



DOSSIER

on the

Amended Federal Climate Protection Act of 24 June 2021

Proposal for the most intergenerationally just law of the 19th legislative
period

As of 29 June 2021

1. The law¹

On 24 June 2021, the Bundestag passed the amended Federal Climate Protection Act, which will enter into force following its publication in the Federal Law Gazette (cf. The Federal Government 2021: n.p.). After a number of successful lawsuits had been filed against the original 2019 Act, the Federal Constitutional Court required the legislature to introduce new regulations on greenhouse gas reduction targets beyond 2031 by the end of 2021 (cf. Federal Ministry for the Environment, Nature Conservation and Nuclear Safety 2021: 1).

The amended Act sets more stringent climate protection targets in order to prevent the civil liberties of future generations from being curtailed by disproportionate restrictions. The target for reducing CO₂ emissions by 2030 has been raised from at least 55 to 65 per cent compared with 1990 levels. By 2040, emissions are to be cut by 88 per cent (cf. The Federal Government 2021: n.p.). Accordingly, the permissible annual emission levels for the sectors *energy industry*, *industry*, *transport*, *buildings*, *agriculture*, and *waste management and miscellaneous* have also been partially reduced for the years 2020 to 2030.

Table 1: Permissible annual emission quantities under the Climate Protection Act 2021

| Annual emissions in millions of tonnes of CO ₂ equivalent | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 |
|--|------|------|------|------|------|------|------|------|------|------|------|
| Energy Industry | 280 | | 257 | | | | | | | | 108 |
| Industry | 186 | 182 | 177 | 172 | 165 | 157 | 149 | 140 | 132 | 125 | 118 |
| Building | 118 | 113 | 108 | 102 | 97 | 92 | 87 | 82 | 77 | 72 | 67 |
| Traffic/Transport | 150 | 145 | 139 | 134 | 128 | 123 | 117 | 112 | 105 | 96 | 85 |
| Agriculture | 70 | 68 | 67 | 66 | 65 | 63 | 62 | 61 | 59 | 57 | 56 |
| Waste Management and miscellaneous | 9 | 9 | 8 | 8 | 7 | 7 | 6 | 6 | 5 | 5 | 4 |

Source: Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (2021): 7.

In line with the Constitutional Court's requirements, the Act also introduces annual reduction targets for 2031 to 2040. A legislative proposal covering the period from 2041 onwards must be submitted no later than 2032 (cf. BMU 2021: 5).

Table 1: Annual reduction targets for the years 2031 to 2040

| | 2031 | 2032 | 2033 | 2034 | 2035 | 2036 | 2037 | 2038 | 2039 | 2040 |
|---|------|------|------|------|------|------|------|------|------|------|
| Annual reduction targets compared to 1990 | 67% | 70% | 72% | 74% | 77% | 79% | 81% | 83% | 86% | 88% |

Source: Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (2021): 7.

¹The draft bill can be found at the following link:

https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Glaeserne_Gesetze/19._Lp/ksg_aendg/Entwurf/ksg_aendg_bf.pdf

The target for achieving greenhouse gas neutrality has been brought forward from 2050 to 2045. For 2050, the objective is to achieve *negative emissions*, meaning that Germany will sequester more greenhouse gases in natural sinks than it emits. To this end, specific targets for enhancing the CO₂ sequestration capacity of natural sinks have been introduced.

To ensure compliance, from 2022 onwards a council of experts is required to publish a biennial report on progress towards targets, the measures adopted, and emission trends (cf. The Federal Government 2021: n.p.). In addition, on 23 June 2021, the Federal Government adopted an €8 billion *Immediate Action Programme 2022* to finance further climate protection measures. More than half of these funds are earmarked for energy-efficient building renovation and the installation of sustainable heating systems (cf. The Federal Government 2021b: n.p.).

