

Shifting paradigms: Reflecting Germany's European policy

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Keywords

EMU, Euro, Federalism, German Constitutional Court, ideas, institutions, multilevel governance, national interest, Germany, political science

Abstract


Germany's presidency of the European Council in the first half of 1999 has focused the attention of scholars on Germany's attitude towards the EU. Germany's European policy has been guided from the beginning by a pro-European vision of 'the house of Europe'. The hypothesis of the article is that this paradigm of German European policy is in flux. Via a constructivist approach it is argued that we are observing a paradigm shift away from a visionary towards a pragmatic European policy which is oriented around efficiency criteria and national interest. Evidence is given by analysing the following propositions: (1) the advocates of a European vision have vanished in Germany, and the broad coalition in society towards Europe is crumbling; (2) at the same time the discussion on Europe has become highly politicised; (3) in addition, important German institutions such as the Federal Constitutional Court (Bundesverfassungsgericht) are reluctant to (re-)strengthen the European idea; and (4) the fit between Germany's and the EU's institutional setting supports the change in paradigm. In conclusion it is argued that Germany is on its way to changing its role from that of a supporting participant to that of a self-confident active player.

Kurzfassung

Die deutsche Ratspräsidentschaft der ersten Hälfte dieses Jahres hat die Frage nach dem Wesen der deutschen Europapolitik auf die wissenschaftliche Tagesordnung gehoben. Die Europapolitik Deutschlands war von Beginn an von einer pro-europäischen Vision geprägt, die sich besonders in dem Bild des 'Hauses Europas' widerspiegelt. Die Hypothese dieses Beitrages ist, daß zur Zeit ein Wechsel in diesem Paradigma deutscher Europapolitik zu beobachten ist. Aus konstruktivistischer Perspektive wird argumentiert, daß sich das alte visionäre Paradigma hin zu einem pragmatischen Ansatz wandelt, der sich primär an Effizienzkriterien und dem nationalen Interesse orientiert. Evident wird diese Hypothese durch die Analyse (1) des Verschwindens der Advokaten einer Vision Europas sowie der breiten gesellschaftlichen Unterstützung für die EU; (2) der Politisierung der Debatten um die europäische Integration; (3) des Bundesverfassungsurteils von 1993, das eher eine Schwächung als eine Stärkung der europäischen Vision brachte und (4) der institutionellen Ähnlichkeiten zwischen der Bundesrepublik und der EU, die ebenfalls den Paradigmenwechsel unterstützten. Die Schlußfolgerung ist, daß Deutschlands Rolle sich zur Zeit von einem unterstützenden Mitglied der EU zu einem selbstbewußten und kritischen Akteur wandelt.

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1 Introduction

The German Council presidency of the first half of 1999 is taking place at a crucial point in European integration. It corresponds to the introduction of the EURO, although it will not be dominated by this discussion any longer. The challenge will be to get AGENDA 2000 on track. Thus the financial and institutional questions as well as the subjects of structural funding, agriculture and Eastern enlargement will be in the centre of discussion. It is time to reflect on Germany's European policy.

As one of the founding members of the European Economic Community and given a fragile role in European integration after World War II, Germany's relationship to the European project has always been an intensive one. Nowadays, this close link cannot be described any longer using Thomas Mann's bipolar scenario of a 'Germanization' of Europe versus a 'Europeanization' of Germany.⁽¹⁾ The German-European link is much more polymorphous and goes beyond its characterisation as a 'tamed power' (cf. Katzenstein 1997).

The aim of this paper is to focus attention on Germany's attitude towards Europe, as this has not yet been sufficiently reflected in the German political science community. The European policy of the Federal Republic has been guided from the beginning, and especially during the period of Chancellor Kohl, by strong Western ties and a vision of 'the house of Europe'. Germany's role has been seen as that of a solid brick under the European roof. European policy was primarily 'pro-European'. European integration was to be created by small steps towards the 'European house' and was not to

been questioned. As the political elite felt under obligation towards the joint goal of European integration and Germany's contribution to it, European policy was not an issue to be discussed among or within political parties.(2) The paradigm of being a supportive participant of European integration has been broadly accepted by citizens and the political elite. The package deal between Germany's future and European integration created stable expectations for its citizens.(3) The European roof was seen as a guarantee of stability and prosperity. Our main thesis in this article is that this paradigm of German European policy is in flux; we will even argue that we are able to observe a paradigm shift.

Coming from an interpretative or constructivist approach(4), we assume that actors' behaviour is not exclusively caused by the actors' interest or resources. In addition to these variables, ideas, norms and guiding principles shape actors' behaviour to a great extent. When choosing an 'appropriate behaviour' (cf. March/Olsen 1989: 160-162), actors refer to shared collections of ideas, norms and guiding principles which could be connected under the notion of paradigm. A paradigm is defined as a central idea and accepted pattern of behaviour (Kuhn 1976). It contains assumptions about the character of an issue, a guiding image or idea about how to solve related problems and a normative basis for legitimate strategies. With the help of paradigms actors succeed in processing huge quantities of data and choose an appropriate strategy in a reasonable time.

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In the following we will present several arguments and provide evidence for the change of paradigm.

- Firstly, the advocates of a strong European idea without political debate have vanished in Germany, and the broad coalition in society towards Europe is crumbling. The national consensus regarding the endorsement of European unification that had existed since the end of the Second World War, has been partly revoked.(5)
- At the same time the discussion on Europe has become highly politicised. Yet this discontinuance was already inherent in the set-up of politics and society as a distinction between material interests and ideas or norms which can be observed. Material interests and norms/ideas overlapped in the post-war era, so that a general consensus regarding European unification could be assumed. In the meantime, this complete overlap between substantially economic interests and values has come to an end. This, however, does not necessarily imply a turning away from European unification. The change of attitude rather creates a "Euro-dilemma": the particular interests of economic, political and social elites and the fears of the population are confronted with the attempt to deepen the integration by those thoroughly rooted in pro-European values of socialisation.
- In addition, important German institutions such as the Federal Constitutional Court (*Bundesverfassungsgericht*) are reluctant to (re-)strengthen the European idea.
- A common academic argument is that Germany has fewer problems adjusting to the challenges of European integration than other member states due to the fact that German institutions correspond to European institutions. The vertical federal structure of the German system and its horizontal fragmentation of autonomous ministries and bureaucracies forming multi-tiered and issue-oriented governance regimes fits extremely well with the EU institutional setting. This similarity should make it easier for different actors to make use of the opportunity structure of the EU interactive system. In our opinion, the last few years have shown that the institutional setting of Germany in particular supported the change in paradigms.

The first part of the text presents the thesis of the eruption of the German advocacy coalition with regard to Europe which has been central to German European policy-making for many years (section 2). The loss of the permissive consensus in German society with regard to European integration(6) is presented through a) the change in public opinion concerning Europe, b) the role of the Euro debate

led by politicians, interest organisations and the German Central Bank. In the second part, we analyse the statements of the Federal Constitutional Court with regard to European policies ([section 3](#)). In the third part, we present the argument of the institutional fit, making the distinction between the horizontal fragmentation and vertical federal structure ([section 4](#)). The outcome of this argumentation is that the new paradigm of Germany's European policy is characterized by a greater orientation towards efficiency criteria and national interest than towards pro-European visions. Germany is on its way to changing its role from a supporting participant to becoming a self-confident active player. As this contribution was written before the German elections in September last year, we did not take into account the European policy of the new German government. Nevertheless, the new government's attitude towards European integration is in accordance with the trend and in line with the paradigm shift we will discuss here. However, the shift has not been caused by the elections, but rather reinforces the development.

2 Crumbling European advocacy coalitions in Germany

Since the beginning of the European integration process, Germany has been one of the member states that have continuously maintained it. The broad approval of European unification by German society has supported the political level in constantly engaging in new European projects. Nowadays, changes in the perception of Europe can be worked out by actors in social and political systems. In the first section, modifications in public attitudes towards Europe are illustrated. The second section elucidates the transformation in the political and social arena by means of the Euro debate conducted by politicians, interest organisations and the German Federal Bank. Those developments of social and political positions towards European integration is not a simple modification in the direction of anti-European positions but a more differentiated perception of Europe.

