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Eucken under the Pillow: The Ordoliberal Imprint on Social Europe

Arnaud Lechevalier

The principles of political economy that underlie our economic order and the monetary union are anything but antiquated. They point out how to sustainably overcome the crisis. I recommend to all politicians that they put Eucken's Grundsätze der Wirtschaftspolitik under their pillow at night.

*Jens Weidmann, President of the Deutsche Bundesbank
(Walter Eucken Lecture, 2013).*

How can it be that a crisis that originated as a failure of US financial markets degenerated into what became for most member states of the European Union (EU) the worst economic and social crisis since World War II and finally to a major threat to Social Europe? In this contribution, Social Europe is understood as the direct and indirect consequences of European integration on the social protection and employment systems and, ultimately, on the well-being of European citizens. The direct consequences are due to EU activities in the area of social, redistribution and employment policy: legislation, jurisprudence of the EU Court of Justice, 'soft law' and redistributive policy (social or structural funds). The indirect consequences are tied to the effects of EU economic integration through the single market or the governance of the Economic and Monetary Union (EMU). An answer to this question is sought below through an examination of European responses to the crisis in the context of the broader European integration process. The argument is made that the current crisis of Social Europe is linked to the dominant if not exclusive position of German ordoliberalism in the framing and development of Social Europe from the founding of the European Community onward. As a conse-

quence, German ordoliberalism also fundamentally shaped Europe's main ideas and institutional responses to the eurozone crisis.

Three main features set this paper apart from the existing literature. First, this analysis extends the chronological scope beyond the current eurozone crisis to include also the origins of the ordoliberal imprint on Social Europe. Second, it offers a comprehensive review of the literature examining the ordoliberal management of the crisis, considering the economics as well as the politics and institutions of the crisis. Third, the crisis of Social Europe is analysed theoretically using a critical political economy approach married to historical, sociological and discursive institutionalist perspectives that are treated here as much more mutually complementary than mutually exclusive.

The first section presents the main ideas of German ordoliberalism, interpreted as a project of a competitive 'order' promoted and framed by constitutional and regulative principles and binding rules. The influence of the ordoliberal school of thought on the treaty on the European Economic Community and subsequently on the architecture of the Economic and Monetary Union (EMU) is then analysed for its significance for Social Europe. In a subsequent step, the relationships between ordoliberalism and the social market economy are clarified.

The second part of the paper analyses and explains the responses to the eurozone crisis. Tracing the policy implemented, it returns to the ordoliberal 'crisis narrative' before analysing responses addressed to the crisis at the European level under the informal leadership of the German governments.

Finally, the paper explains the predominance of the ordoliberal approach in framing responses to the crisis (in spite of its economic shortcomings and long-lasting social consequences) as a product of international and domestic factors.

European integration and the '*soziale Frage*': the ordoliberal imprint

As a prelude to understanding the decisive influence of ordoliberalism on the European Economic Community and on the Economic and Monetary Union, this first section synthesizes its original intellectual framework and ideas. The ordoliberal school of thought holds that a competitive or-

der, promoted and monitored by the state, should be at the heart of social organization. It also presents specific ideas about which constitutional and regulative principles are necessary for achieving this purpose.

Ordoliberalism: the competitive order

Ordoliberalism¹ is a school of thought developed and promulgated by a group of academic economists and lawyers that emerged in the late 1920s in Germany. Its focus lies on how modern industrialized economies can be 'organized through an order which is both economically efficient and humanly acceptable' (Eucken, 1942/1959: 48). Its proponents tried to find a 'third way' between the old (Manchester liberalism and the socialist planned economy). The central, driving element in the ordoliberal tradition is freedom, which is thought safe only within the framework of a competitive market economy. For ordoliberals, not only can a competitive order guarantee the efficiency of economic processes, it may also help prevent the concentration of economic and political power.² Importantly, this competitive order does not emerge on its own-it must be established, protected and promoted by the state.

This school of thought needs to be understood within the historical context of its early development, which included the Weimar Republic (with its hyperinflation, economic depression, policy of cartels), the centrally planned economy in the USSR, the Nazi ideology and regime³ and finally the experience of post-war reconstruction in the Federal Republic of Germany. Intellectually, ordoliberalism emerged from a critical reception of the then declining 'historical school of economics' after the *Methodenstreit* and its proximity to and differences from Austrian neo-liberalism (von Mises, Hayek). This was before the opening to an interna-

1. The term 'ordoliberalism' was in fact first used in a 1950 issue of the review *ORDO*. Before the War, ordoliberals may have referred to themselves mostly as 'neoliberals,' a term said to have been coined in 1938 by Alexander Rüstow.
2. 'Competition as an instrument of disempowerment' in the words of Böhm (cited by Wördersfer 2011: 190).
3. The relationship to the national socialist regime was ambiguous. Some ordoliberals, like Röpke and Rüstow, were forced to emigrate, while others, like Eucken, became open opponents of the regime and stood up against the instrumentalization of the university (by Heidegger in Freiburg). Other economists like Müller-Armack had accommodated themselves to the regime, at least until 1942 (Ptak 2009).

tional mainstream, which eventually resulted in the diffusion of neoclassical approaches and later the emergence of Keynesianism (Rieter and Schmolz 1993).⁴

Despite the fact that practically all the leading ordoliberals joined the Mont Pèlerin society (Ptak 2009), ordoliberalism is nevertheless a heterogeneous set of ideas. Some authors distinguish three different groups. The core group, associated with a 'strict' ordoliberalism (Wörsdörfer 2011) and identified as the *Freiburger Schule*, was founded in the 1930s at the University of Freiburg, Germany by the economist Walter Eucken (1891-1950) and by the law scholars Franz Böhm (1895-1977) and Hans Großmann-Doerth (1894-1944). Yet in a broader sense, the term ordoliberalism also embraces a 'sociological' trend (Ptak, 2004), represented by Alexander Rüstow and Wilhelm Röpke. Finally, it is associated also with the group of 'practitioners' led by Ludwig Erhard, West Germany's Economics Minister from 1949 to 1963, who then became Chancellor, seconded by Alfred Müller-Armack, who himself was a student and a central figure of the *Kölner Schule der Nationalökonomie*. Müller-Armack became a theoretician of the '*Soziale Marktwirtschaft*' (social market economy). The analysis developed here is based mostly on the work of Walter Eucken (1939/1989), the key figure of ordoliberalism.

Ordoliberalism: the competitive order promoted by the state

Eucken's intellectual influences were diverse. At the heart of his concept and discourse on liberty is the (Kantian) idea of autonomy (Wörsdörfer 2011). According to Eucken, liberty faces a threefold threat: private producers, groups within society and government. That is why it is so important to protect market competition under the law.

Just as for the state governed by rule of law, the competitive order should create a framework in which the free pursuit of the individual is limited by the sphere of liberty of another, thus creating a balanced liberty between humans. In reality, the will for competition is closely linked to the will for liberty (Eucken 1949: 27).

4. On the genesis of ordoliberalism see Rieter and Schmolz (1993), Ptak (2004) and Wörsdörfer (2011).

But this liberty is not only ‘negative’; it requires material conditions and favourable ways of thinking that must be positively established. We see, then, that Lutheran Protestantism also deeply influenced ordoliberal ideology (Röpke, Rüstow) in its emphasis on the necessary sociocultural preconditions for individuals acting within the market economy and in its positive vision of the state, quite against the shift of a major part of the CDU in the aftermath of World War II toward ‘Christian socialism’ and corporatism (Manow 2001, Hien 2013).⁵

Ordoliberalism, as formulated by Eucken, is based on a concept of economic order promoted and monitored by the state, in opposition both to the planned economy and *laissez-faire*. In this respect, ordoliberalism departs from the classical liberal approach, which emphasizes the self-regulation of the market and ‘spontaneous order’. This evoked strong criticism, notably from Rüstow (Denord 2008). Yet from the ordoliberal perspective, the state must take the responsibility to organize competitive markets within a policy framework (*Ordnungspolitik*) that applies and protects key principles.

Eucken repeatedly stressed the importance of a ‘strong state’-constrained by a political constitution beyond the reach of social conflict-that creates and preserves the competitive order (Rieter and Schmolz 1993).⁶ The central role assigned to competition by ordoliberal thinkers can be explained primarily by the opposition to Weimar policies such as the *Kartellverordnung* of 1923 (Manow 2001) and, more generally, by the idea that *laissez-faire* leads to the emergence of business interests or, even worse, private monopolies that are the main enemy of a free society (Eucken 1947: 239 ff). In this sense and in contrast to ‘paleoliberalism’ (Rüstow) and other versions of the neoliberal tradition (Schnyder and Siems 2013), for ordoliberals the state is not the problem but the solution. The proximity of this vision of a strong state to an authoritarian theory of the state—such Carl Schmitt’s anti-liberalism—and the question of its compatibility with democratic processes have been hotly discussed (Ptak 2009, Bonefeld 2012, Schnyder and Siems 2013, Biebricher 2014, Streeck 2015). One interesting grid of analysis on this issue was the process by

5. Manow (2001) shows how Germany’s postwar political economy is in essence an expression of compromise between social Catholicism and social Protestantism.
6. Ptak (2004) points out the fact that Rüstow and Müller-Armack referred affirmatively to Carl Schmitt’s theory of the state.

which the initial 'Freiburg school paradigm' of the 'strong state' was modified by the augmentation of a new constitutional framework in West Germany, within which a free market did indeed thrive after World War II (Manow 2001, Bergahn and Young 2012).

'Ordnungspolitik': constitutional and regulative principles of the competitive order

Eucken laid out a framework for governmental action and processes by which the state establishes a framework, called '*Ordnungspolitik*'. Economic processes themselves, however, are carried out by private initiative in the free action of markets. *Ordnungspolitik* is the means by which the state implements a sound and secure framework within which the markets operate.

The main role of the state is to set the stage, to outline the framework conditions, as these are decisive for the development of economic activity. The fundamental task of the state can be described as 'rule-setting': to set the rules for economic processes, monitor compliance with them, and punish infringements (Maes 2002: 7).

It is about setting the rules of the game, to embed the market in institutional structures by using the tools of regulatory interventionism and competition policy. This active role of the state in framing and promoting competition is one of the most distinctive features of ordoliberalism in comparison to other kinds of neo-liberalism (Schnyder and Siems 2013). The competitive order is understood by ordoliberals as a 'disciplining instrument' (*Disziplinierungsinstrument*) (Manow 2001). State regulation must take into account the interdependency of orders, as well as the fact that economic intervention can also have an impact on other social structures.

