

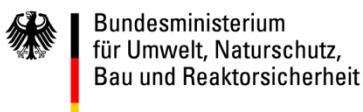
Summary of findings:
**Additional benefit and essential elements
of a climate-protection law with legally-
binding climate-protection targets**

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Im Auftrag des:



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Summary of findings: Additional benefit and essential elements of a climate-protection law with legally-binding climate-protection targets

The principle findings from the study are presented in the following pages.

It is recommended that the federal government anchor climate-protection targets in a general climate-protection law. A law of this kind would be one of the most effective options for increasing climate protection and would have clear benefits over political promises:

Formalizing climate-change targets through legislation is not only appropriate in light of the German government's commitment to make climate protection a high-priority issue. It is also politically vital if Germany hopes to have credibility at European and international levels as a pioneer in climate protection. A global energy transition toward greater climate protection can succeed only if states are successful in their national energy transitions and only if all avenues available for this purpose have been exhausted. It is clear from the Fifth Assessment Report of the IPCC that compliance with the two-degree target requires states to launch intensive efforts immediately. Germany is already calling for the establishment of EU-wide climate-protection targets that are legally binding at the EU level. A climate-protection law would enable Germany to pursue its ambitious efforts to address climate change through an approach that is organized, more target-oriented, and more permanent.

Another crucial factor is that, unlike political promises or resolutions adopted by cabinet, a climate-protection law would be subject to the legislative procedure outlined in the constitution. Parliament, legitimized through direct democracy, is compelled to act only within the context of this process. In addition, the democratic component of the "theory of essentialness" [*Wesentlichkeitstheorie*] may require parliamentary action. The legislative procedure described in the Constitution would also be initiated for a desired amendment to the law. In general, the legal format carries substantial weight, particularly when a deviation from the targets is desired.

A climate-protection law would allow for a real and effective regulation of greenhouse gas emissions across multiple sectors. Regulation is possible only to a limited extent under the current framework, which is divided into various specialized federal laws. General climate-protection targets are therefore neither clearly defined nor legally binding. Many of the specialized laws lack sector-specific reduction targets for greenhouse gas emissions. At most, these laws enable emissions regulation in isolated cases, primarily because each law has a

limited and specific scope. Effective regulation of greenhouse gas emissions requires the legislative formalization of climate-protection targets in conjunction with other action: inter-agency coordination within Germany, measures instituting official objectives, sanctions to apply if targets are not met, and an effective monitoring program.

A climate-protection law would provide a framework for the multidisciplinary field of climate-change law. It would facilitate the organization of the field and, in doing so, bridge the existing gap in federal law. A unifying approach like this could also serve as an “engine” that drives the revision and refinement of specialized regulatory provisions.

The unifying effect of a climate-protection law would enable the actual goal—the reduction of greenhouse gases—to assume a prominent position. Within the largely fragmentary existing framework, this goal plays only a background role, which, in light of the significance of climate protection, is greatly inadequate. In order for climate protection to be effective, it is essential for the German government’s climate-protection targets to be part of a comprehensive approach that is focused on reducing greenhouse gases and that is enforceable at every level. At the same time, it would institutionalize a process that aims directly to protect the climate and to reduce Germany’s greenhouse-gas emissions through laws and regulations for meeting targets and monitoring performance.

The climate-protection law provides transparency, legal certainty, and predictability regarding the level, time-frame, and parties obligated to meet climate-protection targets; it also specifies the climate-policy measures for implementing and achieving targets and for monitoring performance. This allows for long-term security to plan investments in innovative climate-protection technologies, energy efficiency, and renewable energies.

Studies have also confirmed that the clear, legally-binding climate-protection laws in place in North Rhine-Westphalia and Baden-Württemberg—as well as the climate-protection regimes in effect in selected EU member states—generally have greater potential.

The formalization of climate-protection targets in German law would be consistent with constitutional and EU laws and should be accompanied by effective measures for implementing and achieving targets and for monitoring performance:

The Basic Law’s provision on clean air (Art. 74 Abs. 1 Nr. 24 GG) grants the German government the **legislative power to establish a general climate-protection law**, because it is clear that the intention of the provision—that is, the subject that it regulates directly—is climate protection. There is therefore no need for recourse to a combination of the powers granted under Nr. 24 and the provision on economic matters, Nr. 11.

