

# Rechtsanwälte Günther

Partnerschaft

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## Verwaltungsgericht Berlin

Kirchstraße 7  
10557 Berlin

**per beA**

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**25.10.2018**

00271/17 /R /SP

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## Application and Complaint

of

1) -13)

as well as

14) Greenpeace e.V., represented by the Board (Roland Hipp, Sweelin  
Heuss and Martin Kaiser), Hong Kongstrasse 10, 20457 Hamburg

**- Plaintiff -**

against

the Federal Government of the Federal Republic of Germany, Federal Chancel-  
lery, Willy-Brandt-Straße 1, 10557 Berlin

Buslinie 109, Haltestelle Böttgerstraße • Fern- und S-Bahnhof Dammtor • Parkhaus Brodersweg

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Hamburger Sparkasse  
IBAN DE84 2005 0550 1022 2503 83  
BIC HASPDEHHXXX

Commerzbank AG  
IBAN DE22 2008 0000 0400 0262 00  
BIC DRESDEFF200

GLS Bank  
IBAN DE61 4306 0967 2033 2109 00  
BIC GENODEM1GLS

**- Defendant**

Regarding: Climate protection target 2020 and Action Programme for Climate Protection 2020 (40% reduction of greenhouse gas emissions compared to 1990 by the end of 2020)

The following motions will be made to the court in the name and on behalf of the plaintiffs:

- 1. Declare that the defendant is obliged to update or supplement the national climate protection programme 2020 as stipulated in the defendant's cabinet decision of 3 December 2014 (Action Programme on Climate Change 2020) with appropriate measures in such a way that it contains all the necessary measures to ensure that the binding target to reduce greenhouse gas emissions in Germany by 40% by 2020 compared with 1990 is complied with.**

also

- 2. Declare that the defendant is obliged to supplement the national climate protection programme 2020 as stipulated in the defendant's cabinet decision of 3 December 2014 (Action Programme on Climate Protection 2020) with appropriate measures in such a way that it contains all necessary measures to reduce CO<sub>2</sub> emissions to such an extent that the approx. 650 million tonnes of CO<sub>2</sub> equivalent already emitted in excess of the binding climate protection target 2020 by the time of delivery of the judgment are saved/reduced.**

also

- 3. Declare that the defendant is obliged to supplement the national action programme for climate protection 2020 as stipulated in the defendant's cabinet decision of 3 December 2014 with appropriate measures so that the reduction targets of Article 3(1) in conjunction with Annex II to Decision No 406/2009/EC are met by 2020.**

Value of the dispute for registering fees: **80.000,- €**

Further applications and motions are reserved. Powers of attorney are attached.

It is also requested,

- to consider and consult all administrative records relating to cabinet resolutions and decisions on the 2020 climate protection target since 2007 (2007: on the so-called Meseberger resolutions, 2010: on the 2010 energy concept and 2014: the Climate Protection Action Programme) as supporting material in this procedure;
- to consider and consult the administrative records for the 2015, 2016 and 2017 climate protection reports at the Ministry of the Environment, Nature Conservation and Nuclear Safety as supporting documents in this procedure.

It is also requested that the defendant indicate which concrete actions and decisions, other than those already mentioned above, concern compliance with the obligation under Decision 406/2009/EC (the so-called burden sharing decision), and that it also consider and consult those records as available.

In addition

**inspection of such procedural records**

is requested in our office in accordance with §§ 99, 100 VwGO.

Further reasoning may be delivered after inspection of the public records. In the meantime, the following arguments are presented. The detailed grounds are preceded by a summary of the claim in order to improve clarity.

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## **I. Content of the Complaint: Compliance and implementation of Germany's 2020 climate target**

1.

Humans beings influence and change the global climate system by emitting greenhouse gases and by destructing sinks (especially forests). Today, Germany is responsible for about 2% of global emissions and emits over 900 million (million) tonnes (t) of greenhouse gases annually (expressed as CO<sub>2</sub> equivalents). Calculated over the period since 1800, Germany is the sixth largest emitter in the world. At around 9.6 tonnes, Germany's annual per capita CO<sub>2</sub> emissions are still around twice the international average.

