

REASONED OPINION

of the European Affairs Committee of the Federal Council

pursuant to Article 23g (1) of the Federal Constitutional Act in conjunction with Article 6 of Protocol No.2 on the application of the principles of subsidiarity and proportionality

6 May 2020

COM (2020) 80 final

Proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (014922/EU XXVII.GP)

A. Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Reasoning

As announced in the Communication of the European Commission (EC) on the European Green Deal dated 11/12/2019, the European Commission on 04/03/2020 tabled a proposal for a Regulation establishing the framework for a European Climate Law (COM (2020) 80) in order to create the legal basis for the 2050 climate neutrality target.

With this draft regulation, the European Commission intends to further develop the existing European legal framework for a step-by-step reduction of greenhouse gases and to oblige the Member States through a further European act to comply with the Paris Agreement on Climate Change of December 2015.

To this end, a trajectory is to be outlined for the period from 2030 to 2050. In the course of this trajectory, the European Commission is to be empowered, inter alia, to adopt delegated acts to supplement this Regulation by setting out a trajectory at Union level to achieve over time the 2050 climate neutrality target. The Federal Council takes a firm stance against delegated acts, convinced that the trajectory must be set out as an essential element of the European Climate Law by way of the ordinary legislative procedure and therefore has to be included in the basic act. In general, the Federal Council warns against the excessive use of delegated acts.

The European Commission's intention to adopt the trajectory, which is of material importance for the content of the European Climate Law, not as part of the basic act, but merely through delegated acts pursuant to Art.290 TFEU is in violation of the Treaty on the Functioning of the European Union.

Delegated acts may not introduce new elements, but only add or amend non-essential rules. Moreover, the Member States, given their insufficient co-decision rights, would thus be deprived of the possibility of co-determining the trajectory as an essential element for the achievement of the goals of the European Climate Act and would therefore not be in a position to invoke the principle of subsidiarity. Consequently, the project pursued by the European Commission also violates the principle of subsidiarity.

In this context, the Federal Council also refers to the Uniform Opinion of the Länder of 27 April 2020 pursuant to Art.23d para.2 of the Federal Constitutional Act (Liaison Unit of the Länder within the Office of the Government Lower Austria) and the legal opinion of the European Parliament.

Furthermore, the Federal Council is firmly opposed to any consideration of nuclear power plant programmes for the attainment of the climate targets. The path to be chosen for the attainment of the climate targets must be based on the use of renewable sources of energy which, at the same time, creates and secures jobs.