“A Catalyst for European Identity”

Five Questions to Aurore Gaillet

Aurore Gaillet & Eva Maria Bredler

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After the Bundesrat, Germany’s second legislative chamber alongside the Bundestag, also approved the constitutional amendments today, the financial package for defence and infrastructure has been passed before the new Bundestag convenes. This remarkable development affects not only national but also core European issues. For a (French) external perspective, we spoke with Aurore Gaillet, Professor of Public Law at the University of Toulouse Capitole.

1. Looking at democracy in Germany, are you more or less concerned after the Bundestag elections?

On the one hand, the AfD’s result is concerning, even if it was no surprise after the state elections in autumn 2024. Above all, the nationwide doubling of the AfD’s vote share from 10.3% to 20.6% highlights the crisis of the democratic system. Additionally, the geographical distribution of votes along the former inner-German border is striking – a division that does not exist in France. The unexpected share of votes for the Left also reflects the division of German society and growing polarisation.

On the other hand, the AfD’s share is significantly lower than that of the Rassemblement National in France, which won 32% of the vote in the 2024 parliamentary elections. Moreover, Germany’s high voter turnout compared to France is a positive aspect: While 67% of voters participated in France, the turnout in Germany was 82.5%.

To answer your question more directly, there is another factor that offers hope regarding the resilience of German democracy: While in France, times of crisis are not conducive to parliamentary debate (and even reinforce hyper-presidentialism), Germany’s ability to reach compromises is remarkable. This is evident in the current agreements between the CDU/CSU, SPD, and the Greens, demonstrating a strong sense of political responsibility. It is now up to the future coalition to remember the results of 23 February and to actively seek answers to the divisions within German society.

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Schöne neue Welt der Vielfalt hier, die Fremden als Gefahr dort – beide Bilder waren schon immer viel zu einfach, um dem komplexen Phänomen der Einwanderung gerecht zu werden. Der renommierte Migrationsexperte ***Daniel Thym*** *zeigt in seinem hochaktuellen Buch, dass Migration sinnvoll gesteuert werden kann – wenn wir ein Selbstbild als Einwanderungsrepublik entwickeln, das die vielfältige Gesellschaft zusammenhält.*

Mehr Informationen hier.

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2. While migration dominated the discourse during the Bundestag election campaign, the coalition negotiations so far focussed on financial issues. From the perspective of French constitutional law, how is Germany’s handling of the debt brake perceived?

The debt brake has always been regarded as a German peculiarity. While it has prevented the emergence of a critical situation like that in France, where debt has reached 113% of GDP compared to 63% in Germany, it has also hindered essential investments. The issues facing Deutsche Bahn are astonishing to the French, who have long admired German punctuality. In the European context, Germans – alongside others, such as the Dutch – have always been perceived as particularly frugal. However, even European fiscal limits are now being reassessed.

There is a parallel between Germany and France in that both countries have recently seen governments fall over financial struggle: Chancellor Scholz's government in November and Prime Minister Barnier's in December (for the first time since 1962). However, in France, the extent of borrowing is debated politically rather than legally. The Federal Constitutional Court's ruling in autumn 2023, with its strict application of debt rules, was therefore followed with interest in France.

At the same time, the recent German constitutional amendment is being closely observed – both in terms of defence and infrastructure. Procedurally, it is noteworthy that the Bundestag can still legislate even after its dissolution and a new election – that's impossible in France where dissolution not only ends the parliamentary session (with the Senate also suspending its work) but also the mandate of MPs. Thus, it is inconceivable for the old parliament – let alone the former National Assembly – to reconvene after dissolution. Additionally, the Constitution itself determines when the new assembly resumes work, namely "on the second Thursday following its election," according to Article 12(3).

3. The current security policy realignment is reminiscent of the 1960s, when Europe had to position itself between the US and Russia. At the time, Charles de Gaulle distrusted both superpowers – and NATO – advocating European sovereignty within a "Europe of Nations", led by a Franco-German partnership. What can we learn from Franco-German history today?

In the past, there were major differences between France and Germany. By adding a preamble to the ratification act of the 1963 Franco-German Treaty, reaffirming Germany's commitment to both NATO and European integration, the Bundestag took a stance contrary to de Gaulle's vision of an independent Europe. Similarly, Emmanuel Macron's attempts after his 2017 election to strengthen the European dimension in defence policy long failed due to Germany's insistence on cooperation with the Americans. As recently as 2020, Macron expressed his "deep disagreement" with Annegret Kramp-Karrenbauer's position, criticising her reliance on American security as a "misinterpretation of history".

