
Seminar Summer Term 2024

“Regulating climate change – the corporate and securities law perspective in cooperation with the 74th Deutscher Juristentag”

SPB 1 (Internationalization and Europeanization of the law)
SPB 2 (Company and finance)

Description: The threat of climate change has lead lawmakers across the world to ponder mitigating measures. Given that corporations are responsible for a large proportion of CO2 emissions, corporate behavior is a natural starting point. To that end, the Business Law Division of the 74th Deutscher Juristentag (<https://djt.de>) will explore changes in German corporate law. The organizers of the 74th DJT have invited corporate law professors to discuss these questions in seminars, extending an invitation to attend the DJT after having completed the seminar. The DJT takes place on September 25th-27th of 2024 in Stuttgart. Our chair is going to participate in this program.

Being a global phenomenon, climate change calls for an approach beyond national borders and beyond corporate law. The role of finance and securities law has been recognized years ago in Art. 2 para. 1(c) of the Paris Agreement on climate change, focusing on “making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development”.

This seminar invites students to explore how corporate and security law tools can be employed to combat climate change. We will discuss, *firstly*, the European approach via securities law, *secondly*, the proposals of the DJT for national corporate law, and, *thirdly*, undertake a comparison with US law.

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Prof. Elizabeth Pollman (Penn Law, <https://www.law.upenn.edu/faculty/epollman>) will accompany and moderate the discussion on US law. **For this reason, the seminar will be held in English.**

Following the seminar, an excursion to the 74th Deutscher Juristentag is planned, which will take place in Stuttgart from September 25th-27th, 2024. In this context, the organizers of the DJT will host joint discussions for the participating chairs from all over Germany. In addition, all students will have the opportunity to participate in an introductory event and an exchange in a small group with the Business Law Department (including Prof. Dr. Jochen Vetter, Prof. Dr. Marc-Philippe Weller, Prof. Dr. Joachim Hennrichs, Research Assistant Vera Obernosterer, in-house lawyer Dr. Friederike Rotsch). Costs for travel, accommodation, and meals will be covered by grants from the faculty. Further details will be explained during the preparatory seminar meeting.

Time and place: The seminar will take place as a block seminar on July 8th-9th, 2024.

Examination: Students are required to hold a 15-minute English-language presentation of your own topic followed by a 15-minute discussion (in English), and the submission of a seminar paper (choice between English/German, max. 40,000 characters, Times New Roman, size 12pt, 1.5 line spacing).

Participation: For reasons of capacity on site in Stuttgart, the number of students is limited to 15. A preparatory meeting will take place on February 1st, 2024.

Please send a selection of your preferred topics to: mitarbeiter-langenbucher@jur.uni-frankfurt.de. Topics will be handed out on a first come, first serve basis.

List of topics

Part 1: European law

Reference: Kuntz, ESG Demand-Side Regulation – Governing the Shareholders

- 1) **Climate change – the EU Approach:** Which corporate and securities law measures has the EU implemented to fight climate change? Should regulatory measures focus more on the area of corporate or on securities law?
Reference: Rodi, KlimR 2022, 207; Ferrarini/Siri, Stewardship and ESG in Europe
- 2) **Sustainability Reporting:** Which incentives does European sustainability reporting set to induce investors to focus on climate-friendly investments?
Reference: Steuer/Tröger, Journal of Financial Regulation 8 (2022), 1; Klöhn/Jochmann, KlimaRZ 2022, 12
- 3) **Green Finance:** Green Bonds as a core instrument for corporate financing?
Reference: Renner, ZBB 2023, 23; Schlitt/Esmaty, BKR 2023, 426
- 4) **EU regulatory powers:** Can the EU pass corporate law provisions aiming at promoting climate change in view of previous justifications for existing European Company Law Directives?
Reference: Habersack/Verse, Europäisches Gesellschaftsrecht, § 3,4

Group discussion: Which steering instruments has the EU legislator so far relied on? Keeping subsidiarity principles in mind: What can the EU legislator do and which powers remain with the national legislator?

Part 2: National corporate law

Note: These topics are based on the questions posed by the DJT. The DJT expert opinion is expected in spring/summer 2024. Participants are encouraged to discuss the expert opinion.

- 5) **Reporting on Sustainability:** Are changes recommended with regard to companies' internal and external reporting on their own carbon footprint and climate protection efforts? To what extent does EU law set mandatory requirements?
- 6) **Duties of the management board:** Should the responsibility of executive management bodies for climate protection be enshrined in law?
- 7) **Modification of the BJR:** Should the Business Judgement Rule of Section 93 (1) sentence 2 AktG include references to the consideration of environmental and public welfare concerns?
- 8) **Say-on-Climate:** Should the Annual General Meeting regularly vote on the Executive Board's climate action plans and the progress made in the financial year?
- 9) **Sustainability expertise:** Are guidelines recommended to ensure sufficient expertise in sustainability issues on the management and the supervisory Board?
- 10) **Setting incentives via executive board remuneration:** Are targets for executive board remuneration recommended in order to incentivize ambitious climate protection efforts?

Group discussion: Which of the measures discussed should be mandated by the legislator and which should be recommended or encouraged by the GCGC Government Commission?

Part 3: Comparative US law

Note: Students must neither have profound knowledge in US-Securities or Company Law nor familiarize deeply with US-law. Instead, the below mentioned questions, which are discussed in the referenced papers, should be compared to the situation in Europe/Germany in the course of a evaluative statement.

- 11) **U.S. law: The meaning of ESG and U.S. developments:** What does the term ESG mean? Where did it come from? How did usages of the term evolve? How did it become politicized in the United States? How do ESG developments relate to (and threaten) climate change regulation?

Reference: Pollman, The Making and Meaning of ESG, forthcoming Harvard Business Law Review 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4219857

- 12) **U.S. law: Business law as environmental law:** Is environmental law “external” to the concerns of U.S. business law? Should U.S. corporate and securities laws be exclusively focused on the financial or economic interests of investors and shareholders?

References: Light, The Law of the Corporation as Environmental Law, Stanford Law Review 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3228536; Lipton, Not Everything is About Investors: The Case for Mandatory Stakeholder Disclosure, Yale Journal on Regulation 2020

- 13) **U.S. law: Climate change and securities law:** What are the key points of the Securities and Exchange Commission’s proposed climate risk disclosure rule? How would it impact corporate activity and disclosures related to climate change? Will it withstand legal attack?

Reference: Hirst, Saving Climate Disclosure, Stanford Journal of Law, Business, and Finance 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4134822 (additional sources related to the debate on the proposed SEC rule to be discussed or substituted)

- 14) **U.S. law: Climate change and corporate law:** How are concerns about climate change shaping U.S. corporate law and governance?

Reference: Condon, “Green” Corporate Governance, forthcoming in Oxford Handbook of Corporate Law and Governance, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=4633&context=faculty_scholarship

- 15) **U.S. law: Alternative paths to change:** With a polarized Congress and the U.S. Supreme Court on a path of curtailing the power of federal agencies, what else might be done to promote decarbonization and a transition to a green economy?

Reference: Kuo & Means, Forcing Climate Change Compliance, forthcoming Harvard Environmental Law Review 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4585872