

# § 2 Ambitious enough? General climate protection law

[allgemeines Klimaschutzrecht]

## I. Backgrounds

- *climate protection* is a collective term for all measures intended to *counteract anthropogenic global warming* (induced by humans), or to avert or mitigate its consequences
  - anthropogenic global warming is caused by *greenhouse gas emissions*, mainly carbon dioxide [CO<sub>2</sub>] and methane [CH<sub>4</sub>]
  - no climate protection: measures to adapt to the effects of climate change (*climate change adaptation*)
- *general climate protection law* is the law intended to counteract global warming with a general approach, i.e. without specific measures in specific areas

### 1) The threat of climate change

- the advancing climate change
  - see for the current status the [IPCC's Sixth Assessment Report \(AR6 Synthesis Report: Climate Change 2023\)](#)
- a fundamental threat to mankind
  - only the threat of a global nuclear war would be worse
  - the prospect of major natural disasters almost everywhere
  - the prospect of heat waves that require new types of buildings and urban design
  - the prospect of diseases spreading to new, previously colder geo-regions
  - the prospect of a global mass migration of climate refugees with the potential to destroy the modern territorial state
  - the threat of a breakdown of human civilisation, economy and society in large areas of the planet

### 2) The need to reduce greenhouse gas emissions to mitigate climate change

- a fact proved beyond doubts in decades of scientific research in global cooperation
  - most important scientific institution: the United Nations *Intergovernmental Panel on Climate Change (IPCC)*
  - most important scientific source: *IPCC Assessment Reports*
- however, a fact denied by the new U.S. Government and the lobbies behind it
  - contested in [large-scale global disinformation campaigns](#)

### 3) The global common fight against climate change

#### a) The UN Framework Convention on Climate Change (UNFCCC) of 1992

- first international treaty on the global fight against climate change
  - ratified by 197 states and European Union
- binding goal to stabilize greenhouse gas concentrations "at a level that would prevent dangerous anthropogenic interference with the climate system" (art. 2)
- modest climate protection obligations, mainly of the developed countries
  - reporting obligations, financial support for climate action of developing countries
- treaty bodies: annual [Conference of the Parties \(COP\)](#), [UNFCCC Secretariat](#) in Bonn

#### b) The implementation of the UNFCCC by the Kyoto Protocol of 1997/2012

- the [Kyoto Protocol of 1997](#) set *binding emission reduction targets* for the period of 2008 to 2012, which added to an average of 5 % reduction (compared to 1990)
  - 37 industrialised countries, EU and economies in transition participated, but not USA and China
  - Protocol allowed *joint fulfilment of quotas by several countries (bubbling)* and *trading of limited emission allowances*, as long as the overall result was achieved
- the [Doha Amendment to the Kyoto Protocol of 2012](#) set further reduction targets for the period of 2013 to 2020, but was only ratified by the EU, EU member states and few other states

#### c) The Paris Agreement on climate protection of 2015

- the present international treaty on the global fight against climate change
  - ratified by 193 states and EU (USA have withdrawn again in 2025)
- binding *target to hold increase in global average temperature below 2° C*, preferably 1.5° C, above pre-industrial levels of 1750 (art. 2)
- the targets are missed, but the Agreement is an important vehicle for legal innovations

- states must undertake and communicate "national determined contributions" (national climate action plans) and develop long-term low emission development strategies
- treaty bodies: annual Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), UNFCCC Secretariat

#### 4) **The European Green Deal of 2019** (Communication COM/2019/640 final)

- European Union's ambitious holistic response to climate change
- a *comprehensive strategic program* of the European Commission to curb global warming by reducing greenhouse gas emissions until achieving complete *climate neutrality* by 2050
  - "climate neutrality" means a balance between greenhouse gas emissions and removals (no net emissions)
- a *political program*, not binding in itself but envisaging numerous binding legal acts
- key elements:
  - objective to make Europe the *first climate-neutral geo-region by 2050*
    - includes to make it *independent from fossil fuels* and decouple economic growth from resource consumption
  - intermediate target to reduce greenhouse gas emissions already by half by 2030
  - a roadmap for a *complete reorganisation of Europe's economy, energy supply, industries, agriculture and transport* to achieve these objectives
  - promise of *climate justice and fairness*
    - to make the transition fair and inclusive and support those most affected
- financed by a planned total budget of one trillion Euro
- legally implemented mainly by the European Climate Law of 2021, but also by numerous specialised legal acts

