

Judgement of the Federal Constitutional Court of 15 November 2023

Key excerpts:

Headnotes

to the Judgment of the Second Senate of 15 November 2023

-2 BvF 1/22-

Second Supplementary Budget Act 2021

1. a) Beyond the wording of Article 109(3) second sentence and Article 115(2) sixth sentence of the Basic Law, there must be a causal connection between the natural disaster or unusual emergency situation on the one hand and the exceeding of credit limits on the other. In assessing whether such a connection exists, the legislator has a wide margin of appreciation.

b) This margin of appreciation corresponds to the legislator's burden of substantiation in the legislative process.

2. a) In regard to public debt law, the budgetary principles of yearly budgeting, annuality, and the current-year principle apply to the exceptions for natural disasters and unusual emergency situations in Art. 109(3) second sentence in conjunction with Art. 115(2) sixth sentence of the Basic Law. b) The legislator deciding on budgetary matters must not abrogate these principles by choosing a design that facilitates the use of borrowing authorisations for legally dependent special-purpose funds.

3. The principle that the budget must be determined in advance generally also applies to supplementary budgets. Parliament must therefore adopt a supplementary budget bill by the end of the year.

Para. 95 The Second Supplementary Budget Act 2021 does not satisfy the constitutional requirements for emergency borrowing arising from Art. 109(3) first and second sentence and Art. 115(2) first and sixth sentence of the Basic Law. With regard to the timing of its adoption, the Act also violates Art. 110(2) first sentence of the Basic Law. It therefore need not be decided here whether the Act also violates the principles of budgetary clarity and reliability (Haushaltsklarheit und -wahrheit) under Art. 110(1) first sentence of the Basic Law.

Para. 96 As a further specification of the general prohibition on incurring structural new debt imposed on the Federation and the Länder in Art. 109(3) first sentence of the Basic Law ('debt brake' rule – Schuldenbremse), Art. 115(2) first sentence of the Basic Law provides that revenues and expenditures in the Federation's budgeting shall, in principle, be balanced without revenue from credits. Pursuant to Art. 109(3) fourth sentence and Art.

115(2) second sentence of the Basic Law, this requirement is satisfied when revenue from credits does not exceed 0.35 per cent in relation to the nominal gross domestic product.

Para. 129 In order to give meaning to the provision's character as an exception to the general rule in emergency situations, borrowing under Art. 115(2) sixth sentence of the Basic Law must be factually attributable to the specific emergency situation and to the legislator's intent to address the emergency.

Para. 133 Such a causal connection is all the more required under the current, stricter regulatory mechanism. The exceeding of the regular credit limits can only be compatible with the Constitution if the budgetary legislator uses it for the purpose of financing measures to overcome or prevent a natural disaster or unusual emergency situation.

Para. 173 The more implementation-oriented principle of annuality requires, in conjunction with the current-year principle, that all borrowing authorisations allocated to a specific fiscal year – if they are to be used – must be effected in the relevant year. Any borrowing must therefore occur in the year for which it was authorised because it is needed for crisis management during that year. After the end of the fiscal year, the respective borrowing authorisations expire.

Para. 181 Accordingly and with regard to the principle of yearly budgeting, any funds transferred to special-purpose funds that were incurred by borrowing on the basis of the exemption for emergency situations may in principle only be used during the fiscal year to which they were allocated by the decision pursuant to Art. 115(2) sixth sentence of the Basic Law.

Para. 206 The transfer of borrowing authorisations to the Climate and Transformation Fund provided for by the Second Supplementary Budget Act 2021 also runs counter to the constitutional principles of yearly budgeting and annuality following from Art. 109(3) and Art. 115(2) of the Basic Law.

D.

Given that Arts. 1 and 2 of the Second Supplementary Budget Act 2021 are incompatible with Art. 109(3) second sentence, Art. 115(2) sixth sentence and Art. 110(2) first sentence of the Basic Law, the Act is declared void.

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Judgment of 15 November 2023 of the Federal Constitutional Court on the debt brake



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