

Bill of ... introducing a Federal Climate Change Act and Amending Other Provisions

The Bundestag has adopted the following Act:

Article 1

Federal Climate Change Act (*Bundes-Klimaschutzgesetz*)

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Part 1

General provisions

Section 1 – Purpose of the Act

The purpose of this Act is to ensure achievement of the national climate targets and compliance with the European targets so as to provide protection from the effects of worldwide climate change. Its basis is the obligation under the Paris Agreement, based on the United Nations Framework Convention on Climate Change, to limit the rise in the global average temperature to considerably less than two degrees Celsius, and if possible to 1.5 degrees Celsius, above the pre-industrial level so as to minimise the effects of worldwide climate change, as well as the commitment made by the Federal Republic of Germany at the United Nations Climate Action Summit in New York on 23 September 2019 to pursue the long-term goal of zero net greenhouse-gas emissions by 2050.

Section 2 – Definitions

For the purposes of this Act:

1. “greenhouse gases” shall mean carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O) and sulphur hexafluoride (SF₆) as well as the hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) listed in Annex V, Part 2, of the European Governance Regulation, as amended;
2. “greenhouse-gas emissions” shall mean the anthropogenic release of greenhouse gases in tonnes of carbon dioxide equivalent, one tonne of carbon dioxide equivalent being one tonne of carbon dioxide or the volume of another greenhouse gas corresponding in its atmospheric warming potential to one tonne of carbon dioxide; that potential is determined by Commission Delegated Regulation (EU) No 666/2014 of 12 March 2014 establishing substantive requirements for a Union inventory system and taking into account changes in the global warming potentials and internationally agreed inventory guidelines pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 179 of 19 June 2014, p. 26) or by a supplementary act adopted under Article 26(6)(b) of the European Governance Regulation;
3. “European Governance Regulation” shall mean Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328 of 21 December 2018, p. 1), as amended by Decision (EU) 2019/504 (OJ L 85I of 27 March 2019, p. 66);
4. “European Regulation on binding annual greenhouse gas emission reductions” shall mean Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156 of 19 June 2018, p. 26);
5. “European Reported Information Regulation” shall mean Commission Implementing Regulation (EU) No 749/2014 of 30 June 2014 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 203 of 11 July 2014, p. 23);

6. "Paris Agreement" shall mean the Agreement of 12 December 2015 signed by the States Parties to the United Nations Framework Convention on Climate Change and ratified by the Act of 28 September 2016 (Federal Law Gazette, 2016 II, pp. 1082-1083);

7. "Climate Action Plan" shall mean the German long-term strategy adopted pursuant to the Paris Agreement and to Article 15 of the European Governance Regulation;

8. "land use, land-use change and forestry" shall mean the sector of land use, land-use change and forestry defined in Annex 1, point 7; section 3(1) and sections 4, 7 and 8 of this Act shall not be applied to that sector;

9. "net greenhouse-gas neutrality" shall mean an equilibrium between the anthropogenic emissions of greenhouse gases from sources and the reduction in the volume of such gases by means of sinks.

Part 2

Climate targets and annual emission volumes

Section 3 – Climate targets

(1) Emissions of greenhouse gases shall be gradually reduced in relation to their levels in the year 1990. The reduction to be achieved by the target year 2030 shall be at least 55 per cent.

(2) This shall apply without prejudice to the possibility of achieving national climate targets by using intergovernmental mechanisms to achieve part of the reduction in greenhouse-gas emissions;

(3) Should higher national reduction targets become necessary for compliance with European or international climate targets, the Federal Government shall initiate the steps required to increase the target values defined in paragraph 1 above. Reduction targets may be raised but not lowered.

Section 4 – Permissible annual emission volumes, authority to enact statutory instruments

(1) To achieve the national climate targets referred to in section 3(1) of this Act, annual reduction targets shall be set, to which end annual emission volumes shall be stipulated for the following sectors:

1. energy,
2. industry,
3. transport,
4. buildings,
5. agriculture,
6. waste and others.