Up to today, man-made climate change has led to global average temperatures rising by around 1 °C and in Germany by as much as 1.4 °C, a considerable proportion of which has been caused by emissions from Germany since industrialisation began (see **Annex K4**).

These changes are already having a local impact and are thus also affecting the legal rights of the plaintiffs. For example, the extreme summer in Germany 2018 is attributable to climatic change since such events occur more frequently and more intensively than without the man-made climatic change. The number of extreme weather events in Germany has more than doubled in the last 50 years.

2.

The defendant knows of these circumstances and reacted to them 11 years ago, with a Cabinet resolution of 2007, setting the goal of reducing German greenhouse gas emissions by 40% by the end of 2020 compared to 1990 (today contained in the Climate Protection Program 2020). While Germany emitted around 1,250 million tonnes of CO<sub>2</sub> equivalents in 1990, a maximum of 750 million tonnes of CO<sub>2</sub> equivalents may be emitted in 2020, as this corresponds to a percentage reduction of 40%.

In June 2018, the respondent effectively abandoned this target due to a lack of intention to implement it. The Climate Protection Report 2017 (published in June 2018), which is operative in this respect, does not contain a scenario or any additional measures to achieve the target. According to the defendants themselves, 905 million tonnes of CO<sub>2</sub> equivalent were emitted in 2017, a reduction of only 27.7% instead of 40%. According to the climate protection

report 2017 (**Annex K 10**), a total annual emission of 850 million t CO<sub>2</sub> equivalent is currently forecast for the end of 2020.

Without further measures and thus without a favorable judgement, the target will be missed and only a reduction of - depending on the forecast of the effectiveness of measures already adopted - approx. 32% compared to 1990 will be achieved.

The 2020 target is based on the logical assumption that the reduction will be roughly linear and downwards (the emission path). This has no longer been the case since 2010. By 2020, approx. 650 million tonnes of CO<sub>2</sub> equivalent will be emitted too much compared with a linear reduction. If this path is maintained, a total of 1,100 million tonnes of CO<sub>2</sub> equivalent would be emitted in excess by 2030 (2030: target of a 55% reduction compared with 1990).

3.

The Federal Republic of Germany is obliged to reduce greenhouse gas emissions by 2020 also on the basis of a binding decision (Effort Sharing Decision No. 406/2009/EC). According to the defendant, the target set there for all sources not covered by greenhouse gas emissions trading (non-ETS) will also not be achieved "without additional measures" (which have not been announced). According to current projections based on the defendant's data, the target (14% compared to 2005) will be missed by far (by an estimated 93 million tonnes). In 2017, emissions in the non-ETS sectors were only 3% lower than in 2005 (instead of -12%, as given for the assumption of linear reduction). The implementation instrument for the decision is (solely) the Climate Protection 2020 Action Programme.

Since according to Decision 406/2009/EG reductions must be linear, a considerable reduction deficit has already arisen every year. According to the plaintiffs, this already violates European environmental law - even independent of further measures.

4.

In the Paris Agreement of 2015, which is binding under international law, the Federal Government also committed itself to preventing "dangerous climate change" (from a global perspective) in such a way that warming is limited to well below 2 °C and, if possible, to 1.5 °C. The defendant describes this temperature target as binding.

The IPCC's new special report of October 2018 on the 1.5 °C target makes it clear that all and any effort must be made to achieve greenhouse gas reductions quickly and effectively simply because of the expected considerable negative effects of a 2 °C global warming. The IPCC report makes it clear that global emission reductions must be much higher than previously planned and begin to fall long before 2030. Once emissions have taken place, they will remain effective in the atmosphere for up to 100 years, and sea levels in particular will continue to rise for centuries to come, even if anthropogenic emissions no longer occur.

Both the national 2020 climate protection target and Decision 406/2009/EC are based on the assumption of global warming of (above) 2°C - so they do not in themselves guarantee a high level of protection.

