



REPORT ON THE ECONOMIC SITUATION

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The discussion surrounding the 2025 federal budget in Germany

Exclusive report for ACATIS Investment: Prof. Dr. Dr. h.c. Lars P. Feld, University Freiburg and Walter Eucken Institute

When the federal government finally announced its compromise for the 2025 federal budget and cabinet approved the corresponding draft budget in the middle of July, there was a general sense of relief (and, some might say, exhaustion). Now the old saying that there is no summer break without summer drama seems to be coming true. But it is really just drama?

When he announced the settlement, the federal finance minister already noted that beside a EUR 8 billion global reduction in expenditures in 2025, another EUR 9 billion would be subject to a constitutional and economic review. It concerned a structural appropriation of the liquidity surplus of the Kreditanstalt für Wiederaufbau (KfW) from the gas price brake, as well as a loan (as a financial transaction) to Deutsche Bahn AG, more specifically its infrastructure company DB InfraGO AG, and Autobahn GmbH. This loan should increase the federal government's debt leeway, because financial transactions do not have an effect on the debt brake. The federal finance department commissioned a constitutional opinion and also asked its Scientific Advisory Board to provide an assessment of these transactions.

The two assessments, which are now available, are very similar. Both conclude that using the KfW's residual liquidity from the gas price brake would probably be unconstitutional. It would be similarly problematic as the second supplementary budget for 2021, for which the Federal Constitutional Court issued a decision on 15 November 2023. Both believe that the loans to DB InfraGo AG and Autobahn GmbH might be constitutional if they satisfy certain requirements.

With regard to DB InfraGo AG, it is more likely that a loan can be justified as a financial transaction. To be classified as a financial transaction, the loan must be accompanied by an asset. This is ostensibly the case with loans, since they have to be paid back with interest. However, there is a problem in that the two borrowers are both owned by the federal government, and according to the EU requirements for financial transactions, the loans must be real loans and not merely measures designed to circumvent (European or German) fiscal regulations. Since CB InfraGo AG and the group parent Deutsche Bahn AG have their own revenues, it can generally be assumed that the federal loan is recoverable and therefore must be assessed as an asset that accompanies the loan. At the same time, measures must be taken to ensure that the federal government does not use any part of this loan as time

goes by. Moreover, interest, repayments and the terms must be risk-appropriate.

This does not apply to Autobahn GmbH. Autobahn GmbH was founded in 2018 and has been responsible for the planning, construction, operation, maintenance, financing and asset management of federal highways in Germany since 2021. It is financed by federal contributions out of the revenues from the HGV toll. This represents a political (not a legal) appropriation, which is demonstrated by the fact that a portion of the revenues from the HGV toll is used for rail network renewal. Therefore Autobahn GmbH does not have its own revenues, and it is not able to repay a loan on its own. As a result, a federal loan could not be interpreted as a financial transaction, based on the current design. Hence this does not increase the federal government's debt leeway in 2025. The regulatory threshold for the debt brake would be breached and the 2025 federal budget could be unconstitutional.

However, a different institutional design is also possible. When the Fratzscher Commission, in its 2015 report on increasing investment activities in Germany, recommended the establishment of a federal highway limited liability company, Autobahn GmbH was supposed to be able to collect not just the HGV toll but also a potential passenger vehicle toll. Moreover, it was supposed to be able to take on some debt and allow private minority interests. This would also have been an interesting model for the design of infrastructure funds by asset managers. At the time, the SPD blocked these options and in Art. 90 of the Basic Law ensured that the federal government remains the owner of the federal highways, and that this ownership cannot be sold.

A loan to Autobahn GmbH would satisfy the constitutional requirements for the debt brake if parts of the federal government abandoned their earlier aversion to modern infrastructure financing. Otherwise, the requirements for the federal budget will be around EUR 5 billion.

Sincerely yours

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