The emission sources of the individual sectors and their restriction are indicated in Annex 1. The annual emission volumes for the period up to the year 2030 shall be based on Annex 2. In the energy sector, greenhouse-gas emissions shall be reduced as steadily as possible between the stated annual emission volumes. For periods from 2031 onwards, the annual reduction targets shall be updated by means of a statutory instrument enacted pursuant to paragraph (6) below. The annual emission volumes to which this Act refers shall be binding. Subjective rights and actionable legal positions are not established by or on the basis of this Act.

(2) The Federal Government shall be authorised by a statutory instrument, which shall not require the consent of the Bundesrat, to alter the allocation of emission sources to the sectors listed in Annex 1 in so far as this is necessary to ensure uniform international reporting of greenhouse-gas emissions and does not conflict with requirements of European Union legislation.

(3) If, from the year 2021, greenhouse-gas emissions are above or below the relevant permissible annual sectoral emission volumes, the differential shall be subtracted from or added to the residual annual sectoral emission volume in equal instalments until the next target year referred to in section 3(1) of this Act. The foregoing shall be without prejudice to the requirements of the European Regulation on binding annual greenhouse gas emission reductions.

(4) Responsibility for ensuring compliance with annual emission volumes shall lie with the federal ministry whose remit gives it primary competence for the sector in question. It shall have the task of initiating the national measures required for such compliance and in particular of presenting and implementing the measures referred to in sections 8 and 9 of this Act. The foregoing shall be without prejudice to the distribution of responsibilities within the Federal Government. In the event of overlaps between the remits of individual federal ministries within the meaning of the first sentence above, particularly with regard to climate action programmes under section 9, the Federal Government may assign the responsibility referred to in the first sentence above.

(5) The Federal Government shall be authorised by a statutory instrument, which shall not require the consent of the Bundesrat, to alter the allocation of annual emission volumes to the sectors listed in Annex 2 to this Act with effect from the start of the next calendar year. Such alterations must be consistent with the achievement of the climate targets of this Act and with the requirements of European Union legislation.

(6) In the year 2025, the Federal Government shall set annually decreasing emission volumes for further periods after the year 2030 by means of a statutory instrument. These volumes must be consistent with the achievement of the climate targets of this Act and with the requirements of European Union legislation. When annually decreasing emission volumes are set for periods after the year 2030, the statutory instrument shall require the consent of the Bundestag. If the Bundestag has not considered the statutory instrument by the time six sitting weeks have elapsed since the date of receipt, it shall be deemed to have given its consent to the unamended statutory instrument.

Section 5 – Emission data, authority to enact statutory instruments

(1) The Federal Environment Agency (*Umweltbundesamt*) shall compile the data on greenhouse-gas emissions in the sectors listed in Annex 1 to this Act (emission data) for the preceding calendar year (reporting year), beginning with the 2020 reporting year, on the basis of the methodological requirements of the European Reported Information Regulation or on the basis of a supplementary act adopted under Article 26 of the European Governance Regulation. The Federal Environment Agency shall publish the emission data for the reporting year and transmit them to the Council of Experts on Climate Change referred to in section 10 of this Act by 15 March of each year.

(2) From the 2021 reporting year, the following shall be communicated in addition to the emission data:

1. for the reporting year in question, an indication for each sector as to whether the emission data are higher or lower than the annual emission volumes shown in Annex 2 to this Act,
2. for the years following the reporting year, the annual sectoral emission volumes referred to in section 4(3) of this Act,

3. for the land use, land-use change and forestry sector, additionally, the sources of greenhouse gases and their sinks,

4. an appendix showing previous years' emission data transmitted to the European Commission from the 2020 reporting year onwards, the emission data for the sectors subject to the European Regulation on binding annual greenhouse gas emission reductions being posted separately.

(3) The Federal Environment Agency may collect the data required for the performance of the tasks assigned by this Act. The collection of data belonging to natural or legal persons subject to private or public law and to associations of such persons is excluded if those data have been or will be communicated to federal or *Länder* authorities on the basis of other legal provisions. The Federal Environment Agency is, however, authorised to access these data if their collection is necessary for the performance of the tasks defined in paragraph (1) above. This shall apply even if the data were collected for other purposes.