2.1 Public attitudes towards the European integration

When analysing Germany's European policy, it is important to look closely at the development of public opinion with respect to European integration. In the spring and autumn months of each year, Eurobarometer carries out representative opinion polls in all EU member states. To measure the general support for the EU four different questions are posed.⁽⁷⁾ The results reveal that support depends on the level of abstraction of the questions posed. The opinion polls show that the more unspecified and less binding a question is, the greater the agreement to it is (cf. Immerfall/Sobisch 1997, 28). This is true for all member countries including Germany. While in 1995 67 per cent of the German population agreed to a general European unification, only 38 per cent were in favour of a single European currency (European Commission 1996a)⁽⁸⁾. Thus it can be stated – taking into account David Easton's concept (1965 and 1975) – that the specific support of the perceived output and performance of the EU is not as high as the diffuse support that is independent of special output and concerning the general support for the political community, the regime and the political authorities perceived by the individuals.

The changes which can be observed in the attitude of the German population towards European integration are significant (see [Table 1](#): Public support for European integration 1980 to 1995). In 1990, the year of the German unification, the highest support for the EU was registered: 81 per cent of the German population were in favour of European integration (the EU average was the same) and 57 per cent thought that Germany benefited from the EU membership. The high level of support for European integration has been largely attributed to the effects of the Single European Market (cf. Niedermayer 1995, 67). With the debate about the Maastricht treaty in 1991 and 1992, support

among the population reached a turning point. Since then, support for European unification has decreased. It reached its lowest level in Germany and the other EU members in 1995. That year, only 67 per cent of the population were still in favour of EU unification and 40 per cent recognised advantages of EU membership for Germany. Significantly, the opposition to the EU has not increased in the same amount as the support has decreased. This means that at the same time the segment of the population which is undecided about the integration process has grown.

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Table 1: Public support for European integration in Germany (D) and EU 1980 to 1995

	Support for unification				Support for membership				Advantages from membership			
	for		against		good		bad		yes		no	
	D	EU	D	EU	D	EU	D	EU	D	EU	D	EU
1980	78 %	72 %	9 %	13 %	62 %	53 %	6 %	16 %	–	–	–	–
1985	74 %	75 %	16 %	13 %	61 %	60 %	8 %	12 %	53 %	53 %	31 %	30 %
1990	81 %	81 %	11 %	10 %	69 %	69 %	6 %	7 %	57 %	59 %	24 %	23 %
1995	67 %	69 %	26 %	21 %	51 %	53 %	10 %	15 %	40 %	44 %	36 %	35 %

Source: European Commission 1993 and 1996a

Until 1990, German enthusiasm towards Europe which united public orientation and political efforts served as a model for European support. However, this attachment to Europe is partly based on the attempt to find an outlet for the terrible experience of Nazi Germany. It was thus used as a means of compensating for discredited national identity (cf. Niedermayer 1991, 345). After 1992, German support for European integration decreased below the EU average. Public opinion for support or rejection is influenced by a utilitarian and an affective orientation. The utilitarian support is based on perceived, relatively specific interests, while the general support seems to indicate a diffuse and perhaps emotional response to some of the vague ideas represented by the notion of European unity (cf. Lindberg/Scheingold 1970, 40). "Support for the EC is lowest if respondents are asked to give specific or instrumental evaluation of the EC; that is, an answer based on rational cost-benefit calculation. Support is highest if a diffuse, affective evaluation of European unification is being elicited." (Niedermayer 1995, 58). The economic crisis, high unemployment, the costs of German unification and the fear of losing the reliable *Deutsche Mark* (German Mark) lead to a decline in support for European integration because of utilitarian motives. Changes to the agreement to the EU were always connected with economic development, conditions and circumstances (cf. Immerfall/Sobisch 1997, 2; more differentiated and critically Bosch/Newton 1995). At the same time, affective support is dwindling due to the incomprehensible decision-making system in Brussels and a democratic deficit regarding transparency, control and separation of powers.

In the past the support of the German population for European unification was significantly higher. There were a variety of reasons for this harmonious approach. In the first place, inequality in social structures was not extremely pronounced in Germany. The income distribution and the welfare level of households were basically balanced in comparison to other EU member countries (cf. Hradil 1992, 84). Secondly, the German party system was not particularly polarised with regard to the opinion of voters, with an overwhelming majority of voters holding centrist views. There were no strong disparities between the different party affiliations (cf. Falter/Schumann 1992, 199). Political consensus was reached more easily than in other countries that have more controversial party systems. The incorporation of interest groups into the political decision-making process was another reason for the

relatively low degree of controversy concerning the debate on Europe. The comparatively high level of co-ordination between interest groups and government administration yielded a meso-corporatism in Germany (cf. Schmidt 1992, 419). Finally, the economic situation played a major role. The stable socio-economic performance in Germany was an important base for the arrangement of the population with structures and processes of the liberal democratic system (cf. Gabriel 1992, 114). In the post-war era, this positive economic development was strongly connected with the incorporation of the former West Germany into the system of Western European nations and with the formation of the European Communities in 1951 and 1957. But these periods of social and economic stability have come to an end in times of global competition and high unemployment. In particular the debate about the introduction of the Euro being conducted by political and social actors makes the changes in the social climate discernible.

2.2 Conflicting trends in the German Euro debate(9)

The recently expanding debate about the introduction of the Euro reveals that there are various conflicting trends on the national German level as to which model should be used to shape the future of European unification. The discussion about Europe, which, in the past, was exclusively normative, could be characterised by wholehearted consent to the part of the German population and elites. This consent did not question the premise stated at that time by Chancellor Helmut Kohl that the construction of the "European house" was indispensable. Yet European consent has been replaced by a critical analysis of the advantages and disadvantages of a single European currency as well as of the risks that are implied by too early implementation of a monetary union. Although the public debates evidently concentrate on the introduction of the Euro, this novelty indicates more than a mere consideration of the risks and benefits that are involved in the introduction of the Euro. This controversy suggests rather that a common currency will display a strong pull towards integration so that not only monetary policy will be controlled by the European Central Bank, but other policy areas, particularly finance and taxes, will be under the control of supranational institutions, too. These policies are, by tradition, at the heart of national sovereignty. Joining the monetary union is considered a deeply political process that transcends the area of monetary policy (cf. Tietmeyer 1994, 457). The German Euro debate has initiated a discussion about the future of Europe.

Until now, the discussion concerning the further development of European unification was almost exclusively carried out by the political and social elite of Germany. It was characterised by a pro-European bias that is clearly being questioned now. Therefore, it is important to make the following differentiation between political and economic actors, of whom none is strictly against European integration: while the "advocates" support the continuation of European integration because of a more global perspective, the "sceptics" favour the *status quo*, since they focus on the present problems of the European Union (cf. Mayer 1995, 322)(10). Only small, politically insignificant groups completely reject the idea of the European Union or deny that the introduction of a common currency is, in principle, reasonable. In the following, we will look in greater detail at the main characteristics of the different approaches towards Europe in Germany. The analysis of the German Euro debate deals with the positions of German parties, of the *Deutsche Bundesbank* (German Federal Bank) and of interest groups (employer organisations and trade unions). That will lead us to the relationship between the positions of political institutions and economic interests.

The German party system and the Euro debate

German society as well as political and economic actors have begun to deliberate in detail on the monetary union and further development of European unification. This discussion, however, is not

very controversial, as the various opinions do not completely contradict each other. Nevertheless, different models to explain the current situation and the best possible further development are discussed and divergences in emphasis and priorities can be worked out. The debate among the political elite as observed in the public, the media, parties, and interest groups is basically pro-European. Opinions mostly differ in their perceptions of the timing of the integration process. In contrast to the party programmes and official papers (e.g. cf. SPD 1995, CDU 1997, FDP 1994), personal statements made by (important) politicians of nearly every German party indicate that the pro-European attitude has given way to a more careful consideration of advantages and disadvantages of particular integration steps, such as the introduction of the Euro.

The Euro debate cannot be structured along party lines, as the pros and cons are discussed right across the parties, the left-right spectrum, and the interest groups of employees and employers. Only some smaller parties and more radical groups, such as the PDS (Party of Democratic Socialism, successor to the former Socialist Unity Party, the communist party which ruled in the German Democratic Republic)(11), the Republicans (extreme right-wing party) and the *Bund freier Bürger* (Alliance of Free Citizens) under the presidency of Manfred Brunner, former member of the FDP, reject the current structure of the EU and any further integration. The established parties react to these anti-European statements in two ways. On the one hand, it is, above all, conservative politicians who try to be cautious about a clear support for European integration in order to maintain ties between right-wing voters and traditional parties. On the other hand, this strengthens more integration-minded politicians right across all parties who want to set themselves apart from anti-European tendencies, and thus it leads to a multipartisan consensus.