With the Climate Protection Plan 2050, the defendant has committed itself to achieving a greenhouse gas reduction of 55% by 2030 and "extensive decarbonisation" by 2050. These targets, too, are essentially based on a global temperature increase of 2°C and are therefore too low a level of protection for the plaintiffs, who already have to cope with the effects of climate change today (with a warming of around 1.5°C).

To abandon the 2020 target at this point in time is therefore incomprehensible and legally unjustifiable from any point of view.

5.

The plaintiffs 1) - 13) are farmers and their families, who operate organic farms in Germany on their own property and soil on the North Sea island Pellworm, in the "Old Country" by the Elbe near Stade and in the Lausitz in Brandenburg. The plaintiff to 14) is an environmental association and has as statutory goal among other things the protection of the climate system and the prevention of dangerous climatic change.

The plaintiffs demand the adherence to and the enforcement of the national climate protection target for 2020 which is to reduce the greenhouse gas emissions in Germany up to the year 2020 in relation to the base year 1990 by 40%. This would also contribute to compliance with the reduction obligations under Article 3(1) in conjunction with Annex II of Decision No 406/2009, although it would not automatically ensure compliance. Therefore, the application 3) is required.

Plaintiffs 1) - 13) are already affected by climate change. So far, this has manifested itself primarily through more frequent and stronger extreme weather events with flooding of agricultural land, hail, the spread of previously unknown pests, heat stress on dairy cattle and general drought in spring and summer with the corresponding harvest losses. In future, the farms of the plaintiffs will be affected partly also by rising sea levels, as well as by a lack of water supply. The possibilities to use their property are substantially limited by climate change. The plaintiffs are thus in a situation, in which either climate protection is set into place effectively and quickly or there is severe uncertainty with regard to the future of their homeland and farms which they might not be able to operate economically. An approach of wait and see inevitably leads to further violations of their rights.

Specifically, plaintiffs 1-6) assert that Articles 14, 12 and 2 (2) of the Basic Law (*Grundgesetz*) are affected by crop loss due to extreme events (heat with no possibility of irrigation) and heavy rainfall events. In the future and without adequate climate protection, additional considerable damage is to be expected due to difficult drainage and the associated increased costs and limits of technical flood protection. Overall, the plaintiffs fear for the long-term usability of the family business.

Plaintiffs 7)-10) are also already affected by considerable crop losses in 2018 (approx. 50% losses) and must fear that the consequences of ineffective climate protection will damage their dairy cattle operation and make their land effectively unusable due to a lack of irrigation. Already today, heat stress is occurring for their animals due to temperature increases. They also assert present and future encroachment in their basic rights to property, vocational freedom and health and wellbeing (Art 14, 12 and 2 (2) GG).

Plaintiffs 11)-13) are already considerably affected by the occurrence of pests clearly associated with climate change, which extremely increase the operational expenditure of the farm and which can generally be combated only with considerable difficulties in organic farming. Heavy rain events and hail with water logging in winter and spring as well as extreme summers are already now clearly noticeable. If warming is not controlled by active climate protection measures, the farm will be extremely devalued. Also the effects of the rising sea levels will put the region in into further risk, if greenhouse gases are not effectively reduced now.

The plaintiff (14) has been campaigning for decades for measures against climate change and is publicly, as well as in the relevant national, European and international bodies, arguing for holding temperature rise to 1.5 °C.

6.

The climate target 2020 has been adopted by the defendant as a cabinet decision several times since 2007 (currently enshrined in the Action Programme on Climate Protection 2020), and is based on obligations under EU and international law. As such, it is a legally binding self-commitment and has an external impact.

The 2020 climate target is not a purely political declaration of intent that would be inaccessible to judicial review. Rather, it is a justiciable act taken set over time by reoccurring practice by the defendant, to which a concerned party can also refer legally. It is a binding self-imposed commitment. This is because the purpose of the target is (*inter alia*) to fulfill the duty to act and protect the environment an individual rights pursuant to Article 20a of the Basic Law in conjunction with Article 2(2) of the Basic Law.

