

The Impact of the Constitutional Court Ruling of 15 November 2023 on the Federal Government's Budget Planning and the Potential Increase in Insolvency Cases in Germany

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Abstract

This study investigates the implications of the German Federal Constitutional Court's ruling on November 15, 2023, declaring the second supplementary budget of 2021 unconstitutional, specifically the reallocation of unused COVID-19 debt authorisations for green initiatives. This landmark decision clarifies the exceptions to the debt brake and the handling of special funds, significantly affecting the climate and transformation fund, indirectly influencing other special funds aimed at stabilising the energy sector and rebuilding from the 2021 flood disaster. The research method involves a comprehensive review of legal documents, government reports, and financial data to assess the impact on Germany's ability to fund its climate and energy transition policies, particularly through the climate and transformation fund and the broader implications for economic policy and insolvency rates. The main findings highlight the conflict between fiscal discipline, as mandated by the debt brake, and the government's intention to finance environmental initiatives with unutilised COVID-19 debts. The ruling underscores the challenges of balancing fiscal restrictions with urgent environmental goals, questioning the flexibility of budgetary and tax policies to support significant investments in sustainability and climate protection. The conclusion calls for reevaluating how green agendas can be funded within stringent fiscal rules, emphasising the need for innovative financing solutions and a commitment to reconciling economic stability with ecological sustainability. This case study presents a critical analysis of the delicate balance between fiscal responsibility and achieving vital environmental objectives, urging rethink on financing green initiatives within the confines of fiscal and constitutional boundaries.

Keywords: budget planning, Climate and Transformation Fund, COVID-19 pandemic, debt brake, economic impact, fiscal policy, German Federal Constitutional Court, green initiatives, insolvency.

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1. Introduction

On 15 November 2023, the Federal Constitutional Court of the Federal Republic of Germany ruled that the law on the second supplementary budget for 2021 is unconstitutional and declared the reallocation of unused COVID-19 debt authorisations for green initiatives to be unconstitutional Judgment of the Second Senate of 15 November 2023, ref. 2 BvF 1/22 –, para. 1–231.³ This is the first time that the Federal Constitutional Court has made a comprehensive statement on the exceptions to the debt brake and the handling of special assets. Furthermore, it has clarified the legal requirements for the utilisation of emergency loans in detail for the first time. Among other things, the court ruled that the budgetary principles of annuality also apply to special assets. This applies strictly to special funds financed by emergency loans, meaning that the emergency loan authorisations are only available for the emergency year and then expire. The judgement directly affects the so-called Climate and Transformation Fund.⁴ If the established principles are transferred to the other special funds, the Energy Industry Stabilisation Fund and the Reconstruction Assistance Fund 2021 to deal with the consequences of the 2021 flood disaster will also be indirectly affected. The judgement of the Federal Court of Justice therefore has a significant impact on tax policy, environmental policy and economic stability. This judicial decision overlaps with important areas of public interest: governance, environmental sustainability and fiscal responsibility. The urgency to combat climate change, coupled with the stringent constraints of fiscal policy such as the debt brake, presents a unique challenge to governments seeking both environmental goals and economic stability.⁵

The aim of this study is to examine the impact of the Court's decision on Germany's ability to finance its climate and energy transition policies, particularly through the Climate and Transformation Fund, as well as the wider implications for economic policy and insolvency rates.⁶ We provide an overview of the current research

³ Federal Constitutional Court. (2023). Judgment of the Second Senate of November 15, 2023, Ref. - 2 BvF 1/22 –, para. 1–231. Retrieved 27 March 2024: https://www.bverfg.de/e/fs20231115_2bvff000122.html.

⁴ Federal Audit Office. (2023). Report pursuant to Section 88(2) of the Federal Budget Code (BHO) to the Federal Ministry of Finance on the special funds of the Federal Government and the associated effects on budget transparency and the functioning of the debt rule. Retrieved: 27 March 2024: https://www.bundesrechnungshof.de/SharedDocs/Downloads/DE/Berichte/2023/sondervermoegen-volltext.pdf?__blob=publicationFile&v=6.

⁵ Mutambik I, Almuqrin A, Lee J, Zhang JZ, Alomran A, Omar T, Floos A, & Homadi A. 2021. Usability of the G7 Open Government Data Portals and Lessons Learned. *Sustainability*. 13 (24): 13,740, doi: 10.3390/su132413740.