In general, both the CDU (Christian Democratic Union) and its Bavarian sister party the CSU (Christian Social Union)(12) pursue a pro-European policy and emphasise the Franco-German relationship as the driving force behind European integration. But also in both parties a split into supporters and sceptics can be revealed. Prominent politicians in the CDU and the CSU advocate or slightly criticise, respectively, the plans to introduce the Euro. Ex-Chancellor Helmut Kohl is considered a full supporter of economic and monetary union. In his early years as chancellor, Kohl's European policy was largely declamatory (cf. Paterson 1996, 55). In the 1980s, the integrationist Kohl started actively to overcome the intergovernmental character of the European Community with the support of his confidential and lasting relationship with François Mitterand (at that time president of France)(13). In the CDU, Wolfgang Schäuble was Kohl's antagonist during this period. The leader of the parliamentary group of the CDU/CSU in the *Bundestag* (German parliament) is more reserved about monetary union and stresses the rediscovery of national ties. It has become increasingly evident since German unification that the CDU finds itself in a "programmatic split" between Europe and the nation (cf. Schoch 1996, 1223). The aim to establish a European Federation has been formulated with more caution in each new programme. At the same time, the significance of the nation state has been emphasised.

The priorities of the CSU, the Bavarian partner of the CDU, are an active Bavarian presence at the federal and the European level and a special interest in European Agricultural Policy (cf. Paterson 1996, 63/64). The party is confronted with a similar disparity of views concerning European integration as in the CDU: Theo Waigel, former Minister of Finance in Bonn and chairman of the CSU, is for a strict interpretation of the convergence criteria and opposes a delay in monetary union. His opponent Edmund Stoiber, Minister President of Bavaria, has energetically and repeatedly criticised the monetary union. Germany's position as the most important net contributor in the European Union is unacceptable to him. He does not favour the conversion of the EU into a federation either. He supports a European integration based upon a confederation of nation states.

Should the convergence criteria not be strictly applied, he has indirectly threatened the *Bundesregierung* (federal government) with supreme court proceedings. The controversy between Waigel and Stoiber also shows how political competition on the domestic level affects European policy: Waigel's support of strict compliance with the convergence criteria has to be seen in the context of his agreement with Stoiber concerning his re-election as chairman of the CSU.

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The European policy of the German Social Democrats is orientated towards more pan-European aspects of integration in addition to the empowerment of regions in Europe and of the European Parliament (cf. Moeller 1996, 46/47). The majority of members of the SPD (German Social Democratic Party) are cautious about European monetary union. Oskar Lafontaine, chairman of the SPD and at that time Minister President of the Saarland, is considered a supporter of the Euro. At the same time, he is not disinclined to accept a postponement. He warns against overemphasising price stability, as the situation of the labour markets should allow deficit spending. Gerhard Schröder, then prime minister of Lower Saxony and chancellor candidate of the SPD, does not disguise the fact that he favours a "controlled postponement" since the social and economic costs are too high (cf. Schröder 1997). For political reasons he prefers a postponement instead of weakening the criteria. Along with his former Minister for Economic Affairs, Peter Fischer, who supports a large number of participant countries, he is one of the group of "sceptics", but is not one of the opponents of a single European currency. The differing arguments of Lafontaine and Schröder also have to be interpreted with regard to internal conflicts in the SPD, as both wanted to run for chancellor in the federal election in September 1998(14).

The FDP (Free Democratic Party) as the liberal party of Germany endorses European monetary union, for it is seen as a necessary complement to the Common Market (cf. FDP 1994). According to the FDP, a federal structure of the European Union which guarantees economic and individual rights would be in line with their programme in the tradition of political-constitutional liberalism (cf. Jachtenfuchs/Diez/Jung 1996: 17). As the FDP represents the party of entrepreneurs and the self-employed, their political point of view is closely linked to the interests of business, particularly large companies which urge the introduction of the Euro. For instance, Daimler Benz is very committed to convincing the company's employees and the public of the advantages of a single European currency. But even the liberals no longer unanimously favour a single currency. The *Libérale Offensive in der FDP* (Liberal initiative in the FDP) is trying to stop the Euro on grounds of its expected weakness with help of a referendum of all FDP members.

The attitude of the Green Party (Bündnis 90/Die Grünen – Alliance 90/The Greens) to European themes is less homogenous. One group within the Green Party opposes the EU in its present form, calling for a confederate Europe of regions (cf. Wessels 1995, 130), while Joschka Fischer, at that time spokesperson of the parliamentary group of *Bündnis90/Die Grünen*, made clear his different position in this matter. He is convinced that monetary union implies political coercion that, in the long run, will lead to political union (cf. Fischer 1997, 7). According to him, Germany's specific historical experiences do not allow for an alternative to the continuation of European integration.

The Role of the German Bundesbank

Nobody doubts the central role of the German *Bundesbank* (Federal Bank) when it comes to analysing German positions concerning the Euro. It is the Bundesbank's legal task to safeguard the internal and external value of the German currency and hence to regulate the amount of money in circulation and of credit supplied to the economy. The Bundesbank acts independently of political orders but has to support the policies of the federal government. The Bundesbank essentially set the

high standards for the convergence criteria (cf. Weiner 1996) and exercised influence on the European level via the German Government. Despite the considerable influence on the treaty, not all the members of the Central Bank Council (*Zentralbankrat*), which consists of the eight members of the directorate and the nine presidents of the Laender Central Banks, are in favour of the introduction of a single European currency. Hans Tietmeyer, President of the Bundesbank and Chairman of the Central Bank Council, has expressed his general agreement to the currency union and would prefer to meet the 1999 deadline. At the same time, he expresses concern that not all the requirements for the maintenance of monetary stability will be met. The presidents of the Laender Central Banks of Bavaria and Northrhine Westphalia fear that the introduction of the Euro without strict application of the stability criteria will endanger the tasks of the Bundesbank as set out by national law.

Interest groups and the Euro

The common market is very important for the German economy, as 55 percent of all exports go to EU member countries and another 15 percent to EFTA countries. "From the point of view of the German economy, the idea of an economic and monetary union is the necessary complement to the Common Market which, at the same time, will lead to a perfection of monetary policy" (Stihl 1993, 26). German employers also emphasise the harmonisation of tax and foreign trade laws as well as of export controls. Large-scale industrial companies, such as Daimler Benz AG, Siemens and BMW, major banks (e.g. Commerzbank, Deutsche Bank, Dresdner Bank) and insurance companies (e.g. Allianz) along with their employers' associations press for a start to the currency union without delay. These companies base their attitude on the scenario that the Euro – in comparison with the US dollar – would be relatively weak and would, therefore, increase the competitiveness of German export goods. They are also convinced that the Euro will stabilise currency exchange rates, enlarge the overall scope of economic operations and last but not least, will improve the chances of Germany in a globalized market. In contrast to them, small and medium-sized companies, some smaller private banks and the Association of German Co-operative Banks (*Bundesverband der Deutschen Volks- und Raiffeisenbanken*) prefer a postponement of the Euro.

At first, the German Federation of Trade Unions (*Deutscher Gewerkschaftsbund*, DGB) was an emphatic supporter of a single currency. Along with the board of directors of the DGB (*DGB-Bundesvorstand*), a majority of member unions, such as the *IG Metall* (Metal-workers Union) and *IG Öffentliche Dienste, Transport und Verkehr* (Public Services and Transport Union) have been committed to the introduction of the Euro on schedule. Outdoing the policy of the *Bundesregierung*, they have urged that the currency union should be combined with an active labour market policy. However, the impending deadline for the introduction of the Euro has triggered the same kinds of discussions and controversies about the risks and opportunities of the Euro that can be observed in other political, economic and social groups. The trade unions mentioned above have warned against the strict convergence criteria. The board of directors of other member unions, such as *IG Bauen-Agrar-Umwelt* (Union of Construction, Agriculture and the Environment) and *IG Handel, Banken und Versicherungen* (Commerce, Banking and Insurance Union) criticise a single currency more openly. In flagrant contradiction to the DGB line to date, the president of *IG Bauen-Agrar-Umwelt*, Klaus Wiesehügel, proposes a postponement of the currency union because the low wages of other European countries would destroy job opportunities for German construction workers. He adds that only a generous interpretation of the convergence criteria could bring the different opinions among union members closer.

Relationship between political and economic objectives

The impending deadline for monetary union has initiated an extensive debate in Germany about the future of Europe to an extent that was hitherto unknown. Taking into account considerations of a "European civil society" it is important to note that the beginning of a public debate about European subjects in Germany is an indication of a normalisation process with regard to the role that Germany plays in the European systems of nation states. The public debate reveals a Euro(pean) dilemma with two different facets, a political and an economic one. The political "Euro trap" can be described by the following observations. On the one hand, any criticism of the subject of European integration has up to date been considered a betrayal of the idea of the "common European house," and a potential critic would have been discredited as an enemy of European integration; on the other hand, the population's consent to the institutional structures has been on the decline and the efficiency of the European systems has been questioned.

