

Budget: Why more climate investments are possible despite the debt brake

A ruling in Bremen recognizes the climate crisis as an emergency. This opens up new climate finance opportunities for Germany's federal states, according to a legal opinion commissioned by FiscalFuture.

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The German federal government's draft budget for 2027 shows that funding for key climate action measures is at stake. Yet, it is economically unwise not to invest in the climate transition today, as the costs of the climate crisis are rising – and with them, the burden on future generations. A court ruling from Bremen now opens up new avenues for the federal states to finance climate investments.

Until now, the debt brake has allowed for exceptions in “exceptional emergency situations.” However, it was assumed that the climate crisis did not qualify as such an emergency. Emergency loans were used reactively, for example, for acute events such as the flood disaster in the Ahr Valley or during the energy price crisis. For measures intended to mitigate or prevent the consequences of the climate crisis, taking out emergency loans was considered impermissible.

The Bremen state government saw things differently. In 2024, it attempted to finance some of its expenditures through emergency loans. It justified this by citing the energy and climate crisis, among other things. However, the Christian Democratic Union (CDU) opposition filed a lawsuit, and the State Constitutional Court ruled in its favor. The court declared the budget laws unconstitutional – but at the same time held that the climate crisis could, in principle, constitute an extraordinary emergency situation within the meaning of the debt brake. In the Bremen case, the court found that the government had simply failed to sufficiently demonstrate that the budgetary situation was in fact significantly impaired. The government had not sufficiently demonstrated the connection between the climate crisis and other crises and the measures to be financed by the emergency loans.

The ruling thus opens up new opportunities for other federal states as well. This applies in particular where budgets are under heavy strain and, at the same time, significant investments in climate action are necessary. This could become relevant for Berlin, for example, where a new state government following the September election might be open to new approaches to fiscal policy. Since state constitutional courts form a “learning network” and refer to one another’s reasoning, this could also inspire other federal states.

Although the federal government is taking a different course, the states could now send a clear signal. The Cabinet draft for the 2027 federal budget, for example, calls for nearly €3 billion from ETS emissions trading proceeds to be allocated not to the Climate and Transformation Fund (KTF) but to the core budget, to be used for other expenditures in the future. The states could take the Bremen ruling as an opportunity to prioritize climate finance more strongly.

The judges in Bremen justify their ruling that the climate crisis can be interpreted as an emergency by offering a new interpretation of the criteria. The Basic Law (GG) states that an emergency situation must be beyond the control of the state and significantly impair the state’s financial situation (GG, Art. 109). In contrast, the climate crisis has so far been assessed as long-term and too predictable. It does not occur suddenly enough to qualify as an extraordinary emergency situation within the meaning of the debt brake. A new [expert opinion](#) commissioned by FiscalFuture explains how the judges in Bremen arrived at a different conclusion. Even long-term crises could escalate into an “extraordinary emergency,” for example, by crossing tipping points. The “extraordinary” nature of the situation should not be understood purely in terms of time, but rather based on the scale of the crisis. This does not preclude the possibility that the crisis was foreseeable or that the state even contributed to causing it. Furthermore, the simultaneous convergence of multiple crises – COVID-19, Ukraine, energy and climate – could justify an emergency situation, as was the case in Bremen. Thus, the ruling greatly expands the scope of application of the emergency clause.

Bremen's legal interpretation differs from that of the Federal Constitutional Court. In its ruling on the 2023 Climate and Transformation Fund, the Federal Constitutional Court left open whether the climate crisis should be classified as an emergency. Reading between the lines, its decision implicitly suggests that the climate crisis does not fall under the definition of an emergency. The court's ruling marked the beginning of the end for the "traffic light" coalition. It is therefore all the more remarkable that the judges in Bremen have opted for an independent interpretation.

A certain degree of legal uncertainty remains, however, because the ruling does not establish universally applicable standards: At what point is the budgetary situation sufficiently impaired? At what point is the connection between the crises and the measures clearly enough established? There is a growing risk that state budgets will only receive their final assessment in court. Already, parliamentary caucuses of the respective opposition parties are increasingly using the debt rules and the resulting lawsuits as a political tool: In 12 of 16 federal states, at least one lawsuit has been filed against the state government's budget since 2021. In five cases, the budget was successfully declared unconstitutional.

But is that a reason not to try? Whether the Bremen ruling will be utilized is less a legal question than a political decision. State governments might feel encouraged by the ruling to make full use of their expanded scope for action.

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2027 Federal Budget

Household

Debt brake

KTF

Investments