⁶ Bajžíková, L., Nováčková, D. & Vnuková, J. (2023). Significant Investment and Screening of Foreign Investment in Slovakia. *International Investment Law Journal*, 3 (1), pp. 133–145.

landscape, focusing on the tension between fiscal policy and environmental initiatives in order to position our study within the ongoing academic debate. Key publications by experts in the field, such as Potrafke⁷ and Wehrmann & Wettengel, provide insights into the complexity of implementing fiscal restraint while pursuing ambitious environmental goals. The main objective of this thesis is to analyse the immediate impact of the German Federal Constitutional Court ruling and to forecast its long-term effects on German fiscal and environmental policy.⁸

2. Methods

To investigate the impact of the German Federal Constitutional Court's ruling on the federal government's budget planning and the potential increase in insolvency events, a comprehensive review of legal documents, government reports, and financial data was conducted. This included an analysis of the Court's judgment, governmental budget plans, and economic forecasts post-ruling. Publicly available data from the German Federal Statistical Office and relevant economic research institutions provided a basis for evaluating changes in insolvency rates and economic conditions. Qualitative analysis was employed to interpret the legal and economic implications of the ruling, focusing on the redirection of funds from the COVID-19 pandemic to climate and energy initiatives and its constitutionality under German law.⁹ The research also involved a comparative analysis of pre- and post-ruling economic indicators to assess the immediate financial impact and potential long-term effects on Germany's economy and insolvency rates.¹⁰

To ensure that the authors' sources of knowledge are accessible to any reader worldwide and can be verified by anyone, they have taken care to ensure that only sources that are freely available and verifiable on the internet were used. This also ensures that the study is as up-to-date as possible at the time it was written, as evidenced by the fact that the study, which was completed on 28 March 2024, was still able to take into account sources of knowledge from 27 March 2024.¹¹

Despite the localisation of the topic in the German legal and economic area, the authors paid particular attention to using and citing English-language sources wherever

⁷ Potrafke, N. (2023). The German Debt Brake – Stability Anchor or Investment Blocker? Ifo institute. [www.ifo.de](https://www.ifo.de/en/facts/2023-12-08/german-debt-brake-anchor-stability-or-blocker-investments); Ifo Centre for Public Finance and Political Economy. Retrieved 27 March 2024: <https://www.ifo.de/en/facts/2023-12-08/german-debt-brake-anchor-stability-or-blocker-investments>.

⁸ Wehrmann, B. & Wettengel, J. (2023). Q&A – What the German Supreme Court's 'debt brake' decision means for climate policy. Clean Energy Wire; Journalism for the energy transition. Retrieved 27 March 2024: <https://www.cleanenergywire.org/factsheets/qa-what-german-top-courts-debt-brake-ruling-means-climate-policy>.

⁹ Funta, R. & Buttler, D. (2023). The digital economy and legal challenges, *InterEULawEast*, 10(1), pp. 145–160, doi: 10.22598/iele.2023.10.1.8.

¹⁰ Didea, I. & Ilie, D. M. (2022). Restructuring Practice is Now Growing Worldwide Post-Covid Insolvency. *International Investment Law Journal*, 2 (1), pp. 14–45.

¹¹ Müller-Dreißgacker, S. (2024). Joint Economic Forecast Spring 2024: German economy ailing – reform of the debt brake no panacea; Retrieved 27 March 2024: <https://gemeinschaftsdiagnose.de/2024/03/27/gemeinschaftsdiagnose-fruehjahr-2024/>.

possible in order to facilitate international access.

3. Results

3.1. Summary of the key points of the Federal Constitutional Court's decision

In its decision of 15 November 2023, the Federal Constitutional Court issued a remarkable ruling concerning the Second Supplementary Budget Act 2021 of the current government of the Federal Republic of Germany. This law, originally drafted to respond to the financial challenges posed by the coronavirus pandemic, was deemed unconstitutional and therefore declared null and void. With its judgement, the Federal Constitutional Court makes it clear that the strict requirements of the Basic Law on budget management must be adhered to even in times of crisis.¹² The decision emphasises the need for a transparent and constitutional financial policy and thus sends a clear signal for the future. This has concrete consequences for the federal budget: The Size of the Climate and Transformation Fund will shrink by the aforementioned 60 billion euros. This judgement highlights the limits of financial flexibility and calls for careful, forward-looking planning and justification of government spending, especially in exceptional times. The decision was made in the context of a complaint opposition group, which objected to a specific budget amendment: the retroactive allocation of a special fund of 60 billion euros (reallocation), which was originally dedicated to combating the Covid-19 pandemic but ultimately did not have to be used, to the 'Energy and Climate Fund', which has since been renamed the Climate and Transformation Fund. The core argumentation of the court can be divided into three central points:

1. lack of a causal link: The court criticised the fact that the legislator did not explain clearly enough how the retroactive allocation of the €60 billion to the fund was directly linked to overcoming the emergency caused by the pandemic. In particular, there was a lack of a coherent explanation as to why this particular sum, which had already been earmarked for pandemic management but not utilised, should now be relevant for future budgets.

2. violation of annuality and annuality principles: One of the court's most serious accusations concerns the disregard of the constitutional budget principles. According to these principles, all borrowing should be specifically and promptly linked to the expenditure of a particular financial year. The continuation or postponement of borrowing authorisations to future financial years without offsetting them against the debt brake was deemed to be a breach of the constitution.