This means that the defendant is obliged to continue to pursue and implement the 2020 climate target. The commitment has evolved into an administrative guideline: The defendant (Federal Government) must submit and adopt all conceivable measures in order to fulfill its obligation to act and meet the target. Due to the constitutional context, this duty to act can only be lifted by the democratic legislator - for example by passing an adequate climate protection law. Until then, non-compliance with the target will constitute an enforcement deficit.

This argument is underpinned by the fact that neither the target itself nor its importance as an intermediate target on the path to further reductions has been abandoned by the federal government. The defendant has merely (and this also applies with regard to the implementation of Decision 406/2009/EC) ceased its actions. In addition, there is no comprehensible substantive justification for this.

The plaintiffs regard the omission to continue implementing the 2020 climate target as an impermissible encroachment on their fundamental rights under Article 14 (1) of the Basic Law (guarantee of ownership), Article 12 (1) of the Basic Law (freedom to exercise an occupation) and Article 2 (2) of the Basic

Law (protection of life and health), which takes place without a legal basis in law and without sufficient reason or justification.

The defendant has set a binding emission level for the year 2020 through the 2020 climate target in order to fulfill its obligations under Article 2 (2), 20a of the Basic Law. It has pursued this level of protection for 11 years, repeatedly taking measures to achieve it and using it as a basis for legislative projects and justification for encroachments on fundamental rights, for example within the framework of the amendments to the Energy Industry Act (EnWG) in 2016.

The fact that inadequate climate protection can have negative effects on fundamental human rights and that the approval of additional greenhouse gas emissions can therefore constitute an encroachment was recently expressly established by the Court of Appeal of The Hague (for Art. 2 and Art. 8 of the ECHR) in the context of the so-called Urgenda Decision.

Compliance with the 2020 target is possible without negative effects, for example on security of supply, as shown by several scientific papers and, not least, the defendant's own updated action plans. It is factually and legally possible to initiate and implement measures in good time.

7.

Due to the abandonment of the 2020 climate protection target, significantly more greenhouse gas emissions will be permitted by 2020 than previously planned as binding for Germany, according to current projections a total of approx. 650 million t CO<sub>2</sub> equivalent in absolute terms. These emissions will have a negative impact on the rights of the plaintiffs now and in the future, even though climate change is a global phenomenon with many actors and causes. The plaintiffs are affected by the abandonment of the target itself, as well as by the additional emissions caused by the non-linear reduction since 2010.

The first motion seeks the implementation of measures that permanently achieve greenhouse gas reductions in order to reach the threshold of 750 million tonnes of CO<sub>2</sub> equivalent by the end of 2020. Within this framework, measures would also be supplemented to ensure compliance with the reduction obligation under Decision No. 406/2009/EC (non-ETS-regulated sources). This will also facilitate the achievement of the target for 2030 (55%).

The application is based on the order of the decision of the VG Berlin of 09.10.2018 (file no. 10 K 207.16) on the Berlin Air Pollution Control Plan.

The second motion seeks additional measures to offset or reduce the approx. 650 million tonnes of CO<sub>2</sub> equivalent already emitted between 2010 and today due to inadequate implementation and the non-linear reduction path.

This motion is based on the fact that only a final amount of global emissions is scientifically permissible in order to achieve the 1.5°C to well below 2°C target of the Paris Convention on Climate Change. The current IPCC Special Report quantifies this global budget at 580,000 million tonnes of CO<sub>2</sub> equivalent for a global emission path that can still meet the 1.5°C target. Measured against this, it is not only the achievement of the reduction target at a certain point in time that is decisive, but also the path taken towards it, i.e. the absolute emissions that are emitted over time.