If there is a need for the state to intervene so as to ensure that the conditions for maintaining the competitive order are met, then the competitive order cannot exist without a legal framework (Drexel 2011). Eucken defines two clusters of principles relevant for this framework: constitutional principles⁷ and regulatory principles. The economic constitution is central. Because the economic order depends on the underlying economic constitution, the choice of an economic constitution is decisive, and the

7. Regarding the fundamentals of the economic constitution and the relevance of this concept for the European Union, see Drexel (2011).

proper role for *Wirtschaftsverfassungspolitik* (the politics surrounding the economic constitution) is to create and maintain the conditions under which the 'invisible hand' can work efficiently. 'The ordoliberalism of the Freiburg School starts from the basic premise that the market order is a constitutional order, that it is defined by its institutional framework and, as such, is subject to explicit or implicit constitutional choice' (Vanberg 2004: 5). The basic principles of constitutional economics aim at avoiding all forms of arbitrary abuse of private or public powers (Deschamps 2013) as well as any unprincipled discretionary approach to economic policy. They mandate an operational price system, perfect competition, the primacy of monetary policy and price stability, open markets, private property, the principle of liability to ensure that risk is tied to responsibility in economic transactions, freedom of contract in a competitive process and steadiness and constancy in economic policy. Monetary stability plays a crucial role in this context, because 'inflation damages the steering function of the price mechanism and creates uncertainty' (Maes 2002, p. 8). Money creation may introduce instability into the economy and also fluctuation, because the money supply is managed by specific interest groups (private banks, trade unions, the state) (Dehay 1995). In order to establish a stable monetary order meant to serve the public interest, the independence of the central bank should be firmly anchored in the constitution.

Equally important are the rules for sanctions against the transgression of price stability. This idea was put into practice in 1948 during currency reform and institutionalized in the Bundesbank Act of 1957. Anti-trust legislation, passed in 1958, was then the final component of the ordoliberal market economy in Germany (von der Groeben 1979).

Thus, the constitutional principles of ordoliberalism mandate that the state set the institutional framework in which economic activities take place but that it refrain from driving the economic process itself. In other words, the state sets the *Spielregel* (the rules of the game) but does not determine the players' moves (*Spielzüge*). These constitutional principles, in turn, are strengthened by regulatory principles (*regulierende Prinzipien*) meant to ensure the sustainability of the competitive order. These principles include the regulation of monopolies and cartels, an income policy and corrective measures to mitigate *negative external effects*. The role of the state consists in intervening each time the economy departs from the pre-set model or each time deficiencies appear that compromise its function-

ing (Dehay 1995: 35). Infringement on the rules of competition must be sanctioned by the state.

Michel Foucault's examination of the genesis and development of ordoliberalism in 20th century Germany laid bare another, less obvious feature of ordoliberalism. In his analysis of ordoliberalism in the context of his work on the change of the forms of governmentality, he demonstrated that market economy as shaped by ordoliberalism serves as an 'internal regulatory principle of the state throughout its existence and in all its actions' (Foucault 2004: 120). In opposition to classical liberalism, for the ordoliberal, competition is not natural and thus ordoliberalism can never hoist the banner of *laissez-faire*. Indeed, competition requires high vigilance, permanent interventions and regulation of the material, cultural, technical and legal bases of economic activity so as to create an enabling environment for the smooth functioning of the market. For ordoliberals, the functioning of markets is a matter of political engineering.

As a result, ordoliberalism sees democracy through an economic lens. Trade is deemed democratic *per se*. As Böhm explains,⁸ it views the rules of the market as part of 'plebiscitary democracy in everyday life', whereas Foucault (2004) demonstrated how ordoliberalism harnesses principles of a competitive market economy to boost the legitimacy of political institutions.

Ordoliberalism and the 'social market economy'

Beyond the recognition of the state's role, one other relevant peculiarity of German ordoliberalism's contribution to neoliberalism was 'a dedicated effort to resolve what the German ordoliberals themselves conceived as "the social question"' (Ptak, 2009: 102). The socially embedded character of the market economy and the 'interdependence of (economic, cultural, societal) orders' (Eucken) explain the attention they paid to the social question. Yet, there is no unified ordoliberal school of thought regarding social policy or more broadly regarding the 'social market economy'. The meaning of the term *soziale Marktwirtschaft* itself has been a controversial issue for decades (Goldschmidt 2006). Because it played a key role in focusing debate on the constitutional treaty rejected in 2005 in France and in

8. Franz Böhm. *Wirtschaftsordnung und Staatsverfassung* (first publication 1950), cited by Ptak (2004:104).

the Netherlands and because of the place it eventually found in the Lisbon treaty (art. 2, §3), it is worth a closer look.

There are at least three different approaches to the 'social market economy'. The earliest approach was tied to the ordoliberal school of thought that developed immediately after World War II. The second approach followed an evolutionistic concept developed by Müller-Armack, who actually coined the term although he was a latecomer and at the margin of traditional ordoliberalism. A final approach emerged in association with the German economic and social 'miracle' after World War II.

Eucken's position is not perfectly articulated. An early death prevented him from finishing his *Grundzüge*, in which he also discussed social policy. What is clear, however, is that Eucken does not start with a unified concept of justice. Rather, he conceived social policy within the framework of order (Eucken 1942/1959: XVI).⁹ Market processes that adhere to ordoliberal principles are fair, and this explains why the competitive order is so important: Not only because of its efficiency, but also because it offers the optimal solution to the *soziale Frage* (the social question). Eucken stresses that there can be no policy without repercussions for the *soziale Frage*. Allocation and redistribution are always linked (Eucken 1942/1959, XVII), and the competitive order ensures that the formation of income is subject to the right rules of the game. This is the key issue: 'The ordoliberal state "intervenes" not for discernible social ends, but for undistorted competitive relations' (Bonefeld 2012: 639). Yet, because competition policy is not sufficient to solve all of problems, one must consider 'special social policy areas' that reach beyond the order issue and commutative justice as defended by Hayek (Wörderfer 2001: 206-237). Still, social policy always remains subject to the subsidiarity principle, and the limits of redistribution are clearly delineated. All these social policy measures have to be implemented in accordance with the efficiency of the market. The

9. In the Grundsätze der Wirtschaftspolitik, Eucken writes: 'One of the main intentions of this book was to make again clear that social policy should not be viewed as an appendix to the rest of economic policy, but that it has to be considered first and foremost as an issue of economic order policy (*Wirtschaftsordnungspolitik*).... There is nothing that does not concern social issues.... Within the framework of a competitive economy, it means above all the achievement of its basic principle, namely the creation of a functioning price system of perfect competition' (1942/1959: 179-180).

Wohlfahrtsstaat (welfare state) is viewed negatively, as an emanation of paternalism, etatism and corporatism. By blunting the will to perform well and by therefore leading to a reduced capacity for innovation, the welfare state come with a significant cost, all the more since it can also undermine personal responsibility in general. Ordoliberal social policy aims at weaving 'entrepreneurship, private property and [the] free price mechanism into the fabric of society to prevent the proletarianisation of social structures' (Bonefeld 2012, 634). Not the redistribution of wealth but the free market is social because it allows the increase of productivity and the trickle-down effect (Müller-Armack 1976). As Ludwig Erhard summarized, '[t]he concepts "free" and "social" are congruent ...; the freer an economy is the more social it is and the greater will be the macroeconomic utility created'.¹⁰ This statement clearly showcases the approach adopted in the 'social programme' of the Treaty of Rome (see below). Yet even if the social market economy model in Germany often has been treated as a direct product of ordoliberalism, in reality it emerged as a compromise with progressive forces (Hien 2013). Indeed, many social policy reforms were approved by the German parliament in this period against the will of the ordoliberals (ibid.: 354).

In conclusion, although some discourses equate ordoliberalism with the success of the social market economy, a clear distinction has to be made between the ordoliberal heritage as found in the European treaties and in other entrenched institutions on the one hand and those institutional complementarities that are specific to Germany's post-war economic and social system, known as 'Rhine capitalism' (Streeck 2009), on the other. Paradoxically, the EMU has become an unexpected channel for the resurgence of the ordoliberal approach in Germany-through the back door.

How ordoliberalism shaped the social dimension of EU-integration: Rome and Maastricht

European integration has been doubtless the result of several compromises between member states with divergent interests and between rival ide-

10. Ludwig Erhard (*Wirken und Reden*. Ludwigsburg 1966: 320) cited by H. Tietmeyer (1999: 6).

ological orientations, notably concerning the EU's institutional design. Nevertheless, the ordoliberal imprint is dominant, as shown by the negotiations and the content of the treaties of Rome and Maastricht, which are certainly the two most important EU-treaties. Although 'ordoliberalism has represented the genuine ideological matrix of the European institutions' (Strassl 2000: 3), it has remained relatively neglected in the literature until recently (Nedergaard 2013), a fortiori with regard to its consequences for Social Europe.

Ordoliberalism and the Treaty of Rome

Advocates of ordoliberalism, including Ludwig Erhard himself, held tremendous influence during the constitutional phase of the Federal Republic of Germany, and, more precisely, in 1949, when the Christian Democratic Union (CDU) adopted ordoliberal doctrine. At that time, two issues were on the political agenda: the completion of the political order and European integration. As a result, advocates of ordoliberalism have been closely associated with the building of Europe, giving it the imprint of their school of thought. In his capacity as head of the department for fundamental issues at the Federal Ministry of Economics, Alfred Müller-Armack had a pivotal influence in the two political fields (Müller-Armack 1971, Breker 2002: 113), whereas Ludwig Erhard, who was the Minister of Economics, shouldered the political responsibility.

The issue of Europe returned to the agenda when Robert Schuman tabled his proposal in May 1950. Negotiations leading to the *European Coal and Steel Community* (ECSC Treaty) were taking place at that time, and France still held the leading position vis-à-vis West Germany, which was mainly concerned with readmission into the European community of nations (Bilger 1998). This is the reason why the ECSC was established under the auspices of Jean Monnet and Konrad Adenauer, although economic advisors, including Erhard, showed a strong reluctance to go down this path. Erhard finally assented, taking into consideration competition clauses (articles 60 and 61). Considering the ECSC, ordoliberals like Wilhelm Röpke and Erhard saw the imprint of French *dirigisme*, planned economy and protectionism. Yet they considered European integration as the first step towards the establishment of a global free-trade zone. After the failure of the European Political Community (Vayssiere 2005) and the European Defence Community (EDC), negotiations that included Müller-Armack as the representative of the Ministry for Economics (as was the

case for all negotiations that led to the Treaty of Rome) paved the way for economic integration on the basis of the propositions tabled by the Spaak's committee in April 1955. The Treaties of Rome are in fact the products of a twofold compromise within the German government on the one hand and between France and Germany on the other (Laval 2006, Drexl 2011).

On the West German side, preparations for negotiations were led by the Ministry of Economics; they involved various expert panels and required exhaustive work on issues and strategies (von der Groeben 1979). Müller-Armack worked on behalf of the German government on a consensus position based on the compromise hammered out at Eicherscheid between federalist and ordoliberal factions. This led to an approach to European integration according to which the next step would be the implementation of sectoral policies with the European Atomic Energy Community (EAEC or Euratom) as a concession to France under the leadership of Monnet and the establishment of a common market making possible the free circulation of goods, services and capital, which was most in line with German interests. In his 'Considerations on the issue of cooperation versus integration' of May 1955, Erhard wrote that Europe should aim at functional integration, meaning liberalization of trade in goods and capital on a large scale and currency convertibility, without creating new institutions (Laval 2006: 17). This compromise would serve as the basis for the Messina conference. Yet the French-German compromise had to be reached also. During negotiations leading to the Treaties of Rome, the starting point of which was the Spaak's report advocating supranational integration, the French government again put forward proposals for a supranational organization accompanied by common sectoral policies (e.g. on agriculture, transport) and a market protected by high external tariffs. West Germany, which for the first time participated as a free and equal partner in the negotiations (von der Groeben 1979: 496), strongly rejected the sectoral approach, which it deemed too '*dirigiste*' (Moravcsik 1998: 140) and advocated the adoption at the European level of the principle of a competitive, open, market economy (Bilder 1998). Also in the institutional fields, it opposed the proposals included in the Spaak report out of fear of *dirigisme*. Under the instruction of Erhard, Müller-Armack, seconded by the French, succeeded in watering down the powers of the European Commission, which were limited to tabling pro-

posals, to the benefit of the Council of the Ministers (Council of the European Union).