3. violation of the principle of precedence: Another crucial point was the criticism of the retroactive nature of the law. The amendments for the 2021 financial year were only made in February 2022 and therefore retrospectively, which contradicts

¹² Militaru, I. N. (2022). A Brief Look at the Budgetary Procedure in the European Union and the Recovery Plan for Europe. *Perspectives of Law and Public Administration*, 11(1), pp. 50–55.

the principle of prioritisation. This principle states that the budget must be finalised before the start of the financial year in order to ensure planning certainty and clarity.¹³

3.2. Impact of the judgement on the government's plans to change the use of funds from the special fund to combat the Covid-19 Pandemic

The judgement of the Federal Constitutional Court is a major blow to the current government of the Federal Republic of Germany, as the court declared a procedure invalid that was intended to allow the government to make environmental and economic policy concessions that would satisfy the governing parties.¹⁴ The government's plans include decarbonisation and climate change policy. Due to the Court's judgement, there is currently a deficit of 60 billion euros in expected credit authorisations. The government had planned to use this money to achieve its environmental policy goals.¹⁵ In order to comply with the Court's ruling, the government has therefore now planned significant budget cuts, as this is seen as the only viable policy option to maintain a number of other support programmes designed to ensure Germany's competitiveness in the global market. In addition, several government initiatives have been directly affected by the judgement and subsequently put on hold. These include the development of energy efficiency advice for buildings, support for citizens' cooperatives in onshore wind energy generation and training programmes for the expansion of professional heat pumps.¹⁶

Some authors have identified the following changes in the use of funds as a result of the judgement: The electricity and gas price controls introduced during the energy crisis will not be extended beyond the expiry date of 2023; discontinuation of the 'environmental bonus' at the end of 2023; reduction of the climate protection fund by €1.5 billion to €3.5 billion from €5 billion by 2027; funding for the promotion of energy efficiency advice will be reduced by €20 million, resulting in a total budget of €240 million; the budget for international cooperation projects in the areas of energy, technology and raw materials has been reduced to €30 million; the allocation for CO₂ The budget allocation for CO₂ reduction and recycling in the basic materials sectors will remain constant at €10 million until 2024, but is to be gradually reduced in subsequent years; the government plans to gradually reduce tax concessions for diesel fuel in agriculture by 40% from 2024; finally, a planned expansion of funding initiatives in the construction industry will be discontinued. The Ministry of Economic Affairs

¹³ Matějková, I. & Pavelek, O. (2020). Claim trading as a misuse of law. *Law and Financial Markets Review*, 14(1), pp. 29–32, doi: 10.1080/17521440.2019.1582204.

¹⁴ Martinez, M. & Kraemer, C. (2023). German Court misses Scholz government 60 bn euro budget blow. Reuters; Retrieved 27 March 2024: <https://www.reuters.com/world/europe/german-court-make-key-ruling-budget-manoeuvre-2023-11-15/>.

¹⁵ Peráček, T. 2020. The Perspectives of European Society and the European Cooperative as a Form of Entrepreneurship in the Context of the Impact of European Economic Policy. *Online Journal Modelling the New Europe*, 34, pp. 38–56, doi: 10.24193/OJMNE.2020.34.02.

¹⁶ Funta, R. (2018). Extraterritorial application of us-antitrust law on global cartels from comparative (EU LAW) perspective. *Lawyer Quarterly*, 8(3), pp. 214–223.

took the view that although this could lead to an interruption in the conversion of the heating sector, it would not come to a complete standstill and would not lead to social injustice. As a result, funding for the development of a low-carbon heating infrastructure will be reduced from €40 million to €10 million in 2024.¹⁷

3.3. Concrete effects of the Federal Constitutional Court judgement on fiscal policy decisions and the budget

Following the judgement of the Federal Constitutional Court, adjustments had to be made to the 2023 federal budget and with a view to the 2024 federal budget. This applies in particular to the economic plans of the special funds Climate and Transformation Fund, Economic Stabilisation Fund – Energy Division and Reconstruction Aid 2021. With the supplementary budget 2023, which was adopted by the German Bundestag on 15 December 2023, the federal budget 2023 was adjusted in line with the constitution in light of the ruling of the Federal Constitutional Court and a secure legal basis was created for the funds that will be used in 2023 to deal with the energy crisis and inflation. To finance the emergency-related expenditure, the German Bundestag decided to utilise the debt brake exception rule in 2023 in accordance with Article 115 (2) sentence 6 of the Basic Law. The reason for this was the determination of an extraordinary emergency situation due to the far-reaching humanitarian, social and economic effects associated with Russia's war of aggression against Ukraine in violation of international law, which is beyond the control of the state and has also significantly affected the federal government's financial situation in 2023. There is also an extraordinary emergency situation with regard to the consequences of the 2021 flood disaster in North Rhine-Westphalia and Rhineland-Palatinate. According to the political agreement on the federal budget for 2024, the regular upper limit of the debt rule (debt brake) is to be adhered to again.

On Friday, 2 February 2024, the Bundestag passed the 2024 federal budget in the form of the second Budget Financing Act 2024 with the majority of the coalition parties against the votes of the opposition. The aim of the law was to address the financial gaps in the federal budget for 2024 resulting from the court judgement. On 22 March 2024, the Bundesrat passed the Second Budget Financing Act 2024 so that it can enter into force once it has been signed and published in the Federal Law Gazette.

