



DOSSIER

On the

Judgment of the Federal Constitutional Court of 15 November 2023

Proposal for the most intergenerationally just “law” of the 20th legislative period

20. Legislative period of the Bundestag (2021-2025)

As of 2nd October 2025

1. The Judgment

On 15 November 2023, the Federal Constitutional Court declared the Second Supplementary Budget Act for 2021 incompatible with the Basic Law (Grundgesetz, GG). The Foundation for the Rights of Future Generations (FRFG) awards this ruling the *Positive Prize*. The judgment constitutes an act of intergenerational justice, as it breaks the chains of debt, promotes transparency, and safeguards the fiscal leeway of future generations.

The 2021 federal budget initially provided for credit authorisations amounting to approximately €180 billion, including funds to combat the coronavirus pandemic. In April 2021, the Federal Government increased the credit authorisation by a further €60 billion, following a resolution adopted by the Bundestag on 23 April 2021. However, this additional borrowing was ultimately not required for managing the COVID-19 pandemic. In 2022, the governing coalition (SPD, Alliance 90/The Greens, FDP) enacted the Second Supplementary Budget Act for 2021 (cf. Federal Law Gazette 2022: 194), which reallocated the €60 billion initially borrowed for pandemic-related measures to the Climate and Transformation Fund (Hempel 2024: n.p.). The Federal Government intended to use the reallocated funds in subsequent fiscal years. The Federal Constitutional Court held that this budgetary planning was incompatible with the Basic Law.

The Court reasoned that the legislature had failed to demonstrate a sufficient causal connection between the identified emergency situation and the crisis management measures taken; that the Second Supplementary Budget Act violated the constitutional requirements of annuality, yearly budgeting and the current year principle; and that the adoption of the second supplementary budget after 2021 violates the principle that the budget must be determined in advance (Federal Constitutional Court 2023b: n. p.). Each of these violations, the Court held, would independently suffice to establish the Act's incompatibility with the Basic Law.

The Act contravenes the constitutional provisions governing emergency borrowing under Article 109(3) and Article 115(2), sentence 6 GG (Federal Constitutional Court 2023b: n.p.). These provisions allow exceptions to the debt brake only in the event of natural disasters or exceptional emergency situations beyond the state's control that significantly impair its financial position. Any such exception requires a demonstrable causal connection showing that exceeding the credit limit is necessary to overcome the emergency. While the legislature enjoys a margin of discretion and assessment in this regard (Federal Constitutional Court 2023b: n.p.), the Court emphasised that the longer the crisis persists and emergency loans are used, the more

detailed the legislature's justification must be for the continuation of the crisis and the measures taken to overcome it (Federal Constitutional Court 2023b: para. 151). In the case at hand, the Federal Government did not sufficiently explain how reallocating loans to the Climate and Transformation Fund would contribute to overcoming the COVID-19 pandemic.

Furthermore, the Act violates the budgetary principles of yearly budgeting, annuality, and the current-year principle. Under Article 110(2) GG, the principle of yearly budgeting requires that the federal budget be divided by fiscal year and adopted annually (Federal Constitutional Court 2023a: para. 158). Closely related principles of annuality and the current-year principle stipulate that credit authorisations granted for a specific fiscal year must be used within that same year (Federal Constitutional Court 2023a: para. 167). The Second Supplementary Budget Act contravened these provisions, as the Federal Government intended to utilise loans authorised for 2021 in later fiscal years. The *de facto* unlimited continued use of emergency credit authorisations in subsequent years, without counting them towards the debt brake, while simultaneously treating them as debt in the 2021 budget, is impermissible (Federal Constitutional Court 2023b: n.p.).

Additionally, the Federal Constitutional Court found that the Act violated the principle that the budget must be determined in advance. According to Article 110(2), sentence 1 GG, this principle requires that the budget be adopted before the beginning of the financial year (Federal Constitutional Court 2023a: para. 214). This requirement also applies to supplementary budgets. The Second Supplementary Budget Act breached this principle by retroactively approving an increase in the 2021 budget during 2022.

For these reasons, the Second Supplementary Budget Act was declared incompatible with the Basic Law and void. The nullity of the Act reduces the scope of the Climate and Transformation Fund by €60 billion.

2. Evaluation of the Act according to the FRFG's Criteria

2.1. Background of the Judgment

The ruling arose from a constitutional complaint lodged by the CDU/CSU parliamentary group in the Bundestag, which petitioned the Federal Constitutional Court to review the constitutionality of the Second Supplementary Budget Act. The group argued that reallocating €60 billion to the Climate and Transformation Fund constituted a violation of the debt brake

(cf. CDU 2023: n.p.). The Second Senate of the Federal Constitutional Court delivered its judgment unanimously, underscoring both the clarity and the binding nature of the decision.

