

Climate Change Legislation

Germany

Report on the Concepts and Directions
of Climate Legislation

Legal Analysis

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Legal Analysis

The aim of this paper is to analyze climate related legislation and to assess whether the legal measures are sufficient in order to reach long term reduction targets. J&E compares the outcome with other countries and develops policy recommendations based on the national reports.

1. Climate Change Act

1.1. Has your national Parliament adopted an Act on Climate Change yet?

No. There is no main climate protection act like in Great Britain but many sectoral regulations have been adopted since 2007. Climate protection law has developed into its own field of law. The range of regulations relevant to climate protection reaches from Art, 20a of the constitution (Grundgesetz) to distinct climate protecting laws (e.g. on emissions trading) to very specific laws in which climate protection plays only a very small role (e.g. education standards). Recorded are mainly regulations of public law, but climate protection law also affects private law, e.g. §§ 554, 559 in the law of tenancy. The main focus of the regulations on climate protection is regulations on environmental energy acts, e.g. Renewable Energies Act (EEG) or norms on Energy Efficiency.

For supporting the use of renewable energies in the housing and building sector the Renewable Energies Heat Act (EEWärmeG) was adopted in 2008.. The use of RE is compulsory in newly constructed buildings (§§ 3 ff. EEWärmeG).

Meanwhile some federal states have enacted Climate protection laws (Hamburg 2010) or preparing them (Baden-Württemberg, Nordrhein-Westfalen, June 2011).

1.2. Does any draft of a Climate Change Act exist? Has the legislation proceeded? If yes, how soon is it expected to be issued?

There is no official draft for a Climate Protection Act. But initiatives from influential NGOs (esp. WWF) have been launched, and statements of parties in opposition to the government (Social Democratic Party of Germany (SPD) and the Greens (Bündnis 90/Die Grünen,) for a Climate Protection Act where made in 2010.

1.3. Which body is responsible for preparation of the draft?

In the Federal Republic of Germany the government and the federal states can initiate laws. Certainly the government has better chances to pass a law successfully with their majorities in the Bundestag. The government therefore constructs laws in a way that after approval of the Bundestag (parliament) they don't require further approval of the Bundesrat (Federal Assembly). Which laws require approval is regulated in the Basic Law (constitution). If the

draft law does not require approval in the federal assembly a simple majority in the Bundestag is sufficient. Ordinarily the government possesses this majority. In formal aspects the federal level has far reaching legislative powers to regulate climate protection especially from Art 74 Abs. 1 Nr.24 basic law (constitution)¹.

1.4. If there is not any draft, is it a current issue in your country either on political or social level?

There is a first draft law initiated by the WWF for a national climate protection law in Germany, which primarily aims for binding targets for the reduction of CO₂ until 2050. Until now all governmental targets were nonbinding voluntary agreements, not enforceable through law suits (See 1.6).

Nevertheless climate protection has been an important and prevalent topic for every government since 2002.

1.5. Has the idea of a separate CC Act been discussed on political or social level?

Yes, a Climate Protection Act is discussed on the federal level. The Parties in opposition - Social-Democrats (SPD) and Greens (Bündnis 90/Die Grünen) called for a CC Act (2010). In several federal states climate protection laws have been initiated or are in the course of the legislative process (Hamburg, Baden-Württemberg, North Rhine-Westphalia). For the better coordination of the process of climate protection there is a federal- federal state working group on Climate, Energy and Mobility – Sustainable Development, named BLAG KliNa. In this group initiatives of the federal states are discussed and developed.

1.6. Are there any concepts regarding the direction of the climate legislation?

Yes, a conceptual framework for legal regulations for matters of climate protection exists and is implemented since 2007. Already in 2005 under a governmental coalition of social democrats (SPD) and greens (Bündnis 90/ Die Grünen) a climate protection programme was adopted. The following governmental coalition of Christian-democrats (CDU/CSU) and Social-democrats decided in the so called “Meseberger resolution” on 26th April 2007 on an “Integrated Energy- and Climate Programme” containing 29 separate activities and draft laws. The programme was implemented in December 2007 by the Bundestag with a legislative package (Klimapaket I) containing 14 laws². In June 2008 a second bundle of laws

¹ Art. 74 determines which policy fields the federal level may regulate. Art 74 Para 1 Nr.24 names waste management, air pollution and noise.