The Second Budget Financing Act 2024 contains a number of fiscal policy adjustments that would not have been on the government's agenda without the decision of the Federal Constitutional Court. They are aimed at increasing tax revenue and reducing subsidies. In particular, the air traffic tax will be increased from 1 May 2024, which will have a direct financial impact on airlines by increasing the charges for departures from German airports. In addition, the law provides for an amendment to the Offshore Wind Energy Act, which will allow for a broader utilisation of the revenue from offshore tenders in 2023, with part of this revenue being allocated to the federal budget. Another significant measure concerns the gradual reduction of subsidies for

¹⁷ Wehrmann & Wettengel, *op. cit.*, 2023.

agricultural diesel, which are to be completely abolished by 2026. In addition, the citizen's allowance bonus previously introduced for recipients of the citizen's allowance, which subsidised further training without a focus on a vocational qualification, will no longer be granted in future. The law also tightens sanctions in the area of the citizen's allowance: Job centres will be given the power to completely cancel the standard requirement for a period of two months for jobseekers who deliberately refuse to take up reasonable work, with the exception of support for accommodation and heating. Furthermore, the federal subsidy for statutory pension insurance will be reduced by €1.2 billion in each of the years 2024 to 2027. This legislative measure underlines the endeavour to achieve financial sustainability in the federal budget while proactively tackling the challenges identified by the Federal Constitutional Court ruling.¹⁸

In addition to implementing these budget consolidation initiatives, the government has committed to tapping further sources of funding for the Climate and Transformation Fund. One important measure taken by the new coalition is to raise the national carbon dioxide (CO₂) price in the heating sector and transport to €45 per tonne.¹⁹ Around 50% of the remaining funds in the Climate and Transformation Fund are to be used for relief measures for households and companies in order to keep energy prices stable.

3.4. The judgement of the Federal Constitutional Court and its influence on the financing of environmental policy in the Federal Republic of Germany

In its judgement on the German government's budget planning, the BVerfG ruled that part of the government's funding strategy for climate and energy initiatives is unlawful.²⁰ The court ruled that the government's plan to fund green initiatives by reallocating unused debt from the COVID-19 pandemic is unconstitutional. Consequently, the Court ruled on the function of the constitutionally protected restriction on new government borrowing in times of crisis. More specifically, the judgement concerned the reconciliation between a special Climate and Transformation Fund, which was set up to finance the energy transition and necessary climate policy measures, and the requirements of the country's debt brake. The state debt limit enshrined in the constitution in 2009 stipulates that new debt may not exceed 0.35% of the annual gross domestic product. The debt brake is legally protected by Articles 109 and 115 of the Basic Law and contains a cyclical and a structural component. The structural component in particular limits the federal government's ability to incur additional debt to 0.35% of nominal economic output per year. The cyclical component

¹⁸ Noskova, M. & Mucha, B. (2017). Selected Issues of Slovak Business Environment. 24th International Scientific Conference on Economic and Social Development – Managerial Issues in Modern Business, Economic and Social Development (ESD), pp. 254–259.

¹⁹ Pedersen, B. (2023). German parliament approves plan for major carbon price hike after budget deal AP News; Retrieved 27 March 2024; <https://apnews.com/article/germany-carbon-pricing-increase-budget-3606443ff96eb81518a42ce08dae8951>.

²⁰ Martinez & Kraemer, *op. cit.*, 2023.

also allows additional debt to be taken on in times of economic crisis, which must be repaid when the economy recovers.²¹

In addition, an ‘escape clause’ allows the Bundestag to temporarily suspend the debt brake by a simple majority in the event of a natural disaster or other extraordinary emergencies beyond the control of the state. Following this legislation, the implementation of the debt brake was temporarily halted from 2020 to 2022.²² As a result of the global health crisis caused by the coronavirus pandemic, the debt brake was temporarily suspended. This decision gave the previous government under the conservative CDU Chancellor Angela Merkel and the Head of the Chancellery Olaf Scholz as Finance Minister sufficient financial leeway to finance aid measures. At the end of 2021, when the pandemic receded, Scholz took over from Merkel as the new head of government. However, despite new debt authorisations of 60 billion euros for the response to the pandemic, these funds were not used.

According to Wehrmann and Wettengel, the newly formed governing coalition, allocated the additional debt authorisation to finance the Climate and Transformation Fund. This fund was to be used to finance critical climate and energy transition policies that are independent of the regular budget. The German Bundestag subsequently approved this reallocation. The conservative coalition then declared its intention to take legal action against the reallocation of authorised debt, as this measure violated the principles of the debt brake. In December 2021, the newly formed governing coalition reallocated the debt incurred for COVID-19 relief in particular to a climate fund. This was done through the Second Supplementary Budget Act 2021, which retroactively amended the 2021 Budget Act. This amendment enabled the coalition to take full advantage of the temporary suspension of the debt limits provided for in the constitution. However, the Federal Constitutional Court has ruled that the 2nd Supplementary Budget Act is incompatible with the debt brake in the Basic Law and is therefore null and void.²³

