

Federal Climate Protection Act declared partially unconstitutional

May 27, 2021

In a nutshell, the Federal Constitutional Court (*Bundesverfassungsgericht* – BVerfG) advises the German legislator to revise the climate protection framework in a projectable way.

In its decision on the Federal Climate Protection Act (*Bundes-Klimaschutzgesetz* - KSG) from 29 April 2021, the BVerfG has ruled that the KSG is partially unconstitutional.

In essence, not only has the BVerfG defined the scope of the climate protection goal according to the German constitution; it has also stressed the significance of the fundamental rights of future generations against the background of the binding goals stipulated in the Paris Agreement of the United Nations Framework Convention on Climate Change (UNFCCC) adopted on 12 December 2015 and entered into force on 4 November 2016.

Background

The BVerfG decided that the KSG was unconstitutional in four of the court cases and consequently, the German legislator has to amend the law until 31 December 2022. Accordingly, the legislator has already started the process to amend the law.

Against the background of the Paris Agreement, the KSG sets out the general goals of the German climate protection framework. In particular, the reduction goals as derived from the Paris Agreement for specific CO₂-emitting sectors and the acknowledgement of the goal to reduce global warming to a maximum of 2 degrees centigrade or even 1.5 degrees centigrade. However, there are no specific plans for the time after 2030.

Key aspects of the decision – basic principles to be observed by the German legislator

- No or too little action to protect the global climate may already constitute an unconstitutional interference with the individual rights of next generations.
- Even severe restrictions of the rights of individuals and organizations may be justified for the sake of climate protection. The relative relevance and importance of the constitutional goal to protect the global climate is increasing the more climate change becomes worse.
- The BVerfG affirms the legislator's prerogative in terms of the measures it implements to reach the climate protection goals. However, the legislator is bound by the obligatory goals set out in the Paris Agreement. Thus, the CO₂ reduction budget for Germany will determine which measures will have to be implemented.

- The legislator shall implement measures to protect the basic rights of the people, while ensuring the freedom of future generations. Future generations should not carry the burden of previous generations only because currently insufficient measures to stop climate change or reach CO₂ neutrality are taken. The legislator shall implement measures in a projectable way, so that everyone can make arrangements for the future on a sound legislative basis, such as creating technical developments or changing business models.

Impact of the decision

The BVerfG stresses the urgency as well as the importance of climate protection. It reminds the legislator that it is bound by the Paris Agreement and thus must stick to its CO₂ emissions reduction goals and budget. This implies that the legislator needs to align its legislative climate protection framework with these goals, while distributing the burden – restrictions of the freedom of individuals and organizations for the sake of climate protection – evenly. Future generations should not carry a heavier burden than previous generations. Therefore, the BVerfG obliges the legislator to act and revise its current framework, while still acknowledging the legislator's prerogative. On the other hand, the BVerfG clearly states that when using its prerogative, the legislator shall implement a forward-looking and projectable framework, so that everyone can adjust and plan accordingly. Most certainly, the latter was not always observed by the legislator in the recent past.

Politically, this will lead to an action plan including short-term amendments of the current climate protection framework as well as medium and long-term implementation of measures. However, despite the urgency and importance of the matter, government and legislator should observe the very clear statement of the BVerfG to implement a projectable medium and long-term framework.

Your Key Contacts



**Dr. Florian-Alexander
Wesche**

Partner, Düsseldorf
D +49 211 74074 321

florian-alexander.wesche@dentons.com



Sören Braß

Senior Associate, Düsseldorf
D +49 211 74074 322

soeren.brass@dentons.com



Dr. Gabriele Haas

Partner, Frankfurt
D +49 69 45 00 12 393

M +49 160 5065 769
gabriele.haas@dentons.com