² The first package contained: Amendmend of the Act of combined heat and power generation (to foster construction of new facilities), amendment of the Energy Economy Law (liberalisation of metering), Amendmend of the Ordinance on Energy savings (for increasing energy efficiency in housing by 30%), Amendment of the Federal Immissions Protection Act (BimSchV) (Standards for the emission of nitrous gases for power plants), guidelines on energy efficient procurement and services, amendment of the Renewable Energies Act (amendment of the payment for offshore generated wind energy), Renewable Energy Heat Act (Duty to use RE for heat generation in new buildings and funding scheme), Amendmend of the gas network access ordinance (for increasing the feed-in of Biogas into the natural gas net), Amendmend Biofuels quota act, Sustainability Ordinance (to ensure standards for agriculture and protection of natural sites in biofuel production), fuel quality ordinance (increasing bioethanol in petrol and biodiesel in Diesel), shift car taxes to a scheme charged

followed with further 13 measures enacted by the Bundestag³. With these measures a reduction of CO₂-emissions of 30-36 Percent (depending on assumptions and calculation) in comparison with the 1990 level shall be achieved.

The new government of the Christian-democrats and liberals (FDP) has set the target of a 40% reduction compared to 1990 until 2020 in their coalition agreement. In September 2010 the government presented an Energy concept (Energy Concept for an environmentally friendly, reliable and affordable energy supply - 28.9.2010). In this Energy Concept first commitments for a voluntary agreement to reduce greenhouse gases after 2020 were made. The targets are a reduction of 55% until 2030, of 70% until 2040 and 80-95 % until 2050. These voluntary agreements are political targets without legal obligations. In August 2011 the government enacted an Action Plan on Adaptation to Climate Change.

1.7. Has been the public involved in the (legislation) procedure? Is there any opportunity for public participation according to the draft of the Climate Change Act?

The public cannot participate directly in the legislative process. However, as a general rule lobby and pressure groups do it. According to the rules of procedure of the government this is organised in responsibility of the separate departments/ministries. Thus for all legislative acts in responsibility of the Environmental Ministry since 2007 (e.g. the amendment of the renewable energies Act) hearings of "the public" have been carried out. There the interested public had the opportunity to comment on the draft laws. The comments were used and often lead to changes in legislation (e.g. with the Renewable Energies Act).

2. Climate relevant legislation

2.1. Have there been any changes in your legislation – adoption of new pieces of law or coherent modifications - since January 2009 which are climate relevant (even if they are not addressed as climate protection laws) in any branches of law (e.g. transport, energy, agriculture, environment etc.)?

Yes, next to the packages of law in 2007 & 2008 also after 2009 laws and regulations on federal and federal state level have been adopted, which have a climate protection effect (See also 1.1/1.6).

Even in the lowest level of administration, the municipal self-administration of towns and districts climate protection provisions are enacted. For example the city of Marburg issued a statute in 2008, which stipulates the construction of solar panels on the roofs of all old and new buildings⁴.

With a legislative package in June 2011 the government decided on further laws for climate protection. The Package is called "Energy transition" because it derived from the need to reorganise Germany's energy production in the aftermath of the MCA in Fukushima and the long lasting protests in society against nuclear energy. It contains for example the Grid

depending on pollutants and CO₂ emissions, chemicals-climate protection act (to decrease fluoridated green house gases of refrigerants)

³ Amendment of energy saving act and energy saving ordinance (to increase energy saving in buildings by 30%), development of the energy grid, amendment of heating costs ordinance (increasing charging of actual consumption of heat), amendment of lorry toll act (increasing toll prices)

⁴ It is subject to a law suit between the city and the ministry of economics of the federal state

