

The Policy Planning Law of the EU an its Implementation Accross Levels and Sectors

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2. The EU governance system as „policy planning law“
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4. Conclusion and perspectives

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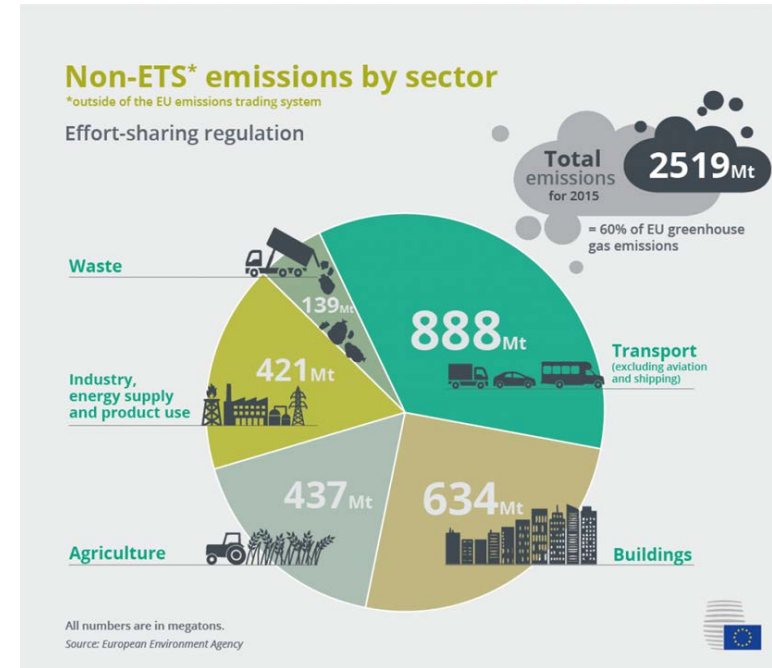
1. The governance system of EU climate policy in a nutshell

Transformation target:

climate neutrality by 2050

Main approaches:

- ETS (I and II)
- Specific targets, regulation and support schemes (e.g. RED, EED, IED ...)
- **Policy planning & review framework of the EU Governance Regulation & European Climate Law**



The governance system of EU climate policy in a nutshell

EU Governance Regulation (2018/1999) - GR
European Climate Law (Reg. 2021/1119) - CL

➤ **Scope: the five dimensions of the EU energy union**

- 1) Decarbonization incl. ren. energy
- 2) Energy efficiency
- 3) Energy security
- 4) Internal energy market
- 5) Research, innovation and competitiveness

➤ **Targets & target setting obligations**

➤ **Planning, coordination and review framework**

The governance system of EU climate policy in a nutshell

Targets

Year	EU Target	National Contribution
GHG emissions (Art. 2, 4 CL, Art. 4 (a) GR)		
2050	➤ Climate neutrality	➤ (-) contribute to EU target
2040	➤ to be proposed by COM (in 2024)	
2030	➤ 55% GHG-reduction -1990 , max. of 225 mio. t. net removals (Art. 2 No. 11 GR with 26th recital of CL)	➤ Non-ETS: according to ESR 2023 ➤ LULUCF: no net emissions (Art. 4 Reg. 2018/842)
Renwables (RED III)		
2030	➤ 42,5% of gross final energy consumption	➤ tbd by MS , incl. indicative trajecetories with prescribed reference points Art. 4 a) (2) GV
Energy efficiency (EED-III)		
2030	➤ 11,7% less energy consumption compared to 2020 EU reference scenarios (Art. 4 (2) EED-III)	➤ tbd by MS incl. indicative trajectories ➤ annual min. saving rates: 1,49% 2024-30; 1,9% public buildings; 3% energy renovation.



The governance system of EU climate policy in a nutshell

The „Integrated National Energy and Climate Plans“ (NECPs)

Content (Art. 3 and Annex 1 GR)

Part A

- **National Targets** & trajectories as required by Art. 4 GR
- **Policies and Measures (PaMs)** in relation to the targets

Part B

- **Assessment**
 - **status and projections** in the 5 dimensions
 - **impacts of PaMs**, economic, social, ecologic
- **Description of methods**

The governance system of EU climate policy in a nutshell

The „Integrated National Energy and Climate Plans“ (NECPs)

Procedure

Preparation phase – ambition gap filling



Mid-term update of NECPs after 5 years, 2023, 2033

Implementation phase – delivery gap filling



The governance system of EU climate policy in a nutshell

Long Term Strategies (Art. 15 GR)

