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Major Developments in EU and German Climate Change Legislation

April 2021 saw two major developments in climate change legislation in the EU and in Germany. These developments confirm that the goal of fulfilling the Paris Agreement and achieving climate neutrality by 2050 at the latest will increasingly shape EU and German law-making for the foreseeable future. Further legislative action may be just around the corner.

Provisional Agreement of EU Lawmakers on EU Climate Law

At the EU level, European lawmakers reached a preliminary agreement on the European Commission's proposal for a European Climate Law on 21 April 2021 after months of intense debate.

The European Climate Law codifies the EU's commitment to reaching climate neutrality by 2050 and the target of reducing net greenhouse gas emissions by at least 55% by 2030 as compared to 1990. Further key elements of the provisional agreement include (i) a process for setting a 2040 climate target, taking into account an indicative greenhouse gas budget for the years 2030 to 2050 to be published by the European Commission, (ii) establishing a European Scientific Advisory Board on Climate Change that will provide independent scientific advice, (iii) strong coherence across EU policies with the climate neutrality objective, and (iv) committing to engage with the different economic sectors to prepare sector-specific roadmaps that chart the path to climate neutrality in different areas of the economy.

The provisional agreement still requires the European Parliament and Council’s formal approval, which is currently expected to happen in June 2021. The adoption of the European Climate Law will be the first step in implementing the European Green Deal. Further legislative action will follow. The European Commission has already announced it will table a legislative “Fit for 55 package” to achieve the new emission reduction goal for 2030. A number of concrete proposals may be presented around June 2021.

Germany’s Climate Change Act Declared Partially Unconstitutional – Swift Reform Expected

For Germany, a groundbreaking ruling by the German Federal Constitutional Court (*Bundesverfassungsgericht*) regarding the German Federal Climate Change Act (*Bundes-Klimaschutzgesetz*) was published on 29 April 2021. The Federal Climate Change Act became effective in 2019. The Act made it obligatory to reduce greenhouse gas emissions by at least 55% as compared to 1990 by 2030, and set out the reduction pathways applicable during this period by means of annual emission amounts for the energy, industry, transport, buildings, agriculture and waste sectors. The Federal Constitutional Court’s ruling declared the Federal Climate Change Act partially unconstitutional. In the Court’s view, the Federal Climate Change Act does not define in enough detail Germany’s path after 2030 to climate neutrality by 2050.

The ruling confirms that the goal of climate protection is a constitutional principle that has been defined more closely in accordance with the goals of the Paris Agreement. The ruling criticizes the fact that the emission amounts allowed before 2030 irreversibly offload major emission reduction burdens onto periods after 2030, thereby jeopardizing practically every type of freedom protected by fundamental rights for future generations. The decision calls for transparent guidelines for the further structuring of greenhouse gas reduction that would provide orientation for the required development and implementation processes and would convey a sufficient degree of developmental urgency and planning certainty.

According to the ruling, the current provisions of the Federal Climate Change Act remain in force for the time being. However, the legislature must enact provisions by 31 December 2022 that specify in greater detail how the reduction targets for greenhouse gas emissions are to be adjusted for periods after 2030. Initial key points were already proposed on 5 May 2021 by the responsible Federal Minister for the Environment, Svenja Schulze, and Olaf Scholz, the Vice Chancellor. These key points include a stricter reduction goal for net greenhouse gas emissions of at least 65% as compared to 1990 by 2030, an 88% reduction goal by 2040 and climate neutrality by 2045 instead of 2050. This would also mean stricter sectoral emission targets in the short-term, and may be followed by further legislative action.

** This GT Alert is limited to non-U.S. matters and law.*

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