Expansion Acceleration Act (NABEG), which should foster the faster development of the energy supply grid to be ready for the growing sources of renewable energies. In contradiction to other permit procedures in the field of infrastructure development this law moderately improves public participation in the energy infrastructure development. The package contains also an amendment of the Nuclear Energies Act, which re-establishes the exit out of nuclear energy until 2022. The Renewable Energies Act (REA) was again amended in June 2011. Key points of the amendments were: the expansion targets established in the Energy concept (see 1.6) were incorporated in the REA – 35% RE until 2020; 50% in 2030, 65% in 2050 and 80% in 2050; bonuses were established to support flexibility of production of RE and energy storage, and new schemes for feed-in tariffs for offshore generated wind, photo voltaic facilities, bio fuels, geothermal energy, hydropower negotiated. Further the Energy transition package contained a draft on changes of tax regulations for energy saving measures in existent buildings. A draft for climate friendly development of cities and towns implies changes in construction and planning law, which is mainly directed on supporting repowering/ retrofitting of Wind power plants. The draft further aims at encouraging inner city development (redensification, etc.), neighbourhood specific solutions for climate protection and adaptation to climate change (e.g. facilitation of PV-plants and supplementary heat insulation). Furthermore since 2009 the objectives of certain laws have been adapted to the political goal of protecting the climate. Thus the amended Federal Water Act (WHG) and the amended Federal Nature Conservation Act (BNatSchG) now contain objectives that indicate climate relevance (§ 1a Abs. 1 Satz 3 WHG, §§ 2 Abs. 1 Nr. 6, 10 Abs. 1 Nr. 1 BNatSchG).

2.2. Why is it directly or indirectly relevant in climate protection?

Germany is a good example for how without a main climate protection act but with sector specific laws important steps to climate protection can be made. The laws are transpositions of European directives as well as national induced regulations. Only a monitoring system can determine, whether the legal acts are sufficient for reaching the ambitious self-commitments. The above mentioned laws and acts are all directly relevant for climate protection and are in public relations always referred to as climate protection laws.

3. National Climate Strategy or any other national climate relevant plan or program

3.1. Is there an action plan or program to implement the National Climate Strategy?

Yes since 2005 the governments enacted various plans and programmes. The government in charge from 2002-2005 enacted a national climate protection programme. The following governmental coalition with the Christian-Democrats (CDU/ CSU) and the Social-Democrats (SPD) in April 2007 enacted an “Integrated Energy- and Climate programme”, which was implemented in two packages of laws in September 2007 and June 2008. The present governmental coalition with the Christian-Democrats (CDU/CSU) and the Liberals (FDP) presented an Energy Concept in September 2010, which also contains far reaching targets for climate protection. Firstly goals for the reduction of greenhouse gases until 2050 are defined. (See 1.6)

3.2. Which body is responsible for preparation of the action plan or program?

The federal government or for particular sectors also the departments (ministries). For the review of the targets the Bundestag (Parliament) is in charge.

3.3. Is there the public involved in the implementation of the above plans or programs?

No. All plans and programmes to date have been enacted without public participation.

3.4. Does your National Climate Strategy cover concrete and coherent legislative measures as tools of the declared goals? Does this Strategy refer to a Climate Change Act?

Yes, see 1.6. But the targets are voluntary agreements and not legally binding.

3.5. Are the policy measures preferred to legislative measures in climate protection at the present time as well?

Depending on how ambitious you work on climate protection you come to different conclusions to this question. Generally speaking you could say that in Germany for every party climate protection is considered an important policy field and all parties are trying to implement laws in this respect. This is true already since the 90ies and also for conservative governments. A first voluntary agreement was made in 1990 to reduce greenhouse gases deriving from energy production by 25% by 2005 in comparison to the 1990 emission. It was missed. Following agreements (established in the coalition's agreement between CDU/CSU and FDP) aimed at the reduction of greenhouse gas emissions by 40% by 2020 in comparison to the 1990 level. Already the law packages of the coalition between CDU/CSU and SPD in 2007 and 2008 took this target into account.

Thus the German reduction target goes beyond the obligations to reduce greenhouse gases deriving from the EU-Climate and "Energy-Package". Again: The voluntary agreement is only a political declaration of intend, not legally binding.

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