



COM (2020) 80 final

European Climate Law

The AK's position

This proposal is one of the legislative projects announced in the “European Green Deal”: According to the communication, the Commission is proposing the first European “Climate Law” to “set out clearly the conditions for an effective and fair transition, to provide predictability for investors, and to ensure that the transition is irreversible. This will enshrine the 2050 climate neutrality objective in legislation.”

The key elements of the draft are

- the binding establishment of the 2050 climate neutrality objective; so far there has been a political commitment by the European Council to reduce greenhouse gas emissions by 80 to 95% by 2050 compared to 1990 levels.
- the prospect of the greenhouse gas target for 2030 being tightened up; the current target for 2030 is an EU-wide 40% reduction in greenhouse gas emissions compared to 1990 levels, and the Commission is due to examine by September 2020 whether it can be increased to 50-55% in a cost-effective manner.
- conferring on the Commission, by means of delegated acts, the power to establish intermediate targets and target paths up to 2050.

The objective of the Paris Agreement means that the use of fossil energy sources (coal, oil, natural gas) must be continually reduced. This exit from fossil fuels will bring a profound change in the economy. Increasing energy efficiency and replacing fossil fuels with renewable energy sources will play an important role, but energy consumption itself must also be reduced. Decarbonisation is expected to bring about similarly far-reaching changes on several levels as they were brought about by mechanisation in the 19th century or computerisation since the 1970s.

From the AK's point of view, shaping this process must focus on fairness and the interests of workers. Strategies for this so-called “Just Transition” must

take the climate policy requirements seriously and at the same time place workers – not least in negatively affected sectors – at their centre. Disadvantageous effects must be mitigated, whilst the positive potential inherent in this transformation must be made use of in the interests of workers.

The AK supports the EU's goal of achieving climate neutrality by 2050. It will require all instruments to achieve this: investments, enforcement orders and prohibitions, ecotaxes and other fiscal instruments, as well as soft measures such as awareness campaigns. These different instruments must complement each other. It should be ensured that action is taken at those levels (EU, Member States, local level) where it is most effective. An example of this is the shift of freight transport from road to rail, where each of the above levels is important. Another aspect is the taxation of energy products, where ambitious minimum standards must be introduced at European level to avoid a tax race to the bottom between Member States. In this context, the AK refers to the comments made in its position on the “European Green Deal”.¹

Justice plays a prominent role in public acceptance of all these measures. Climate and energy policy must not lead to the formation of a two-tier energy society. The consideration of social and distributional impacts of the measures is an essential prerequisite for achieving climate and energy policy goals. Only in this way the necessary broad social acceptance can be achieved. Distributional impacts refer to distribution between consumers and businesses, but also between households and - at the European level - between Member States.

Since energy is needed to meet many basic human needs, energy supply must be regarded as a service of general interest. For this reason, the security of energy supply plays an essential role. This requires a cross-sectoral view of the energy system (electricity, heat and mobility transition) and thus the use of synergy potentials (sector coupling).

In this sense, the possibly more far-reaching objective of reducing emissions by 2030 is supported. However, AK considers it a matter of urgency that, when planning measures at all the above-mentioned levels - at European, national and local levels - the concerns of workers and the effects on employment and social cohesion are studied and understood fully and that measures are optimised from these perspectives.

For this reason, AK is of the opinion that not only on Member States level social dialogue does have a particularly important role to play in shaping climate and energy policy measures - Art 11 of the Governance Regulation takes this role into account to a certain extent - but also at the level of the Union. AK therefore considers it important to involve the social partners more intensively and in a structured manner, including in the consultation process at EU level.

Key importance of investments

The EU's ambitious climate and energy policy needs adequate funding. According to estimates by the EU Commission, achieving the current climate and energy targets alone will require an additional investment of up to EUR 260 billion annually by 2030. If these targets are ramped up as planned, the need for investments will be even higher. This funding gap cannot be closed without a massive expansion of public investment.

These investments can only be secured by an active state. This applies to an even greater extent in the current crisis. In addition to regulatory intervention, the main aim is a massive increase in public investment by the Member States, including in the development of public transport, renewable energies, networks, energy renovation of buildings, social infrastructure and research and development. AK is of the opinion that now is the time to correct a key fault of the Economic and Monetary Union: the restrictive fiscal rules which have become a "brake on climate protection". A "golden investment rule" that allows Member States to make climate-related, environmental and social net investments without violating EU fiscal rules is ultimately necessary. The Commission must become the forerunner of a corresponding change in EU fiscal rules in order to overcome resistance in the Council.