The Federal Constitutional Court’s November 2023 ruling declaring the reclassification of unused COVID-19 debt for green initiatives unconstitutional has significant implications for tax policy, environmental policy and economic stability. This court decision intersects with important areas of public interest: governance, environmental sustainability and fiscal responsibility. The urgency to combat climate change, coupled with the stringent constraints of fiscal policy such as the debt brake, presents a unique challenge to governments seeking both environmental goals and economic stability. The aim of this study is to examine the impact of the European Court of Justice’s decision on Germany’s ability to finance its climate and energy transition policies, particularly through the Climate and Transformation Fund, as well as the wider implications for economic policy and insolvency rates.²⁴ We provide an

²¹ German Federal Bank. (2019). Monthly Report April 2019: Germany’s debt brake: <https://www.bundesbank.de/en/publications/reports/monthly-reports/monthly-report-april-2019-793792>.

²² Potrafke, N., *op. cit.*, 2023.

²³ Wehrmann & Wettengel, *op. cit.*, 2023.

²⁴ Funta, R. & Schultz, A. (2023). The Interpretation of Article 101 (3) of the TFEU by the European Commission. *Prawo i Wiek* (47), pp. 651–670, doi: 10.36128/PRIW. VI 47,808.

overview of the current research landscape, focusing on the tension between fiscal policy and environmental initiatives in order to position our study within the ongoing academic debate. Key publications by experts in the field, such as Potrafke (2023) and Wehrmann & Wettengel (2023), provide insights into the complexity of implementing fiscal restraint while pursuing ambitious environmental goals. The main objective of this thesis is to analyse the immediate impact of the Federal Constitutional Court ruling and to forecast its long-term effects on German fiscal and environmental policy.

3.5. The Federal Constitutional Court on the role of the constitution in the conflict between financing measures against climate change and limiting public debt

The Federal Constitutional Court has ruled on the role of the constitution in limiting the debt of the new state in times of crisis. The court focused on the compatibility between the specially created Climate and Transformation Fund, which is intended to finance immediate climate policy measures and the energy transition, and the country's debt brake, which limits government borrowing and was enshrined in the constitution in 2009 and stipulates that new debt may not exceed 0.35% of annual gross domestic product.²⁵ However, between 2020 and 2023, the debt brake was temporarily suspended in response to Covid 19, giving the previous government adequate fiscal space to fund stimulus initiatives amid the global health crisis.²⁶

According to Popa Tache, at the end of 2021, when the pandemic receded, there were still 60 billion euros in new debt authorisations for the fight against the pandemic that had not been used. These were diverted by the new government to the Climate and Transformation Fund to finance urgent energy and climate policy measures outside the normal budget, arguing that the country's recovery from the economic challenges caused by the pandemic would be accelerated by such investments, which was later declared unconstitutional by the Federal Constitutional Court.²⁷ According to Grimm et al., the Federal Court of Justice based its decision on three points, including the fact that the transfer of funds to the climate fund did not fulfil the necessary criteria for exceeding the debt ceiling, although the coronavirus outbreak fulfilled this requirement, as the legislature could not provide sufficient evidence linking the situation to the emergency aid crisis management strategies. Secondly, the court reasoned that it was unlawful to date the credit authorisation to the 2021 financial year, while initiatives requiring the funds are still planned in the following financial years. Finally, the adoption of the law after the end of the 2021 financial year violates a principle enshrined

²⁵ Federal Ministry of Finance. (2022). The federal debt rule (debt brake). Retrieved 27 March 2024: https://www.bundesfinanzministerium.de/Content/EN/Downloads/Public-Finances/germanys-federal-debt-rule.pdf?__blob=publicationFile&v=5.

²⁶ Vallée, S., Cohen-Setton, J., & Buhl, D. (2021). Germany's debt brake and Europe's fiscal stance after COVID-19. Dgap.org. Retrieved 27 March 2024: <https://dgap.org/en/research/publications/germanys-debt-brake-and-europes-fiscal-stance-after-covid-19>.

²⁷ Popa Tache, C.E. (2019). Individualization and development of international investment law as the third millennium law field. *Juridical Tribune – Tribuna Juridica*, 9 (3), pp. 583–588.

in the Basic Law, according to which the budget must be set in advance.²⁸

3.6. The judgement's potential impact on the economy and private households

Although the Federal Constitutional Court's decision is a major setback for the German government, the main problem lies in the current deficit of 60 billion euros in planned subsidies and programmes. The implications of the BGH judgement on the debt brake for the economy and individual budgets are therefore complex, with convincing arguments being presented from several perspectives. According to Fratzscher, the Climate and Transformation Fund is almost exhausted with expected revenues of only €30 bn, primarily from emissions trading. On an economic level, the Court's decision creates more economic uncertainty, causing many companies to question the reliability of the commitments they can still rely on. This will hamper economic progress at a crucial time. Germany has been disproportionately affected by the energy crisis and the weak global economy. The expected decline in private investment could further hamper the country's efforts to transition to a more environmentally friendly and technologically advanced economy.²⁹