2.2 Interpretation of the Debt Brake by the Federal Constitutional Court

The Federal Constitutional Court's ruling on the Second Supplementary Budget Act for 2021 marked the first time the Court had examined the scope and limitations of the debt brake. The decision not only clarified the conditions under which the exemption clause applies, but also established strict standards for future borrowing, thereby narrowing the permissible scope for new debt (Meickmann 2023: n.p.; Grimm et al. 2024: 1). In general, the Court (2023b: n.p.) reaffirmed adherence to the debt brake as defined in Articles 109 and 115 GG, emphasising that legislators must pursue political objectives within this constitutional framework (Märting/Mühlbach 2023: n.p.).

Nevertheless, the Court did not prohibit the financing of multi-year economic stimulus programmes through borrowing in response to unforeseen emergencies (Rath 2023: n.p.). Such borrowing, however, requires an annual reassessment of the emergency situation and increasingly detailed justifications for its continued existence and the measures adopted to address it (cf. Federal Constitutional Court 2023a: para. 151).

A further significant element of interpretation in the ruling concerns whether climate change can be regarded as an emergency justifying an exception to the debt brake. The Federal Constitutional Court (2023a: para. 33) made clear that the exceptions contained in Articles 109 and 115 GG cannot be invoked in relation to climate change without a direct causal connection. Climate change, the Court noted, does not constitute an exogenous shock but rather a long-term structural challenge requiring sustained and far-reaching governmental action within the ordinary framework of budgetary management. Due to the enduring nature of the climate crisis, it cannot be deemed a specific emergency within the meaning of the Basic Law (Sauter 2024: n.p.). Recognising climate change as such would permit governments to incur new debt each year to combat the crisis, effectively rendering the debt brake meaningless.

In sum, the Federal Constitutional Court's ruling has further restricted the interpretation of the debt brake and obliged the Federal Government to restructure its federal budgets for 2024 and the subsequent fiscal years (Heine/ Herr 2024: 21).

2.3. Reference to Intergenerational Justice

One might have expected the Federal Constitutional Court to explicitly invoke the principle of intergenerational justice in its reasoning. However, in these proceedings, it was the Federal Government that appealed to this principle in its defence. It argued that credit-financed investments in climate protection would safeguard the rights and freedoms of future generations (Federal Constitutional Court 2023a: para. 66). Moreover, it referred to the Court's 2021 ruling on the Federal Climate Protection Act, which had underscored the need for financial investments to mitigate climate change as a means of protecting intertemporal freedom. Accordingly, the Government claimed that investments reducing greenhouse gas emissions would preserve the civil liberties of future generations (Federal Constitutional Court 2023a: para. 66).

In contrast to its 2021 ruling, the Federal Constitutional Court did not itself refer to intergenerational justice in the 2023 judgment. From the perspective of the FRFG, the significance of this decision lies precisely in its prevention of governments from permanently circumventing the debt brake under the pretext of securing long-term ecological benefits. Such actions could, paradoxically, restrict the fiscal autonomy of future generations. Ecological intergenerational justice must not be pursued at the expense of financial intergenerational justice. Future legislatures must retain the freedom to determine how to allocate available public funds in accordance with their own democratic mandates.

2.4. Why is the Judgment Especially Intergenerationally Just?

Intergenerational justice refers to a condition in which individuals are not disadvantaged by their membership in a particular generation (cf. FRFG 2025). According to the Federal Government, as noted above, the debt brake serves to protect future generations from excessive burdens arising from government debt, thereby safeguarding their financial autonomy (Federal Constitutional Court 2023: para. 66). The underlying assumption is that the federal budget is sufficiently large and that fiscal sustainability can be achieved through a more efficient allocation of existing resources rather than through additional borrowing (Ifo Institute 2023: n.p.).

The Federal Constitutional Court's ruling is therefore intergenerationally just because it prohibits the retroactive reallocation of emergency loans for unrelated purposes and mandates strict adherence to the debt brake. Since the financial consequences of interest payments will

primarily materialise in the future, while the political benefits of increased public spending or subsidies are felt immediately by today's electorate, there are structural incentives to violate the debt brake to finance short-term expenditure and electoral promises (FRFG 2023: n.p.). By reinforcing compliance with the debt brake, the ruling protects the fiscal leeway of future generations by preventing the unrecorded shifting of budgetary funds and ensuring that debt levels and interest burdens remain low (Breuer 2023: 490).