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The economic dimension of the Euro dilemma is hidden behind the uncertainties of the European monetary union. The introduction of the Euro could lead to an unstable currency which might end the successful German economic and monetary policies of the post-war era. Many politicians fear that the previous economic policy might fail in the future. Furthermore, the rigorous budget discipline may lead to welfare losses for workers and other low-income employees. Increasing unemployment could result in an explosive social atmosphere in Germany. This argument contrasts with an evaluation that takes into account the possible effects on society if monetary union were doomed to fail. Both employers' associations and trade unions dread the consequences of a failed monetary union because it would increase the external value of the German Mark. As a consequence, prices of export products would rise and hence endanger jobs in this important segment of the German market.

The reaction of political actors with regard to the Euro(pean) dilemma is characterised by the priority that is given to *political* decisions over monetary questions. The opinion of economists who warned against too early a formation of monetary union in Europe was not taken seriously by the government. A parallel between the economic and monetary union that preceded the political unification of Germany and the European integration process can be drawn (cf. Knodt 1992, 65). Due to the primacy of political aims, the attention paid to warnings from economic experts was limited in the German case and is limited in the European case. The Euro debate and related considerations of the future of Europe reveals a high degree of politicisation of European politics in Germany.

To sum up the argument of this section: The implicit agreement on the part of the German population and interest groups to the process of European integration has come to an end. Prior to that a permissive consensus concerning European integration existed in Germany. Interaction between elites and population in forming public opinion was on friendly terms. The majority of the population adopted the conviction unanimously expressed by the economic and political elites that European integration was desirable and advantageous (cf. Reif 1993, 25). The debate about the democratic deficit in the EU, the criticism of European agricultural policy as well as of the financial contributions of Germany to the European budget, and the discussions about the convergence criteria have split the formerly permissive opinion in society. Public opinion reacted with an increasing dissent to European integration. The permissive consensus that consolidation of European integration was desirable has come to an end in Germany. The current debate about the European project has considerably politicised the German discussion. The normative objective of the 'construction of the house of Europe' is no longer accepted without discussion of costs and benefits. In a way, Germany has been emancipated from its old role of a self-appointed paragon and the unquestioned driving force behind EU integration. In comparison to the other member states the position of Germany in the EU is on the way to normalisation.

There are different factors that explain the revoking of the German consensus. The present level of discussion shows that an economic and monetary union has to be seen in direct relation to steps towards further political integration. The European Central Bank would be an even more independent and autonomous authority than the European Commission and would gain control of a wide scope of tasks that used to be under national sovereignty. In that respect, a common monetary policy is seen as a means that may have a strong impact on European integration and could lead to a political union in the long run. The EMU will initiate a process of irreversible surrender of sovereignty to the European level. The EMU debate implicitly strengthens a competing model of legitimating the European democratic deficit, which is that of efficiency. The discussion in Germany has shifted away from normative considerations to a debate about the pros and cons of EMU for every economy and that of the German state as a whole. Efficiency as a legitimisation of German European policy-making is coming to the fore in the EU discussion.(15)

3 The Federal Constitutional Court and its policy

In recent years that part of the literature which focuses on domestic factors in explaining Germany's integration policy has focused on the challenging role of key German institutions. The Federal Constitutional Court (FCC) plays a key role in shaping the German attitude towards the EU. In this section we will show that the FCC is not strengthening or helping to reconstruct the old German European policy paradigm but is rather giving way to a more refined paradigm which is based on a case-to-case assessment of each intergrational step. Although with its ratification verdict in the Maastricht Treaty in October 1993 the FCC demonstrated its involvement in integration policy and set a milestone with its role in the integration process, the German public and many German political scientists have not recognised the verdict to a greater extent. Why? Two factors help us to explain that lack of interest: (a) The relationship of the Germans to their constitution has remained very down-to-earth since its ratification in May 1949 and the importance of its creation and continuation pales in contrast to the events in (financial) policy. (b) The FCC, at first glance, has acted in accordance with the integration policy of the Federal Government. Only upon closer examination of implicit ideas and norms does the Court's verdict lead to an adequate assessment.

During the most important sections of post-war constitutional history – during the creation of the Federal Republic and German unification – the constitution provided the framework for historical processes but at the same time was overshadowed by current events. After the Second World War, the famous *Stunde Null* (zero hour) was identified by the majority of the population as the day of monetary union in 1948. From then on daily life changed. The political interest of the people until 1949 was absorbed by the blockade of Berlin and the growing tension between East and West. The same pattern could be observed 40 years later during the political and constitutional break which ended the post-war period and the division of Germany. Although unification was brought about essentially by constitutional means, the main discussions were held on German Economic and Monetary Union and worries about the cleavage between East and West in economic as well as in societal and cultural terms. The agreement on basic principles and aims of their community for the revision of their constitution was not discussed in public by the Germans. The contribution of the German constitution and its guardian – the FCC – to European integration was also judged to be negligible (cf. Detjen 1997, 3).

Even the Maastricht Treaty and with it the change in Article 23 and 50 of the German constitution and the verdict of the FCC on the TEU, the Germans did not initiate a lively debate in public – except for federal and Laender politicians who were struggling over the future of German federalism (see below). Sometimes it seems that only the judges in Karlsruhe themselves and some foreign academics

have recognised the importance of the Court's statement.⁽¹⁶⁾ It seems that a well-known pattern in German constitutional history will repeat itself: again the constitution as such has been obscured by a debate on an emerging monetary union. This lack of regard does not do justice to the significance of the FCC's verdict. On the contrary: a closer look at the behaviour of the FCC will tell us that most of the time it supported disintegrative tendencies and did not act at all, together with the Federal Government, in accordance with a pro-integrative consensus, as some scholars have interpreted recent developments (Goetz 1996).

The position of the Court on European integration is characterised by a struggle about the FCC's areas of competence in contrast the European Court of Justice (ECJ). It is the history of 'Solange (as long as) I' (Hilf 1987) and the Maastricht verdict of the FCC which have to be looked at.

In the early history of European integration the FCC did not accept complaints concerning violations of the constitution if they were directed against community law. The first confrontation was in the offing when in 1974 a company exporting cereals and animal food had sued against a Community law which regulated details of its exporting business at the Frankfurt Administrative Court. After being rejected by the ECJ in a second step, the Administrative Court asked the FCC via judicial draft whether the decree violated the Basic Law principle, which is laid down in the German constitution, of the freedom to choose and pursue one's career. The explosive nature of the incident has not to be seen in the outcome – both courts voted in favour of the community law – but in the fact that the FCC had decided at all after a decision of the ECJ. The court at Karlsruhe argued that *as long as* the law of the EC does not contain a sufficient Basic Law catalogue (Grundrechtskatalog), which should be adequate to the one in the German constitution, the FCC itself would be allowed to prove the compatibility of the EC law with German Basic Law.

In the Maastricht verdict in October 1993 the FCC took up that argument. The Court was asked to scrutinise whether the German Ratification Law of TEU, which had already passed the Bundestag, could be reconciled with the demands for democratic accountability enshrined in the German Basic Law. The Maastricht Treaty is seen as being in conformity with the constitution but it strengthened 'Solange I' by saying that it is the duty of the FCC to ensure the constitutional conformity of European Law. And then as if the judges at Karlsruhe did not show any autonomy they stated in another sentence that the FCC would exercise 'jurisdiction over the applicability of secondary Community legislation in Germany in a 'co-operative relationship' with the European Court of Justice' (Winkelmann 1994, 754). The 'co-operative relationship' laid down in the 'reasons' of the verdict ascribed to the ECJ the role of guaranteeing 'protection of basic rights in every individual case for the entire area of the European Community; the FCC can therefore restrict itself to a general guarantee of the constitutional standards that cannot be dispensed with' (Winkelmann 1994, 769).

The FCC's verdict resembles a defence of the nation-state, neglecting the fact that European integration has brought national governance partly 'beyond the leviathan' and incorporates all member-states into a complex transnational, multi-level system of decision making. 'Being a member of the EU has the consequence that political institutions, i.e. governing agents, have lost their exclusive privilege of authority allocation' (Kohler-Koch/Knodt 1997, 3). That is why in recent literature on the multi-level system it is characterised as an 'interpenetrated system of action' (Kohler-Koch/Knodt 1997, 3f). Along the same line is the debate on 'Governance without Government' (Rosenau/Czempiel 1992; Kohler-Koch 1993 and 1995; Jachtenfuchs/Kohler-Koch 1996) where the state is given the role of moderator of the societal dialogue.