The defendant itself also assumes in its climate protection plan for 2050 that a (final) greenhouse gas budget will be available for Germany until 2050. This budget can be calculated on the basis of the given emission path with the interim targets for 2020 and 2030 and amounts to approx. 20,000 million t CO<sub>2</sub>eq between 2010 and 2050. Of this, almost 5% would be over-emitted if the 2020 target were not met. Irrespective of whether the plaintiffs consider this budget to be reasonable in the context of a necessary target path of 1.5°C, the defendant must adhere to its own ideas of permitted emissions.

If this complaint is not successful, a violation of the law also persists if the further climate targets for 2030 (55% according to the climate protection plan 2050) and the goal of a far-reaching decarbonisation by 2050 are met. Not only would the failure to meet the target mean that a much faster reduction rate to be achieved between 2020 and 2030 (by 3.4% per year instead of the previously assumed approx. 2%), which could have a negative economic impact on younger plaintiffs in particular and also limit the probability of success, but by 2030 some 1,100 million tonnes of CO<sub>2</sub> equivalent would have been emitted in excess by 2030 than would be permissible on the basis of the Action Programme on Climate Protection 2020. This is more than the current yearly total of German emissions (2017: 905 million t CO<sub>2</sub> equivalent) and corresponds to a considerable proportion of the globally permissible emissions of 580 Gt CO<sub>2</sub> equivalent by 2050 according to the IPCC and the budget available for Germany according to the defendant of approx. 20,000 million t CO<sub>2</sub> equivalent according to the assumptions of the defendants.

It is not clear how the defendant can make up for or save this share of global warming or that it intends to do so. Rather, the defendant believes that the abandonment of the 2020 target will have no consequences if it achieves the further milestones.

The following chart illustrates this relationship between the emission paths by 2050 and the emission paths achieved to date and the projections of the defendant's climate protection plan for 2017:

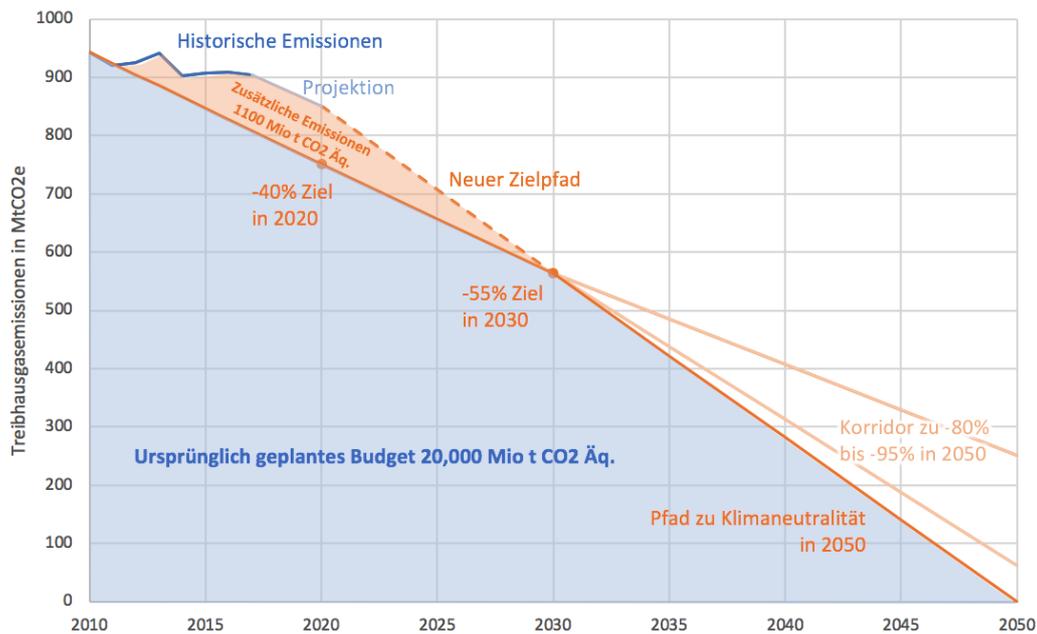


Fig.1 - Source: NewClimateInstitute, Prof. Dr. Niklas Höhne, Oktober 2018

The dark blue line at the top left of the chart indicates the emission development in Germany since 2010 (*Historische Emissionen*). The orange solid line is the emission path (*Zielpfad*) actually planned with the intermediate targets, the dashed line the "new target path" (*neuer Zielpfad*) based on the actual development. The light blue area represents the Federal German budget (*ursprünglich geplantes Budget*) on the basis of the defendants' specifications, and the orange area shows the "overemission" until 2030 (*zusätzliche Emissionen*).