2. Evaluation of the Act regarding the criteria developed by the FRFG

2.1. Reference to intergenerational justice

The legislature has sought to incorporate the principle of intergenerational justice into the amended Climate Protection Act. Following the decision of the Federal Constitutional Court, it was obliged to prevent disproportionate restrictions on the fundamental freedoms of today's younger generation (The Federal Government 2021: n.p.). In the section on *Sustainability aspects*, the Act explicitly states that climate targets are to be increased out of a "responsibility towards future generations" (BMU 2021: 10). To safeguard the freedoms of future generations, the targets were not only tightened but also extended to cover the period after 2030. Nevertheless, in light of criticism from the opposition, the question remains as to whether these measures are sufficient.

2.2. Use of the terms *intergenerational justice* and *sustainability*

Unlike the 2019 Climate Protection Act, the new draft law makes repeated reference to the terms *intergenerational justice* (or *intergenerationally just*) and *sustainability*. The section on *Sustainability aspects* emphasises that the objectives and principles of the German Sustainability Strategy were considered in the drafting of the Act, and affirms that the legislation is compatible with this strategy (BMU 2021: 10).

The revised Sustainability Strategy of the Federal Government outlines six principles of sustainable development. The first principle requires that "sustainable development" be applied consistently as a guiding principle in all areas and in all decisions (Federal Government 2020: 70). In 2018, the following principles were adopted (Federal Government 2020: 13):

- (1.) *Consistently apply sustainable development as a guiding principle in all areas and in all decisions*
- (2.) *Assume global responsibility*
- (3.) *Preserve natural resources*
- (4.) *Strengthen sustainable economic activity*

(5.) Maintain and improve social cohesion in an open society

(6.) Use education, science, and innovation as drivers of sustainable development.

The draft law explicitly incorporates Principles 1 and 3. The first requires the permanent safeguarding of the Earth's natural resources and ensures that development is sustainable for both present and future generations. In relation to the fourth principle, *Strengthening sustainable economic activity*, the Act uses the term *intergenerational justice* in the following way (BMU 2021: 10):

'The structural change necessary for global sustainable consumption and production and the technical modernisation required to achieve this should be designed to be economically successful and, in the German and global context, ecologically and socially sustainable and just to all generations' (Federal Government 2020: 90; emphasis added by the author).

On the Federal Government's website, the Act has been described as a "generational contract for the climate" (The Federal Government 2021: n.p.). Its purpose is to prevent "a disproportionate shift of greenhouse gas reduction burdens" and the resulting restrictions on freedoms being deferred into the future and thus imposed upon later generations (BMU 2021: 2).

2.3. Participation of young people

There is no evidence of any significant involvement of young people in the legislative process. The number of young members of parliament in the Bundestag is notably low. In the 19th legislative period, only 1.9 per cent of MPs were under the age of 30, of whom 0.3 per cent were between 20 and 24 and 1.6 per cent between 25 and 29. The largest age groups represented were "50 to 54 years" (19.2 per cent) and "45 to 49 years" (16.8 per cent) (German Bundestag 2019: 5).

2.4. Drafting of the law

On 12 May 2021, the Federal Cabinet adopted the draft of the amended Climate Protection Act (Federal Ministry of Food and Agriculture 2021: n.p.). The Bundestag passed the Act on 24 June 2021 with 352 votes in favour, 290 against, and 10 abstentions. The law was subject to strong criticism from the opposition. For different reasons, the Greens, The Left, and the FDP argued that the Act did not go far enough in tackling climate change. Anton Hofreiter, leader of the Green Party parliamentary group, criticised the government for failing to make full use of the opportunities for climate protection due to "a mixture of timidity and excessive demands". The Left Party objected in particular that too little had been done for a climate-friendly transformation of the transport sector, while the FDP called for greater coordination with European partners. In contrast, the AfD rejected the premise of a climate emergency caused by CO₂ emissions (Tagesschau 2021: n.p.). The Bundesrat adopted the Act on 25 June 2021 (The Federal Government 2021: n.p.).

3. Literaturverzeichnis

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