At the same time the FCC attempts to do both, to strengthen the state's sovereignty and to protect supranationalism. The Court tries to establish a model of compromised status quo as its construction of the future EU.⁽¹⁷⁾ It positions itself in-between the federalists on the one hand, trying to convert the EU into a community based upon democratic accountability, and confederalists, working to abandon any supranationalism at all. In inventing a new – historically mostly harmless – word that does not exist in the German language, the one of *Staatenverbund* (confederation of allied states), the Court is obviously trying to follow a kind of 'third path'. It is the attempt to find an 'ideal way' integration model in the middle between a *Bundesstaat* (Federation) and a *Staatenbund* (Confederation). The inserted '-ver-' ties together the confederation of states in a stronger way than the *Staatenbund* but, in contrast to the *Bundesstaat*, places the states in the 1st row; they remain *Herren der Verträge* (masters of the treaties)⁽¹⁸⁾.

The main principle of the Court's integration model is *delegation*. The sovereignty of the nation-states is delegated – away from democratic accountability – to the supranational level. The artificial and more theoretical than realist distinction the Court introduces between surrendered and delegated suprastatism is fundamental to legitimating the ratification of the Maastricht Treaty as well as the persisting lack of democratic symmetry of the European integration status quo. In addition, it provides the possibility for the Court to withdraw delegated sovereignty back to the nation-state.

An analogy from the new form of 'delegated suprastatism' and classical contract theory will help to understand the Court's model. All collective decisions in modern states are based on delegation and representation – carried out most of the time by majority vote – as one of the guiding principles. But the specific function of authoritative allocation of values and binding decision-making is only given to the elites of the political system under certain constraints. First of all, any higher authority has to be based upon the explicit vote of all participants. Directly or indirectly they have to agree upon principles, norms, rules and decision-making procedures of the new institution – the primary contract. With this contract the rational actors (be it individuals or states in a kind of double representation in the EU) establish the following principles: (a) the sovereign has to be the 'demos' which delegates its power to representatives through regular, free, equal and secret elections; (b) decision-making rule is the principle of majority; (c) power within the established community is divided; (d) the community aim is to protect the life, freedom and property of the people; (e) courts ensure the rule of law and (f) the right of opposition and resistance has to exist. These principles – especially the delegation of power through majority voting – are based upon two dominating preconditions without which legitimacy could not be assumed anymore: a) the openness of the proceedings has to be secured (e.g. by securing the basic rights and minorities as well as equal chances for majority and minority to be present and assert their interests to avoid structural minorities and b) the reversibility of decisions.

Coming back to the FCC's 'delegated suprastatist' model, no (federal) state has been established on the European supranational level and so far it still seems exceedingly remote. It is obvious and has been said many times before that most of the principles stated above are violated in the EU, as is most prominently shown by equality in voting at the decisive stage of collective decisions. Representation is carried out only indirectly through a kind of double or second step representation through an executive elite. That is what is described in the literature as the democratic deficit and the asymmetry between a supranational legal development and the lack of any corresponding democratic accountability (Gustavsson 1998). The Court legitimises the supranational development through its match with the basic values and norms laid down in the German Basic Law. With this argumentation

it returns to one of the central thoughts of John Locke that focuses on the primary contract (Locke 1992, second treaty, chapter 8, Parag. 119ff). That is the notion of an existing implicit contract between the participants of a community. The implicit contract is based on the community's principles, values, norms and rules. Whenever the implicit contract is violated, community members can oppose the decision and must be able (de jure) to revise it.⁽¹⁹⁾ In that way Germany represented through the Court can oppose EU integration if it is incongruent with the nation-state's value system. European principles that are not in line with the national value system cannot be adopted. It is one of the dominating principles of the 1949 German Basic Law which cannot be changed in its core content.

'The accession of the Federal Republic to the European Union must therefore take place in a form permitted by the applicable articles. It is not possible to solve the problem through political means – as has been done in other Member States – by allowing a referendum to undermine the central constitutional provisions safeguarding the right of the people to determine its fate. [...] What was viewed in Denmark and in France as a political question to be decided by plebiscite was seen in Germany as a problem of constitutional law, to be decided by the Constitutional Court' (Gustavsson 1998, 4).

To put it in a nutshell: the core of the 'delegated suprastatism', laid down in the verdict of the FCC on the Maastricht Treaty, legitimates further integration steps through a match with the implicit (German) societal contract and with the principal of reversible delegation of power to the supranational level (cf. Gustavsson 1997). This becomes obvious in the verdict of the Court:

'The Federal Republic of Germany is thus, even after the coming into force of the Union Treaty, a member in a confederation of allied states whose common authority is derived from the Member States and which can have binding effect within the sphere of German sovereignty only by virtue of the German legal sanction. Germany is one of the 'Masters of Treaties', which have established their adherence to the Union Treaty 'for an unlimited period', but which could ultimately, through an act to the contrary, revoke that adherence' (Winkelmann 1994, 781).

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This model has been questioned in the debate on further integration, i.e. EMU. The question been posed is as to whether the decision to introduce a common currency and, in addition, an independent Central Bank, not subject even to the Commission or the Council of Ministers, does not violate the precondition of a reversible suprastatism. The Court itself warned about the dynamics of a EMU and stated that Germany 'is not subjecting itself to an unsupervisable, unsteerable automatic pilot in its progress to a monetary union' (Winkelmann 1994, 792).

The ideas of the EU as a 'Staatenverbund', member-states as 'masters of the treaties' and the principle of delegated suprastatism propagated by the FCC is not in line with the old paradigm of Germany's European policy. European integration is no longer supported as the main principle, which has to be strengthened and is unquestioned. On the contrary, the court's verdict offers the opportunity to discuss every integrational movement and to withdraw delegated competencies under discussion. The FCC's contribution to the new paradigm is to open up the opportunity to debate the shape of the European house and its furniture instead of propagating its ideal vision as such.

4 Cinderella's slipper: consequences of the German-European institutional fit

There is one characteristic of German policy making that is shaping its adjustment to the challenges of the EU: The German institutional setting fits the EU in the same way as Cinderella's feet fitted its lost slipper. There are two principles in the political system of the Federal Republic which make the German decision-making match better with the European institutional setting than other member states(20): The horizontal fragmentation of the system which is caused by a division of competencies along with a high degree of autonomy on the part of several national actors such as the individual national ministries, the Federal Constitutional Court and the German Federal Bank; and the vertical fragmentation of power due to the division of competencies caused by the federal structure of the political system.

But at the same time both principles cause some opposing outcomes which are concealed by the institutional fit argument: the high degree of autonomy on the part of national ministries and institutions can also lead to an incoherence in German policy-making. Even in the past horizontal fragmentation caused some problems in imposing the old paradigm. Towards the end of the chancellorship of Helmut Kohl, the competition between ministries was rising and the divergence of European policy between the different ministries was obvious. In the case of the federal structure of the Republic, the adaptation to European integration is transforming the federal system and is pressing forward with the development of the German federalism into an increasingly competitive system. The increasing struggle of the smaller and economically weak Laender provided with less administrative and financial capacities to place themselves on the same footing as the more resourceful Laender is one of the outcomes. The demand for more subsidiarity is another. The Laender are no longer struggling for a greater say in European policy and a Europe with the regions as one facet of the European house. At the moment they want to get more autonomous competencies back from the European level to improve the responsibility they have won for regional welfare – each Land on its own and using its own strategies.

4.1 Horizontal fragmentation: the resort principle and issue-oriented networks

In recent years the part of the literature which focuses on domestic factors in explaining Germany's integration policy has been directed to the challenging role of various key German institutions such as the Federal Government (*Bundesregierung*), German Parliament (*Bundestag*), Council of (Laender) Ministers (*Bundesrat*), German Federal Bank in Germany, and the Federal Constitutional Court (FCC) as explanatory variables. This refers to the point that in addition to the division of power between the Federal Government and the Laender – referred to in the next section – sovereignty in Germany is not given exclusively to the parliament as in for example the British system, but rather political power is based on a wide range of unchangeable basic laws, the right to test the constitutionality of laws through the FCC and the far-reaching autonomy of the Federal Bank. In this section we will not deal with any one of these institutions in detail – for the special role of the Federal Bank and the FCC see sections 2 and 3 – but with an underlying principle of the German system which causes a horizontal fragmentation in policy-making: the principle of ministerial autonomy which in German is referred to as '*Ressortprinzip*' (department principle). In shaping German policy-making ministerial autonomy is realized within multi-tiered governance regimes and issue-oriented networks. Katzenstein refers to these points in subsuming them under the terms of 'the system of associated sovereignty in the European polity and semisovereignty in the German state' (Katzenstein 1997: 40). The similarities of these both, he argues, create 'a milieu in which German political actors can feel at home' and make 'it possible for German and European political elites to reinforce and exploit an institutional fit that had emerged fortuitously' (Katzenstein 1997: 40f).

