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A Climate Protection Act for Germany

Results of a legal analysis
(commissioned by the WWF)

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Outline

- I. Current legal framework for climate protection in Germany
- II. Options for incorporating climate protection into the German legal order as a separate issue
- III. Legal feasibility and contents of a climate protection act
- IV. Advantages of a general climate protection act



I. Current legal framework for climate protection in Germany

- ▶ So far, no coherent „climate change law“ in German legal order
- ▶ Requirements set forth in European and international law (concerning GHG reduction compared to base year 1990)
 - ▶ 21 % by 2012 (Kyoto Protocol plus EU effort sharing)
 - ▶ 33 % by 2020 (EU climate and energy package)
- ▶ Political commitment by German government
 - ▶ 40 % by 2020
 - ▶ Not a legally binding target



II. Options for incorporating climate protection as a separate issue into the German legal order

Options

- ▶ General Climate Protection Act
- ▶ Climate Protection Code
- ▶ Chapter on climate protection in Environmental Code
- ▶ Constitutional clause on climate protection

Results of legal analysis

- ▶ Short-term: general Climate Protection Act best option
- ▶ Long-term: Chapter on climate protection in Environmental Code recommendable



III. Legal feasibility and contents of a general Climate Protection Act (1)

- Legally possible
 - ▶ Constitutional base in Art. 74 Abs. 1 Nr. 24 GG
 - ▶ European law must be observed
- Contents
 - ▶ Binding emission reduction targets to be reached by 2050
 - ▶ Methods for attaining targets
 - ▶ Independent expert body (Commission on Climate Change)



III. Legal feasibility and contents of a general Climate Protection Act (2)

Binding targets for period until 2050

- ▶ In sectors not covered by EU Emissions Trading Scheme (ETS): ambitious national goals are permitted
- ▶ In sectors covered by EU Emissions Trading Scheme (ETS): EU-wide cap in force from 2013, consequently no other binding national targets permitted
- ▶ Annual interim targets?



III. Legal feasibility and contents of a general Climate Protection Act (3)

Procedures for ensuring meeting of targets

- ▶ Legal obligation for federal government to take appropriate mitigation measures
- ▶ Reporting duties of government to parliament (Bundestag)
- ▶ Sanctions when interim targets are not met: as a minimum, a duty to (over)compensate in the subsequent year



III. Legal feasibility and contents of a general Climate Protection Act (4)

Independent expert body (Commission on Climate Change)

- ▶ Advisory function, no competence to take legally binding decisions
- ▶ Advise government on mitigation objectives and measures
- ▶ Progress reports to Bundestag
- ▶ Inter-disciplinary membership



IV. Advantages of a general Climate Protection Act

- ▶ Establishment of binding, long-term reduction targets
- ▶ Definition of trajectory for attaining targets
- ▶ Formulation of general principles for German climate change law
- ▶ Enhancing political visibility of climate protection
- ▶ Increasing political cost of non-compliance



Thank you for listening!

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