The ordoliberal approach played a key role in the architecture of the Treaty of Rome. The German Minister of Economics succeeded in imposing his position: market liberalization without previous fiscal and social harmonization¹¹ as well as precise, constraining rules regarding competition designed to bolster a liberal policy. 'This influence can mainly be explained by the hierarchical framework in which objectives are ordered and the relations between the clear legal instruments provided by the Treaty and these objectives' (Drexel 2011: 437). These instruments have hardly been modified since then. Several top-level objectives are operationalized at the intermediate level in Article 3 on the policies to be implemented by the Community (*ibid.*). The article includes the establishment of a European internal market—the four main liberties and 'undistorted' competition. With the Maastricht Treaty, the Economic and Monetary Union was added. At a lower level, what prevailed were operational rules for the establishment of the European internal market and competition policy.

During all phases of negotiations the essential principles of a market-oriented system were successfully put forward and embodied in the EEC treaty. This has occasionally been denied because the Treaty does not contain *expressis verbis* any paragraph concerning the economic order. However, if we consider the totality of the goals specified in the treaty and the rules and institutions for their realization, it clearly appears that they not only contain all essential characteristics of a market-oriented system but also include rules that considerably limit the freedom of intervention of member states (von der Groeben 1979: 497).

11. 'In exchange for accepting an industrial customs union, the French government forwarded the demands of the *Patronat*—prior harmonization of social regulations concerning the length of paid vacation, gender equality of wages and the work-week, the right to withdraw of veto continuation to the , second stage', after the first 25 percent tariff cut, the right to invoke clauses and impose border taxes in the case of a balance of payment crisis—plus an agriculture policy.... By late October 1956 France renounced the right to withdraw unilaterally and conceded that social policy might be harmonized at the beginning of the second stage, but reasserted its positions on safeguards and the veto. Erhard, apparently seeking to block the EC and mobilize German business behind the Free Trade Agreement, rejected the compromise' (Moravcsik 1998: 144).

These rules include the abolition of all impediments to trade and the free movement of the production factors and goods, European rules about effective competition and against discrimination, the freedom to establish a business, free access to any market and others. Moreover, if one takes the jurisprudence of the Court of Justice of the European Communities into consideration too, the ordoliberal approach can be said to have shown a remarkable level of continuity and resilience, including resilience against the influence of more recent economic theories (Drexler 2011). More recently, this legacy of ordoliberalism in the field of European competition policy has been widely recognized (Denord 2008, Marty 2014), although the analysis of this legacy still lacks sophistication and depth (Montalban et al. 2011, Nedergaard 2013).

The social programme of the Treaty of Rome as a by-product of market integration

What social policy role was assigned to the European Community in this context? First of all, in the framework of a global approach linked to the principle of subsidiarity, social and redistribution policies still remain the responsibilities of member states. The guiding thought (article 117 of the Treaty of Rome) is that social progress, viewed as the 'harmonization of social systems' (meaning the establishment of equivalent, not uniform national standards), will ensue mainly 'from the functioning of the common market ... but also from the procedures provided for in this Treaty'. In accordance with the ordoliberal approach, social progress is supposed to originate from the competitive order. This is the origin of the ambiguities of the Treaty. It is politically ambiguous, first of all, because it supposes that the European internal market can lead to the harmonization of social legislation through spillover effects. It is ambiguous from a legal point of view too because the social competences of the EEC are anchored in the framework of the 'procedures provided for' within the Treaty, so that 'the need to promote improved working conditions and an improved standard of living for workers' (article 117) is viewed only as another rationale for creating a common market and the free movement of workers (Vogel 2015). At best, article 117 can be seen as a programme, as stated by the European Court of Justice (ECJ) several times in its case law, to support the equalization process through improving standards of living. Social policies European and national levels should be built on that. Yet it does not follow from these positions that there is any legal obligation for

member states or any guarantee of individual rights. Article 117 has never triggered an assessment of the (judicial) validity of a Community act or of the compliance of national legislation with Community law (Rodière 2014: 35), and article 118 was limited to the role of the European Commission, which 'shall have the task of promoting close co-operation between Member States in the social field'.

The working assumption that improvements in welfare would automatically follow on the heels of economic growth, which in turn would be a consequence of the liberalization of the European market foresaw two possible exceptions (De Schutter 2006). First, the risks of distorted competition may result in the unequal pay of women in some companies and branches of industry. Second, the same can be presumed for working time and paid holiday schemes. This is why the Treaty of Rome contains a clause on equal remuneration for men and women for the same work (Article 119) and a provision on the equivalence of national paid leave schemes (article 120). Likewise, the European Social Fund, the first structural fund, was implemented (articles 123 to 128) in order to improve employment opportunities for workers in the common market by increasing their geographical and occupational mobility. Yet it played a very limited role until the 1970s.

No legal basis existed for the development of a binding EU social policy. Yet, where no special allocation of powers had been provided for, recourse was made to the power provided by the Treaty for general purposes of approximation of legislation when this approximation affects the establishment or functioning of the internal market.¹² The Treaty of Rome also settled two major problems for the implementation of a common market: the freedom of movement for workers (article 49) and measures in the field of social security necessary to provide this freedom (article 51). The first regulation, not implemented until 1971, was the Council Regulation (EEC) No. 1408/71 on the application of social security schemes to

12. Approximation refers to the obligation of EU member countries to adjust national law to give effect to the entire body of EU law. As stated in article 100 of the Treaty of Rome (now article 115 of the treaty on the functioning of the EU): 'The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market'.

employed persons, to self-employed persons and to members of their families moving within the Community.

The first social action programme was adopted by the Council of Ministers in 1974. Regarding working conditions, a number of rules on the protection of workers in cases of collective redundancy, on the transfer of undertakings and on employer insolvency were adopted during the late 1970s. Yet, the idea was that European social legislation had to be conceived as a negative programme: it should aim primarily to abate the social consequences of the economic crisis after the first oil price shock without giving ground to any ambitions to steer the community towards a European social model (De Schutter 2006). Even in the area of gender equality, in which efforts were greatly expanded at that time, social rights were considered an instrument of the internal market, and the jurisprudence of the Court of Justice mostly focused on the need to avoid distortions of competition.

The focus on the functioning of the internal market explains also the extensions of the cooperation procedure to new social areas as wanted by Jacques Delors and implemented by the European Single Act in 1986. The harmonization of health and safety regulations for workers in the working environment (the new article 118a) was of central concern because different conditions might easily constitute non-tariff trade barriers (Ross 1995). The definition of minimal norms for labour conditions at the level of the European Community aimed to prevent social dumping, which would distort competition.

Delors wanted concomitantly a regional policy to accompany the single market and the extension of the European Community to Spain and Portugal. Thus, structural funds were implemented to develop the southern regions and to limit social dumping between southern and northern regions. Lastly, the European Single Act encouraged a new social dialogue between management and labour at the European level (article 118b).

Ordoliberalism and Maastricht: 'Monetary stability and social market economy'

In the negotiations leading to the Treaty of Maastricht, Germany was not willing to agree to any sharing of monetary sovereignty under the EMU unless accompanied by an institutional framework in which 'governing rules' would prevail without encroaching on the independence and the

mandate of the European Central Bank (ECB). This construct was seen as a way to avoid opening up space for discretionary political interventions at the European level and mechanisms of redistribution between member states.

Even before the fall of the Berlin wall and the debate on anchoring re-united Germany in the European Union (EU), the issue at stake for the successive governments of the Deutschmark zone and, first and foremost, for the French executive was how to put an end to the asymmetric functioning of the European Monetary System (EMS) and to the hegemony of the Bundesbank. Bundesbank policy, which in its logic had been defined solely within the German context, meant that the central banks of the other EMS member states, a fortiori with a view to create free markets for capital, had to conform to the policy of the Bundesbank in order to defend their currency against the Deutsche Mark—according to the incompatibility triangle of Mundell. This had a major influence on Germany's options on the road to the treaty that emerged, which itself was the result of a compromise between the Bundesbank's anti-inflation policy and the demands of German business interests and the Chancellery for a competitive exchange rate and macroeconomic growth policy (Moravcsik 1998). Therefore, as soon as 1988, the West German government agreed to share German monetary sovereignty while imposing binding rules based on institutional ordoliberal principles in a context in which mainstream economics had moved away from a Keynesian active fiscal policy and demand management (Hall 2012).

To secure national central banks' acceptance of a proposal made by Delors and to which Helmut Kohl had acquiesced (Delors 2004: 333, Bibow 2012), the European Council of Hanover decided in June 1988 to invite central bank governors to envision the path to a single currency. In this group, which worked out the so-called 'Delors report', the 'fundamentalist approach' of the *Bundesbank* advocated by its president Karl-Otto Pöhl played a major role and paved the way for later developments.

The characteristics of the 'Economic and Monetary Union have endowed the unrestricted common market *with a set of rules* that are indispensable to its proper working. In this sense, the Economic Union can be described as having four basic elements: the single market that guarantees the free movement of persons, goods, services and capital, competition policy and other measures aimed at strengthening market mechanisms, common policies designed to foster structural change and regional

development and, finally, macroeconomic policy coordination, including binding rules for budgetary policies (Delors report: 16). Relying on its dominant position in the negotiation process and presenting itself as the negotiation partner with the greater assets who thus stood to suffer the greatest potential loss, Germany prevailed on the majority of key issues. These included (1) the right to opt out, (2) nominal 'convergence' criteria for participation (in which social indicators such as the unemployment rate are not included in spite of Delors' wishes (Delors 2004: 346), (3) the procedure for the transition to EMU, (4) the nature of transitional or 'second-stage' institutions such as the European Monetary Institute, (5) the autonomy, mandate and voting procedures of the ECB, (6) the site of the ECB and the name of the currency, (7) controls and sanctions on excessive national deficits, and (8) provisions for bailouts and other financial transfers (Moravcsik 1998: 441 f.). Several factors contributed to the fact that the Maastricht regime was 'largely a "made in Germany" product' (Bibow 2012: 7): the asymmetric functioning of the EMS and the strong negotiating position of Germany, which in turn resulted from the lack of an attractive alternative to the agreement; the position of the *Bundesbank*, which was able to dictate the conditions of its own abdication of power; strong theoretical support, based on a blend of German ordoliberal and mainstream Anglo-Saxon ideas (new classical macroeconomics); and the success story of German monetary policy (Moravcsik 1998, Maes 2002, Heise 2005, Bibow 2012).

Finally, the Maastricht Treaty includes four main elements. First, it is based on the principle of an open market, which secures the four fundamental freedoms of the single market. Second, based on 'binding rules' and born out of it, the institutional framework of EMU aims to ensure the primacy of monetary policy by subordinating the functioning of the eurozone to an inflation target defined by the European Central Bank, the constitution of which was inspired by the *Bundesbank* experience (Strassl 2009). The objective of economic growth is thus subordinated to price stability, and the ECB has no mandate to monitor financial markets. Third, in addition to the Maastricht criteria, which were later anchored in the Stability and Growth Pact (SGP), the role of national budget policies is limited to smoothing out business-cycle fluctuations, in accordance with the subsidiarity principle. The sanction mechanisms are to ensure that discretionary spending policy in the member states does not damage ECB objectives. Fourth, the interdiction made to the ECB to monetarize sovereign

debt and the 'no bailout' clause between member states in the case of crises of solvency affecting one member contribute to the same end: they aim to prohibit moral hazard behaviours and to ensure the liability principle of each member state. 'In this respect the entire Maastricht framework reflects core principles of ordoliberalism' (Weidmann 2013).