#### 5) **The temporary rise of a strong climate protection movement in the civil society**

- from 2018 - 2024 mass climate protests, sometimes accompanied by civil disobedience
  - on the first day of the *global climate strikes (20.09.2019)*, around 500 demonstrations throughout Germany
  - mainly a phenomenon among the younger generation
  - protagonists: Fridays for Future (initiated by GRETA THUNBERG), Extinction Rebellion, Last Generation
- some activists radicalised (esp. the "Last Generation")
  - showed a totalitarian approach (tried to enforce their will on others, e.g. car and truck drivers)
  - committed numerous criminal offences to draw attention (blockades, coercion, property damages)
  - were in several cases prosecuted and sentenced to fines or even imprisonment
- climate protests subsided abruptly in 2024

## II. **The EU Regulation on the Governance of the Energy Union and Climate Action (EU Governance Regulation) of 2018** (Regulation 2018/1999)

- an example that illustrates how national policies are no longer free but coordinated in Europe
  - but draws criticism for being too soft and deficient
- a *common governance mechanism* as central procedural steering instrument for achieving the European Union's energy and climate targets within the Energy Union (a framework strategy) and under the Paris Agreement
- focuses on the *five dimensions of the Energy Union*:
  - energy security
  - internal energy market
  - energy efficiency
  - decarbonisation (→ promotion of renewable energies)
  - research, innovation and competitiveness

- provides for the following governance measures of the member states:
  - *long-term strategies* with a 30-year perspective (art. 15)
    - all 10 years; must be consistent with the EU's climate-neutrality objective
  - integrated national energy and climate plans (NECP) (art. 3, 4)
    - for 10 years; must set out their targets, measures & contributions and the policies and measures to achieve them, as related to the five dimensions (art. 3, 4)
  - integrated national energy and climate progress reports (art. 17 et seq.)
    - all 2 years; on all their measures and progress in all five dimensions of the Energy Union
  - *annual reports* with greenhouse gas inventories and other information (art. 26)
  - public consultations, regional cooperation and a multilevel climate and energy dialogue (art. 10 - 12)
- an e-platform facilitates reporting and cooperation (art. 28)
- the European Commission will monitor and assess the member states' submissions and may issue recommendations (art. 29 et seq.)

### III. The EU Effort Sharing Regulation of 2018 (Regulation 2018/842; tightened in 2023)

- long title: Regulation 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement
- *legal obligation* of every member state *to reduce its greenhouse gas emissions annually*
  - on the basis of *annual emission allocations* by the European Commission
  - up to a percentage determined for each state individually in the annex (Germany: 50 %)
  - in order to achieve the EU's overall target of 40 % reduction below 2005 levels until 2030
  - in the sectors energy, industrial processes and product use, agriculture and waste
- compliance facilitated by certain *flexibilities* (art. 5), i.e. the option to
  - borrow from the emission allocation for the following year
  - bank excess parts of the annual emission allocation to subsequent years or
  - transfer parts of the annual allocation to other member states

### IV. The European Climate Law of 2021 (Regulation 2021/1119)

- long title: Regulation 2021/1119 establishing the framework for achieving climate neutrality ("European Climate Law")
- the general legal framework to implement the Paris Agreement and achieve climate neutrality in the European Union
- sets binding *objective to achieve climate neutrality by 2050* (art. 2, 1<sup>st</sup> alternative)
  - and even *negative emissions from 2050* (art. 2, 2<sup>nd</sup> alternative)
- sets binding *intermediate climate target to reduce by 55 % until 2030* (compared to 1990) (art. 4(1))
- orders to set a *second intermediate climate target for 2040* (art. 4(3))
- requires a *Union strategy and national strategies on adaptation to climate change* (art. 5)
  - to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change
- involves a European Scientific Advisory Board on Climate Change (art. 3)
- requires *public participation* and a *multilevel climate and energy dialogue*
  - with local authorities, civil society organisations, business community, investors and other stakeholders
- provides for an assessment of progress and measures all five years (art. 6, 7)

