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Germany and Europe Testing the limits

Even Germany has constitutional worries about more European integration

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HOW far can Germany's constitution stretch before it rips? The euro crisis is pushing Germany to test the limits of its "Basic Law". In May the Bundestag will vote on both the euro zone's fiscal compact and the European Stability Mechanism (ESM), a permanent bail-out fund. This is a prelude to a European economic government or even, some suggest, a United States of Europe.

The ESM is a state-like transfer system that would "change the identity" of the Basic Law, say Wolfgang Kahl and Andreas Glaser of Heidelberg University. The fiscal compact may be a German invention that is planned to apply to 25 of the European Union's 27 members, but it is now being written into international law. The government thinks it needs a two-thirds majority in the Bundestag and the upper-house Bundesrat, the normal procedure for amending the constitution.

The phrase "change the identity" is a call to arms, suggesting that the Basic Law is being superseded. It can be replaced, under Article 146, by a constitution "freely adopted by the German people". But this would require either a referendum, a first in modern Germany, or a

constitutional convention. Do Germans want this? And would their politicians risk a referendum? Some see the Article 146 discussion as a mere ploy to block further European integration.

Even pro-Europeans suspect that the constitution is reaching its limits. The steps taken so far are permissible, says Gunther Krichbaum, head of the Bundestag's Europe Committee, but "we have to think how far European integration can progress on this basis." It is not just the euro, he says. How would the charter cope with a European army?

Yet the Basic Law is stretchier than many think, says Franz Mayer of Bielefeld University. It calls Germany "an equal partner in a united Europe". Mr Mayer claims that "the founders in 1949 did think some kind of European federal state could be possible with the Basic Law." Surely it can cope with the ESM and fiscal compact. A two-thirds majority was not needed to ratify the treaty establishing the International Criminal Court, which limits Germany's discretion to refuse extradition, Mr Mayer notes. The fiscal compact impinges no more than that on national sovereignty.

The real point of the two-thirds parliamentary hurdle may be to impress the final arbiter: the constitutional court. The court has let the euro rescue through, while strengthening the Bundestag's role in approving them. But the judges take an increasingly narrow view of what is allowed. The court's 2009 decision on the Lisbon treaty ruled that Germany could not transfer core powers to a democratically flawed EU. If Germany wants more Europe, the court's president, Andreas Vosskuhle, says, "a referendum would be necessary."

German leaders seem to want a lot more Europe. Chancellor Angela Merkel now favours "political union". On March 20th Guido Westerwelle, the foreign minister, hosted eight colleagues in Berlin for a "strategic debate" on Europe's future. If Germany is serious, it will have to debate its own constitution as well.

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