(4) The Federal Government may, by means of a statutory instrument not requiring the consent of the Bundesrat:

1. assign responsibility for determining and communicating the data,
2. stipulate which data are to be determined and communicated,
3. lay down requirements for the determination and communication of the data, and
4. regulate the procedure for the determination and communication of the data.

Section 6 – Provisions governing monetary penalties

(1) An administrative offence is committed by anyone who intentionally or negligently infringes a statutory instrument within the meaning of section 5(4) of this Act or an enforceable order enacted on the basis of such a statutory instrument in so far as the statutory instrument refers, in respect of a particular offence, to this provision governing monetary penalties.

(2) The offence is punishable with a monetary penalty of up to fifty thousand euros.

Section 7 - Provisions implementing the European Regulation on binding annual greenhouse gas emission reductions

(1) The purchase of emission allocations for the fulfilment of obligations under the European Regulation on binding annual greenhouse gas emission reductions shall be effected centrally through the federal ministry responsible for the implementation of the said Regulation, subject to the resources available in the federal budget. When emission allocations are purchased, the federal ministry referred to in the first sentence above shall ensure that the selling state gives an undertaking to use the proceeds to combat climate change.

(2) The Federal Government shall present the Bundestag and Bundesrat, with a summary statement of account accompanying the draft federal budget; in particular, the statement shall contain the following:

1. an overview of the sectors whose emission data have been compliant with, higher than and lower than the annual emission volumes set out in Annex 2 in the preceding calendar year and since the year 2021,
2. an overview of the emission allocations available under the European Regulation on binding annual greenhouse gas emission reductions in the year to which the draft budget relates, and

3. the number of purchased emission allocations in the preceding calendar year and the total number of emission allocations purchased since the year 2021.

In addition, a summary statement of the budgetary funds spent on such purchases.

Section 8 – Measures in the event of annual emission volumes being exceeded

(1) If the emission data referred to in section 5(1) and (2) of this Act indicate that the permissible annual emission volume for a sector has been exceeded in a reporting year, the responsible federal government ministry defined in section 4(4) shall, within three months following the presentation of the assessment of the emission data by the Council of Experts on Climate Change established pursuant to section 11(1), present an emergency programme for the relevant sector; the programme shall ensure compliance with the annual sectoral emission volumes in the subsequent years.

(2) The Federal Government shall deliberate on the measures to be taken in the relevant sector or in other sectors or on cross-sectoral measures and shall adopt these measures as quickly as possible. In so doing, it may take account of the existing margins of appreciation allowed by the European Regulation on binding annual greenhouse gas emission reductions and alter the annual sectoral emission volumes referred to in section 4(5) of this Act. Before the proposal for a decision on these measures is produced, the assumptions regarding greenhouse-gas emissions on which the measures are based shall be forwarded to the Council of Experts on Climate Change for verification. The result of this verification shall be attached to the proposal for a decision.

(3) The Federal Government shall inform the Bundestag of the adopted measures.

(4) For the energy sector, paragraphs (1) to (3) above shall be applied, *mutatis mutandis*, at intervals of three years, beginning with the reporting year 2023.

Part 3

Climate action planning

Section 9 – Climate action programmes

(1) At least after each update of the Climate Action Plan, the Federal Government shall adopt a climate action programme; in addition, if targets are missed, the existing climate action programme shall be updated to include measures adopted pursuant to section 8(2) of this Act. In each climate action programme the Federal Government, having regard to the current climate projection report within the meaning of section 10(2), shall specify which measures it will take to achieve the national climate targets in the individual sectors. Central to the measures referred to in the second sentence above is compliance with the annual emission volumes set in accordance with section 4, taken in conjunction with Annex 2. The Federal Government shall also specify which measures it will take to preserve the net sink in the sector of land use, land-use change and forestry.