One potential positive impact of the court judgement is therefore fiscal discipline, as stricter enforcement of the debt brake will make the government more responsible in its spending, leading to a reduction in government debt and therefore an improvement in long-term economic stability through a lower tax burden. Similarly, a strong commitment to fiscal discipline can boost investor confidence, which in turn attracts investors and lowers the government's borrowing costs. However, given the budget deficit created by the court ruling, the government will be forced to cut investment in social programmes, leading to a reduction in the quality of life of private households. Furthermore, given the challenges posed by the war between Russia and Ukraine, the government may be less able to take on debt to stimulate the economy or provide social safety nets, which would exacerbate the economic downturn and have a negative impact on private households, especially the most vulnerable groups. Faced with a deficit of EUR 60 billion, the government could also increase taxes, as in the case of the national carbon tax (CO₂) for the heating sector and transport, which has been raised to EUR 45 per tonne. In addition, cuts in social spending could affect low-income households and those who rely on social programmes.³⁰

Declaring a retroactive state of emergency can also be challenging in a society

²⁸ Grimm, V., Malmendier, U., Schnitze, M., Truger, A., & Werding, M. (2024). Policy Brief 1/2024. German Council of Economic Experts; German Council of Economic Experts. Retrieved 27 March 2024: <https://www.sachverstaendigenrat-wirtschaft.de/en/publications/policy-briefs/policy-brief-1/2024.html>.

²⁹ Fratzscher, M. (2023). Germany's debt brake is destroying the economy. Project Syndicate. Retrieved 27 March 2024: <https://www.project-syndicate.org/commentary/germany-debt-brake-is-derailing-economic-future-by-marcel-fratzscher-2023-11?barrier=accesspaylog>.

³⁰ Fragkos, P., Fragkiadakis, K., Sovacool, B., Paroussos, L., Vrontisi, Z., & Charalampidis, I. (2021). Equity implications of climate policy: Assessing the social and distributional impacts of emission reduction targets in the European Union. *Energy*, 237, 121,591.

where people lack foresight and have conflicting attitudes, especially when the memory of the original emergency begins to fade. The newly introduced rules of the ACA will result in the government prioritising a consumptive focus in future disasters by providing immediate financial aid rather than making long-term investments to avoid associated complications; similarly, the government will adopt an in-built austerity approach where later parts of the €60 billion total damage caused by the crisis will either be overlooked or offset by spending cuts.³¹

3.7. Cancellation of required subsidies and possible effects on the insolvency process

The debt brake judgement holds many uncertainties as the court ruling and the reallocation of the €60 bn in unspent COVID-19 funds to the Climate and Transformation Fund means that the government has less funding available for potential support funds that could impact businesses facing insolvency. In the midst of the pandemic and the ongoing energy crisis, the government was able to provide substantial funding to domestic businesses before the court judgement. Education, infrastructure and healthcare have taken a severe hit due to the government's strict structural budget policy, which has led to insufficient public investment. Under the guise of the debt brake, a fiscal policy has been pursued that prioritises corporate subsidies over public services. As the ruling has impaired the government's ability to prioritise business subsidies, many companies will be affected, leading to an increase in bankruptcies of already struggling businesses.

In view of the fiscal challenges posed by the Court's ruling, the government should prioritise, examine alternative financing options and restructure existing funds. In particular, when setting priorities, the government should prioritise certain sectors that are most at risk of insolvency due to the deficit, given the €60 billion hole in the budget. Similarly, the federal government could consider exploring alternative sources of insolvency support, including private sector partnerships or the provision of temporary tax increases for certain industries. In addition, the federal government should restructure existing funds to optimise the allocation of existing funds and maximise their impact on preventing insolvency cases. The Federal Court's decision therefore does not directly address the cancellation of specific funding measures. However, it likely means that the government will need to prioritise which programmes to maintain and which to cut, potentially leading to a reduction in the detail or scope of support offered.

According to the Federal Statistical Office, the number of insolvencies rose by 12.3% in 2023. The country recorded double-digit growth rates in insolvencies in every month of 2023. For example, the number of insolvencies in October 2023 was 14,752,

³¹ Südekum, J. (2023). The economic distortions of the Federal Constitutional Court's debt brake decision. Verfassungsblog. Retrieved 27 March 2024: surveillance by the Stability Council. Retrieved 27 March 2024: <https://www.bundesbank.de/resource/blob/796276/b7dfae6d0932ec10a1b1b84581e844d2/mL/2019-04-schuldbremse-data.pdf>.

which corresponds to a 24.1% increase in insolvencies.³² Similarly, German industry fears that the country could experience a more severe recession due to a budget deficit caused by the unsuccessful diversion of €60 billion in COVID-19 emergency funds for climate initiatives following the court judgement. This fear is exacerbated by weakening domestic consumption and low demand for exports. In addition, the implementation of the court ruling will lead to a reduction in government spending, which is forecast to cause the economy to contract by 0.5% in 2024.³³

According to the latest joint report by five leading economic research institutes in Germany from 27 March 2024, the country's economy is in a difficult situation. In their spring report, they revised their forecast for the current year downwards considerably and are now only forecasting an increase in economic output of 0.1%. This represents a significant decline compared to the 1.3% originally expected in the autumn report. The forecast for next year remains almost unchanged at 1.4% (previously 1.5%). However, due to the delayed recovery, economic output is expected to be more than 30 billion euros lower.