Furthermore, the Court reaffirmed the principles of budgetary clarity and truthfulness (see Federal Constitutional Court 2023a: para. 216). The obligation to disclose borrowing transparently in public budgets and to prohibit its transfer across financial years ensures that future generations are not confronted with concealed debts embedded in special funds. Importantly, the Federal Constitutional Court did not prohibit the use of special funds altogether – for example, the €100 billion special fund established in June 2022 for the Bundeswehr remains permissible. Moreover, the ruling safeguards the fiscal autonomy of future parliaments (Federal Constitutional Court 2023a: para. 140). By limiting the current Bundestag's borrowing powers, the Court protects the fiscal rights of future legislatures and reinforces constitutional compliance, thereby enhancing the democratic legitimacy of fiscal governance.

Overall, the judgment makes an important contribution to budgetary practices that preserve the fiscal rights of future generations and promote sustainability and intergenerational justice.

2.5 Impact of the Judgment

The ruling not only invalidated the transfer of €60 billion to the Climate and Transformation Fund but also triggered extensive debate in both political and academic circles about the future of the debt brake. Criticism was not primarily directed at the Court's interpretation, but at the rigidity of the debt brake itself (Kleine/ Herr 2024: 22). Within the context of intergenerational justice, the discussion centred on how Germany can achieve climate neutrality by 2045 without resorting to additional borrowing for investment (Hüther 2024: 16). Some questioned whether future generations truly benefit from a reduced debt burden if this comes at the cost of deteriorating infrastructure and insufficient action to mitigate climate change (Kriwoluzky 2025: n.p.). These debates gained renewed momentum following the subsequent federal election.

In March 2025, the 20th Bundestag passed a constitutional amendment reforming the debt brake, with the support of the CDU/CSU, SPD, and the Greens. Under the revised provisions,

defence spending may now be financed through loans exceeding one per cent of gross domestic product (Hans Böckler Foundation 2025: n.p.). Additionally, a €500 billion special fund was established to finance investments in climate protection and infrastructure (Federal Agency for Civic Education 2025: n.p.). The federal states were also granted a joint structural debt margin of 0.35 per cent of nominal gross domestic product.

In autumn 2025, the Federal Government, comprising the CDU/CSU and SPD, established an expert commission to develop a concept for modernising the debt rule. This commission was tasked with identifying mechanisms to facilitate additional investment in Germany (Hans Böckler Foundation 2025: n.p.). Notably, its mandate explicitly refers to the constitutional obligation to protect the interests of future generations (Federal Ministry of Finance 2025: n.p.). This development demonstrates that the principle of intergenerational justice has gained tangible influence within Germany's fiscal policy discourse.

2.6 The FRFG's Position on the Debt Brake¹

According to the FRFG, maintaining the debt brake is essential to ensure fiscal responsibility towards future generations and to safeguard their financial flexibility. Nevertheless, the FRFG recognises that, in clearly defined exceptional circumstances, such as acute threats to national security, defence-related borrowing is justified. A contemporary example is the war in Ukraine: without adequate defence investment, credible deterrence would be impossible. The FRFG therefore does not oppose the defence exception clause in Article 109(3) sentence 5 GG.

At the same time, the FRFG warns against any dilution of the debt brake. Borrowed funds must be used exclusively for future-oriented investment rather than for consumptive expenditure. Investments in infrastructure or climate protection that generate long-term societal benefits are intergenerationally equitable, as each generation contributes its share through loan repayments or interest payments while simultaneously benefiting from the resulting assets. However, this requires that the funds are demonstrably invested in projects that serve future needs. The FRFG therefore insists that the €500 billion special fund be reserved strictly for investment purposes and not diverted to ease pressure on the regular budget. Only under these conditions can future generations genuinely benefit rather than bear the burden of present-day debt accumulation.

¹ For the full opinion of the FRFG on the debt brake, compare FRFG (2025) in publication, Chapter 3: Public debt.

3. Conclusion

The ruling of the Federal Constitutional Court of 15 November 2023 represents a milestone for intergenerational justice. By prohibiting the government from “parking” emergency loans in special funds and spending them at a later date, the Court prevents present-day policymakers from financing short-term electoral promises at the expense of future taxpayers. Crucially, the ruling strengthens budgetary transparency and ensures that future generations are not confronted with hidden debts. The FRFG welcomes this decision, as it secures the financial self-determination of future generations, protects them from additional burdens, and reaffirms the debt brake as a central instrument of intergenerational justice.

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