(2) The climate action programme shall be adopted no later than the calendar year following the update of the Climate Action Plan. The federal ministries with sectoral responsibility under section 4(4) of this Act shall, within six months following the update of the Climate Action Plan, propose measures that are likely to achieve the required additional greenhouse-gas reductions in the respective sectors. Besides scientific estimates of the probable greenhouse-gas reduction effects, the proposals for measures shall also contain scientific estimates of potential economic, social and other environmental consequences. These estimates shall, as far as possible, include effects on efficiency in the use of natural resources. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, in consultation with the Federal Ministry for Economic Affairs, shall determine the probable greenhouse-gas reduction impact of the proposed measures.

(3) The Federal Government shall involve the *Länder*, municipalities, business associations and organisations of civil society as well as the Scientific Platform on Climate Change and scientific advisory bodies of the Federal Government in every climate action programme through a public consultation procedure.

Section 10 – Reporting

(1) The Federal Government shall produce an annual climate action report containing information on the development of greenhouse-gas emissions in the individual sectors and on the state of progress in implementing the climate action programmes adopted pursuant to section 9 of this Act and the emergency programmes presented pursuant to section 8 as well as a forecast of the likely greenhouse-gas reduction effects. The Federal Government shall forward the climate action report for the preceding year to the Bundestag by 30 June.

(2) From the year 2021, the Federal Government shall produce a climate projection report in accordance with the requirements laid down in Article 18 of the European Governance Regulation; the report shall contain the projections for greenhouse-gas emissions, including sources and sinks resulting from land use, land-use change and forestry, and specify the national policies and measures adopted for the reduction of those emissions. The Federal Government shall forward the climate projection report to the Bundestag by 31 March of the relevant year.

(3) The climate projection report shall be central to the integrated national energy and climate progress reports prescribed by Article 17 of the European Governance Regulation; the latter reports shall be produced by the Federal Ministry for Economic Affairs and Energy in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

Part 4

Council of Experts on Climate Change

Section 11 – Independent Council of Experts on Climate Change, authority to enact statutory instruments

(1) A Council of Experts on Climate Change shall be established, comprising five specialised persons from various disciplines. The Federal Government shall appoint the members for a term of five years, at least one member being drawn from each of the fields of climatology, economics, environmental science and social matters and possessing outstanding scientific knowledge and experience in his or her field. The Council of Experts as a whole shall also embody overarching expertise in the sectors specified in section 4(1) of this Act. Equal representation of women and men shall be ensured. Each member may be reappointed once.

(2) The Council of Experts on Climate Change shall elect by secret ballot from among its members a chairperson and a deputy chairperson. The Council of Experts on Climate Change shall adopt its own rules of procedure.

(3) The Council of Experts on Climate Change shall be bound only by the mandate assigned by this Act and shall be independent in its activity. The Federation shall meet the costs incurred by the Council of Experts on Climate Change, subject to the provisions of the federal budget.

(4) The Council of Experts on Climate Change shall be assisted in the performance of its work by an administrative office. The staff of the office shall be appointed by the Federal Government and shall be under the authority of the Council of Experts on Climate Change in professional matters.

(5) The Federal Government is authorised to enact statutory instruments not requiring the consent of the Bundesrat to lay down rules governing the seat of the Council of Experts on Climate Change, its administrative office, the lump-sum remuneration of its members, the reimbursement of their travel expenses, their duty of confidentiality and other organisational matters.

Section 12 – Tasks of the Council of Experts on Climate Change

(1) The Council of Experts on Climate Change shall examine the emission data referred to in section 5(1) and (2) of this Act and shall present the Federal Government and the Bundestag with an assessment of the published data within one month following their transmission by the Federal Environment Agency.

(2) Before the proposal for a decision on the measures referred to in section 8(2), the Council of Experts on Climate Change shall examine the assumptions on greenhouse-gas reduction that underlie the measures.