## V. The German Federal Climate Action Act (FCAA) [Bundes-Klimaschutzgesetz] of 2019

- the centrepiece of German climate protection legislation
  - adopted 2019, tightened up 2021 and 2024
  - refers explicitly to the 2° and 1.5° C targets under the Paris Agreement (sect. 1)

### 1) The national climate protection targets [nationale Klimaschutzziele] (sect. 3, 4 FCAA)

#### a) Legally binding targets for a gradual reduction of greenhouse gas emissions until 2030 and beyond

- concrete targets for 2030 (sect. 3 original version) and 2040, 2045, 2050 (sect. 3 revised version)
- gradual reduction through decreasing *annual emission budgets* (sect. 4(1); Annexes 2, 3)
- the FCAA only stipulates the targets; achieving them necessitates flanking special legislation on specific measures in special areas of law (emissions trade, renewable energies, building energy management etc.)

#### b) The original - restrained and incomplete - climate protection targets

(sect. 3(1), 4(6) original version)

- by 2030 reduction by 55 %, in comparison with the levels of 1990
- no concrete targets for the years thereafter
  - only authorisation of the Federal Government to regulate targets in an ordinance

#### c) The declaration of unconstitutionality of these targets by the Federal Constitutional Court (BVerfGE 157, 30)

- for violating *fundamental rights as intertemporal guarantees of freedom*
  - see already supra, slide 1, § 1 III.4
- The low target for 2030 and missing concrete targets for the following years do not satisfy the requirement arising from the principle of proportionality that the inevitable emissions reduction to the point of climate neutrality must be distributed over time in a forward-looking manner that respects also the fundamental rights of future generations.
- One generation must not be allowed to consume large portions of the CO<sub>2</sub> budget with a minor reduction effort (!) if this involves to leave subsequent generations with a drastic reduction burden, exposing their lives to comprehensive losses of freedom.
- Further reduction measures must be defined in good time for the post-2030 period, extending sufficiently far into the future.
- This unconventional approach to fundamental rights is controversial.

YOUR OPINION AND ARGUMENTS:

---

---

#### d) The new - more demanding - climate targets (sect. 3(1, 2) revised version)

- by 2030: reduction by 65 %
- by 2040: reduction by 88 %
- by 2045: net greenhouse gas neutrality
- by 2050: negative greenhouse gas emissions

### 2) Instruments of general climate action

- *climate action programme* [Klimaschutzprogramm] of the Federal Government (sect. 9)
  - stipulates the planned measures to achieve the national climate protection targets
  - mandatory within 12 months after the commencement of a legislative term
  - in 2026, the current Climate Action Plan of 2023 was judged insufficient by the Federal Administrative Court
- annual *climate action report* [Klimaschutzbericht] of the Federal Government (sect. 10)
  - with forecasts

- involvement of an independent Council of Experts on Climate Change (sect. 11)
  - with scientific functions
  - with own administrative office
  - has published so far 15 scientific reports, statements, opinions etc.

### 3) Other approaches

- emphasising the *role model function of public authorities* (sect. 13 et seq. FCAA)
  - they must give *due consideration* to climate protection *in all their planning and decisions* (sect. 13 FCAA)
- encouraging Federation-Länder cooperation for climate protection (sect. 14(2) FCAA)
- a binding target of a *climate-neutral federal administration by 2030* (sect. 15 FCAA)
  - see corresponding targets of a climate-neutral Land administration in supporting climate action acts of the Länder

## VI. An unclear perspective: The sudden rise and fall of popular support for climate protection in the 2020s

- climate protests peaked in 2019 and from 2021 to 2023 but subsided in 2024
- climate protection was not a major issue in the German federal election campaign 2025, nor is it in today's political debate
- the reasons for the decline in public awareness are unclear:
  - geopolitical threats, economic problems, the polarisation of the population?
  - the massive disinformation campaigns, the rise of dumb authoritarianism?
  - a repulsive effect of the climate protection legislation?
  - or is public awareness only suspended until the next catastrophe?
- *current climate protection law is only an interim solution*: a convincing legal concept...
  - that combines truly effective climate protection
  - with due respect for freedom and economic needs
  - in a simple, clear and concise law
  - while avoiding bureaucracy...is still waiting to be developed