In the context of the ongoing reunification, Kohl made, however, a major concession to European integration by accepting a timetable for the start of the second and third phases of Economic and Monetary Union, at which point the transition to the single currency would become irrevocable (Van Esch 2012). The other major concessions were the decision regarding which EU member states could join the euro and, more fundamentally, that the German government accepted a large currency union with many potential members instead of a small 'DM-Zone' (Wyplosz 2006). Seen from this point of view, despite the fact that the ECB is an institution whose organization and mandate conform to ordoliberalism, the implementation of the monetary union was a victory of pro-European integrationists with the 'help of history' and Helmut Kohl (Le Héron 2014).

Compared to the German federal system, two important components are missing (Laval 2006): a central fiscal policy to ensure stability and redistribution and fiscal transfers between states. This architecture, which tends to 'market-making federalism', is highly problematic for national social models (Barbier 2012). Moreover, the ECB is not supposed to play a role as a lender of last resort, for two major reasons. First, it could lead to conflict with the objective of price stability. Second, it could give rise to moral hazard behaviour in the banking system (Tietmeyer 1999: 231) or from member states. Like the Bundesbank, the ECB did not have the mandate to safeguard financial market stability, and the treaty left banking supervision in the hands of national authorities, although this policy can be changed by unanimous vote (which happened, in part, in 2014).

This institutional design brought up two main issues. The ECB issues a common currency for all citizens of the monetary union. Yet in the absence of a lender of last resort, the euro is a foreign currency with a fixed exchange rate for all member states. Member states of the eurozone are deprived of the direct relationship that exists everywhere between the central bank and the sovereign state when the state is the ultimate guarantor of the capital of the central bank and the central bank is the lender of last resort of a financial system in which public debt plays a pivotal role (Aglietta and Orlean 2002, Aglietta 2012). Secondly, the euro is a cur-

rency without a sovereign. During the negotiations of the treaty, it was mainly the French executive who sought to avoid the propositions made by Germany—including a full draft treaty—toward an extension of areas of political responsibility and further development of the political-institutional structure (Tietmeyer 1999: 208-209). Therefore, the intergovernmental conference on political union brought few substantial outcomes: ‘rhetorical strengthening of foreign and security policy’, ‘a very modest expansion of qualified majority voting’ and ‘an agreement without Britain on modest, nonfiscal social policy’ (Moravcsik 1998: 449).

Maastricht, Amsterdam and Lisbon: which division of competences in social field?

The Maastricht Treaty on European Union was signed on 7 February 1992 and entered into force on 1 November 1993. Completed by the Treaty of Amsterdam in 1997, it is also fundamental for Social Europe. The Agreement on Social policy annexed to the Protocol on Social Policy of the Treaty of Maastricht created a division of competences between the EU and member states, which was later incorporated into a revised ‘Social Chapter’ of the EC Treaty by the 1997 Treaty of Amsterdam. It also established voting procedures in the field of social policy. To understand the context in which it emerged, one has to keep in mind that at the end of the 1980s, the Delors Commission had taken the initiative with a report on the social dimension of the internal market (European Commission 1988). The central idea of the report was that ‘the inclusion of the social dimension can certainly be a plus for individuals and social groups, but may also, in some areas, be a value-added for companies’. Thus, the social dimension of the internal market was supposed to be, first of all, a comprehensive exercise of the freedom of movement for persons. The report included thirty proposals that called for the establishment of a common set of minimum social provisions to ease this mobility.

On this basis, the Commission submitted to the Council of Labour Ministers in May 1989 a first proposal for a Social Charter aimed at covering all EU citizens. With the exception of Great Britain, the European Council adopted the Community Charter on Fundamental Social Rights of *Workers* (not citizens) in December 1989. This Charter emphasized the principle of subsidiarity and offered in many fields only generalities. More significantly, it contributed to gender equality and worker participation (Delors 2004: Chapter 12). On this basis, the Commission launched

a 'social action program' that included 47 initiatives, projects of directives and recommendations (Degimbe 1999). The Charter had no binding character. Yet in 1991, eleven member states (fourteen after 1995), again without Britain, agreed to adopt a Social Protocol to be added to the 1992 Maastricht Treaty. They signed an Agreement on Social Policy in February 1992, which was annexed to the Social Protocol. This agreement has had a broad scope. First, it updated the objectives of EC social policy. Second, it recognized a legal role of social partners in the community legislative process – which goes directly back on this issue to the Joint Agreement of the Social Partners of October 1991, which the latter had elaborated in the preparation of the intergovernmental conference in Maastricht. Finally, it extended EC competences in the areas of employment and industrial relations. In 1997, the newly elected British government decided to sign this Social Protocol, allowing it to be fully incorporated into article 136 of Amsterdam Treaty in 1997 (current article 151 of the TFEU).

The key fact concerning this social protocol is the underlying logic of a division of competences between levels of government, which is at the same time a voting procedure on these issues (Lechevalier and Wielgohs 2010). Articles 117 and 118 of the Treaty of Amsterdam, slightly modified and completed by the following treaties (article 151 to 153 of the Treaty of Lisbon) took over the objectives and the method of the Treaty of Rome but added the 'promotion of employment' to the 'promotion of improved living and working conditions'. Employment promotion was introduced as a new title (VIa). Article 118 (which has become the article 153 of the TFEU of Lisbon) states that ...

with a view to achieving the objectives of Article 117 (151), the European Parliament and the Council after consulting the Economic and Social Committee and the Committee of the Regions (a) may adopt measures designed to encourage cooperation between Member States ... (b) may adopt [measures] in the fields referred to in paragraph (a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.

Within the relevant fields a distinction was made between three different areas of competence (see Infobox, below). Thus, there was an extension of EU competences to working conditions, to the information and consultation of workers, equality between men and women concerning labour market opportunities and treatment at work and to the integration of per-

sons excluded from the labour market. At the same time, qualified majority voting (QMV) was extended to some of these areas. In other areas, the Council was required to *act unanimously, in accordance with a special legislative procedure*. Other issues were explicitly excluded from being decided under QMV: pay, the right of association, the right to strike and the right to impose lock-outs.

**Infobox: The competences of the European Union in the fields of social policy
(article 153 of the Treaty of Lisbon)**

The Union shall support and complement the activities of the Member States and the European Parliament and the Council shall act *in accordance with the ordinary legislative procedure* in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (e) the information and consultation of workers;
- (h) the integration of persons excluded from the labour market;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernization of social protection systems without prejudice to point (c).

In the following fields the Council shall act unanimously, in accordance with a special legislative procedure:

- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (f) representation and collective defence of the interests of workers and employers, including co-determination,
- (g) conditions of employment for third-country nationals legally residing in Union territory.

The treaty of Lisbon adds that the Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraphs (d), (f) and (g).

The provisions of this Article *shall not apply* to pay, the right of association, the right to strike or the right to impose lock-outs.

Joint EC level preference formation had occurred during the late 1980s, so that even those governments with adverse economic interest came to Maastricht ready to strengthen the 'social dimension' (as marketed by the Commission and other Euro-level actors) which was meanwhile perceived as a legitimate corollary to the Single Market (Falkner 1998: 96).

However, the distribution of powers between the Union and the member states follows a double logic: in the wake of the Single European Act, the more the social matter at issue might impact the proper functioning of the single market, the more likely it is to enter the field of the ordinary legislative procedure with qualified majority voting. Yet at the same time, the closer the matter is to the heart of state sovereignty and to national economic and finance policy (first and foremost social protections¹³), the more it remains subject to unanimity or is excluded from the field of shared competences. As a result, these new legal provisions have not changed the pattern of decision-making on the basis of the lowest common denominator, and they have had minimal financial consequences for member states (Moravcsick 1998). The principle of subsidiarity, according to which social and labour systems should remain a national concern and EU social policy should only supplement national policies for the purposes of harmonization on the basis of common social minimum standards and avoiding the distortion of competition, has prevailed. This use of the principle of subsidiarity has turned out to be rather ambiguous (see J.C. Barbier's contribution in this book).

Concomitantly, the social protocol introduced in the Treaty of Amsterdam promoted the Social Dialogue between management and labour at union level and included new patterns of corporatist decision-making following a new procedure suggested by the Belgian delegation to the Intergovernmental Government Conference by communicating with the European Commission and lastly revised and proposed by the social partners themselves. It called for the Commission to carry out mandatory consultations with management and labour before submitting proposals in the social policy field on the general principles and, when appropriate, on the details of a proposal. European social partners may inform the Commission of

13. 'The provisions adopted pursuant to this Article shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium' (article 153 TFEU).

their wish to negotiate in order to reach a collective agreement on the concerned issue. Moreover, a member state may entrust social partners, at their joint request, with the implementation of directives adopted in the relevant fields. During the 1990s, EU legislation was passed in this way covering, mainly, European Works Councils, parental leave, atypical work, and working time (Falkner 1998). "This suggests first, that industrial relations aspects have played as large a role in recent collective negotiations as questions of substance, and, second, that the EU-level social partners (above all, the employers) have so far understood their role to be limited to law labour issues in a rather traditional sense" (Falkner 2000). Consensual and costless measures were privileged. In 2004, the use of this procedure came to an abrupt halt. The reasons were a general political trend towards supporting flexibility and lowering of social and labour standards (first and foremost from business), the lack of political support from the Commission, Barosso and the European Parliament (which was dominated by liberals and conservatives), and, finally, eastern enlargement, which increased the heterogeneity of member states.

The 2009 Lisbon Treaty strengthened the social objectives of the Union. It recognized the social values of the EU in the founding treaties, included new objectives for social matters and introduced a few innovations. It contained a horizontal clause: 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'. So far, however, this clause has had no appreciable effect, neither on legislation nor on the jurisprudence of the Court of Justice of the European Union (CJEU). In principle, the treaty also gave legal force to the EU Charter of Fundamental Rights, but this issue has remained highly controversial, as the recent opinion of the CJEU has shown (see J.C. Barbier's contribution in this book). Qualified majority voting is extended to a few measures related to social benefits for migrant workers (Article 48, TFEU) and may be extended to some other fields. The open method of coordination (see Hacker's contribution in this book) has been institutionalized (Article 156, TFEU). However, the competences of the EU in the social area have remained largely unchanged and the development and implementation of social policies remains principally the responsibility of the member states (Barbier 2013). As pointed out by the Commission itself in its last communication on the social dimension of the

EMU to legitimize the disappearance of the social dimension from the EU political agenda: 'It should ... be noted that employment and social policies fall very largely under the national competence of the Member States' (EC 2013:1). Therefore the treaty does not change the asymmetrical status of economic and social rights at the EU-level and has had no effect on the unbalanced CJEU jurisprudence (Scharpf 2010).

