

Silke Uebelmesser
University of Jena

Why Karlsruhe rejected the German budget

(LaVoce 15 December 2023)

The ruling of the Federal Constitutional Court of November 15, 2023, on the Second Supplementary Budget for the year 2021 came as a surprise to many. Not only was it declared to be void. For the first time, the Court commented on the constitutional basis of the German debt brake – and it did so in a very comprehensive and very strict manner.

The German debt brake in its current form, as enshrined in the Basic Law, has been in force since 2016 after a transitional phase. It stipulates that the federal government has only a limited debt margin, allowing net borrowing of just 0.35% of GDP in structural terms, i.e. after cyclical adjustments. The apparent inflexibility of the debt brake has often been criticized. However, two points should be kept in mind: First, there is a cyclical component. In bad economic times, new debt can be higher, and in good economic times it must be lower. This is to allow the automatic stabilizers to work. Second, exceptions are possible in the case of natural disasters or extraordinary emergencies beyond the control of the state, if declared by a majority in the Bundestag. This was the case in 2020 and 2021 due to the burden of the Corona pandemic on the federal budget, and in 2022 due to the impact of the Russian war against Ukraine on energy prices. In 2023, the plan was to return to the debt brake.

Like many other countries, Germany is facing a major transformation. It wants to become greenhouse gas neutral by 2045. In addition, its aging society threatens the sustainability of its social security systems. These are major challenges, but they are clearly structural in nature and have been known for decades. They do not justify another exception to the debt brake. Structural and thus long-term tasks also require long-term financing, preferably within the core budget.

The challenge for the governing coalition of Social Democrats, Greens and Free Democrats was to reconcile the financing needs of the green transition and the growing burden on the social security system with the promise not to raise taxes, while at the same time respecting the debt brake. To achieve this, unused Corona funds of 60 billion euros were redirected to the Energy and Climate Fund, a special fund to finance the energy transition and climate protection. The fund also helped balance the political interests of the three parties without painful compromises. Furthermore, there was a change in the accounting rules. Under the new rules, borrowing authorizations were counted against the debt limit when they were allocated to the fund, not when they were used in later years.

The Constitutional Court declared this Second Supplementary Budget to be void. First, the necessary factual link between the emergency justified by the Corona pandemic and the use of the unused funds to address the energy crisis was not given. Second, the use of emergency borrowing authorizations in subsequent fiscal years without proper counting was not constitutional. As a result, not only was the volume of the Climate and Transformation Fund reduced by 60 billion euros. The Economic Stabilization Fund, another special fund with a volume of 200 billion euros, which was mainly intended to cushion price increases in electricity and gas purchases, was also closed, since it made use of the same accounting rules.

The ruling is a major stress test for the federal government. The first step is now to put the 2023 budget on a constitutional footing. To this end, the Bundestag has again declared an exception to the debt

brake for 2023, primarily in order to properly account for the borrowing authorizations used in 2023 for the Economic Stability Fund. The second step is to close the gap in the 2024 budget, which the Federal Minister of Finance has estimated at 17 billion euros. The third step is to rethink the fiscal planning for the years afterwards. There is a controversial debate within the government and among the public. Cuts in climate-damaging subsidies and reductions in social benefits are being discussed, as well as a rethinking of climate policy towards greater use of market-based instruments. So far, all proposals have met with resistance. A further suspension of the debt brake in 2024 is also being proposed, although the Federal Constitutional Court has set high standards for this. At the same time, opponents of the debt brake are pushing for more fundamental reforms, knowing full well that the required two-thirds majority in the Bundestag is not very realistic. Reform proposals include a general relaxation of the debt limit, a shift toward a “golden rule” to allow for more investment, or the creation of a special transformation fund along the lines of the special fund for the German armed forces. Evidence shows that a general easing of debt limits does not necessarily lead to more investment, but is often used to increase consumption, as governments tend to prioritize spendings that benefits today’s electorate. Similarly, special rules for investment lead to problems of categorization and do not guarantee the implementation of the best, future-oriented projects.

The government’s plan for 2024, presented in mid-December, is based on a bundle of measures to close the gap, including an increase in the CO₂-price, a reduction of climate-damaging subsidies and cuts to some transformation projects. The debt brake will be reinstated for the time being while the government continues to pursue the three central goals of the coalition, i.e. fighting against the climate crisis, strengthening social cohesion, and continuing support for Ukraine. The timeline now is for the 2024 budget to be passed by the Bundestag early in the new year.

To summarize

- 1) Germany is not in a state crisis. The gap to be closed for 2024 must be considered in relation to the federal budget of about 450 billion.
- 2) The planned savings and cuts are not an austerity budget policy. The budget will be significantly larger than the last pre-corona budget, despite some spending cuts.
- 3) The necessary debate on political priorities can no longer be avoided. This is an opportunity for all parties involved to rethink the goals and the instruments to reach them.
- 4) Germany sees itself as an anchor of stability within the European Union. Any discussion about the debt brake and necessary structural reforms must be closely linked to the new fiscal rules to be adopted at the European level.

Silke Uebelmesser

<https://sites.google.com/view/silkeuebelmesser>