

Germany – Hurdles to clear before the debt spigot can be turned open

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The likely future governing parties, CDU/CSU and the Social Democrats (SPD), want to amend the German constitution in order to be able to take on more debt for investments in defense and infrastructure. We provide a timeline for the decisions and describe which hurdles these plans will have to overcome in the Bundestag and Bundesrat. Also, we discuss whether the Federal Constitutional Court could still stop them.

On Tuesday, the CDU/CSU and the SPD, who are expected to form the new governing coalition, agreed to largely suspend the debt brake for defense spending and to set up a special fund of 500 billion euros for investments in infrastructure, the borrowing of which will also not count towards the debt brake (for details see [here](#)). However, there are still a few hurdles to overcome before these plans can be implemented.

When will the Bundestag and Bundesrat decide?

In order to amend the Basic Law (the German Constitution) as planned by the CDU/CSU and SPD, both the Bundestag and the Bundesrat must agree with a 2/3 majority. As this majority is unlikely to be achieved in the newly elected Bundestag, the old Bundestag, which will remain in office until its successor is constituted (probably on March 25), is to decide.

To this end, the Bundestag is to convene for two special sessions on March 13 and 18, with the final vote taking place on March 18. Between the sessions, the Bundestag Budget Committee will meet for one or two special sessions. If the proposals receive the necessary majority in the Bundestag, the Bundesrat will vote on them on March 21.

Where do the parties stand on the plans?

The **CDU/CSU** and **SPD** are of course in favor of the plans drawn up by their leaders. There have been a few critical voices from the ranks of the CDU/CSU. In the end, however, their representatives are likely to agree, as otherwise the new coalition and thus the election of CDU Chairman Merz as Chancellor would be severely jeopardized.

The **AfD** and the **Left Party**, on the other hand, were clearly opposed. They are not convinced that these measures are the right policy. In addition, they see the rights of



the new Bundestag as being violated, as they could jointly block the amendment to the constitution, if the new parliament decided on this issue.

The **Greens** largely agree with the content of the proposals. After all, during the election campaign they had vehemently called for higher defense spending and infrastructure investments to be financed through additional debt and therefore a relaxation of the debt brake. However, they criticize the approach of the CDU/CSU and SPD, who did not include them in their considerations. The Greens also accuse the CDU chairman and likely future chancellor Friedrich Merz of breaking his election promises. Ultimately, however, the Greens are unlikely to be able to reject the content of the plans, which they welcome in principle.

The **FDP** (Liberals) is also critical of the plans. After all, it had always defended the debt brake in the last coalition, which was ultimately the reason for the break-up of the old government. At the very least, they are likely to reject the special fund for additional infrastructure investments, and probably also the extensive suspension of the debt brake for defense spending.

The **BSW** is particularly opposed to additional debt for defense. According to its chairwoman Sahra Wagenknecht, the plans for a special fund for infrastructure investments will at least be examined. If both are voted on together, the BSW is unlikely to approve the plans.

Although the **Free Voters** are not represented in the Bundestag, they are part of the state government of Bavaria. Its chairman has recently made very negative comments about the plans of the CDU/CSU and SPD.

Will the Bundestag agree?

Probably yes! The CDU/CSU and SPD parliamentary groups in the “old” Bundestag only have a total of 403 MPs, which means that 86 votes in favor would still be needed for a 2/3 majority. The CDU/CSU can probably not count on the FDP (90 MPs), so they need the consent of the Greens (117 MPs). As described above, we assume that they will ultimately vote in favor. Together, the three parliamentary groups have 520 MPs, and they could probably also count on the votes of the non-party transport minister and the MP from the Danish minority party. This would give them a total of 522 votes, which would give them a safety cushion of 33 MPs up to the 2/3 majority of 489 votes.

Will the Bundesrat agree?

The Bundesrat could prove to be the bigger hurdle. This is due to the fact that coalition agreements at federal state level generally stipulate that the respective government will abstain in the Bundesrat if the coalition partners cannot agree on a “yes” or “no” vote. In order to achieve the 2/3 majority required for an amendment to the Basic Law, there must be at least 46 votes in favor out of a total of 69 votes. An abstention therefore has the same effect as a “no” vote.

The fact that EUR 100 billion of the special fund for infrastructure is to flow to the federal states and that the debt brake is also to be relaxed for them is certainly also intended to encourage the federal states to vote in favor. It is therefore not certain that the representatives of the FDP, Left Party and BSW will make the same decision at state level as their party colleagues at federal level. However, if all state governments with the participation of one of the three parties abstain in the Bundesrat, this would ultimately mean 22 votes against the constitutional amendments.

This would mean that Bavaria's voting behavior would be decisive. The CSU and the Free Voters form the governing coalition there, with the CSU supporting the measures – its chairman helped negotiate them – but the Free Voters rejecting them, at least so far. It



is not possible to say with certainty whether the Free Voters will stick to this position. However, such an approach would be a major snub to the leader of the CSU, who is also the state's Prime minister, and would therefore jeopardize the governing coalition. We believe it is rather unlikely that the Free Voters will risk this. We therefore assume that the Bundesrat will ultimately vote in favor with a 2/3 majority.

Will the Federal Constitutional Court intervene?

The AfD and the Left Party have threatened to take the Federal Constitutional Court to court against the Federal Government's planned action. The accusation would be that the old Bundestag, which obviously no longer represents the will of the people after the new elections, cannot make such an important decision. This is because it is clear that there would not be a 2/3 majority for the plans of the CDU/CSU and SPD in the new Bundestag.

However, there is a broad consensus among constitutional lawyers that the old Bundestag has the same decision-making powers until its successor is constituted – i.e. until March 25 – as it had before the election of its successor. As an example, reference is often made to a decision by the Bundestag on October 16, 1998 that Germany should participate in the NATO mission in Kosovo. Even then, the “old” Bundestag still voted, although a new Bundestag was elected on September 27, 1998. It is therefore unlikely that the plans of the CDU/CSU and SPD will be stopped by the Federal Constitutional Court.



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