The ministries on the federal level are relatively independent actors, they are responsible for their own resort and concentrate on finding solutions for particular problems within their issue area. We can observe the 'department principle' by having a closer look at the policy-making of the ministerial bureaucracy. It is involved to a great extent in the preparatory drafting of EC legislation within numerous working groups of the Commission and the Council(21) and in the implementation. The ministers and state secretaries are active within the decision-making process. Two ministries play a major (competing) role in EU policy making: questions of a more political character are taken up by the foreign office(22). The Economics Ministry involved with the questions of a more technical nature has consolidated its role because of the increasing importance of technical questions in EU policy-making and because of its historical and political mission to defend and propagate the social market economy. The ministry also plays a key role as a contributor of information and documents to the other ministries as well as to the Parliament, the Bundesrat and the Laender observers (see below) and it chairs the inter-ministerial committees on EC affairs, as it is also responsible for transferring their resolutions back to the German Permanent Representation in Brussels (cf. Rometsch 1996: 71). The autonomy of the ministries is strengthened in addition by the fact that in practice the departments were distributed between the different parties of the ruling coalition government, which holds true for the old and new government.

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This autonomy has developed a governance approach within each department to solve problems in close co-operation with the committees of the Parliament and the Bundesrat concerned. In addition relevant interest representatives are involved. These issue-specific 'networks' could also be enriched by transnational consultations and strengthen the power of the ministry in its competition with the others. Ministerial bureaucracy plays an important role in the shaping of these 'issue-networks'. Their established co-operation with different societal actors and representatives of interests provide the basis for issue-oriented problem-solving which is based on the expertise and mutual trust of the partners. Corporatist networks consisting of representatives of an autonomous ministry and the representatives of various interests attributed with bargaining power are trying to find an optimum (concerning their interests as well as the core of the problem) solution which should be based on as much expertise as possible. The parallels to the EU governance approach are obvious: like Germany, the EU is based on multi-tiered governance regimes as just described. And for both, the EU and Germany, consultative bargaining and consensual decision-making procedures are characteristic of their governance arrangements(23). Another telling argument in support of the consensual character of German policy-making within the EU is the following: to demonstrate its endeavour to balance and equalize divergent powers, Germany avoids isolated leadership situations and presents bilateral initiatives, especially Franco-German efforts.

The EU gathers issue-specific and rather discrete governance regimes under its institutional roof. As Bulmer argues, this 'is true within the European Commission, where vertical co-ordination within the directorates general is much stronger than horizontal co-ordination between them' and within 'the Council of Ministers, of which there are over twenty: they tend to confine themselves to their individual provinces' (Bulmer 1997: 59). Along with the fragmentation of the administrative process, expertise and information provided by societal actors and experts gains prominence. In that way, in both Germany and the EU closed and highly stabilized issue networks are formed in which the technical nature of a problem is highlighted to transform political bargaining into administrative problem-solving. In both negotiation systems bureaucracy plays an important role in shaping the issue-specific networks and to work for an appropriate problem-solving rather than a political solution. 'Policy making is largely 'precooked' in negotiations between civil servants in the Committee of Permanent Representatives (COREPER) and its specialist subcommittees', Bulmer describes parts of the European situation which matches our description of the German co-operative governance

within ministerially determined issue networks (1997: 55).

Concluding the multi-tiered governance arrangements shaped by the autonomy of the ministries in Germany, one could argue that it simplifies policy-making in the EU for German institutions because it matches the issue-specific approach of the EU. The institutional fit creates a milieu which makes it easier for German political actors to adjust to the challenges of the EU and to make use of the opportunities the EU is offering. Putting the argument even more bluntly, some of the authors have argued that Germany's convergence with EU governance structures provide it with more 'indirect institutional power'⁽²⁴⁾ than other member states.

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Nevertheless, one can get the impression that often Germany does not make use of that power. One explanation is that resort egoisms and the fragmentation of different issue-specific approaches towards the Community could cause incoherence in the entire German position and problems with integrative concepts that bridge several issue areas as within the programmes of the structural funds. This can lead to a more confused than coherent German policy in Brussels, which is not at all oriented towards a coherent pro-European paradigm.⁽²⁵⁾ The weakness in domestic policy co-ordination is even higher in the run-up to federal elections when parties try to raise their profiles through their federal ministers⁽²⁶⁾ or in times of problems in leadership, as in the last year of Chancellor Kohl's office, when speculations about his successor weakened the unity of his government. All in all, Germany's European policy with regard to the various ministries has often lacked a coherent profile due to the horizontal fragmentation of the system even under the old paradigm. In recent years the orientation of European policy away from the foreign ministry towards the specialist ministries has forced an issue-oriented discussion and fragmented policy. The European strategies of the ministries are thus much more oriented towards the interest of the ministry, in terms of effective issue-oriented behaviour, than towards acting according to a comprehensive pro-European idea. In addition, the vertical segmentation of the policy process through co-operative and competitive federalism is weakening a coherent position and gives rise to a divergent European policy on the part of the Laender.

4.2 Vertical fragmentation: competitive federalism and joint European decision making

When talking about the German European policy, one inevitably has to talk about the federal character of the state and the Federal-Laender relationship. The most prominent perspective is that of having a closer look at the Laender adaptation to the integration process. And indeed vast evidence of institutional adaptation to European integration may be found. In the main part of growing integration, Laender competencies were directly affected without the Laender having a chance to react directly. Thus the Laender responded to any further integration with federal adaptation. Most of the authors who have looked at the adaptation of German federalism to EU integration have pointed exclusively to the fact of an ongoing process of interlocking politics' (*doppelte Politikverflechtung*, Hrbek 1986)⁽²⁷⁾ in the Federal Republic (Anderson 1997, Hrbek 1997). Here we will take up that picture but at the same time point to more recent and more dramatic developments in the German federalist model.

Today the Laender together with the Federal Government represent their interests towards the EU in a co-operative way and through the Bundesrat, as well as parallel to the federal institutions, in a direct way. The indirect participation of the Laender is based on two principles: (a) the information principle, which obliges the Federal Government to inform the Bundesrat about all EU plans which could be of interest to the Laender and (b) the participation of the Laender through the Bundesrat

when transferring sovereignty from the national or Laender level to the EU. The information principle and limited participation have already been in practice since the ratification of the Treaties of Rome. The full Laender participatory rights, which include the fact that the federal government needs to give 'due consideration' to the Bundesrat's opinion if Laender legislative powers, the establishment of their authorities or their administrative procedures are affected, is laid down in the new Article 23 of the Basic Law(28). If no agreement can be reached between the Federal Government and the Bundesrat, a decision is taken by the latter with a two-thirds majority which is binding for the Federation in its negotiation with other member states. The new Article 23 also considered the request of the Laender to be represented in the Council of Ministers and its various committees. It stipulates that, where essentially the exclusive legislative jurisdiction of the Laender is concerned, the exercise of Germany's rights as a member state shall be transferred to a Laender representative.

To represent their interests at the community level, strict time and information management was requested by the Laender. To guarantee the greatest amount of information in the shortest possible time and in addition the possibility to start direct lobbying, different instruments are used by the Laender. The oldest institutions are the ones of the 'Laender observer' (*Laenderbeobachter*). It is a kind of collective representative which is bound to the Bundesrat and the representatives of the Laender which join the German delegation in negotiations in all European institutions. Even in sending representatives of the Laender to the European institutions one can observe a marked predominance of the powerful Laender administrations of Northrhine-Westphalia, Bavaria and Baden-Wuerttemberg which exceeds the fixed Laender proportion of the Bundesrat. For example Northrhine-Westphalia has sent 49 representatives to the different European institutions and committees in 1994, whereas the Saarland was only able to send one(29).

The dependence of effective Laender lobbying on the administrative capacities of the Laender becomes even more obvious in the case of the so called 'offices of the Laender' at Brussels. Successful Laender lobbying is extremely important in the period of agenda-setting and policy formulation, especially in the case of the programmes that concern structural as well as research and development policy. Early influence on the creation of the structural funds programmes is the best guarantee for later successful participation in the same programmes.