In principle, the establishment of stricter national climate-protection objectives is also permitted under **EU law**. The *Effort Sharing Decision 406/2009/EG* (subsequently referred to as ESD) establishes only minimum standards for specific sectors and strongly encourages EU member states to adopt more ambitious national targets. It is also important to bear in mind that the ESD regulations, as a whole, apply only to the obligations of the individual states and are therefore limited in accordance with each state's reduction levels; state efforts surpassing these obligations are therefore not bound by ESD standards. States are therefore generally free to develop a timeframe for intermediate goals before 2020 and to set up a sanctioning mechanism. Then the scope of Art. 19 AEUV is not broadened, and Germany's middle-term climate objective for the year 2020 is not a measure that contributes to climate protection. Even if AEUV Art. 193 were applicable, however, its conditions would likely be satisfied.

For sectors subject to *emissions trading*, it is important to consider the "EU cap": a legally-binding, EU-wide cap was established for enterprises taking part in emissions trade. With regard to the formalization of overall middle- and long-term goals for 2020, 2030, 2040, and 2050, this means that, while such goals are possible in principle, their consistency with EU law depends on their concrete design and the measures implemented to meet targets. There are three conceivable approaches to resolving the tension between sectors subject to emissions trading and those that are not: first, it is permitted for a state to have an overall goal that includes sectors with emissions trading and those without it (Approach 1). With this approach, it is crucial to bear in mind that measures introduced to meet targets do not conflict with the emissions trading. In addition, an overall target is possible under law if emissions reductions from the emissions trading scheme are balanced in absolute terms (Approach 2) as well as a target that excludes the sectors involved in emissions trading (Approach 3).

The latest findings from climate science suggest that the **overall targets set for the decades** between 2030 and 2050 should be more ambitious than those developed by the German government. According to these studies, clear, binding targets for the German government should be established as core elements of the climate-protection law. The climate-protection law should also set **intermediate goals** for reductions in greenhouse gas emissions at intervals of 4 or 5 years. Establishing legal standards is prudent, not only because it increases these standards' binding character and grants them greater legitimacy; it can also prevent a "policy of postponement." Here, as in the British *Climate Change Act*, there should be provisions for "banking" and "borrowing. Climate-protection targets should reflect new scientific findings and new international and European obligations through the addition of a corresponding clause. The six most damaging greenhouse gases should be identified within the law itself, along with the base year to be applied for each.

The total of the overall and intermediate targets are to be divided into “sector targets” and distributed across the energy sector (both inside and outside of the emissions trading system); the commerce, trade, and services sector; private households (including buildings); and transport, agricultural, land-use, land-use-change, forestry, and waste sectors. It is recommended that the climate-protection law specify that sector goals will be determined through governmental resolution. This method is advantageous because of its considerable flexibility. The Bundestag could participate through reporting requirements or through the approval of Bundestag committees. Because the responsibility for meeting climate-protection targets lies primarily with the federal government, sector goals must be assigned to one or more federal ministries in order to establish accountability for meeting these **divisional objectives**. The climate-protection law could specify that the within the authority of the federal government to ensure that the federal ministries set their own reduction targets. Concrete provisions for the sector goals should be laid out in the climate plan. The objectives of reduction targets present an organizational challenge for the creation of the **climate-protection plan** generally considered necessary and for the preparation of **climate-protection reports**. Therefore, if possible, the instruments and procedures selected for use in their creation should be those intended for acceleration, flexibility, and mutual agreement. With regard to the climate-protection plan, the use of a “statutory instrument” should be forgone in light of the complexity of the procedure. There are also legal concerns, as the statutory instrument would be directed solely at the federal government itself.

In terms of **coordination**, the typical interdepartmental coordination should be avoided where possible. Instead, it is advisable to create a central body, such as a cabinet committee, under the leadership of the most relevant federal ministry, and to structure operations in accordance with the principles of integrated government planning. In addition, the rules of procedure could provide the minister of the environment with a right of initiative. At the same time, it is possible that the Chancellor, acting on her policy-making authority, will issue legally binding conditions. Expanding the Regulatory Impact Assessment with regard to climate protection should also be considered within the context of the climate-protection law.

In compliance with the provisions of the general climate-protection law, the federal government should design and enact the climate-protection plan as an operational work plan. Doing so makes this plan an “internal law,” which is binding on cabinet members and the federal administration, but at the same time provides the required flexibility. In terms of content, it should not only be a “whitelist” of necessary measures; instead, it should be a comprehensive survey of possible measures and instruments so that it permits an assessment of the overall climate-protection potential. The duration of the climate-protection plan should be synchronized with the legislative term. This requires effort in terms of preparation, but also

ensures crucial possibilities for change after the formation of a new parliament and a new federal government.

