

# § 7 Ambitious enough? General climate protection law

[allgemeines Klimaschutzrecht]

## I. Backgrounds

- see already supra, slide 5, § 5 II
- *climate protection* is a collective term for all measures intended to *counteract anthropogenic global warming* (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 the IPCC's Sixth Assessment Report (AR6 Synthesis Report: Climate Change 2023)
- climate change is 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 international commitment to climate protection: UNFCCC, Kyoto Protocol and Paris Agreement

- the global awareness of the threat of climate change
  - except of the new U.S. Government and the lobbies behind
- the United Nations Framework Convention on Climate Change (UNFCCC) of 1992
- the implementation of the UNFCCC by the Kyoto Protocol of 1997/2012
- the Paris Agreement on climate protection of 2015
  - ratified by 193 states (USA have withdrawn) and European Union
  - legally binding target to limit increase in global average temperature below 2° C

### 3) The European commitment to climate protection: the European Green Deal

- a heavily funded, ambitious political program to achieve climate neutrality by 2050
- legally implemented mainly by the European Climate Law of 2021 (see. infra, IV.)

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

- from 2018 - 2024 mass climate protests, sometimes accompanied by civil disobedience
- protagonists: Fridays for Future (initiated by GRETA THUNBERG), Extinction Rebellion, Last Generation [Letzte Generation/Ultima Generazione/Ostatnie pokolenie]
- mainly a phenomenon among the younger 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

## 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
  - climate neutrality is a balance between greenhouse gas emissions and removals
- 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 3](#), § 3 II.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.
- Remember that this unconventional approach to fundamental rights is controversial!

YOUR OPINION AND ARGUMENTS:

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#### 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
- 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
  - on the first day of the *global climate strikes* (20.09.2019), around 500 demonstrations took place throughout Germany
  - the activist organisation "Letzte Generation" carried out numerous spectacular actions between late 2021 and 2023
- in the German federal election campaign 2025, unlike before in 2021, climate protection was not a major issue
- the reasons for this 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