The timetable referred to in Article 2

Art 2 provides for a new target for 2030 to be considered by September 2020. AK considers this deadline to be too unambitious and supports the demand² of twelve EU states - including Austria - to publish the proposal of a ramped up target for 2030 by June 2020 at the latest. This would be very important in view of the next world climate conference and would strengthen the EU's intended global leadership role in climate policy.

Authorisation of the Commission in accordance with Article 3

The AK considers the determination of the roadmap for Union-wide emissions to be a decision of particular importance. AK therefore considers that the roadmap should be defined under the ordinary legislative procedure to ensure that the Council and the Parliament are adequately involved. Consideration should be given to whether it is appropriate to set a cap on the trajectory already in the Climate Law, for example by specifying that greenhouse gas emissions in the Union must not exceed a linear path between the climate policy targets for 2030 and 2050.

Coherence with EU policies in other areas

The goal of climate neutrality can only be achieved if it is embedded in a coherent policy framework, if the transition is fair and socially just, and if sufficient financing is ensured for the necessary measures. These requirements are only addressed briefly in the draft Regulation. It merely points out that the Commission is mandated to "to review existing policies and Union legislation in view of their consistency with the climate-neutrality objective as well as with the trajectory identified" (p. 3).

With regard to the question of financing and Just Transition, we refer to [AK's position on the "European Green Deal"](#), in which the Commission's proposals are subjected to a critical review and improvements are called for.

With regard to the compatibility of individual policy areas with climate policy requirements, AK assumes that the following areas, among others, will also be analysed accordingly and offers its expertise in this respect:

1. EU Investment Agreements

AK notes a **lack of coherence** between **EU investment policy** and the objective of the proposed Regulation and proposes the following improvements to better align EU investment policy with the objective of climate neutrality by 2050:

In order to achieve climate neutrality by 2050, a **rapid phase-out of fossil fuels** is necessary. In Austria, for example, the phase-out of coal-based power generation is practically complete. Other Member States have also decided to phase-out coal-based power generation.³ The profit interests of the energy companies stand in the way of this project. In many cases, state **compensation payments** are provided for. On 29.1.2020, the German government presented a draft⁴ for a coal exit law, which provides for compensation payments or closure premiums.

In the interests of a socially just energy system transformation (just transition), excessive compensation claims must be prevented. **AK therefore demands the end of the special rights of action for investors (ISDS)**. The plurilateral Energy Charter Treaty (ECT) grants foreign investors in the energy sector the right to sue states in private arbitration courts for compensation for climate protection measures. Most recently, the German energy company Uniper (with the Finnish majority shareholder Fortum) threatened an ISDS lawsuit against the Netherlands over the legal decision to phase out coal⁵.

In the opinion of the AK, **provisions of the ECT are not compatible with the 2050 goal of climate neutrality**. On 15.07.2019, the Council gave the Commission a mandate⁶ to open negotiations on the modernisation of the ECT. Provisions on climate protection and the transition to clean energy are to be added. According to AK, these additions would not change much because the ECT protects investments in fossil and renewable energy sources equally. AK is therefore calling for the **removal of protection standards and special rights of action for investors (ISDS) contained in the ECT without replacement**. If a modernisation of the ECT to this effect is not quickly foreseeable, the EU and MS should terminate the ECT.⁷

The Commission considers that **ISDS claims by EU investors against EU Member States** based on the ECT are **incompatible with Union law** (COM(2018) 547 final). The ECJ has already ruled in the "Achmea" case that ISDS actions based on intra-EU BITs are not compatible with Union law. The arbitration courts take a different view and declare that they retain jurisdiction for claims of EU investors against EU Member States on the basis of the ECT.

2. EU Trade Policy

It is an undisputed fact that international trade with its globally ramified value chains and long transport routes, contributes to a further increase in greenhouse gas emissions.⁸ More and more emissions are linked to international trade. Studies show that about one third of the European GHG footprint is generated outside the EU. These indirect emissions can be attributed primarily to imports of raw materials, agricultural products, and industrial products. At the same time, about 17% of the emissions produced in the EU are exported, mainly from industrial production.⁹

Although European industry will continue to depend on imports of raw materials, at least in the medium term, this sector in particular is still subject to serious violations of workers' rights and serious damage to the environment. Moreover, the mining of raw materials is linked to a systematic overuse of natural resources.¹⁰ Similar problems are evident in the international transport of goods, without which the internationally ramified value chains could not be maintained. Emissions from international freight transport are projected to almost quadruple by 2050 if no changes are made¹¹. At the same time, social standards are frequently undermined, especially in this industry.¹²