At the same time, Franco-German relations have strengthened when based on shared and embodied values. This is often exemplified by the political "couples" (as the French say) of De Gaulle/Adenauer (1958-1963), Giscard d'Estaing/Schmidt (1974-1981), and Mitterrand/Kohl (1982-1995), who symbolised the importance of Franco-German relations despite political frictions or different party affiliations.

Regarding the present: While Chancellor Olaf Scholz's proclaimed "*Zeitenwende*" (turning point) from 2022 appears to have stalled, the transformation of the world order inherited from 1945 and shaped by the US is fundamentally altering the landscape. On both sides of the Rhine, a revitalisation of Franco-German cooperation is now being called for at the highest political levels. Its success will depend on whether challenges are faced together as well as on a mutual commitment to fostering trustful and balanced relations.

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4. Energy policy remains a common challenge. Merz advocates a return to nuclear power, on which France has long relied. How could deeper Franco-German cooperation in defence and energy policy impact the EU's power dynamics?

Despite their shared reliance on nuclear energy, there are fundamental differences in these areas.

A close Franco-German partnership in defence, particularly concerning the nuclear shield, would put pressure on other member states. At the same time, such cooperation raises numerous technical and political questions. To reduce European dependence on the US, both Europe's industrial capacity and interoperability must be strengthened. Given the complexity of decision-making within the EU, it is likely that we will see the emergence of smaller, more focused cooperation groups.

Energy strategy is another major challenge, both for sovereignty and economic strength. However, we are still far from a consensus on the "energy mix": What is the true potential of renewables? What is our stance on nuclear power (particularly in Germany)? How much fossil energy can we accept, given that fossil dependence is incompatible with sovereignty?

5. Speaking of sovereignty: Trump, Putin, and others embrace authoritarian rule, and many in Europe find this appealing. Is a strengthened Franco-German-led EU enough to counter this, or do we need new forms of European cooperation?

Indeed, the question arises as to why authoritarian regimes are so attractive. Legitimacy and perceived decision-making efficiency are key factors. To address this in terms of "cooperation structures", we must differentiate between policy areas.

Effective cooperation beyond the EU is certainly conceivable in areas such as foreign and security policy, where the EU itself has so far remained relatively weak. Smaller intergovernmental formats would be beneficial, involving countries like Poland and the UK and bridging the EU and NATO. However, this does not preclude continued reflection on European defence, which could serve as a catalyst for a sense of belonging to the Union and its values – and thus European identity. As philosopher and economist Amartya Sen (and long before him, Ernest Renan) said, identity is also forged through adversity.

Ultimately, authoritarian tendencies can only be countered by decisive policies that effectively address contemporary challenges – in migration, the economy, and the environment. If not all member states cooperate, those committed to countering authoritarianism should use – driven by Franco-German leadership – the EU's enhanced cooperation mechanisms.

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Editor's Pick

by MAXIMILIAN STEINBEIS



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The book I'm currently reading is a 1,000-page, half-forgotten classic from the 1970s: the novel trilogy *The Aesthetics of Resistance* (despite the title: a novel! But not just that...) by the German-Swedish writer Peter Weiss. It begins in Berlin in the mid-1930s: three young communist workers, isolated and in almost hopeless circumstances, striving to further their intellectual and aesthetic education. The Spanish Republic is still fighting against fascism – then the civil war is lost, the fleeing fighters are interned, persecuted, extradited, annihilated. They still believe in the Soviet

Union, the land of revolution – then it devours its children, and Stalin signs his pact with Hitler. Exile in neutral Sweden still offers protection – but the room for manoeuvring underground becomes desperately small. It is barely bearable to begin with and becomes less so with each passing day – and yet, it is bearable. And great art emerges from it.

I'm not finished yet, about 100 pages remain. But I already know that I won't be finished with this book for a long time.

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

Fasten your seatbelts: 2025 turned out to be quite a bumpy ride so far, to say the least. A splash of colours by the wayside might sooth our souls – at least that's what the EU seems to be thinking, with bus stops all around Europe filling with colourful advertisements of NextGenerationEU, the flagship program of von der Leyen's first term. But the paint is peeling now that the drafts on the EU's next **Multiannual Financial Framework** were leaked: PÄIVI LEINO-SANDBERG (ENG) explains how they mirror the NextGenerationEU and why they might be a fading hope amidst geopolitical challenges the EU is facing today.