Responses to the crisis: the 'long shadow of the German ordoliberalism'¹⁴

In a first step we will examine how the responses elaborated at the EU level work mainly in the ordoliberal tradition, although the shortcomings of this approach not at least for Social Europe have forced the German government to compromise. Subsequently, the reasons for the predominance of the ordoliberal framework are analysed.

The new governance of the eurozone: the ordoliberal legacy and its failures

To understand the architecture and rules of European economic governance in its new form, it is important to keep in mind that the management of the crisis has been marked by the rise of the intergovernmental approach, which had begun in the aftermath of the 'no' to the Constitutional Treaty in France and the Netherlands and had been incorporated in modifications of the new Treaty of Lisbon. Therefore, the main new features of governance can be traced back to the preferences and discourses of national governments or their leaders and to the compromises between member states, mainly between France and Germany (Schild 2013, Crespy and Schmidt 2014, Van Esch 2014, Schimmelfenning 2015). Finland, Netherland and Austria as creditor countries were predisposed to align with Germany, whereas France was prone to defend the interests of the countries most exposed to the crisis, albeit within the bounds of its advocacy for the French banking system. However, not all countries and not even all national executives were possessed of unanimous internal consensus.

The bilateral German-French leadership, which became a *directoire*, was in fact a *directoire* dominated by Germany with Angela Merkel as the

14. Title from Dulian and Guérot (2012).

major partner in the 'Merkozy' leadership duo (Schmidt 2015, Beck 2014). Despite some differences on the solutions to the crisis, Sarkozy shared Merkel's neoliberal beliefs. In addition, the success of Merkel and Wolfgang Schäuble's approach in agenda-setting can be explained by the fact that it reflected the strategic priorities not only of EU surplus and creditor countries but also of transnational capital groups and export companies because it focused on the EU's global competitiveness (Heinrich and Kutter 2013). Only the ECB put checks on this asymmetric duopoly.

The policy response to the eurozone crisis under the leadership of 'Merkozy' could be deemed essentially ordoliberal because its primary aim was creating more restrictive rules for public finance so as to ensure monetary stability and sound financial policy and to encourage greater competition between national spaces of labour allocation. A prerequisite for this competition is the implementation of structural reforms (labour market and social protection) as well as the 'internal devaluation' of labour costs (wages as well as social benefits) in order to restore competitiveness and correct an imbalance of trade. Yet, given the limited success of this approach in resolving the main issues, additional measures were taken by the European Council and by the ECB that broke with the ordoliberal approach.

Table 1: New governance of the EMU: stances taken and outcomes

Rescue plans for countries in crisis	
Germany	<p>First favoured the withdrawal of voting rights in the European Council (or even exclusion) for 'debt sinners'</p> <p>Then, favoured the involvement of the IMF in assistance and opposed the expansion of the EFSR as a permanent fund</p> <p>Then, defended a strong conditionality of the loans to indebted countries</p> <p>With the conditionality of assistance programmes to be made conditional on the ratification of the TSCG¹⁵</p> <p>Rejected the recapitalization of banks through rescue funds</p> <p>Orderly sovereign default procedure with the implication of private creditors</p>
France and others	<p>First opposed the involvement of IMF in assistance</p> <p>Favoured the establishment and perpetuation of rescue funds</p> <p>Soft adjustment of fiscal policies</p> <p>Against automatic sanctions for high public deficit countries</p> <p>Bank licence for the EFSF and ESM and then access to the ECB</p> <p>Against the implication of private creditors in public debt restructuring</p>

15. TSCG: Treaty on Stability, Cooperation and Governance in the Economic and Monetary Union ('Fiscal Compact').

Outcome	Establishment and expansion of the rescue funds with strict conditionality (Troika and 'memorandum of understanding' signed by rescued countries) Conditionality of assistance programmes: conditional on the ratification of the TSCG Limited bank licence for the ESM Orderly sovereign default procedure with the implication of private creditors in case of Greece
Surveillance of national fiscal policy	
Germany backed by the ECB	Called for a strengthening of the Stability and Growth Pact including automatic sanctions and withdrawal of voting rights Coordination of economic policy at best at the level of the EU-27 Wanted to introduce a debt brake and a path for the reduction of public debt as a percentage of GDP
France and others	Opposed to automatic sanctions and the withdrawal of voting rights For a ' <i>gouvernement économique</i> ' for the eurozone Finally in favour of a 'golden rule' (balanced budgets)
Outcome	Reinforcement of the surveillance and of sanctions implemented by inverted qualified majority (without withdrawal of voting rights) and limited to the national deficit Debt brake ('golden rule') (TSCG) and public debt level explicitly incorporated in the Excessive Deficit Procedure (Six-Pack) Coordination of national policy: At least two Euro Summits per year (TSCG)

Rescue plans for the crisis countries: conditional to austerity

At the beginning of 2010 and in the face of the Greek situation, the second Merkel government (a liberal-conservative coalition) first dithered regarding the rescue of member states with insufficient access to financial markets. In an address to the German Parliament in March 2010, the Chancellor still evoked the possible exclusion of a country from the eurozone 'as ultima ratio' should it fail to meet qualifying conditions over the long term.¹⁶ Finance Minister Wolfgang Schäuble, however, pleaded for the withdrawal of voting rights in the European Council. Like the ECB, the Merkel government remained very reluctant to loosen the no-bailout clause. In February 2010, as the speculative bubble expanded to Spain and Portugal, the deal began to change. Against the recommendations of her own finance minister and the ECB, Merkel made the participation of Germany in an assistance plan conditional on the involvement of the IMF

16. See Deutscher Bundestag – 17. Wahlperiode – 30. Sitzung, Berlin, 17 March 2010 <http://dip21.bundestag.de/dip21/btp/17/17030.pdf>, p. 2719.

in assistance as well as on the strengthening of national fiscal discipline. These principles were enacted at the first eurozone summit in March 2010. Eventually, the first rescue package for Greece, consisting of loans with punitive rates of interest in exchange for an austerity plan, was put together. Under pressure from financial markets targeting other countries with downgraded credit ratings, successive rescue packages for Greece (May 2010), Ireland (December 2010), Portugal (May 2011), again for Greece (July 2011 and February 2010) and the establishment of temporary (European Financial Stability Facility, EFSF) and then permanent (European Stability Mechanism, ESM) funds took place. Germany was forced to make three main concessions: first, the rescue of Greece, and later of Portugal and Ireland, calling into question the no-bailout clause second, the establishment and perpetuation of the rescue funds and finally the interventions of the ECB in the government bonds market. In exchange, access to the ESFS/ESM was made possible only under strict conditionality. Countries wishing to receive aid were made to sign off on a detailed commitment to austerity (so called 'memoranda of understanding' that included strict fiscal consolidation and welfare state and labour market reforms) and to accept the narrow, intrusive and permanent surveillance of the Troika (EU-Commission, ECB, IMF) as well as the tightening of fiscal rules for all eurozone countries (see below).

To restore the right incentives for financial markets, the Chancellor insisted on the participation of private lenders in the restructuring of sovereign debts in spite of the risk of spread to government bonds for the countries in crisis. This was achieved after the 'Deauville compromise' between Merkel and Sarkozy made the treaty establishing the European Mechanism of Stability (EMS), a permanent lending facility, possible. In parallel, the German government first rejected the recapitalization of banks through EMS, which will be made possible to a limited extent after the implementation of the European Banking Union. At the same time, the German government managed to defeat the creation of Eurobonds (Merkel had sworn in June 2012 that this would never happen 'as I long as I live') as well as all other forms of collective liability that could weaken the principle of individual liability for member states (Nedergaard and Snaith 2015). The call of François Hollande in favour of a European growth strategy, for a renegotiation of the fiscal compact treaty and for a rapid introduction of eurobonds-articulated before being elected president-remained unheeded after May 2012.

Fiscal policy: tightening of the binding rules

Regarding *fiscal policy*, ever since the inception of the monetary union the rationale of governing by binding rules has been to fight the possibility of moral hazard behaviour from member states, because it could jeopardize the objectives and the credibility of monetary policy. The reinforcement of the principle of liability of financial markets and states (*Haftungsprinzip*) had to be at the forefront of the crisis strategy (Weidmann 2013). That is why the reform of the surveillance of fiscal policy included three main aims: clearer implementation of the Excessive Deficit Procedure, stricter criteria on deficit and debt reduction with the goal of implementing an ‘expansionary fiscal consolidation’¹⁷ and finally stronger automatism and harder sanctions. From an ordoliberal point of view, the most salient element is the possibility of levying sanctions in case of non-compliance with the rules.

The use of sanctions has been considerably extended and made easier to implement. Through the ‘Six-Pack’, agreed in 2011, this holds for the preventive part of the Stability and Growth Pact (SGP), which is reinforced by an earlier and more accurate monitoring and assessment of the member states’ draft budgetary plans by the Commission (see Hacker’s contribution in this book for details). Equally important for the implementation and the quasi-automatic character of sanctions is that the Commission’s recommendation to impose a sanction shall be deemed adopted unless a qualified majority of states vote against it. Moreover, the revision of the preventive arm of the SGP includes for the first time a path of expenditure, which will be expected to grow at a rate below the medi-

17. ‘Germany’s policy of expansionary fiscal consolidation by means of binding fiscal rules is setting a positive example for other eurozone countries, but that alone won’t suffice. All the eurozone governments need to demonstrate convincingly their own commitment to fiscal consolidation so as to restore the confidence of markets, not to speak of their own citizens.... Germany’s course of growth-friendly deficit reduction in conjunction with its suggestions for a strengthening of Europe’s fiscal framework could serve as a blueprint for European economic governance’, wrote Wolfgang Schäuble in 2010, see <http://europesworld.org/2010/10/01/a-plan-to-tackle-europes-debt-mountain/#.VSKk2vmsWDg>.

um-term growth rate of potential GDP 'unless the excess is matched by discretionary revenue measures'.¹⁸

The corrective arm of the SGP again takes up limits for the current public deficit of three per cent of GDP and public debt of 60 per cent of GDP. An innovation is the narrower definition of the 'exceptional circumstances' that allow a member state to escape excessive deficit procedures (EDP).¹⁹ Secondly, EDP can be triggered against a member state whose debt ratio is higher than 60 per cent of GDP and which is not reducing quickly enough: the debt ratio must fall by an average of one-twentieth of the debt in excess of the 60 per cent GDP ceiling over three years, taking business-cycle effects into account.²⁰ Third, the introduction of new sanctions through the Six-Pack brought a further tightening of the corrective arm of the SGP. These make it possible to take sanctions against states earlier than before.²¹ Efforts to have national fiscal policies monitored by the European Commission are at the same time backed by the new 'European Semester': The main aim was to reinforce the ex-ante coordination of fiscal policy with an agreement on the objectives and on the time sequence as well as to reinforce the sanctions mechanisms. Complementing these measures is the Two-Pack, which entered into force in 2013. Its first objective is to ensure the full compatibility of the multilateral surveillance framework established by the Treaty of Lisbon (the TFUE) and the conditions attached to financial assistance granted by the ESFS or the ESM. Its

18. Article 5 of the Regulation N°1466/97 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on 'The strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies'.

19. 'A severe economic downturn for the euro area or the European Union as a whole' instead of 'unusual event outside the control' of the government.

20. Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure. 'For three years following the correction of excessive deficits at the time to entry into force the new rule, the benchmark does not apply in full, but sufficient progress towards compliance is necessary' (Barnes et al. 2012, Box 1).