According to Arnold and Chazan (2024), a high bankruptcy rate is expected for German companies in 2024, as the number of insolvencies rose significantly in 2023. This is confirmed by preliminary data from the German Federal Statistical Office, according to which the number of regular insolvencies filed in Germany rose by 18.1% in February 2024 compared to the same month of the previous year. January 2024 already saw an increase of 26.2% compared to January of the previous year. Double-digit year-on-year growth rates have therefore been recorded continuously since June 2023.³⁴ It is important to note that insolvency applications are only included in the official statistics after the first court decision. In many cases, the actual application to open insolvency proceedings is filed around three months before the court decision to open proceedings. The insolvency statistics only record company closures that take place as part of insolvency proceedings and do not include those that are closed for other reasons or prior to the occurrence of final insolvency. In view of the macroeconomic environment and the weak economic fundamentals, the number of insolvencies is expected to continue to rise at an above-average rate.³⁵

Companies are facing challenges due to high energy costs and the end of pandemic aid. These companies survived the consequences of the coronavirus pandemic thanks to extensive state aid, which the court declared unconstitutional. In

³² Reuters. (2024). *German insolvencies up significantly at the end of 2023*. Reuters; Reuters. Retrieved 27 March 2024: <https://www.reuters.com/markets/europe/german-insolvencies-increased-significantly-end-2023-2024-01-12/>.

³³ Huaxia. (2023). *Insolvencies in Germany remain well above last year's level*: Destatis-Xinhua. English. news.cn. Retrieved 27 March 2024: <https://english.news.cn/20231213/cbd3b9a09e1b4a81a12df2cbf5357dd2/c.html>.

³⁴ Arnold, M., & Chazan, G. (2024). *German insolvencies set to rise as Covid aid expires and economy stagnates*. Wwf.ft.com. Retrieved 27 March 2024: <https://www.ft.com/content/b81fff40-eee3-481c-9cde-f39282070c0e>.

³⁵ Federal Statistical Office – Destatis (2024): Press release no. 103 of 15 March 2024; Retrieved 27 March 2024: https://www.destatis.de/DE/Presse/Pressemitteilungen/2024/03/PD24_103_52411.html.

addition, the obligation to file for bankruptcy was temporarily suspended.³⁶

4. Discussion and conclusion

4.1. Findings from the analysis of the judgement of the Federal Constitutional Court

Our analysis of the Federal Constitutional Court's ruling of 15 November 2023 reveals an extremely complex interplay between constitutional law, tax policy and environmental initiatives for Germany. The judgement of the Federal Constitutional Court highlights the conflict between the budgetary discipline required by the constitutional debt brake and the intention to finance environmental initiatives with unused COVID-19 debt. The decision of the Federal Constitutional Court thus has a massive impact on the German government's strategy to support climate and energy policy and highlights the limits of the existing fiscal framework for environmental investments using federal and state funds. Not only does the Federal Constitutional Court stop the reallocation of €60 bn earmarked for pandemic response to climate and energy policy measures, it also sets a precedent for how fiscal rules are interpreted in relation to environmental objectives. The immediate financial impact includes a significant shortfall in funding for the Climate and Transformation Fund, affecting several planned green initiatives. Economic indicators point to a potential increase in bankruptcies as businesses and households adjust to an environment in which expected government support may be reduced. In addition, our analysis points to a shift in government budget strategies, with an increased focus on aligning future fiscal policy measures with constitutional requirements. These findings emphasise the multifaceted implications of the ruling, which span legal, economic and environmental areas.

The Federal Constitutional Court's decision also illustrates how difficult it is to reconcile strict budgetary fiscal rules with pressing environmental goals and thus calls into question the flexibility of budgetary and tax policy to support significant investments in sustainability and climate protection. The implications for Germany's economic and environmental policy strategy are profound and require a rethink of how green initiatives can be financed within fiscal and constitutional limits. At the centre of this is the Climate and Transformation Fund, which is of crucial importance for financing the German energy transition and requires the search for innovative financing solutions.

It should be noted that although the present study is comprehensive in terms of analysing the ruling of the Federal Constitutional Court, it is not without limitations in a broader context. The analysis is primarily based on the specific context of German tax and environmental policy, which is not directly transferable to other countries with

³⁶ Gregusova, D., Srebalova, M., Capandova, P. & Mittelman, A. (2016). Safeguarding Obligations through Securities. 3rd *International Multidisciplinary Scientific Conference on Social Sciences and Arts, SGEM 2016*, BK 2: Political Sciences, Law, Finance, Economic and Tourism Conference Proceedings, Vol. II, pp. 769–775.

different legal and economic structures. Future research could explore comparative analyses between Germany and other countries to identify best practices in balancing fiscal discipline and environmental investment. In addition, longitudinal studies could examine the long-term effects of the court's judgement on environmental policy and fiscal performance in Germany. Given the limitations of our analysis, which is rooted in Germany's unique tax and environmental landscape, we recognise that our findings may not be directly transferable to other global contexts with their different legal and economic systems. Future research could benefit from a comparative perspective that examines the interplay between fiscal restraint and environmental finance in different countries to identify effective practices. Long-term studies could also shed light on the lasting effects of such court decisions on a country's environmental policy development and financial situation.