European trade policy contributes significantly to the conditions of global trade through its priorities, both at multilateral level and in bilateral trade agreements. European trade policy must therefore be reoriented. This is the only way to ensure that trade rules do not conflict with climate protection or even undermine the ambitious intentions of the Green Deal. As already explained in more detail in the [AK position on the "European Green Deal"](#), AK reiterates once again that a trade policy that takes workers and the climate crisis seriously must meet the following criteria:

- The chapters on sustainability must be supplemented with an **enforcement mechanism** that ultimately makes it possible to impose sanctions in the event of violations of the established, internationally recognised labour and environmental standards. In addition to **international social standards**¹³, it must be ensured that multilateral environmental agreements are also ratified, implemented and applied. At present, the chapters on sustainability are toothless since they are explicitly excluded from the general dispute settlement procedure of trade agreements. Trading partners have nothing to fear if they fail to meet their commitments to ratify, implement and apply labour and

environmental standards. This currently also applies to references to the Paris Agreement. The Global South that has historically contributed little to the climate crisis should receive concrete support measures with regard to labour and environmental standards - for example through technology transfer and capacity building.

- The ratification and implementation of the commitments of the **Paris Agreement** as well as non-withdrawal non-rescission must be anchored as an “**essential element**” clause in all trade agreements. It should be borne in mind that all existing EU trade agreements do not yet fulfil this requirement.
- Supplementing the EU Emissions Trading Scheme (EU ETS) with an EU-wide floor price and a **Border Carbon Adjustment** (BCA) to prevent undesired effects of international trade on climate protection efforts, especially carbon leakage.
- A **completed impact assessment**, which examines not only the economic and social effects but also the environmental and climate damage of a trade agreement and draws appropriate consequences for the trade agreement must be a precondition for the commencement of trade negotiations. For example, commitments with respect to regulatory cooperation, which make climate protection ambitions more difficult or contradict them, must be removed from the agreements.
- WTO rules must be reviewed to make them compatible with the priority of combating the climate crisis and effectively combating environmental and social dumping.

Footnotes

- 01** AK EUROPA Position Paper on the “European Green Deal”, <https://www.akeuropa.eu/communication-european-green-deal-0>
- 02** Call for Plan to increase 2030 Target, Letter to Executive Vice-President Frans Timmermans, <https://www.euractiv.com/wp-content/uploads/sites/2/2020/03/Joint-letter-call-for-plan-to-increase-2030-target.pdf>, 3.3.2020.
- 03** <https://beyond-coal.eu/data/>
- 04** https://www.bmwi.de/Redaktion/DE/Downloads/G/gesetzentwurf-kohleausstiegsgesetz.pdf?__blob=publicationFile&v=8.
- 05** <https://www.telegraaf.nl/financieel/1134267479/claim-om-kolenverbod-voor-staat>, 5.9.2019.
- 06** <https://data.consilium.europa.eu/doc/document/ST-10745-2019-ADD-1/en/pdf>, 2.7.2019.
- 07** See letter from 278 civil society organisations and trade unions of 9.12.2019, with support of AK <https://www.energy-charter-dirty-secrets.org/open-letter/>.
- 08** Dominique Bureau, Lionel Fontagné, Katheline Schubert (2017). Trade and Climate: Towards Reconciliation. Notes du conseil d'analyse économique, Conseil d'analyse économique, 37.
- 09** Richard Wood, Karsten Neuhoff, Dan Moran, Moana Simas, Michael Grubb & Konstantin Stadler (2019): The structure, drivers and policy implications of the European carbon footprint, Climate Policy, <https://doi.org/10.1080/14693062.2019.1639489>.
- 10** <https://www.ejatlas.org/>.
- 11** International Transport Forum (2015): The Carbon Footprint of Global Trade. Tackling Emissions from International Freight Transport. <https://www.itf-oecd.org/sites/default/files/docs/cop-pdf-06.pdf>.
- 12** <https://awblog.at/ausbeutung-und-umweltverschmutzung-auf-hoher-see/>
- 13** see AK position paper on the non-paper on the sustainability chapters: <https://www.akeuropa.eu/non-paper-commission-services-trade-and-sustainable-development-tsd-chapters-eu-free-trade>.



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About us

The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 million employees and consumers in Austria. It acts for the interests of its members in fields of social, educational, economical, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.