

German Bundestag

19th electoral term

Decision

The German Bundestag, at its 218th sitting, held on 25 March 2021, acting on the basis of Bundestag printed paper 19/27921, decided,

- (a) on the communication by the Federal Government
– printed paper 19/20243, point A.27 –**

**of the amended proposal for a Council Decision on the system of Own Resources of the European Union
COM(2020)445 final; Council Document No 8140/20**

- (b) on the communication of the Federal Government
– printed paper 19/20243, point A.28 –**

**of the proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic
COM(2020)441 final; Council Document No 8141/20**

- (c) on the communication of the Federal Government
– printed paper 19/20243, point A.35 –**

**of the proposal for a Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility
COM(2020)408 final; Council Document No 8403/20^{*)}**

Statement of position addressed to the Federal Government under

^{*)} The Council document annexes will not be printed but can be accessed via the Bundestag's internal EU database, EuDoX, under Council document 8403/20.

Article 23(3) of the Basic Law

in awareness of the communication in items A.27, A.28 and A.35 of printed paper 19/20243, to adopt the following resolution in accordance with Article 23(3) of the Basic Law:

“I. The Bundestag notes:

The COVID-19 pandemic has caused great suffering and enormous damage. People have died before their time, others are grappling with long-term health problems, and many are seeing their livelihoods threatened. Within the European Union, to prevent this jointly suffered ill fortune leading to deep division among the member states, decisive action in a spirit of solidarity is required.

It is true that coronavirus strikes and poses a threat to all people indiscriminately. From an economic point of view, the COVID-19 pandemic is a symmetrical shock, a huge downturn in economic activity in all member states due to the same cause. But that shock is not affecting all the EU member states with the same severity. Coincidences of epidemiology, differences in the robustness of healthcare systems and variations in economic structure and prevailing pre-pandemic conditions have led to the effects of the pandemic, though serious everywhere, varying wildly. The European Union’s response must therefore be likewise huge but differentiated.

The direct costs and the plummeting downturn in economic activity are colossal. Covering those costs and financing investment in the economic recovery will require substantial amounts of funding. Current budgets cannot supply that funding. It ought rather to be provided by means of long-term loans. This will allow the costs to be spread over a very long period of time, and the European Union can stretch out the repayment of the loans as appropriate. The relative economic weight of the loans will also fall over time – an effect that will be all the more pronounced the stronger the economic recovery turns out.

Building on a Franco-German initiative, the European Council on 21 July 2020 launched a comprehensive and unprecedented package of measures for Europe’s recovery following the COVID-19 pandemic. The exceptional circumstances justify extraordinary measures.

The Federal Government’s advocacy for the support measures aligns with the pursuit of European integration as a state objective. It is also an expression of Germany’s own interest as properly understood. Because of their differences in capacity, caused by their different histories, many member states could undertake only limited and inadequate countermeasures alone. This would lead to severely distorted competition, and the countries in question would end up far below their potential in terms of economic recovery. Less vigorous growth would be the result for Germany too, as its export-focused economy particularly depends on the internal market. In the medium term, the European Union could find itself facing a greater test of its cohesion than the financial crisis, if it gave the impression of benefiting only a few member states and hindering others in their development.

At the heart of the package is the creation of a new recovery instrument called NextGenerationEU. It provides for the Commission to take out loans on the capital markets of up to EUR 750 billion on behalf of the European Union, of which EUR 390 billion can be disbursed to the member states as grants and EUR 360 billion can be passed on to them as loans. The proposed Own Resources Decision is a key element of the multiple components underpinning

the recovery package. The Council Decision on the system of Own Resources of the European Union provides the basis for the borrowing; it makes it possible in the first place to generate financial resources to respond to the pandemic. The Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic allocates those resources to various areas of expenditure. The Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility determines how the vast majority of the resources are to be used. A smaller proportion of the funds will be allocated to certain EU programmes. The generation, allocation and use of funds is thus determined by this interconnected chain of EU legal instruments based on different treaty provisions.

II. The Bundestag welcomes this package of measures as negotiated by the Council and the European Parliament on the basis of the Commission proposals. The package makes it possible to mitigate the economic and social effects of the crisis and supports a sustainable recovery. Being strategically aimed towards economic convergence and resilience, it contributes to long-term and sustainable growth. Increased investment in infrastructure, climate action, digital sovereignty, artificial intelligence, security, and research and development will advance the twin transitions to a greener and digital society.

The European Union has borrowed on the capital markets in the past. Within the framework of the European financial stabilisation mechanism or the balance-of-payments assistance programmes, those loans were passed on to member states. It has done the same vis-à-vis non-EU countries in the form of macro-financial assistance. However, the unprecedented quantity of funds to be borrowed and the partial use of those funds for operational expenditure warrant examination as to whether the underlying agreements are tenable under European legislation and constitutionally sound.