Purpose: Develop long-term decarbonization scenarios and trajectories; implement international obligation from Art. 4 (19) PA

Main content (Art. 15 and Annex IV GR)

- National GHG reduction target for 2030, *if available*, and indicative milestones for 2040 and 2050; *estimated* RE share and energy consumption by 2050
- Sector projections, PaMs and decarb. Options, socio-economic impact assessment, estimated investment needs
- Methods of modelling and projections

Procedure: submit/update every 10 years as of 2020; no participation; no review mechanism; COM to provide support and gap information

- **EU to prepare European LTS, as well (Art. 15.2 GR)**

2. The EU governance system as „Policy Planning Law“

GR & CL provide a binding legal framework for policy development:

- **Targets:** regulated European targets and/or requirements and criteria to determine EU and national targets.
- **Planning requirements,** to determine PaMs towards the decarb- and transformation targets
- **Participation and coordination requirements,** including stakeholders, experts, public, regions
- **Assessment, monitoring and reporting requirements** with regard to status development, projections, methods, knowledge base etc.
- **Review and gap filling mechanisms:** with regard to ambition and delivery gaps. COM-review, cyclic updating of plans

Obligations addressed to governments and lawmakers!

2. Das EU-governance system als policy planning law

The crucial purposes of policy planning law:

- **Long-term orientation** towards common, agreed sustainability targets
- **Burden sharing** between states, sectors, generations
- **Federal distribution of tasks** according to subsidiarity principle,
- **Coordination** of complex policy mixes in multistate-multisector system
- **Transparency** about status, ambitions, knowledge base, etc.
- **Protection of human right to healthy environment** (?)

A legal framework with common targets, planning, coordination and transparency rules is *conditio sine qua non* for sustainability transformation!

3. Key questions of implementation and development

(1) Inclusion of all federal levels of action

- **Climate & energy transformation is a multilevel challenge** and requires substantial contributions on all levels including regions and communities
- **EU-GovSys is focussed on member state level:** CL includes more the Union level, however with a comparably weak planning framework.
- **Inclusion of the subnational levels is left to MS,** however, it is an indispensable requirement for implementation of the targets.
- **In Germany national Climate Law only for national policy,** no planning obligation for Länder and municipalities, no coordinated targets, gap filling mechanisms.

Germany will still have to develop a full-size federal policy planning law

3. Key questions of implementation and development

(2) Effectiveness and procedural enforcement

- **GR/CL mainly rely on transparency (incl. name & shame, benchmarking) and review (gap filling) mechanisms**
- **PPL approach stands between hard and soft law** and „fortifies“ previously soft approaches of open coordination
- **PPL must account for the limited plannability** of political decisions in complex multilevel-multi-actor constellations processes
- **It is not about a „planned economy 2.0“**, at all, but about a regulated, adaptive process towards common long-term targets

PPL must mainly rely on, „adaptive“, co-operative and pro-active enforcement!

3. Key questions of implementation and development

(3) Options and limits of justiciability

- The „hard“ procedural obligations (planning, assessment, reporting, review etc.) are fully justiciable and can be subject to infringement procedures and NGO suits!
- Clearly insufficient, incomplete or incoherent plans can also be challenged as in breach with the GR and its coordination requirement.
- Whether a state „paid due account“ to COM recommendations should be justiciable to the extent that the State must provide a plausible alternative path towards binding targets.
- Courts cannot force parliamentary majorities & votes, but:

Judgements can provide an important means to both urge and support political deciders!

3. Concluding theses

- (1) The EU GR & CL set out a **binding framework for continuous policy planning and review** in order to steer EU and MS towards climate neutrality. This approach of obligatory, regulated policy planning can be conceptualized as „**policy planning law**“ (PPL)
- (2) PPL should be appraised as an **indispensable institutional prerequisite for sustainability transformation**; binding rules are needed to ensure long-term orientation, coordination, profound knowledge, participation and transparency in complex multilevel-multisector constellations.
- (3) PPL must **account for the limits of predictability / controllability** of complex societal developments and political processes and, therefore, be designed as a **procedural and adaptive, „learning“ framework**.

3. Concluding theses

(4) The PPL approach raises numerous questions that call for further debate and legal research regarding, for example,

- design of targets, policy plans, coordination, monitoring, reporting, review,
- relation to direct measures like ETS I & II,
- extension to subnational levels,
- design and combination of hard and soft law elements,
- means of enforcement on EU and national levels,
- meaning for protection of human rights,
- aspects of participation and justiciability, ...

Thank you for your attention – and remarks and questions!