

German Federal Constitutional Court Paves Way for EU's Recovery Instrument



News

Thomas Wahl

In its decision of 15 April 2021 (Ref.: 2 BvR 547/21, a summary is available [in English here](#)) the German Federal Constitutional Court (FCC) rejected an application for preliminary injunction against the German Act Ratifying the EU Own Resources Decision. The Council Decision of 14 December 2020 on the system of own resources enables the EU to raise funds of up to €750 billion within the framework of the temporary reconstruction instrument Next Generation EU (→ [eucrim 3/2020, 174](#)). In particular, it has been designed to help alleviate pandemic-related economic consequences.

The applicants consider the EU approach to be a violation of the German Parliament's budgetary rights and of the overall budgetary responsibility enshrined in the constitutional principle of democracy, which may not be touched as a constitutional core principle pursuant to Art. 79(3) of the Basic Law. Although the FCC does not consider the application in the principal proceedings to be either obviously inadmissible or clearly unfounded, after a summary examination, it found that a violation of the constitutional identity does not seem very likely. This is justified by the fact that the borrowing of money on capital markets by the EU does not lead to a direct liability for Germany and that such loans are limited in amount, duration, and purpose.

In the context of balancing the consequences, the FCC decided, in view of the limited period of validity and the EU-political relevance of the instrument of reconstruction, that waiting for the principal proceedings would weigh more heavily than a later finding of unconstitutionality.

In the main proceedings, it will now have to be examined, on the basis of an identity control, how far-reaching Germany's liability and budgetary obligations as provided for in the Own Resources Decision are and whether parliamentary influence on the handling of the financial resources has been preserved. If the FCC were to find in the principal proceedings that the 2020 Own Resources Decision constitutes an *ultra vires* act or encroaches upon constitutional identity, it would be incumbent upon the Federal Government, the *Bundestag*, and the *Bundesrat* to restore constitutional order by all means available to them.

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ISSN: 1862-6947

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by
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