The focus here is on assessing the measures from the point of view of the concept of responsibility with regard to European integration, which has been assigned to the Bundestag by the Federal Constitutional Court. The Bundestag exercises that responsibility in the spirit of the state objective to bring about a united Europe. The implications of the package for the federal budget need to be assessed from the point of view of overall budgetary responsibility as part of the assent procedure.

The power to generate funds by borrowing is granted in the proposed Own Resources Decision, which is based on the third paragraph of Article 311 TFEU. According to the first paragraph of Article 311 TFEU, the Union shall provide itself with the means necessary to attain its objectives and carry through its policies. The empowerment to borrow is – as outlined above – capped, tied to the stated purpose and temporary. The Own Resources Decision permits its use “[f]or the sole purpose of addressing the consequences of the COVID-19 crisis through the Council Regulation establishing a European Union Recovery Instrument”. The funds to be borrowed on the capital markets are specifically not added to the EU budget as own resources but classified as assigned revenues. This separation ensures that the borrowed funds will not be used, even temporarily, for other operational expenditure under the EU budget. It is also the case that funds will not be borrowed until a payment is actually due for a project which fulfils the conditions of the recovery instrument. Funds must be assigned to uses within the framework of the recovery instrument by the end of 2023. Any possible funding from the EUR 750 billion package which has not been assigned by then will expire and cannot be transferred to other areas of the EU budget. The disbursement of funds to member states and, consequently, the borrowing on the capital markets must be completed by the end of 2026.

The reasons for enshrining the empowerment to borrow in the Own Resources Decision are, firstly, that it constitutes the underlying basis for the financing of the European Union and, secondly, that the repayment of loans for the grant element of the recovery instrument as well as the interest payments will have to come from the EU's own resources. The Own Resources Decision remains the ideal basis for the empowerment to borrow, not least because of the particular procedure used for its adoption and entry into force. Unanimity is required in the Council of Ministers, and the decision does not enter into force until all member states have given their assent in accordance with their own constitutional rules. As such, the Own Resources Decision depends on the assent of the German Bundestag. The empowerment to borrow thus rests on a basis which is particularly protective of the member states' sovereignty and simultaneously leads to enhanced legitimacy.

The allocation of funds through the recovery instrument is based on Article 122 TFEU. This marks it out as a response to an emergency, as that article allows measures appropriate to exceptional and severe economic difficulties in the Union. The COVID-19 crisis is undoubtedly such an occurrence. The recovery instrument is unique, targeted and temporary, limited to the time required to address the consequences of the COVID-19 crisis. Funds must be allocated by the end of 2023 at the latest, so the temporary and exceptional nature of the situation is clear here too.

The Own Resources Decision and the recovery instrument cross-reference one another and are mutually dependent. The overall result is that the absolutely exceptional nature of the borrowing is founded and enshrined in legislation. The borrowing is tied to material, verifiable conditions, time-limited and bound by specific purposes. It is accompanied by an explicit general rule, newly introduced in the Own Resources Decision, not to use credit to finance operational expenditure outside those purposes.

The measures thus remain within the confines of the integration programme on which the Bundestag and Bundesrat based their consent, adopted by the majorities required for constitutional amendments, to the treaties underpinning the European Union – most recently the Treaty of Lisbon. At that time, borrowing was an established budgetary instrument for the European Union. Financing budgetary expenditure from credit was also public policy in the Federal Republic of Germany for decades. Given this background, this first ever instance of borrowing to finance expenditure at the EU level was clearly recognisable as an option to the ratifying legislator. The present empowerment makes use of that option for the first time and in a particular form.

The Bundestag moreover welcomes the fact that the proposed Own Resources Decision introduces a new category of own resources. In that category, national contributions will be calculated on the basis of non-recycled plastic packaging waste. This is only a new calculation method and will at most result in changes to the relative shares of member states' contributions in the total budget.

The new category of own resources is not a tax either; it is not levied on economic entities individually. How the member states source the amounts calculated under this and the other categories of own resources is – with due regard to other provisions of European legislation – solely their own decision. From the point of view of the Bundestag's responsibility with regard to European integration, the introduction of this new category of own resources is unproblematic.

Also to be welcomed is the political agreement by the European Council that, over the coming years, it will work towards reforming the system of own

resources and introduce new own resources. The Bundestag will take an active part in that reform process. Both the Federal Government and the Bundestag have complete control of the future development of the system of own resources: the Federal Government has it thanks to the unanimity requirement of the Council, the Bundestag through the need for ratification. The reform process is legally irrelevant to the upcoming Own Resources Decision.

All in all, the package of measures stands on sound foundations both in terms of European legislation and from a constitutional perspective.”