To summarise the analysis of the Federal Constitutional Court's ruling, the judgement highlights the delicate balance between fiscal responsibility and the need to achieve key environmental goals and calls for a reassessment of how green agendas can be financed within strict fiscal rules. The way forward requires flexibility, innovation and a commitment to reconciling economic stability and environmental sustainability. From this perspective, however, the Federal Constitutional Court's decision also opens up the opportunity for a dialogue on the design of a fiscal policy that reconciles environmental sustainability and economic stability. It emphasises the need for sustainable tax strategies that can support environmental goals without violating basic fiscal policy principles.

4.2. Discussion of the results of the analysis of the Federal Constitutional Court's decision in the field of tension between German fiscal policy and European initiatives for ecological change

The implications of the Federal Constitutional Court's judgement go far beyond its immediate legal context and influence Germany's broader strategy for achieving climate targets in the European context and maintaining German fiscal discipline. The discussion of the findings from our study brings together our results with the current state of research and highlights the inherent challenges associated with dealing with fiscal constraints in the pursuit of ambitious environmental policies. Previous studies have emphasised the importance of sustainable fiscal practices in supporting long-term environmental goals. However, our analysis adds a nuanced perspective by illustrating the immediate constraints and potential long-term directional changes in policy required by legal and fiscal frameworks. The limitations of our work lie in the constantly evolving nature of tax and environmental policy, which points to the need for ongoing consideration and follow-up as new judgements are made and policy developments emerge. Future research directions could include investigating alternative funding mechanisms for environmental initiatives that are consistent with fiscal rules, as well as assessing the impact of fiscal policy changes on economic stability and environmental policy effectiveness. Ultimately, our study contributes to a deeper understanding of the delicate balance between fiscal responsibility and

environmental stewardship and provides insights for policy-makers, academics and the public.

The judgement of the Federal Court of Justice has resonated in financial policy, environmental strategy and the wider economic landscape. At its core, the decision emphasises a critical tension between the imperative of budgetary discipline, as enshrined in the debt brake, and the urgent need to invest in environmental sustainability and the fight against climate change. This juxtaposition presents a complex scenario for policymakers, who must navigate the fine line between complying with constitutional fiscal constraints and fulfilling commitments to environmental and climate goals.

Countries around the world face similar dilemmas and must find a balance between fiscal discipline, economic stimulus and environmental initiatives. Germany's experience is a unique case study that illustrates the intricate linkages between constitutional law and policy initiatives. Internationally, the approach to funding environmental policies varies, with some countries adopting more flexible fiscal policies to enable large-scale investment in green technologies and infrastructure. The German model, constrained by its rigorous debt brake, illustrates the challenges of maintaining a healthy fiscal position while striving for environmental leadership.³⁷

The implications of the judgement go far beyond the immediate legal boundaries and raise questions about the future of fiscal policy in the age of climate change. It prompts a reassessment of how governments can creatively finance ambitious environmental programmes within the existing legal and fiscal framework. In addition, the decision underscores the need for legislative clarity and foresight in crafting budget laws that provide the necessary flexibility for unforeseen challenges, including pandemics and climate crises. The court ruling could serve as a catalyst for innovation in public finance and spur exploration of alternative financing mechanisms for environmental initiatives, such as green bonds, public-private partnerships and dedicated environmental taxes. Policymakers and researchers must continue to explore the intersections between law, economics and environmental policy to find sustainable solutions that fulfil both fiscal prudence and the imperative of climate action.

Beyond the immediate legal boundaries, the implications of this decision extend to the very architecture of tax and environmental policy. It calls for a recalibration of strategies to finance the green agenda within the rigid confines of the existing fiscal and legal framework. Moreover, this moment serves as a clarion call for legislative precision and adaptability, urging the crafting of budget laws that can withstand the vagaries of future crises, be they global health emergencies or climatic upheavals.

The dialogue between economic rationality and ecological necessity is still ongoing. The momentum of the period of scientific research into the implications of the German Federal Constitutional Court's ruling invites a rethink of how public funds can be mobilised for the environment, e.g. through instruments such as green bonds, public-

³⁷ Peráček, T. (2021). A few remarks on the (im) perfection of the term securities: a theoretical study. *Juridical Tribune – Tribuna Juridica*, 11 (2), pp. 135–149, doi: 1,024,818/TBJ/2021/11/2.01.

private partnerships and environmental levies. The search for solutions at the interface between legal frameworks, fiscal policy and environmental responsibility is more important than ever and requires a joint search for strategies that take into account both our economic protection and the future of our planet.

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