seriously. This much is clear from the results of the May 2014 European elections, which swept into the parliament groups hostile to the European Union in a number of member states. The anti-integration sentiment was felt much more acutely elsewhere in Europe – including the traditionally eurosceptic UK, economically stagnant France and still-struggling Greece – than it was in Germany, where the CDU/CSU has benefitted from a robust economy and Merkel's personal popularity. Nevertheless, there are limits to the Chancellor's ability to forestall difficult and contentious debates on the future of European integration and Germany's place within it through a politics of *alternativlos*. For one thing, Merkel has a new coalition partner, the SPD, to reckon with. Differences between the two parties over European issues emerged during the last government, when the SPD argued against Merkel's austerity-oriented approach to stabilising and strengthening the Eurozone. The Social Democrats could now look to exploit those differences, which are shared by other centre-left European leaders including French President Francois Hollande and Italian Prime Minister Matteo Renzi.

The emergence and relative success of AfD is another challenge. Having gained seven seats in the new European parliament, the party now has a base from which to build momentum and credibility before the next federal election. It was helped in this endeavour by its acceptance, in June 2014, into the group of European Conservatives and Reformists (ECR); the parliamentary bloc founded by the British Conservatives. As well as boosting AfD's legitimacy and countering the accusations against it of political extremism, the party's accession to the ECR bloc was an embarrassing defeat for Merkel, who had specifically asked David Cameron to reject its membership (*Frankfurter Allgemeine Zeitung* 2014b). AfD now has its best chance to establish euroscepticism as a mainstream and reasonable

political opinion, potentially reshaping the policy stances of the other Germany parties in the process.

In the legal realm, an adverse final ruling on the OMT decision by the GCC (pending the ECJ's opinion) would also greatly circumscribe the German government's room to manoeuvre in Europe, as well as strengthening the hand of those who oppose the government's handling of the euro rescue. It is, of course, too early to predict how these events will unfold, but it seems clear that the economic crisis of the Eurozone has opened up new avenues for challenging the pro-integration consensus in Germany, a development that may yet lead to the reconfiguration of the European project.

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<sup>1</sup> See, for example, the critique of the ECB's monetary policy by Paul Kirchhof, a former judge of the German Constitutional Court (Kirchhof 2014).

<sup>2</sup> Guiso et al. (2013) have suggested that 'conformity constraint' – that is, the limitations placed on political leaders by a need to comply with the electorate's deeply held cultural values – played a role in delaying financial assistance to Greece, thereby precluding a timely and potentially contagion-free resolution of the debt crisis.

<sup>3</sup> AfD has picked up on this theme – emphasising the inalienability of national parliaments' budgetary powers and the desirability of repatriating some supranational competences to the national level (*Alternative für Deutschland* 2013).

<sup>4</sup> *Brunner v The European Union Treaty* [1994] 1 CMLR 57 (*Maastricht decision*).

<sup>5</sup> BVerfG, 2 BvE 2/08 vom 30.6.2009, Absatz-Nr. (1 - 421) available at: [http://www.bverfg.de/entscheidungen/es20090630\\_2bve000208en.html](http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html) (*Lisbon decision*). Accessed on 15 April 2014.

<sup>6</sup> BVerfG, 2 BvR 2728/13 vom 14.1.2014, Absatz-Nr. (1 - 105) available at: [http://www.bverfg.de/entscheidungen/rs20140114\\_2bvr272813en.html](http://www.bverfg.de/entscheidungen/rs20140114_2bvr272813en.html) (*OMT referral*). Accessed on 15 April 2014.

<sup>7</sup> *Lisbon decision*, paragraph 252, 256.

<sup>8</sup> BVerfG, 2 BvR 1390/12 vom 12.9.2012, Absatz-Nr. (1 - 248), available at: [http://www.bverfg.de/entscheidungen/rs20120912\\_2bvr139012en.html](http://www.bverfg.de/entscheidungen/rs20120912_2bvr139012en.html) (*euro-rescue decision*). Accessed on 15 April 2014.

<sup>9</sup> *Euro-rescue decision*, paragraph 208.

<sup>10</sup> *Euro-rescue decision*, paragraphs 220-222.

<sup>11</sup> *Euro-rescue decision*, paragraphs 223-229.

<sup>12</sup> *Euro-rescue decision*, paragraphs 245-247.

<sup>13</sup> *OMT referral*, paragraphs 55-94.

<sup>14</sup> *OMT referral*, paragraphs 36-43.

<sup>15</sup> *OMT referral*, Dissenting Opinion of Justice Lübbe-Wolff, Dissenting Opinion of Justice Gerhardt.

<sup>16</sup> *OMT referral*, paragraph 44.

<sup>17</sup> *OMT referral*, paragraphs 44-54.

<sup>18</sup> The CSU took a harder line against what it described as the excesses of Brussels bureaucracy as part of its campaign for the 2014 European Parliament elections. In an interview published on the CSU's website, General Secretary Andreas Scheuer stated: 'We say yes to Europe. But we want a better, less bureaucratic, slimmer Europe of the citizens'. Available at: <http://www.csu.de/aktuell/meldungen/januar-2014/interview-gs-bayernkurier-fuer-ein-schlankeres-europa/>. Accessed on 15 January 2014.

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<sup>19</sup> This is an annual competition to identify the ugliest and most undesirable word from public language.

<sup>20</sup> AfD was aided in its European campaign by the GCC, which struck down the 3 per cent hurdle for German parties in the EP in February 2014 (*Spiegel Online* 2014).

<sup>21</sup> The UK, as on so many other issues, being an exception.

<sup>22</sup> And the opposite is also possible – Slovak Prime Minister Robert Fico may be cited as an example of a pro-EU populist (Auer 2013).

<sup>23</sup> AfD's leadership expressly rejected the possibility of allying with UKIP at the European level, joining the British Conservatives instead.

<sup>24</sup> The same claim sometimes combines tangible economic considerations with less tangible fears and historical allusions, as when AfD demands an immediate ban on the ECB buying government bonds of indebted states, on the grounds that 'inflation must not erode citizens' savings' (*Alternative für Deutschland* 2013). In another nod to the link between its euroscepticism and its defence of German sovereign nationhood, the party's slogan during the 2013 federal election, "*Mut zur Wahrheit*" ("Courage for the truth") was altered to "*Mut zu Deutschland*" ("Courage for Germany") for the European elections.

<sup>25</sup> The True Finns are a right-wing populist group who combine anti-EU rhetoric with racist anti-immigrant sentiment. In an article in the *Financial Times*, a senior Finnish Social Democrat is quoted as saying of the True Finns: 'I wouldn't say we stole their clothing at all. But we did move a little in their direction, and I think that is in line with the mood of the Finnish people' (Milne 2012).

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