The economically strong Laender in particular enforced their lobby offices, both in terms of personnel and financially, directly after the foundation phase. Economically weak Laender which could only provide their offices in Brussels with little personnel and financial resources are forced to exclusively select their channels of influence while neglecting others(30).

After developing different strategies of indirect and direct communication channels to the European level, 'information' reaches the Laender level in time and causes less trouble than before(31). Nowadays an excessive flow of information is causing trouble at the Laender level. For example the Federal Government sent 7,000 EU documents through the Bundesrat to the Laender administrations in 1995 – 139 were discussed by the Bundesrat. The Laender had to respond by expanding their administration and the technical infrastructure(32).

Even these brief insights provide support for to the hypothesis regarding the adaptation process to the EU that all 16 Laender have gone through. Financial and administrative capacity should be regarded as a main factor influencing the successful performance of the Laender in EU policy-making. Economically weaker Laender are definitely at a great disadvantage in that respect.(33)

The perspective of multi-level governance provides the opportunity to focus on the consequences for

Laender policy of being involved in EU policy-making. It may open our eyes to the disintegrative tendencies of the European integration. The most dramatic development did not take place in the legalising process of reforming Article 23 of the Basic Law but in the disintegrative tendencies in systematically producing winners and losers at the regional level of the European multi-level system. The phenomenon is not new but, with the need to participate actively through a multitude of channels in European policy-making, has multiplied the asymmetry between the German Laender.

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The horizontal and vertical redistribution of income between the federal and Laender-level (*Länderfinanzausgleich*) should eliminate some of the economical and financial asymmetries, but created increasing redistributive conflicts between recipient and paying Laender in the mid 80s and nowadays. The new initiative of the minister president of Bavaria, Edmund Stoiber, supported by Baden-Württemberg and Hessen to get rid of the solidarity-motivated horizontal distribution of resources in the Federal Republic in its current form is only one more proof of the rising competition among the Laender. The great demand for rigid subsidiarity by Northrhine Westphalia and Bavaria when preparing the special summit in Pörtschach October 1998 has not found a majority within the conference of the Laender European ministries before the summit but showed a new possible alliance. The split is no longer mainly between the federal and Laender level. The strategy of the Laender is no longer focused on getting better access to European decision-making as such. Rather, 'strong' Laender are demanding more subsidiarity with regard to getting more exclusive Laender competencies back to the Laender level. The aim is to pursue one's own regional policy which could and should differ quite a lot from other Laender policies with regard to strategies and outcome. The principle of solidarity as now practised should be replaced by a policy driven clearly by the interest of each Land on its own. Unequal living conditions within Germany as well as within the EU are thus tolerated. As a result the split now has to be located between 'strong' and 'weak' Laender. The paradigm followed is no longer the one of building a united Europe with the regions, but rather one of making use of the EU where possible but getting back competencies where it could contribute to effective regional policy and where regional political elites can benefit. The new strategy by some of the Laender is supported by the current president of the Bundesrat, Hans Eichel (SPD, prime minister of Hessen) and the new chancellor Gerhard Schröder (SPD)(34).

To sum up the argument presented in this section: firstly, in the German case the historical establishment of the Laender after 1945 has hindered a restructuring of the (with respect to financial and administrative resources) unequal shape of the Laender(35). Secondly, within these essential conditions that have shaped the development of West German federalism until today, joint decision-making and interlocking politics (*Politikverflechtung*) between Federal Government and Laender have developed which characterises German federalism. In addition to regulating the bargaining process between the Laender and the Federal Government, joint decision-making was also an instrument for the economically weak Laender to make up for their disadvantages in the competition between the Laender. Thirdly, joint decision-making as a kind of co-operative problem-solving within a vertical dimension fits very well with the approach of multi-level governance of the EU and its philosophy of incorporating subnational entities in European governance. But fourthly, it has also shown that European integration could counteract co-operative federalism, strengthen Laender competition and started to change it towards a competitive federalism (*Konkurrenzföderalismus*) which is widening the gap between economically weak Laender on the one hand and economically strong Laender on the other hand. Fifthly, the strong orientation of the Laender towards the old paradigm of contributing to the building of a 'European house' and adding a regional component has come to an end. The Laender strategy moved from trying to attain a greater contribution in European affairs to the demand for more subsidiarity and exclusive competencies – at least from the 'strong' Laender. With it the European policy of the German Laender will be strongly

geared towards the criterion of whether it is going to pay or not.

5 Conclusion: Germany as a new European player

When reviewing Germany's European policy of the last few years on the eve of the German presidency we noted a paradigm shift which could lead to a new role of Germany within the European Union. The old paradigm was characterized by the overriding image of a 'European house' as the dominating normative goal for future integration. Behaviour appropriate to that norm was considered to be legitimate. Above all, strategies under that paradigm had to be pro-European. The unquestioned role of Germany has been one of a supportive participant. That shared concept created stable expectations for citizens as Germany's future was closely linked with European integration. Our hypothesis in this contribution was that this old paradigm is in flux and that actually we could observe a paradigm shift. The new paradigm displaced the old. It is geared more towards the national interest and has triggered discussions of the pro and cons of a European issue that have been highly politicized. The legitimization of European policy within the new paradigm is much more on the basis of efficiency criteria than on a normative base. As a consequence, Germany's role will change towards that of an active self-confident player within the EU. Several indicators have been analysed that provide evidence for our hypothesis of shifting paradigms.

Firstly, we showed that the permissive consensus concerning European integration in Germany has come to an end. The debate about the democratic deficit of the EU, the criticism of European agricultural policy as well as of the financial contributions of Germany to the European budget, and the discussions on the convergence criteria increased the rejection of European integration. The current debate about the European project has extensively politicised the German discussion. The normative objective of the 'construction of the house of Europe' is no longer accepted without discussion of the costs and benefits. In a way, Germany has been emancipated from its old role of a self-appointed paragon and a supportive participant of EU integration.

The discussion about economic and monetary union (EMU) was important for the decline of the old paradigm because (1) it was the first time that a European issue was politicized and (2) it has to be seen in direct relation to steps towards further political integration. The discussion in Germany has shifted away from normative considerations to a debate about the pros and cons of EMU for everybody's economy and that of the German state as a whole. Efficiency as a legitimisation of German European policy-making comes to the fore of the EU discussion. The role of the European Central Bank as an independent and autonomous authority will have a strong impact on European integration and could lead to a political union in the long run. EMU will initiate a process of irreversible surrender of sovereignty to the European level. Beyond the EMU debate, an outcome of the politicized European policy is that it becomes a topic of party politics. In accordance with the old paradigm European policy had the appearance of being unpoliticized. The opposition was not only not able to be more pro-European than the liberal-conservative government but also was not able to take an anti-European line because of the existing permissive consensus and the feared loss of voters.

By looking at one of the key institutions of Germany, the Federal Constitutional Court (FCC), we demonstrated that the FCC's verdict from 1993 did not rescue the old paradigm. Instead of legitimizing the shift of sovereignty to the European level as one more step to a 'European house', it has promoted a model that legitimises the prevailing democratic deficit at the EU level while strengthening state sovereignty without weakening supranationalism. The FCC's model is one of 'delegated suprastatism'. First, it has become obvious that the model of 'delegated suprastatism' of the FCC is not able to cover the most recent developments in European integration, especially the

EMU, and second, it does not create a new pro-European vision. The court's verdict provides the opportunity to discuss every movement towards integration and to withdraw delegated competencies under discussion. The FCC's contribution to the new paradigm is to open up the possibility of comparing every European development with current German constitutional reality and examine the pros and cons before allowing a further step to deeper integration.

In addition we have demonstrated that two major institutional characteristics of the German system – horizontal and vertical fragmentation – have had an impact on the paradigm shift. The horizontal fragmentation of the German system had already existed under the old paradigm. But in recent years the orientation of European policy away from the foreign ministry towards the specialist ministries has triggered an issue-oriented discussion and fragmented policy. With it European strategies of the ministries are much more oriented towards the interest of the ministry, in terms of effective issue-oriented behaviour, than towards acting in accordance with a comprehensive pro-European idea. However, weakness in domestic policy co-ordination is even higher in times before federal elections when parties try to raise their profiles through their federal ministers or in times of problems in leadership, as in the last year of Chancellor Kohl's office, when speculations about his successor weakened the unity of his government. With the new government the horizontal fragmentation will still be of importance for stressing the new paradigm. With the new and more powerful design of the financial ministry, the orientation of the European policy towards national interest, especially with regard to financial aspects, will be stressed. Nevertheless, it has to be clear that the horizontal fragmentation is the most stable variable we have analysed and that its influence on the paradigm shift is limited.