(3) The Federal Government shall obtain the opinion of the Council of Experts on Climate Change regarding the underlying assumptions on greenhouse-gas reduction before ordering the implementation of the following measures:

1. changes to the annual emission volumes by means of a statutory instrument enacted under section 4(5) of this Act;
2. updating of the Climate Action Plan;
3. adoption of climate action programmes pursuant to section 9.

(4) All public bodies of the Federation within the meaning of section 2(1) of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) shall enable the Council of Experts on Climate Change to peruse the data required for the performance of its tasks and shall make such data available. The Federal Government shall ensure that the protection of third parties' industrial and commercial secrets is guaranteed. The Council of Experts on Climate Change may hear and question public authorities as well as experts, particularly representatives of business organisations and environmental associations, on matters relating to climate action.

Part 5

Model role of public authorities

Section 13 – Consideration requirement

(1) Bodies discharging public duties shall give due consideration to the purpose of this Act and to the targets set for its implementation. The foregoing shall be without prejudice to the powers of the *Länder* and municipalities to determine the manner of their compliance within their respective areas of responsibility.

(2) When planning, selecting and making investments and procurements, the Federation shall examine how each of these operations can contribute to the achievement of the climate targets specified in section 3 of this Act. Where there are two or more planning, selection and implementation options for investments and procurements, preference shall be given, after balancing against other relevant criteria pertaining to the purpose of the investment, to the option or options with which the aim of reducing greenhouse-gas emissions over the whole lifetime of the capital good or procured item can be achieved at the lowest cost. Additional investment or procurement expenditure shall not be disproportionate to the additional contribution to

greenhouse-gas reduction. In so far as provisions of procurement law are applicable, they shall be observed.

(3) When cost-effectiveness criteria are applied, costs and savings over the entire lifetime of the capital good or procurement in question shall be the basis of any comparison. Due consideration shall be given to the expected cost of climate action to the national economy.

Section 14 – Federation-*Länder* cooperation

(1) Without prejudice to compatibility with federal law, the *Länder* may enact their own laws on climate change. The existing *Länder* laws on climate change shall continue to apply without prejudice to their compatibility with federal law.

(2) The Federation and the *Länder* shall cooperate in an appropriate form in order to achieve the objectives of this Act.

Section 15 – Climate-neutral federal administration

(1) The Federation shall set itself the aim of climate-neutral organisation of the federal administration by 2030. To achieve this goal, the Federal Government shall adopt, in the year 2023 at the latest and every five years thereafter, measures to be complied with by the federal authorities and other federal institutions without legal personality of their own if they are directly subject to the organisational authority of the Federation. If legal provisions are required to achieve the aim specified in the first sentence above, the Federal Government shall present the Bundestag with a draft of those provisions within six months following the adoption of the measures.

(2) Climate-neutrality of the federal administration is to be achieved, in particular, through energy savings, through the efficient provision, conversion, use and storage of energy and through the efficient use of renewable energy sources and the selection of the most climate-friendly possible vehicles. In this context, care shall be taken to ensure the efficient use of natural resources. In the case of federal administrative actions abroad, such as the construction or refurbishment of federal buildings, due consideration shall be given to local regulations and technical standards and to market conditions.

(3) The Federation shall endeavour, in the corporations, agencies and foundations under its supervision, in its special funds and in the legal entities that are partially or wholly under its ownership, to ensure that these bodies also pursue climate-neutral organisation of their administrative activity.

(4) The Federal Government shall engage in experience-sharing with the *Länder* with a view to assisting the *Länder*, within their sphere of responsibility, in considering and, where appropriate, framing rules that are comparable with those enacted in pursuance of paragraphs (1) to (3) above.