21. A fine of up to 0.2 per cent of GDP can be decided by the Council acting under Article 126 (8) of the EU Treaty already with the report of an excessive deficit (Stage 3 of EDP), if the member state has already been convicted as part of the preventive arm of the SGP to an interest bearing deposit or if non-compliance to SGP is 'particularly serious'.

second objective is the establishment of common provisions for monitoring and assessing draft budgetary plans and ensuring that member states correct excessive deficits.

Table 2: Summary overview of the EU's fiscal rules (new rules in italics)

Enforcement mechanism	Rule and procedures
Preventive arm of the SGP	Medium-Term Objective (MTO) for the structural GG budget balance
	<i>Benchmark for expenditure to grow following GDP trend</i>
For member states that have not attained their MTO	<i>Annual expenditure growth must not exceed a rate below the reference medium-term rate of potential GDP growth unless the excess is matched by revenue measures</i>
	The structural balance should improve by 0.5% annually as a benchmark
	<i>If the Commission finds evidence of significant deviation from MTO it will address a warning to the member state concerned. Failing effective action, the Commission can propose to apply a sanction (an interest-bearing deposit); a decision shall be deemed to be adopted by the Council unless it decides by a qualified majority to reject the Commission's recommendation within 10 days</i>
Corrective arm of the SGP	3 per cent of GDP ceiling for the general government (GG) deficit. <i>A deficit above three per cent of GDP is considered exceptional when it results either (i) from an unusual event outside of the Member State's control or (ii) from a severe economic downturn.</i>
	60% of GDP ceiling for the GG gross debt
	<i>Reduce debt by 1/20th of excess over 60 per cent of GDP ceiling per year over three years</i>
	A non-interest deposit of up to 0.2% of GDP can be required from a euro country with an excessive deficit and already subject to an interest deposit or if non-compliance is 'particularly serious'. With continued non-compliance, the fine for euro-area member states may be increased.
'Treaty on Stability, Coordination and Governance ('Fiscal Compact')	<i>General budget balance as Medium-Term Objective, lower limit of a structural deficit of 0,5 % of the gross domestic product at market prices.</i>
	Improve structural budget balance by 0.5 percentage points of GDP if MTO not met

European Semester	<p><i>April: Member States report to the Commission (National Reform Programme for economic policies, Stability or Convergence Programmes (budget))</i></p> <p><i>June-July: country-specific recommendations of the Commission adopted by the Council</i></p> <p><i>October: member states send their draft budgetary plans to the Commission.</i></p> <p><i>November: Commission opinion on national draft budgetary plans</i></p> <p><i>Commission's 'Annual growth survey'(AGS) and Alert Mechanism Report (AMR) (conclusions adopted by the Council in January)</i></p> <p><i>March: Economic priorities based on AGS adopted by the EU leaders</i></p>
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Source: Based mainly on Barnes et al. (2012) and on European Commission (2013).

The Treaty on Stability, Coordination and Governance ('Fiscal Compact') introduced a new cap on member states' *structural* deficits of 0.5 per cent of GDP, augmenting the 'Six-Pack' fiscal reforms. It was put forward by the Merkel government, and its core supporters were two conservative leaders, including one representing Germany.²² It was signed on an inter-governmental basis and ratified by 25 member states. This so-called 'golden rule' is more meaningfully understood as a 'debt brake' ('Schuldenbremse' in German).²³ It sets an obligation to integrate the 'Balanced Budget Rule into national legal systems through binding and permanent provision, preferably constitutional'.²⁴ The failure to implement the 'debt brake' into national law can be sanctioned by the CJEU at the request of

22. See Tsibelis and Hahm (2014) for the unfolding of the negotiation and the successive versions of the text.

23. It may be noted that this new criteria for the structural deficit has no economic foundation. It is only the contingent by-product of the reform of the German federal system subsequently exported at the European scale. After the 2006 federal reform on the relationships between the national and state levels of government, the inability of the main concerned stakeholders to agree on the financing side of the reform lead to the introduction, *faute de mieux*, of the debt brake (that is, a limit for the structural deficit of the national government of 0.3 per cent of GDP in 2016 and no deficit for the federal states from 2020 onwards) in the German Basic Law.

24. Preamble of the Treaty on 'Stability, Coordination and Governance in the Economic and Monetary Union'.

one or more contracting parties.²⁵ If the CJEU would find that the contracting party had not complied with its judgment, it could impose a financial penalty. In order to persuade reluctant member states to comply, EMS funds were made available only for countries signing the fiscal compact. 'Victory for Merkel' headlined the 'Financial Times', and indeed, the key provisions on fiscal discipline conformed to the German government's central requests (Kreilinger 2012).

Using existing rules and combining them with new limitations, public finances of the member states are now placed under a wide range of constraints. The total deficit may not exceed three per cent of GDP, the structural deficit may not exceed 0.5 per cent of GDP, the structural budget balance must be improved by 0.5 percentage points of GDP annually for countries under EDP, the debt ratio must be curbed to 60 per cent of GDP and spending growth is subject to constraining rules. It is unclear now which of these rules will be turn out to be the most salient practical constraint. Simulations run by the OECD show that in the future, the MTO (structural deficit of 0.5 per cent of GDP) should be the most binding rule for most countries, except for a few highly-indebted countries like Italy and Portugal (Barnes et al. 2012).

This strategy is supposed to prevent moral hazard among member states, restore the confidence of financial markets and maintain low interest rates on public debt. Just as the ordoliberal approach would suggest, the German government blamed the failure of the Growth and Stability Pact on overly lenient rules. Reverse qualified majority is supposed to ease the enforcement of more stringent rules. Yet over the very long term, the rules seem to be paradoxically unsustainable because they imply very low levels of debt and a very significant reduction of public expenditures, which should be detrimental to economic growth. 'The requirements can thus not be considered to be a permanent approach'. Moreover, 'the methodology to calculate the structural balance has a number of weak-

25. 'If the European Commission, after having given the Contracting Party concerned the opportunity to submit its observations, concludes in its report that such Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union by one or more Contracting Parties. Where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3(2), it may also bring the matter to the Court of Justice' (Article 8).

nesses and discretion will be needed in implementing the rules' (Barnes et al. 2012). Wypolsz (2012) demonstrates that rules are never able to cover all contingencies and may therefore become suboptimal. Furthermore, the new rule for the structural deficit mandates that public investment be financed by current revenues; a requirement that will weaken GDP growth potential (Aglietta 2012). Several studies have shown a negative link between the reduction in the structural primary budget balance and growth over the last years in the eurozone. The proper value of the fiscal multipliers has remained controversial, but it was revised upward in the context of the 'great recession' (Batini et al. 2012). Eventually, one may simply note from an empirical standpoint that at the end of 2014 the ratio of public debt to GDP had declined in no member state except in Germany, which has had the highest growth of GDP since 2009.

Structural reforms and macroeconomic imbalance: dismantling wage regulation and rolling back the welfare states

Structural reforms supposedly prove the ability of governments to cut public expenditures and to boost competitiveness. A first contribution to that was taken in February 2011 with the *Euro Plus Pact*, presented jointly by the French and the German governments. Due to lack of unanimity, it was adopted in March 2011 and falls back on the Open Method of Coordination.²⁶ It aimed at fostering competitiveness and employment, at contributing further to the sustainability of public finances and finally at reinforcing financial stability. Two main points are worth noting here. First, in order to achieve the objective of lowering the labour costs, the *Euro Plus Pact* urges member states to review 'wage-setting arrangements, and, where necessary, the degree of centralization in the bargaining process', and to abolish wage 'indexation mechanisms'. Second, governments are expected to demonstrate a commitment to enhance the sustainability of public finances through pension reforms that align the effective retirement age with life expectancy and aim to increase the participation rates, through limits on early retirement schemes and through targeted incentives to increase workforce participation among older workers.

26. See the revised version of the conclusions of the European Council (24/25 March 2011).

As opposed to responses targeting public finances alone, procedures centred around macroeconomic imbalances were put forward by the Commission despite the reluctance of the German government. The Six-Pack has extended the scope of macroeconomic surveillance with a new procedure to correct imbalances in line with the propositions of the Van Rompuy Task Force. A procedure has been introduced as a surveillance mechanism that aims to prevent and correct macroeconomic imbalances within the EU. It relies on an alert system that uses a scoreboard of indicators and in-depth country studies, binding rules in the form of a new Excessive Imbalance Procedure (EIP) and enforcement in the form of financial sanctions on eurozone member states that do not implement recommendations. Yet the mechanism has an asymmetric feature in the bias inherent to the upper and lower thresholds applied to competitiveness indicators in the EIP. Current accounts are deemed unbalanced at rates of either -4% or +6%; there is no lower threshold for the development of unit labour costs, and no upper threshold for the growth of export market shares (Liddle et al. 2012, 8). Implicitly, all member states are thus pressured to follow Germany's Agenda 2010 strategy, which was intended to enhance competitiveness by cutting down the real costs of labour (wages plus social benefits). But how is this supposed to work for all European countries? Not all member states can replicate the institutional complementarities of the German economy, and not every eurozone country can sustain the export-led growth model followed by Germany because it was made viable by growth in domestic demand in the rest of the eurozone (Boyer 2015).

Against this background, the new elements of European economic governance have produced two main results. These can be only briefly mentioned here, although they are of paramount importance in the present context. First, substantial intervention by supranational institutions (the Troika) in core areas of labour-market regulation aimed at ensuring wage moderation has led to a virtual dismantling of employment protection legislation (individual and collective dismissals) as well as measures related to atypical employment and of collective wage-setting systems (Deakin and Koukiadaki 2013). The main results are the decrease of bargaining coverage, decentralization of wage bargaining and the decrease of real (minimum) wages (for a comprehensive overview, see Schulten and Müller 2015). Second, social policy—in the broadest sense—has today been designated and targeted as the EMU's main adjustment variable (Pochet and Degryse 2012: 217). Austerity measures focused first on pub-

lic investment and social expenditures on health care, social services, pensions and other areas (see the introduction to this volume).

However, the paradox is that the rescue of the eurozone in 2012, thanks to the declaration of Mario Draghi, and again the fight against the threat of deflation in 2015 were in fact made only possible because the German government had no other choice but to acquiesce in the 'quantitative easing' policy of the ECB *against* ordoliberal principles (see C. Barbier's contribution in this volume). This situation led to the successive resignations of the two main German proponents of ordoliberalism at the ECB. Likewise, the German government was forced to make some major concessions regarding the-step-by-step and partial-implementation of the Banking Union (Véron 2012).

Explaining the predominance of the ordoliberal approach

The predominance of the ordoliberal approach can be first attributed to the crisis narrative that has prevailed above all in Germany but also at the European level despite the fact that it is based on a misleading diagnostic about the root cause of the crisis. Second, it has been bolstered by an international and domestic variables framed by ideas and institutions.

The crisis narratives

Crisis narratives are important because they are 'discursive selectivities as they attribute relevance to some phenomena of crisis rather than others and relatively unambiguously identify causes and responsibility for the failure and remedy' (Heinrich and Kutter 2013: 125). The crisis narrative propagated and reiterated by German leaders, with the help of most of the German mass media, has consisted in identifying public debt as the root cause of the crisis, most especially the irresponsible policies of southern European states in particular. The cause of excessive public debt is ascribed to the fact that ...

a number of European and G20 countries have over the past decades lived well beyond their means ... Even in good times governments have for too long been spending more than they earned. Perhaps worse, some also spent more than they can easily repay ... The profligacy of governments has led to levels of debt that will become unsustainable if we do not at once begin [to] shape our future (Schäuble 2010).