The vertical fragmentation of the German institutional system is facing crucial restructuring at the moment. In contrast to some German writers on the subject who describe a decentralisation process related to the reinforcement of the co-operative German federalist model, we have analysed the challenges of a multi-level system of governance within the EU and brought to light a new dimension of German federalism which we would like to call a competitive federalism. The criterion of efficiency is also the driving force behind the strategies of the German Laender, which are voicing their prevailing interests at the EU level and now trying to draw back competencies towards the regional level. As a result of the Laender's competitive policy, the gap between the economically weak Laender on the one hand and the economically strong German Laender on the other hand will become more obvious during the next few years. It will become clear that it is not only a division between East and West Laender, which is stressed in the literature, and no longer a federal government – Laender split, but between economically disadvantaged (and usually small) and the four or five prospering (large) states (e.g. Bavaria, Northrhine Westphalia, Baden-Wurttemberg). The strong orientation of the Laender towards the old paradigm of contributing to the building of a 'European house' and of adding a regional component has come to an end. The Laender strategy moved from trying to reach a greater contribution in European affairs to the demand for more subsidiarity and exclusive competencies – at least from the 'strong' Laender. This way the European policy of the German Laender will gear itself strongly towards the criterion of whether it is going to pay or not.

The shift away from the permissive and normative consensus of the old paradigm to a much more differentiated argumentative and competitive pattern in Germany should be clear in its various dimensions. In this contribution we interpreted this shift as a paradigm shift away from the former pro-European visionary policy towards an active and self-confident German role in Europe. The new government under Chancellor Schröder has not caused the shift but is acting according to the new paradigm that was born before the elections in September 1998. The European policy of the new government is the logical consequence of the new paradigm orientation. Schröder even made that

(maybe) unconscious shift of paradigm explicit when saying that ‘...within the next few years new big visions will not be on the agenda but the realization of the old visions. European policy will consist of economic and financial policy. What is required now are pragmatic politicians, these are the true visionaries of the near future (transl. by the authors, cf. Große Hüttmann/Roth 1998, 3). The paradox of that new non-visionary and non-consensual paradigm of European policy is now that in the future Germany can play a stronger and more active role than in the past. Expected domestic difficulties and discussions along party lines as well as a lack of domestic consensus about the implementation of international agreements could – as we know since Putnam’s ‘two level-games’ (1988) – strengthen the international position of an actor. A politicized European policy which is more oriented towards efficiency criteria could offer opportunities of achieving a strong position in European bargaining processes that Germany never had before. Whether the new government will be able to make use of, is another question.

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Endnotes

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(1) The new voice of Germany in Europe has caused fear of German hegemony and again strengthened the – binding – function of the European model (cf. Pritchard 1996, 154).

(2) As for the conservatives European integration was a main goal, social democrats were either not able to compete in pro-Europeanism nor did they want to create an anti-European stigma for themselves.

(3) The link is most obvious in the narrow relationship between support for German unification and the German agreement on early European Monetary Union as well as a political union by several EU member states, especially France.

- (4) In this contribution we are not aiming to present the interpretative or constructivist approach in great detail. For detailed remarks see Knodt 1998 as well as Jachtenfuchs 1995, Jachtenfuchs et al. 1998 and Nullmeier 1994.
- (5) While in 1990 81 per cent of the German population approved plans for European integration, in 1995 only 67 per cent did (cf. European Commission 1996a).
- (6) The concept of permissive consensus examines distributive patterns of agreement and disagreement that can be observed in the formation of public opinion. As long as the majority of the population does not oppose a political concept, and sceptics do not obtain an influential position within society, the societal behaviour can be defined as a permissive consensus (cf. Key 1961; Lindberg/Scheingold 1970)
- (7) Firstly, they ask about general support for European integration ("*In general, are you for or against efforts being made to unify Western Europe?*"); secondly, they measure to what extent the membership of the respective country in the EU is supported ("*Generally speaking, do you think that (your country's) membership in the EC is a good thing, a bad thing, or neither good nor bad?*"); thirdly, they try to find out if a sudden end to the EU would be of concern ("*If you were told tomorrow that the EC had been scrapped, would you be very sorry about it, indifferent or relieved?*"); fourthly, they enquire whether the membership of the respective country is being considered advantageous. ("*Taking everything into consideration, would you say that (your country) has on balance benefited or not from being a member of the EC?*").
- (8) It is important to stress that the support of the elite for the single currency is much higher than the support of the German population. In 1995, 46 per cent of top German decision makers were very much for and 44 per cent to some extent for the single currency (cf. European Commission 1996b, 10).
- (9) Due to the research period the analysis is restricted to the German Euro debate before May 1998. That is also the reason why all the data that are presented refer to the time period before the federal election in September 1998.
- (10) Sixty-two economists belonging to the last-named group (among them Wilhelm Hankel) objected to the economic and monetary union in a "manifesto" published on June 11, 1992.
- (11) The PDS was the only party in the Bundestag that refused the ratification of the TEU (cf. PDS 1996).
- (12) The CSU is the Bavarian partner of the CDU, which itself has no party association in Bavaria. Both parties form a joint parliamentary group in the *Bundestag*.
- (13) The good relationship between Kohl as a Christian Democrat and Mitterand as a Socialist did not seem as striking as the close relations between Kohl's predecessor Helmut Schmidt (SPD) and Valéry Giscard d'Estaing (UDF, Union pour la Démocratie Française) (cf. Paterson 1996, 55).
- (14) After this election Schröder as chancellor formed a coalition government between Social Democrats and the Green Party. Lafontaine became Federal Minister of Finance.
- (15) It seems to be a German peculiarity that we prefer to talk about the efficiency rather than about the effectiveness of policy-making.
- (16) Cf. Formont 1995, Gustavsson 1996, 1997, 1998.

(17) For the following thoughts on the implicit integration model of the Court, see Gustavsson 1998. See also his 'five recommendations concerning the democratic deficit' (1997a: 2).

(18) Cf. Paterson 1996: 144 and Gustavsson 1997.

(19) For the argument of reversibility see Gustavsson 1997 and Zürn 1996: 41.

(20) For a comparison of several member states, cf. Schmidt 1997.

(21) For a detailed description of the work of the German government and the bureaucracy, see Rometsch 1996, pp.69-76.

(22) It should be mentioned at this point that after the Genscher period and the new and rather weak foreign minister Kinkel, the political questions of EU policy are strongly influenced by the Chancellor himself.

(23) Cf. Katzenstein 1997: 26, Bulmer 1997: 58f and Anderson 1997: 82.

(24) For different types of power see Stefano Guzzini 1993, and Bulmer's adaptation for the German case (1997: 72-76).

(25) Bulmer's alternative interpretation 'as a form of 'soft power' and 'useful bargaining resources in interstate negotiations' (Bulmer 1997: 68) could be observed very seldom in practice.

(26) As shown before the Federal election of 1998 when the minister president of Bavaria, Edmund Stoiber (CSU), pleaded for excluding the foreign ministry (headed by the FDP minister Klaus Kinkel) of European Affairs.

(27) For a good overview of the notion of interlocking politics and the European Union, see Risse-Kappen 1996.

(28) Article 23 of the Basic Law was renewed during the changes made to the Basic Law due to the German unification and the ratification of the Maastricht Treaty.

(29) The representation of the new Laender was even worse: Thüringen, Sachsen-Anhalt and Mecklenburg-Vorpommern were not represented at all, whereas Brandenburg and Sachsen each sent one representative.

(30) In the mid-80s Bavaria enlarged its information office by up to 20 employees, Northrhine-Westphalia and Baden-Wurttemberg by up to 10.

(31) An exception can be seen in the case of the Laender parliaments. Even though most Laender constitutions ascribe the right of information to the Laender parliaments, they cannot keep up with the timetable of European policy-making and European decision rhythms. It has to be stressed here that European policy-making by the Laender is a matter for the executive.

(32) Again it has been more problematic for the small Laender to add to each ministry a department of European affairs and to set up its own Ministry of European Affairs in addition

(33) In addition, the regional policy style is another key factor which influences regional performance at the EU level (for this argument see Knodt 1998).

(34) Cf. Speeches by Hans Eichel and Gerhard Schroeder in the Bundesrat, November 6th 1998, in:

Das Parlament, no. 48, November 20 1998, p. 14 and NZZ, November 7/8 1998, p. 3.

(35) Scharpf stated that the last chance of German federalism to get rid of its asymmetry was German unification. But on the contrary the speed of the unification process preserved the old territories and re-established the five post-war Laender (Nachkriegsländer).

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