The deviation from the target and the effect on the annual reduction rate required to get back on track becomes even clearer if the chart only shows the path from 2010 to 2030:

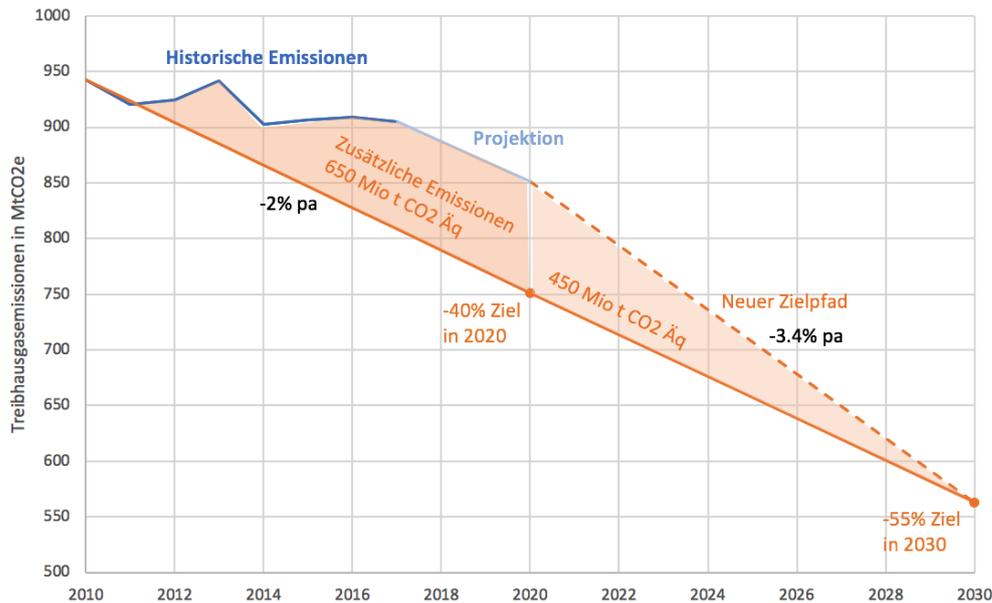


Fig. 2 – Source: NewClimateInstitute, Prof. Dr. Niklas Höhne, October 2018

The new target path by 2030 means a necessary reduction of 3.4% per year and leads to orange-coloured excess emissions. By the end of 2020 this will already amount to 650 million tonnes of CO<sub>2</sub> equivalent - this is the subject of the second motion).

If the complaint is not successful, the atmosphere will be burdened with an additional 1,100 million tonnes of CO<sub>2</sub> equivalent in the long term by 2030 simply because the 2020 target was missed, assuming a roughly linear pathway to 2030.

8.

The plaintiff 14) seeks compliance with objective European and national environmental law and, as environmental association, does not have to show specific rights or interests in accordance with Article 9.3 of the Aarhus Convention. The third motion expressly refers to compliance with European environmental law. Due to the (probably undisputed) connection between Decision 406/2009/EC and the Action Programme for Climate Protection 2020, the plaintiff 14) is also entitled to bring an action for applications 1) and 2).

A violation of Greenpeace's interest would however also exist. The German emission path clearly complicates the achievement of the objective of limiting global warming to 1.5 °C compared with pre-industrial values and thus calls into question or at least considerably complicates the achievement of the statu-

tory objectives of the plaintiff 14). The plaintiff 14) also draws on the legal protection guarantee of Art. 47 of the European Charter on Fundamental Rights and the so-called “Protect” decision of the European Court of Justice.