In addition to these measures, the climate-protection plan should define specific sector targets so that successes and weak points can be identified reliably and a better organizational allocation can be initiated. All of these measures would provide for a clear, transparent planning process. Parallel instruments—in the procurement sector, for example—should be integrated into the climate-protection plan in order to ensure their coordination with the overall strategy.

Although a climate-protection plan can also function independent of a general climate-protection law, a climate-protection plan based on a climate-protection law is the better option for greater climate protection.

In the case of (imminent) failure to meet targets, quick and effective action must be taken to ensure that the overall goal is reached on time. In anticipation of such circumstances, it is useful to include, and budget for, (additional) measures within the climate-protection plan that can be initiated as soon as conditions are in place. If additional budgetary resources are necessary for this purpose, the Bundestag must approve the provision of these funds in the annual budget. This ensures that resources will be allocated efficiently. Restructuring the funds currently used for climate protection must be made a priority so that the appropriate incentives can be put in place to guarantee an efficient use of resources. There are reservations, however, about making budgetary commitments within the framework of the climate-protection law.

In addition, the climate-protection law should create a legal framework for a methodologically consistent **assessment of greenhouse gas emissions** in individual subsectors in Germany. Instructions inserted here should at least direct the the legislator or issuer of the act to introduce necessary provisions in detail. Existing assessment systems should be used, augmented, and coordinated to this end. Specific provisions that are already concrete, such as those about competencies and limitations on data usage, can be laid out in the climate-protection law as well.

In order for **performance to be monitored effectively**, an independent, interdisciplinary climate-protection commission should be created that provides an objective analysis, evaluation, and forecast for the federal government's activity. In addition, there should be concrete, **regular political reports** by the federal government, which is primarily responsible for climate protection. The potential audience could be the Bundestag, the Bundesrat, or the

committee on climate change. Special reports could be provided in cases where meeting the target appears uncertain and additional measures are required.

In order to meet the national climate-protection targets, **the federal government, Länder, and municipalities must collaborate.** The *Länder* and municipalities also have significant influence on the success of climate protection in Germany. The climate-protection law should therefore contain provisions to coordinate climate-protection efforts within the *Länder* as well as between the federal government and the *Länder*.

The federal government should not be the only entity administering an effective procedure to plan, carry out, and monitor target compliance. The climate-protection law should also provide minimum requirements to ensure that each of the *Länder* standardizes a rational procedure for planning and implementing an effective climate-protection policy. Minimum requirements of this kind coordinating climate protection in the *Länder* are permissible under the constitution. The future development of climate-protection efforts in the *Länder* could determine whether the federal government also requests or requires each of the *Länder* to set its own long-term and legally-binding minimum targets for the reduction of greenhouse gases. Under constitutional law, at least, this is allowed.

In order to improve the coordination of climate-protection efforts between the federal government and the *Länder*, the climate-protection law should provide for the cooperation of the *Länder* in the federal government's activities, particularly in its climate-protection planning. In addition, a continuous sharing of experiences should be institutionalized, for example by forming a committee for the federal government and the *Länder* or by organizing a standing conference on climate change.

The municipalities, on the other hand, can be incorporated into the climate-protection law only to a limited extent. Because of the restriction on federal interference [*Durchgriffsverbot*] in Art. 84 Abs. 1 S. 7 GG, the federal government cannot transfer any tasks to them. A direct obligation for municipalities to participate in climate-protection planning would therefore not be permissible within the framework of the climate-protection law. In addition, due to Art. 104a f. GG, direct financial support for municipal climate-protection projects is only permitted under certain conditions, such as when funding projects are made generally accessible. Climate protection in the municipalities can be controlled indirectly through the *Länder*, however. For example, the *Länder* can be authorized to require municipalities to draw up plans with specific content.

Legally-binding **provisions of a general climate-protection law, unlike specialized laws,** immediately raise concerns because of the equivalent status of federal laws. At the same time,

appropriate regulations can have a certain educational impact and produce guidelines that can, and should, serve as the orientation for legislative decisions.

In summary:

Legislative formalization of climate-protection targets is one of the most effective options for increasing climate protection. A climate-protection plan with concrete methods for implementation is necessary in addition to the general climate-protection law.

Thus, an “either/or” decision is not recommended. Rather, both instruments are necessary: a general climate-protection law with legally-binding targets and regulations, and a climate-protection plan for implementing objectives. These two instruments are closely intertwined.