The challenges do not stop there. The EU Commission recently proposed a reform of the **Return Directive** to address significant enforcement gaps. While the proposal aims to create a clear, modern, and simplified system for managing returns effectively, it in fact raises concerns about its impact on existing safeguards for individuals involved, as JONAS BORNEMAN (ENG) argues.

The recently introduced "**Omnibus**" packages promise a less bumpy ride. The regulatory reform aims at "simplifying" corporate sustainability reporting and due diligence requirements under several European Green Deal instruments in order to strengthen European competitiveness. "Simplification promised, simplification delivered!" – this is how the EU Commission introduced the Omnibus packages. ALICE BERTRAM (ENG) unpacks why the Omnibus might deliver legal uncertainty and ecological rollback instead, focussing on the envisaged changes to the Corporate Sustainability Reporting Directive.

FREYA WOLFERS (GER) chimes in, analysing how the planned changes for the **Corporate Sustainability Due Diligence Directive** (CSDDD) could severely undermine its enforcement.

SAUMYA RAVAL and JELENA BÄUMLER (ENG) add to this, arguing that the CSDDD reform overlooks the realities of informal economies at the expense of vulnerable rightsholders in the **Global South**, and thus risks diminishing the EU's credibility as the global forerunner for corporate governance.

Germany should also have a closer look at the CSDDD: The **German Supply Chain Due Diligence Act** could be amended during the upcoming coalition negotiations (right now, actually). MARKUS KRAJEWSKI (GER) shows why the temporary suspension or even complete abolition of the Act would hardly be compatible with Germany's international obligations.

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An der Professur für Öffentliches Recht, insbesondere ***Völker- und Europarecht*** *(Prof. Dr. Birgit Peters) der Universität Trier ist ab dem 01.08.2025 befristet bis 31.07.2028 eine Stelle als* ***Wissenschaftliche/r Mitarbeiter/in*** *(m/w/d) (E 13 TV-L, 50%) zu besetzen. Die Stelle ist zur wissenschaftlichen Qualifikation [Promotion] eingerichtet. Zu den damit verbundenen Aufgaben gehört die Mitarbeit in Forschung und Lehre; gute Englisch- oder Französischkenntnisse sowie Interesse und Spaß am Öffentlichen Recht, Völker- und Europarecht sollten gegeben sein.*

Mehr Informationen hier.

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Sadly, **respect for international law** does no longer go without saying. We live in a time when international law is being broken by powerful states again and again, without justification. In light of recent events, 79 GERMAN SPEAKING INTERNATIONAL LAW SCHOLARS (ENG) urgently appeal to decision-makers

at federal and state levels not to jeopardise Germany's commitment to international law.

Another case in point is **Mexico**, which recently transferred 29 alleged drug lords to the US without due process – although they had pending extradition proceedings. While combating organised crime is crucial, RODOLFO GONZÁLEZ ESPINOSA (ENG) warns that Mexico disregarded the rule of law and set a dangerous precedent.

The rule of law looks even more dire in the US, with authoritarianism taking its place. Or is it **fascism** already? Many commentators shun this term as rhetorical overreach. ALANI GOLANSKI (ENG) takes a closer look at the definition and argues there are reasons to characterise the second Trump administration as fascist or, at least, quasi-fascist.

In the meantime, the Constitutional Court in **Bosnia and Herzegovina** blocks the Republika Srpska's latest legal manoeuvre, which effectively introduces Serbian symbols. CARNA PISTAN (ENG) describes the struggle over identity and statehood in Bosnia and Herzegovina after the Dayton Peace Agreement, where symbols serve as powerful instruments of division, risking deepening ethnic divisions.

The Bavarian Constitutional Court ruled on a less symbolic matter when it declared the expansion of police powers under the **Bavarian Police Task Act** partially unconstitutional. JULIAN SENDERS (GER) analyses the decision and hopes that the Federal Constitutional Court, which announced to decide on similar cases this year, will shed more light on the relevant standards.

Finally, our symposium on "Eyes Everywhere: Surveillance and Data Retention under the EU Charter" (ENG) concluded with a piece by GUIDO WESTKAMP on the ECJ's ***La Quadrature du Net II***decision, examining the intricate links between anonymity, surveillance, creativity, and copyright.

And thus, our ride continues – enjoy the bizarre landscapes, vibrant colours, and shy sunlight along the way, and do not expect a *Quadrature du Cercle*.

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Take care and all the best!

Yours,

the Verfassungsblog Team

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