In this context, there is no reason for German taxpayers to bail out these countries and ordoliberalism becomes an ideological touchstone for both moral and intellectual leadership (Ryner 2015). The success of Angela Merkel in portraying herself as the prudent 'Swabian Housewife' who balances household income and expenses had 'popular appeal in northern European societies that have enjoyed export-oriented recoveries' (ibid.). Later on, the issue of public finance was extended to the 'home-made' problems of competitiveness and of labour market reforms in the countries affected, including France. This discourse played a crucial role in recasting the narrative of the crisis as an issue of public finance and competitiveness (Heinrich and Kutter 2013). This one-sided narrative can be easily emotionally coloured in German with terms such as '*Schuldensünder*' ('debt sinner'). Taken up by the Commission, it has played a key role in justifying responses to the crisis that have focused on austerity, deepening labour market reforms and welfare state cuts.

Empirical facts belie many aspects of the narrative. Before the crisis, the eurozone went through a phase of budget consolidation. Structural public deficits had been cut to less than one per cent of GDP in the eurozone in 2007, and the share of the public debt burden relative to GDP had been reduced from 70 to 66 per cent between 2005 and 2007. Only Greece, and to a lesser extent France and Portugal, had a public deficit to GDP ratio exceeding two per cent, whereas Spain's budget was actually in surplus and Ireland's public finances were balanced. The subsequent deterioration of public deficits and public debt appeared to be in reality the consequence of the crisis (including the bank rescue package, counter cyclical public spending to stimulate the economy and the impact of 'automatic stabilizers' on the current budget deficit). The cause of the crisis, in turn, can be attributed primarily to private over-indebtedness (Spain, Ireland). The fundamental reason for the government debt crisis in the eurozone is that unsustainable private debt explosion forced governments to increase their debt so as to save large segments of the private sector (De Grauwe 2013). The responses to the crisis left the responsibility for rescuing national banking systems to the member states. Because the falling value of government debt securities directly affected banks, who as major holders of these securities were particularly vulnerable, a twin crisis emerged: A lowered value of government securities jeopardizes bank solvency to the same extent as bank insolvency jeopardizes states.

As a matter of fact, the rules established in the 1992 Treaty on Economic and Monetary Union and the inefficiency of financial markets have subsequently lead to growing divergence between member states. This is a starting point of the current economic crisis. Right from the beginning, the eurozone did not meet the criteria for an optimal currency area (OCA) (Paolo Mongeli 2010). Yet, its dynamic has exaggerated the heterogeneity between member states' national economies. However after the introduction of the European currency, financial markets stopped discriminating between countries and the interest rate spread on government bonds disappeared nearly completely, although the whole architecture of the monetary Union was specifically designed to make financial markets the watchdogs of national fiscal policy. Yet divergence remains in inflation rates, first and foremost due to the divergent dynamics of wages between southern European states and Germany and Austria. This led to divergent real interest rates and unit costs of labour, exacerbating in turn economic disparities between member states and nourishing a boom in southern European countries and Ireland, which allowed northern European countries to accumulate large current account surpluses financed by credit flows to the south.

Indeed, within the EMU two broad growth strategies emerged. Northern European countries followed an 'export-led' growth strategy as southern European countries pursued a 'domestic demand-led' growth strategy (Hall 2012). The German economy implemented a *Lohnzurückhaltung*, a policy of wage restraint, in the post-reunification context, which led to lasting real wage stagnation from 1995 to 2007. In spite of productivity increases at a level comparable to the European average, nominal unit labour costs have therefore decreased, fuelling both trade imbalances and international lending to southern countries. Whereas Germany remained below the common inflation target, the PIGS countries (Portugal, Ireland, Greece, Spain) experienced higher wages and cumulative inflation rates in the context of higher GDP growth. With price competitiveness crumbling over the years, the balance on current transactions and debt deteriorated further (Flassbeck and Spiecker 2011; Horn et al. 2012). The single currency has thus exaggerated 'existing differences and eliminated the policy instruments required to overcome them' (Moravcsik 2012: 58).

The 2007-2008 financial crisis finally caused an asymmetric shock among the eurozone countries and put a brutal end to blooming credit in

southern Europe and Ireland. The fact is that when the external debt of deficitary countries mounted and when the spreads on national government bonds surged from 2010 onwards, financial institutions of creditors' countries suspended loans and capital markets in the eurozone split into segments. Rocketing interest rates and recession resulted, caused most proximately by the necessity to curtail domestic demand in order to reduce deficits of current account. Massive capital withdrawals in the countries affected were evidenced by the growing imbalance in the 'TARGET 2' interbank payment system. The vicious cycle of the crisis of real economy, public finances and banking system brought to light the institutional weakness of economic governance in the eurozone. This shows that stabilizing the rate of inflation at a low level, as required by a strict adherence to ordoliberalism, will not hinder financial crisis in the context of liberalization and globalization of capital movements. Only a central bank as a lender of last resort can prevent it.

In short, the analysis of the causes of the crisis put forward by the German government has imposed a cognitive framework and set of references not affirmed by observed data (Boyer 2015).

Political economic analysis of the responses to the crisis: a set of interdependences between international and domestic variables

Against this backdrop, the question arises as to how German governments were able to take the lead in more or less imposing their own ordoliberal *Weltanschauung* and their approach to crisis intervention on their EU partners, minimizing concessions that have however become unavoidable in the wake of the crisis. Several variables help explain the role of the German government as a veto player and as agenda setter (Young 2013) but also as a coalition leader of creditors states and other member states that have implemented austerity measures in the context of the crisis of the eurozone. There is no unequivocal explanation but rather a set of interdependences between international and domestic factors framed by ideas and institutions. The first may explain why the German government has been successful in setting most of the terms of crisis management – in spite of the turn of the monetary policy in 2012 – and the kind of national interests it defended in this context. Yet, only the national institutional configuration, cultural frames as well as domestic political constraints and the balance of power specific to Germany are able to explain fully the ordoliberal response to the crisis.

Germany is the dominant economic power in the eurozone because the Maastricht founding compromise made the eurozone conform to German monetary doctrine (see above) and because of the performance of the German economy over the last years. 'Germany was able to take the lead in Europe because German (ordoliberal) ideas have been at the heart of the EU and the euro since its inception' (Blyth 2012: 142). From an historical perspective, crisis bargaining was constrained by the path-dependencies of the design of monetary union. Concretely, solutions to the crisis compatible to institutional path-dependency were much less expansive because there was no need of explicit redistribution of costs among member states. Member states have, generally speaking, had a strong common preference for the preservation of the euro and, on this basis, the rescue of their national banking systems, yet their preferences regarding the distribution of cost adjustment have diverged. Hence, it is not surprising that supranational delegation and enforcement are to be found 'in the area of fiscal discipline, which commits the indebted countries whereas financial assistance and transfers that would commit the solvent countries should remain under intergovernmental control'. The design of the selected solutions generally 'matches the preference of Germany, the country with the strongest bargaining power' (Schimelfenning 2015: 11).

This key role is also due to the economic weight and performance of the German economy in terms of external surplus, GDP growth and raw (not 'full-time equivalent') employment rates. Germany's economic performance in most years after World War II gave weight to the ideas behind ordoliberalism at the European level (Nedergaard 2013). The economic success achieved in Germany in recent years has provided a new justification for the 'ordoliberalization of Europe' (Biebricher 2014), although the reasons behind the performance and their consequences for the imbalances within the eurozone have been hotly discussed (Young and Semmler 2011, Horn et al. 2012, Fratzscher 2014, Knuth 2015). On the western side of the Rhine, the French economy has experienced second-rate performance in terms of growth, employment and competitiveness since 2006. Its fiscal fundamentals have been relatively weak, due mainly to tax cuts during the first decade of the century. After the election of Hollande, the fear of a further downgrading of the credit rating and of a rise in public bond yield played a major role in explaining the careful stance

of the French executive. These developments have strongly constrained the ability of France to play a counterbalancing role (Lechevalier 2011).

Moreover, Germany's approach to the Euro crisis has been based on a narrow national (domestic) interest to defend its position as a global export champion (Young and Semmler 2011, Berghahn and Young 2013, Beck 2014, Bulmer 2014). Undeniably, post-reunification Germany, by recovering its full sovereignty, has pursued more vehemently its national interest even as its commitment to European integration has weakened among the post-Kohl generations. Germany has become more eurosceptic and has progressed toward international 'normality' in the course of pursuing a more self-confident national policy.²⁷ Until the crisis, two principles were predominant in shaping the preferences of German policy in the European Union: the German government's pro-integrationist commitments to the European project and ordoliberal principles (Olender 2012, Bulmer 2014). Accordingly, German governments preferred to push forward European integration in keeping with 'sound money' principles. In the wake of the crisis, when the compatibility of the two orientations was at stake, the Merkel government hardened its ordoliberal stance such that the pro-integrationist commitment was necessarily weakened (Olender 2012).

In this way, ordoliberalism has been used in 'a strategic manner both in domestic and in EU negotiating contexts' (Bulmer 2014). As pointed out by the discursive institutionalist approach, 'historically embedded and institutionalized ideas limit the room for manoeuvre in which national leaders operate' (Crespy and Schmidt 2014: 1095). The ordoliberal crisis narrative and responses to the crisis have been used as a strategic resource by Merkel-Schäuble governments to justify at the European level their limited room of manoeuvre and at the same time to satisfy domestic political forces by 'invoking frames that resonate within the national culture' (ibid.). These frames and ideas have national origins—the way they are produced and the political and cultural constraints they impose are largely determined by nationally specific institutions (Campbell and Pedersen 2014). The emphasis on a culture of stability has provided a valuable resource for securing Germany's objectives within the eurozone, but above all it also has allowed it to satisfy demands presented to it by

27. Joschka Fischer. 'Frau Germania'. *Süddeutsche Zeitung*, 29 March 2010.

domestic politics, institutions, the media and public opinion (Lechevalier 2011, Bulmer 2014, Young 2014).

The keystone in the present context is of course the Bundesbank. 'Germany's collective historical neuralgia over the inflation of the 1920's' (Blyth 2013: 56) has often been put forward to explain why German authorities stick to the principle of sound money. In fact, the alleged link between Hitler's rise to power and Germany's hyperinflation resonates, at best, in the long-term conflict about reparations after World War I. Yet, other industrial countries also suffered from periods of extremely high inflation rates, and analyses based on a larger number of countries do not show that high historical inflation rates necessarily lead to more inflation aversion. Moreover, recent empirical work using Eurobarometer survey data seem to show that there is no significant difference regarding inflation aversion between northern (including Germany) and southern European states (Howarth and Rommerskirshen 2014). From this point of view, Germany's inflation aversion is indeed a 'myth', but after World War II this myth satisfied the Federal Republic's need for non-political narratives and collective symbols related only to market exchange, consumption and individual prosperity (Münkler 2011). It appears indeed to have been instrumentalized to emphasize the success story of the Deutsche Mark after monetary reform and to legitimize the guardian of the German culture of stability, the Bundesbank (Tietmeyer 1999).