Annex 1 – Sectors (*ad* sections 4 and 5)

The division into sectors is based on the source categories of the Common Reporting Format (CRF) set out in the European Reported Information Regulation or on an implementing act adopted on the basis of section 26(7) of the European Governance Regulation.

| Sectors | Description of the source categories in the Common Reporting Format (CRF) | CRF source category |
|---|---|---------------------------------------|
| 1. Energy | Fuel combustion activities in energy industries Other transportation (pipeline transport) Fugitive emissions from fuels | 1.A.1 1.A.3.e 1.B |
| 2. Industry | Fuel combustion activities in manufacturing industries and construction Industrial processes and product use CO ₂ transport and storage | 1.A.2 2 1.C |
| 3. Buildings | Fuel consumption activities: commercial/institutional household Other activities relating to fuel consumption, particularly in military establishments | 1.A.4.a 1.A.4.b 1.A.5 |
| 4. Transport | Transport (domestic civil aviation, road transport, rail transport and inland shipping), excluding pipeline transport | 1.A.3.a, 1.A.3.b, 1.A.3.c and 1.A.3.d |
| 5. Agriculture | Agriculture Fuel consumption activities in agriculture, forestry and fisheries | 3 1.A.4.c |
| 6. Waste and Other | Waste Other | 5 6 |
| 7. Land use, land-use change and forestry | Forestland, cropland, grassland, wetlands and settlements, harvested wood products, changes between land-use categories | 4 |

Annex 2 – Permissible annual emission volumes (*ad* section 4)

| Annual emission volumes in millions of tonnes of CO ₂ equivalent | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 |
|---|------|------|------|------|------|------|------|------|------|------|------|
| Energy | 280 | | 257 | | | | | | | | 175 |
| Industry | 186 | 182 | 177 | 172 | 168 | 163 | 158 | 154 | 149 | 145 | 140 |
| Buildings | 118 | 113 | 108 | 103 | 99 | 94 | 89 | 84 | 80 | 75 | 70 |
| Transport | 150 | 145 | 139 | 134 | 128 | 123 | 117 | 112 | 106 | 101 | 95 |
| Agriculture | 70 | 68 | 67 | 66 | 65 | 64 | 63 | 61 | 60 | 59 | 58 |
| Waste and Other | 9 | 9 | 8 | 8 | 7 | 7 | 7 | 6 | 6 | 5 | 5 |

Article 2

Amendment of the Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitsprüfung*)

The following point 2.13 shall be added to Annex 5 of the Environmental Impact Assessment Act promulgated on 24 February 2010 (Federal Law Gazette I, p. 94), as amended by Article 22 of the Act of 13 May 2019 (Federal Law Gazette I, p. 706):

| | |
|-------|---|
| "2.13 | Climate action programmes adopted pursuant to section 9 of the Federal Climate Change Act." |
|-------|---|

Article 3

Amendment of the Act Establishing a Special Energy and Climate Fund (*Gesetz zur Errichtung eines Sondervermögens „Energie- und Klimafonds“*)

The Act Establishing a Special Energy and Climate Fund of 8 December 2010 (Federal Law Gazette I, p. 1807), as amended by Article 1 of the Act of 22 December 2014 (Federal Law Gazette I, p. 2431), shall be amended as follows:

1. Section 2(1) shall be amended as follows:

(a) The second and fifth sentences shall be deleted.

(b) In the new second sentence, the word "may" shall be replaced by the words "may, in particular," and the words "development of" in the seventh indent shall be deleted.

(c) In the new third sentence, the words "of up to 500 million euros a year" shall be deleted.

(d) The following sentence shall be appended: "Compensatory payments to operators for the closure of coal-fired power stations and compensatory electricity price relief payments in connection with the introduction of CO₂ pricing may be made from the Special Fund."

2. Section 4 shall be amended as follows:

(a) Paragraph (1) shall be amended as follows:

(aa) After point 1, the following point 2 shall be inserted:

"2. receipts from a national emissions-trading scheme for CO₂ pricing,"

(bb) The present points 2 to 4 shall be renumbered 3 to 5.

(b) In paragraph (2), after the reference "paragraph (1)(1)" the addition "and (1)(2)" shall be inserted.

Article 4

Entry into force

This Act shall enter into force on the day following the date of promulgation.

Berlin, 20 October 2019

Ralph Brinkhaus, Alexander Dobrindt and the parliamentary group of the CDU/CSU

Dr Rolf Mützenich and the parliamentary group of the SPD