Among the other 'embedded ideas' in Germany, the decisive role that the Federal Constitutional Court (FCC) has been playing in the wake of the crisis has to be stressed. FCC jurisprudence concerning the participation of Germany in the process of European integration was for a long time characterized by its openness to integration but also by a still tenacious defence of the German constitutional order. The ruling on the Lisbon treaty²⁸ marked a turning point. It reaffirmed that Germany is a sovereign state with an 'intangible constitutional identity', that the member states remain the 'masters of the treaty' and that the Union is therefore not entitled to determine its own competences. It called also into question the democratic nature of the EU on the grounds that the European Parliament is not representative of a 'European people' and that its voting system violates the principle of 'one person, one vote'. More specifically,

28. *Ruling of 5 May 2011 – 2 BvR 1011/10.*

the ruling set intangible limits to European integration, as authorized by the German Basic Law. The FCC identified on this occasion a series of competences that fall intangibly under national sovereignty. In a comment on the case, former German foreign minister Joschka Fischer criticized this as a 'national latch' barring the way to further European integration.²⁹

In the wake of the crisis, the FCC set the 'stability of the Euro currency as true ultimate priority of the eurozone and stipulated that German legislators must be more closely consulted on EU legislation' (Young and Semmler 2011: 8). The judgment on the European Stability Mechanism (ESM) and the 'Fiscal Compact' in 2012 followed ordoliberal principles closely. On the one side, the limitation of the deficit set by the TSCG is said to be compatible with the basic law because 'it corresponds exactly to the model of the German debt brake'.³⁰ On the other side, the court noted that the direct or indirect monetary financing of public deficits is forbidden by the treaties and that the no bail-out clause between member states remains a 'key pillar' of EMU. This is why it explicitly took action against a banking license granted to ESM and against any proceeding that could engage Germany without the democratic participation of the Bundestag. In 2014, for the first time in its history, the FCC referred the case of the ECB OMT programme to the CJEU with the demand that conditions be imposed on that programme. Its main argument was that markets are efficient and therefore the ECB should not try to reduce the interest rate spread on public bonds. Backed by the FCC, in the wake of the crisis the Bundestag has indeed extended its traditional role of a control body to act as an active decision-maker because fiscal policy and constitutional issues were involved (Beichelt 2012).

In this institutional context, internal political issues and constraints have clearly dominated the political agenda of the Merkel government's responses to the crisis even as European policy has become more politicized. Germany notably delayed the European response at the beginning of the (Greek) crisis (Dullien and Guérot 2012). The Christian Democratic Union, which at the turn of the new century had already shifted to a more neoliberal course, has played a key role since the inception of the crisis

29. Joschka Fischer. 'Ein nationaler Riegel'. *Die Zeit*, 10 July 2009.

30. *Ruling of 12 September 2012 – 2 BvR 1390/12.*

disseminating the mainstream crisis narrative in Germany. Its Bavarian sister party, the CSU, was even more eurosceptic and against any cooperative solution at the European level. One of its leading parliamentarians, Peter Gauweiler, directed a complaint to the FCC about the constitutionality of the European Financial Stability Facility. The second Merkel government (2009-2013) was based on a coalition between the CDU/CSU and the Free Democratic Party (FDP), which in the post-war period was a driving force of European integration and had been represented by figures like Hans-Dietrich Genscher, the foreign minister before and after the fall of the Berlin wall. Yet, over the last years, the FDP has become still more neoliberal and much less pro-integrationist. As the party of 'German tax payers' it advocated a strict control of national fiscal policies, it was against ECB interventions and against the creation of the European Stability Mechanism and any kind of 'fiscal union'. In this context, later marked by the rise of a new anti-euro party (*Alternative für Deutschland*), the political will of the Chancellor to preserve its governmental majority on eurozone crisis issues has little leeway. In fact, on several occasions the adoption of crisis legislation was possible only with the support of the Social Democratic Party, particularly for obtaining the necessary two-thirds majority for measures such as the adoption of the ESM in June 2012. After Chancellor Gerhard Schröder's social-liberal turn (*'die neue Mitte'*), the SPD moved slightly to the left again before the parliamentary election in 2013 and has been more open to common solutions like Eurobonds and growth initiatives at the EMU level. Nevertheless, it supported the ordoliberal consensus regarding key issues: strict conditionality of rescue packages for indebted countries, introduction of a 'debt-brake' and a prohibition of ECB bond purchases. For fear of being accused of 'betrayal of national interests', as in June of 2012 by the CSU after their approval of the conclusions of the European summit, the leaders of the SPD have remained reluctant to support the alternative strategy proposed by François Hollande during the electoral campaign in France.

Finally, the 'knowledge regime'³¹ conducive to Germany may also explain some aspects of the status of ordoliberalism among German eco-

31. *'Knowledge regimes* are the organizational and institutional machinery that generates data, research, policy recommendations, and other ideas that influence public debate and policy making' (Campbell and Pedersen 2014: 3).

conomic and academic elites. The strong coordination of the German knowledge regime and the decisive role played by semi-public research organizations (Campell and Pedersen 2014) has led to a socialization that takes place mainly through specific economic and political institutions. The influence of ordoliberalism as an intellectual framework—more than as a theoretical tool—on numerous mainstream German economists as well as the weakness of the (neo-)Keynesian tradition within the profession and in institutions like leading research institutes, the *Bundesbank* or the Ministries of Finance and Economics has been pointed out by various authors (Allen 2005, Dullien and Gu erot 2012, Biebricher 2014). It is worth noting that in the wake of the crisis a conflict among German-speaking economists flared up twice and both times the debate confirmed the strength of ordoliberal and neoliberal traditions against neo-Keynesian points of view. In 2010, an appeal launched by Bernd Lucke, later founder of the anti-euro party *Alternative f ur Deutschland* and others was signed by 189 economists.³² Their arguments are similar to those presented in a *study put out by the Scientific Advisory Board of the Federal Ministry of Economics and Technology of January 2011* by Manfred Neumann, Roland Vaubel and J rgen von Hagen. It highlighted the type of ‘expertise’ called upon by the German government: *most German economists spoke out against the measures provided for the countries that have been facing severe financial difficulties and against purchases by the ECB of government bonds, supporting rather the default of the countries involved*. The response to this criticism by economists of the ECB focused on *contagion risks and domino effects within the EMU following a restructuring in one of the Euro area countries* (Bindseil and Modery 2011). In 2012, 172 leading German economists signed another open letter³³ warning ‘German citizens’ against the risks attached to the ‘single resolution mechanism’ of the banking union favoured by the heads of state and government at the June 2012 summit. Because of the

32. Two thirds of the economists asked agreed to answer. Among them 191 signed the text, 11 abstained and only 7 disagreed. See the text at <http://www.faz.net/aktuell/wirtschaft/protestaufruf-der-offene-brief-der-oekonomen-im-wortlaut-11810652.html>
33. See , Der offene Brief der  konomen’ in Frankfurter Allgemeine Zeitung. <http://www.faz.net/aktuell/wirtschaft/protestaufruf-der-offene-brief-der-oekonomen-im-wortlaut-11810652.html>

reply of neo-Keynesian economists, the controversy found a strong echo in public opinion.

Conclusion

This paper has put into perspective and analysed the ordoliberal imprint on the historical path of Social Europe and on the management of the eurozone crisis. Having emerged in the specific context of the late 1920s in Germany and having occupied a prominent place in the Federal Republic's founding years, the ordoliberal economic school of thought is an original variant of neoliberalism because it does not consider free markets to be self-regulating. It is based instead on a concept of competitive order promoted and monitored by the state. Ordoliberal principles hold that the state, as a rule-setter, must organize competitive markets within a policy framework that remains true to constitutional and regulative principles. Moreover, free-market processes that conform to ordoliberal principles are supposed to increase the welfare (of citizens) and thus should be viewed as 'social'. This was exactly the implicit 'social programme' of the Treaty of Rome on which German ordoliberals exercised an important if not exclusive influence: the response to the *soziale Frage* was supposed to be mainly given by market integration within the European Community. The legacy of the ordoliberal tradition on the design and functioning of the Economic and Monetary Union has had again decisive consequences for the continuing path of Social Europe. The recurring incapacity of other member states – and above all of successive French governments– to balance the EMU, as designed by the ordoliberal tradition, with a political Union (actually proposed on different occasions by German leaders) has led to a division of competences between the EU and the member states in the fields of social policy, which is at the EU level first and foremost intended to work in a (single) 'market preserving' manner. At the same time, according to the principle of subsidiarity, the Economic and Monetary Union is supposed to preserve national sovereignty in key social areas. The main result is the asymmetry between economic freedoms at the EU level and social rights, formally mainly anchored at the national level, but jeopardized by the functioning of the single market and of the EMU. This asymmetry has been endorsed and developed by the jurisprudence

of the European Court of Justice. In spite of some modifications, the Treaty of Lisbon has not changed this situation substantially.

Since the onset of the eurozone crisis, the responses of Germany, which has become the dominant national player and a coalition leader of several EU member states, can again mainly be characterized as ordoliberal. The strategy consists in tightening an extended range of binding rules, first and foremost for public finance, and in implementing structural supply-side reforms with the goal of improving the competitiveness of member states (but also the competition between them). In the course of the crisis, German government finally agreed to establish rescue packages for indebted countries, yet under strict conditionality. To avoid moral hazard of debtor countries, it refused to open any perspective for a shared solidarity between eurozone member states. A set of factors, working at the international and domestic levels, explain this ordoliberal stance. At the international level, the newly asserted German identity in the aftermath of the reunification, the – highly discussed – performance of the German economy since 2006 and the path dependency of the EMU as anchored in the Treaties are the best explanatory variables. On the domestic side, specific national institutional configurations, cultural frames and political constraints for the German Chancellor have played the most important role.

This ordoliberal strategy in the management of the crisis not only has had far-reaching implications and high costs for Social Europe. It has also failed to reach its main objectives, starting with the reduction of public debt as a percentage of the GDP, which has grown in all member states except Germany so far, in spite of the rollback of national welfare states and of the ‘structural reform’ of labour markets and collective agreements. Even the economic upturn forecasted at the beginning of 2015 for the years 2015 and 2016 is expected mainly due to cyclical factors (oil price, lowering the exchange rate of the euro and low real interest rates), partially as the result of the ‘non-conventional’ policy adopted by the European Central Bank in contradiction to ordoliberal principles. Nonetheless the grand coalition government in Germany, elected in 2013, has held onto its ordoliberal approach tightly, as shown again by the treatment of the Greek crisis in 2015. This way of exporting a keystone of the German political and economic national culture to other member states is not without great problems for the future path of Social Europe and therefore for the legitimacy of the EU itself. The eurozone has neither a well-

developed redistributive federal system nor a central fiscal policy to complement its ordoliberal framework, as does Germany, and it cannot replicate the institutional complementarities unique to German capitalism. As shown not only in the literature on the variety of capitalisms, economic and social policy is indeed deeply anchored in national institutions and cultures (Barbier 2013, Hall 2014). Yet, as the current crisis demonstrates, the long-term sustainability and viability of the eurozone depend on the ability or inability of member states to find common responses to the key issue: the growing divergences of their national economies. Trying to impose a uniform economic and social policy – by binding rules without effective democratic control or mechanisms of redistribution between member states – on countries with very different economic and social systems and needs is a recipe for deepening the divergences of (national) economic performance and for endless political conflict, and it could very well spell the death of ‘social Europe’.

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